

# Deposit Protection with mydeposits for Joint and Several Tenancies

## Why is it important that I read this guide?

If you take a deposit relating to a Joint and Several Tenancy Agreement, you should familiarise yourself with the processes of our insurance scheme in order to ensure that the deposit is protected correctly, including our key requirement to appoint a 'lead tenant'.

This guide is to be read in conjunction with the mydeposits insurance based protection Scheme Rules.

Other authorised tenancy deposit protection schemes may have differing rules and processes surrounding protection of deposits under a Joint & Several Tenancy Agreement. This guide relates to the processes of mydeposits only.

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## What is Tenancy Deposit Protection?

Under the Housing Act 2004 ("the Act") all landlords and agents who take a deposit from a tenant who occupies a property in England or Wales under an Assured Shorthold Tenancy Agreement ("AST") must protect that deposit with one of the Government's authorised TDP schemes.

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## What is a joint and several tenancy agreement?

A Joint and Several Tenancy agreement (JSTA) is created where two or more adults reside in a property and they have signed a single agreement for the same period of time. They are classed as a single tenant and all are jointly responsible under the terms and conditions of the tenancy agreement.

Strictly speaking a joint tenancy is limited to a maximum of four people (although many agreements include more than four) and each person has full use of the property and equal rights under the tenancy.

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## What happens to the deposit under a joint tenancy?

As far as the deposit is concerned, the landlord receives a single deposit to which all the tenants are equally entitled to receive back. It is up to the parties how the deposit is distributed at the end of the tenancy. Many landlords, however, follow the convention of returning the deposit in the same way they received it. i.e. If they receive it in parts they return it in parts. If the parties want to stipulate a particular method of return they should agree this in advance and clearly document it.

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## How does mydeposits deal with deposits taken on joint tenancies?

It is the responsibility of the landlord to notify us of the names of every tenant party to the agreement. It is the responsibility of the landlord to inform us and then to provide the tenants with a copy of the Prescribed Information. If there are any mistakes or omissions regarding the inclusion of any tenant then the tenant should inform the landlord and ask the landlord to inform us.

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## What is a 'lead tenant' and what role does this tenant play in deposit protection?

We do not require the landlord to provide every tenant with separate documents and notification details of the deposit protection. Instead we require the landlord to nominate a 'lead tenant'. The landlord must ensure that all the tenants agree to the appointment of the lead tenant. The lead tenant will then be responsible for the receipt of service of documents, and is to act on behalf of all tenants in dealing with us during the tenancy.

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## What happens if the lead tenant leaves or the tenants wish to change the lead tenant?

The landlord should inform us immediately that a new lead tenant has been appointed. The Prescribed Information is updated and reissued along with the updated details noting the new lead tenant. There will be no charge for this service and the deposit remains protected at all times.

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## A new tenant has replaced one of the original co-tenants. Is the deposit still protected?

If the new tenant has simply replaced an existing one and all the other details of the tenancy agreement remain the same, the existing deposit protection will continue to be valid. However the new tenant and the old tenant should ensure that a 'deed of assignment' is drawn up to amend the contract. The ingoing tenant should agree with the outgoing tenant to take over responsibility for the deposit and the usual practice is for the incoming tenant to give the equivalent of their share of the deposit to the outgoing tenant.

It is essential that the landlord is involved in this process and that they inform both the new and old tenant of any intended deductions from the deposit at the end of the tenancy. It is likely that if this is not done that the new tenant will have a strong case to dispute any deductions for contract breaches committed before he moved in, even though he is jointly and severally liable.

The landlord should inform us of the change and provide a copy of the assignment of rights. We will then confirm if protection is still in place and amend the Prescribed Information accordingly. The landlord must then reissue it to the tenants and obtain the agreement of the tenants that it is correct.

## What happens if there is a dispute at the end of a JSTA?

As we only recognise that there is a single deposit protected, we will not accept disputes for separate “shares” of the deposit. Instead, we will only accept a dispute from one of the tenants on behalf of themselves and their co-tenants.

Where this person is the lead tenant, we recognise the authority assumed by them at the start of the tenancy. If a dispute is raised by one of the other tenants, we require them to raise a dispute on the understanding that they have obtained the express authority of all co-tenants, including the lead tenant, accepting the dispute is being raised on their behalf and if they are entitled to a share of the disputed amount, the nominated tenant is responsible for the distribution of the money.

In short, any tenant subject to the JSTA can assume the authority of the lead tenant at the time of a dispute but this is subject to the agreement of all other tenants.

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## Will mydeposits pay individual shares of the deposit separately to the tenants?

In the main, no. However there may be exceptional circumstances where we may consider payment of individual shares especially where tenants may have become separated for geographical reasons at the end of the tenancy agreement. In general, the deposit will be paid to the lead tenant or with the agreement of all other co-tenants, the nominated tenant who will be responsible for distribution. mydeposits cannot get involved with disputes between tenants on the allocation of deposit monies.

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## One of the tenants is no longer in contact with all the other co-tenants. Can they still raise a dispute?

We provide a form to the tenant to complete declaring that they accept responsibility of raising the dispute and get this agreed by all the tenants you are in contact with.

You must then sign the form and agree with the declaration that you are responsible for the disputed amount. This form signed and witnessed is a legally binding undertaking.

We will undertake the dispute on its merits but you must be aware that you are responsible for any monies received.

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## The co-tenants have agreed to the return of the deposit. Can one tenant still raise a dispute?

It may be possible for a tenant to raise a dispute in this instance, however it will be for the tenant to provide the evidence for why they wish to do so. The tenant will have to inform us of the amount of the deposit they wish to dispute and the co-tenants should be asked to confirm that they do not wish to use the ADR and they will be unable in the future, regardless of the decision of the adjudicator.

If the tenant wants to dispute more of the deposit than their “share”, whilst this may be possible, they should be aware that the adjudicator will consider the evidence from the landlord and if there is a robust agreement from the other tenants it would be unlikely that they would overturn this.