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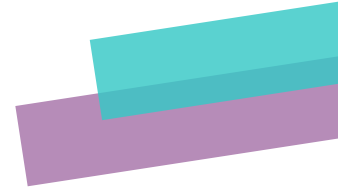
England and Wales - Custodial Conditions of resolution

May 2024



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Introduction

These conditions of resolution are an addendum to the mydeposits scheme rules and set out the process for end of tenancies and when we deal with a resolution case ("a case").

It covers the legislative requirements relating to the case, the responsibilities of both tenant and member (known as 'property manager') and how the scheme will resolve the case.

Members and tenants are required to agree with these conditions of resolution as the way we will help the parties with the deposit return.

We offer a free resolution process which is an alternative to the parties resolving the case through the courts.

We actively encourage its use as it is quicker and allows the parties to resolve the issues by engaging with each other. A resolution outcome will only be made by us on the deposit return if it is necessary.

By accepting to use our resolution process the parties will be able to present their case and evidence to a fully trained and qualified resolution specialist. First, we will help the parties collectively reach a resolution. If that is unsuccessful, we will analyse the evidence provided and make a binding decision on how the deposit should be released.

A party cannot appeal a scheme decision as the decision is final and binding on the parties and us.

Section A – End of tenancy best practice

Tenant

At the end of the tenancy the tenant should pay all rent owed, contact the member to discuss the deposit return and make sure they have registered their account with us so they can either use it to discuss/negotiate the deposit release or agree to the member's release terms.

Member

At the end of the tenancy the member should arrange the check-out inspection before contacting the tenant to discuss the deposit return. The member can use our release process to discuss/negotiate the return of the deposit. They need to make sure the tenant has registered their account with us.

Uncontactable tenant

If a member is unable to contact the tenant at the end of the tenancy then we recommend that the member still arranges a check-out inspection as usual and records any settlements that should be made from the deposit. The member should then try to contact the tenant, informing them of the proposed deductions, and keep a record of all actions taken relating to the deposit. They should then make a release request in line with their position at the end of the tenancy. The tenant will receive a release request notification from us. If the tenant does not respond then the member can follow the single release process.

Uncontactable member

If a tenant is unable to get in contact with the member at the end of the tenancy then they should wait 10 days from the day they moved out before starting a release request. A member can respond to the release request to discuss/negotiate the return of the deposit. If the member does not respond to the release request then the tenant can go through the single release process.





Single release process

If a party is able to use the single release process then they must upload a signed statutory declaration setting out how they believe the deposit should be released. After approving it we then provide the statutory declaration to the other party who has 14 days to respond. If they do not respond then the deposit will be released in accordance with the statutory declaration. If a party does not send us a statutory declaration despite being able to, we will move the matter to resolution so we can actively assist the parties with resolving the deposit release.

Section B – Release and negotiation

The release

Either party can start the release process at the end of the tenancy and will need to confirm the date the tenant moved out of the property. This will create a release request ID in the portal for the deposit protection.

By either starting the process or responding to the tenant's release request, the member will need to provide their settlements position through the portal and upload all supporting evidence. This will help the tenant respond to the settlements to achieve an agreement between both parties.

The tenant will respond to the member's settlements by either agreeing with them or proposing a new offer amount, including reasons to support this offer. The tenant will also need to upload all supporting evidence to help reach an agreement.

Responding to settlements

There is no limit to the number of offers that can be proposed, and the parties are encouraged to use the chat feature on the portal to help reach an agreement. Both parties are advised to use the chat feature in a professional and respectful way as our team will be able to view all messages sent but will not actively monitor the discussions.

Once an agreement is reached on all settlements the deposit will be released on the agreed terms.

If an agreement cannot be reached after both parties have offered settlements either party can start the resolution process and either request our resolution team resolve the issue or inform us the issues will need to be resolved through the courts. If any settlements were agreed then the deposit money we are holding will be paid out on those settlements and the rest will move forward to resolution.

No response from either party

If the party required to respond to a settlement offer does not respond within 14 calendar days, the settlements and evidence already provided will be sent to our resolution team automatically for a resolution outcome.

If no agreement is reached between the parties after three months of negotiation, the settlements and evidence will be sent to our resolution team automatically for a resolution outcome.

Section C – Resolution case acceptance criteria

Raising a case

Either party can move the case to resolution after first using the release process to negotiate. If there is no agreement to any settlement the issues can proceed to a case.

Both parties must agree to use our resolution process. If either party wishes to resolve the matter through the courts then they can select this option after the negotiation stage.

We will check that the tenant has left the property, paid all rent correctly owing and the parties have been through our release process.

Reasons to not accept case

We may not accept a case for any of the following reasons:

- The tenant has not left the property, paid all rent correctly owing or used the release process
- The issues requiring resolution are not about the deposit return
- Court proceedings have already been started and relate to the tenancy issues raised with us (unless they have been withdrawn or are stayed for mediation purposes or the court has subsequently directed that the matter be dealt with by our resolution process)
- There are allegations of fraud, police involvement, criminal activities, duress or harassment by either party
- The case being raised is vexatious, frivolous or being raised unreasonably by the tenant
- It would be more appropriate for the case to be dealt with by the courts. This would happen if, in our opinion, we would be unable to make a decision based on the evidence or the case contains complex legal issues

If we decide not to accept a case then we will contact both parties, provide the reasons and let them know how the deposit will be released.

If at any stage, we are made aware of more information relating to a case which affects the reasons why a case was either accepted or rejected, we may change our initial decision and will provide full written reasons for this change.

Joint tenants

If the case relates to a joint tenancy then the lead tenant will raise and deal with the case. The tenants can change the lead tenant at any point up to resolution and at all points the lead tenant must confirm that they:

- will personally conduct all aspects of the case
- have authority to act for all the joint tenants
- agree to distribute any money fairly, that may be returned to the joint tenants
- agree to indemnify us against any claims or loss by the other joint tenants, and
- will notify all the joint tenants that we are unable to resolve any matter between themselves

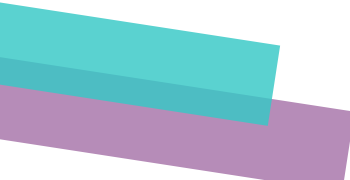
The other joint tenants will have 'read only' access to the resolution case so they can see its progress.

If the tenancy is being renewed with one or more tenants leaving then generally the incoming tenants will cover the outgoing tenants deposit and take responsibility for the condition of the property when the tenancy started. If settlements are required with outgoing tenants that cannot be resolved directly outside of the scheme then the member should start a release to deal with the matter and protect the deposit for the new tenancy separately.

Authorised parties

We may allow an Interested party to raise and handle a case as an 'authorised representative' of the tenant once we have had written confirmation that they can act. The authorised party must inform us in writing, providing reasons and evidence why they are acting on behalf of the tenant. Some reason may be due to the:

- tenant's difficulty with language or understanding the issues
- tenant's disability, incapacity, or sickness
- tenant's absence from the UK



We may allow an authorised representative to handle a case on behalf of a private landlord member on the same basis as above.

Our decision to accept an authorised party to take responsibility for the case is final and we may require proof of identification or other evidence and documents, including any 'enduring power of attorney', 'lasting power of attorney' or other agency agreement. If we accept the authorised representative, the definition of 'tenant' is extended to the authorised representative.

A company landlord or agent member will not be allowed to give authority for another party to act on their behalf in a case.

Third party costs

If a party instructs a solicitor or any other professional representative, the costs must be paid by the instructing party. We will make no award for costs relating to the professional representation unless specified in a court order.

Miscellaneous

The parties are encouraged to discuss and settle the case before we make a binding decision using our negotiation portal.

If the parties reach agreement after resolution has been started, both parties must provide written proof of any agreement and signed instruction. We may independently check the authenticity of the signed agreement.

The member is responsible for confirming all proposed settlements. We may request more information if the agreed amounts are unclear, or we will use the evidence provided to make a decision.

Each party is responsible for any costs and/or expenses incurred that relate to a case. We will make no award for preparing a case.

No award will be for more than the protected amount.

The tenant will respond to the member's settlements by either agreeing with them or proposing a new offer amount, including reasons to support this offer. The tenant will also need to upload all supporting evidence to help reach an agreement.

Section D – Resolution process and timescales

Raising a case

When raising a case with us either party is required to:

- make sure all their settlement positions are up to date and then inform us through the portal that they want to proceed to the next stage
- tell us whether the decision should be resolved using our resolution process or through the courts

If resolution is selected, both parties are then required to finalise their evidence through the portal in the time stated. This evidence will be final and can only be added to at the request of our resolution team

We will then check the case is valid. If we are unable to accept the case, we will explain the reasons to both parties.



Choosing court

Either party can choose court to resolve the case. Any agreed amount will be returned to the parties and the remaining amount will be known as the unresolved amount.

If a party chooses to use the court, Tenancy Deposit Solutions Limited t/a mydeposits (TDSL) must not be added as a defendant to the court proceedings in any circumstances. If we are added as a party to the proceedings then an application will be made to the court to remove TDSL from proceedings and we will request costs from the claimant for having to do so.

Whichever party tells us that they have chosen the court process will then have six months to provide us with an issued court claim confirming the case is being dealt with by the court. If we receive no court claim during this time, the unresolved amount will be released to the other party.

When we do receive the issued court claim, confirming that proceedings have been started within six months of choosing this option, we will hold the unresolved amount until a court order is received.

We may retain the amount we are holding for a time, after receipt of a court order, to allow any appeal or leave to appeal.

A court order should specifically refer to how we release the deposit. We are aware that judges do not always do this so we may request a copy of the claim form to confirm that the claim relates to issues that can be resolved using the deposit.

We may request any other information or documentation we consider appropriate before releasing the amount we are holding.

If the court refers the case back to our resolution process, both parties will need to confirm the evidence they would like our resolution team to consider within the time stated.

Section E – Evidence

The deposit belongs to the tenant unless the member proves, with evidence, that they are entitled to any proposed settlements. Both parties to the case are responsible for setting out their position clearly, which includes pointing us to relevant evidence.

When agreeing to use our resolution process, the member and tenant accept that we act as an impartial party and have total discretion to assess the evidence provided. Both parties will be able to respond to each other's position but there will be no cross examination and our decision will be made on the positions and the evidence provided.

All evidence provided must be relevant and proportional to the issues in the case. If the issues are particularly complicated, involve issues unrelated to or exceeding the amount protected, or where there is a large or complex amount of evidence, we may advise that the court may provide a better result.

We will not be responsible for any error or omission arising because the parties positions or supporting evidence was incomplete, illegible, confusing, contradictory or misleading, as long as we have taken reasonable care, particularly when a large amount of evidence has been supplied by a party.

Important evidence

The most important documents in a case are the tenancy agreement, signed and dated check-in and check-out reports (including inventory and schedule of condition) and dated photographic/video evidence. Any costs incurred by a member that they wish to deduct from the deposit should be supported by valid invoices, receipts or estimates.



The guides and case studies provided on our website give detailed information on how we consider evidence. As a summary:

- the check-in/out report will be given more evidential weight if it has been viewed/signed by the tenant or conducted by an independent inventory clerk. If there is a doubt as to the independence of the report, the party relying on it should set out why they believe it to be independent. If the report has not been seen/signed by the tenant, the member should explain why not and provide evidence that the tenant was given the opportunity to do so.
- photographic and video evidence can be used to support the party's position. If the photographic or video evidence is separate to the check-in/out reports and not date stamped or verified by the tenant, we may be unsure when it was taken. If a party intends to rely on the electronic properties of a photographic or video file then this should be explained in the settlement position.
- specific guides and case studies which deal with common issues we see are on our website. We recommend looking at these for any advice or guidance which may help settle the issues

Returning evidence

We will only return any evidence posted to us if we are informed it is required back. Depending on the size and weight of the evidence, we may require prepayment of postage to return the evidence.

Section F – The resolution outcome

Case assessor

After both parties have confirmed their positions and if settlements remain outstanding the case will be assigned to a case assessor. We will look at both parties' positions, evidence and any other relevant information that has been provided. The case assessor will try to contact both parties to discuss the case with the aim of reaching an agreed resolution outcome with the parties.

Decision

If the case assessor decides the case needs a decision an adjudicator will have 28 calendar days to issue the decision from the date the case moves to this stage.

If an adjudicator is unable to reach a decision with the evidence provided, we may ask for more information. We may ask for clarification on a point or more evidence if we have reason to believe a certain piece of evidence exists.


We work under tight government monitored timescales, and if a decision can be made with the evidence provided, we are not required to request any more evidence.

We will inform both parties once the decision has been made and make payments in line with the resolution outcome within five working days.

How we make our decision

If a member makes comments which are unsupported by evidence, we may award the amount back to the tenant as the member has not persuaded us, on balance, that they are entitled to the amount claimed.

We will take fair wear and tear of property and its contents into account and are unable to make an award which would result in the member receiving new for old, also known as 'betterment'.



Our 'Fair wear and tear' guide provides more information on how we calculate fair wear and tear. We will consider the item or area and assess:

- the age of the item (or when decoration last occurred)
- the quality and condition of the item at the start of the tenancy
- the lifespan of the item/area in a let property
- the length of the tenancy
- the number and type of occupants may be relevant.

Any award made to the member is for a breach of the tenancy agreement by the tenant. This will generally be a breach which has resulted in the property not being returned in the condition it was in at the beginning of the tenancy (taking fair wear and tear into account).

Our case assessors and adjudicators are trained to follow a consistent approach to the most common issues and our internal training guide provides support for the less common scenarios:

- Although cases may seem the same to a member or tenant, every case is different, and the evidence provided will vary depending on the specific circumstances
- Each case is decided on its own facts and evidence, like a court judge
- We have discretion to decide what we believe to be fair in the circumstances
- If one person considers a certain course of action to be fair in a case, a different person may consider a slightly different course to also be fair

As long as we have followed the correct approach and explained the reason(s) for coming to a decision, then that decision will be correct even if a party is unhappy.

Section G – Miscellaneous information

Like our scheme rules, these conditions of resolution may need to be updated from time to time. Notices of any changes will be posted on our website, in newsletters and by email where the member has provided us with an email address, or direct mail if not.

If we make an incorrect payment to any party due to an administrative error then that party is required to return the amount immediately when requested. Legal proceedings may be started if the amount remains unreturned.

If a tenant or member believes that we have made an error in fact or law or an administrative mistake, they must complete our resolution complaint form with the details. This form can be found on our website, or we can send a copy on request.

Any party agreeing to use our resolution process means agreeing to be bound by the decision. Using our complaints procedure to complain against or appeal a decision will be unsuccessful.

We are not regulated by the Financial Conduct Authority (FCA) and our decisions are not subject to judicial review. The Department for Levelling Up, Housing and Communities has responsibility for monitoring all the tenancy deposit protection schemes but does not have a role in individual cases or complaints.

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