



Tenant Fees  
Act 2019 (the Act)  
- FAQs

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## Tenant Fees Act 2019 (the Act) - FAQs

With the Tenant Fees Act now in force, this Guide offers some answers to the most commonly asked questions, so far, on various areas covered by the Act.

Please note that the information below is correct as at 1st July 2019 and will be subject to future changes.

The Act has been written to stop landlords and agents charging tenants unreasonable fees, and in some cases, not refunding fees that they are not entitled to keep.

First, just a reminder that the Act applies to:

- Tenancy Agreements **signed** on or after 1st June 2019
- Assured shorthold tenancies, student accommodation tenancies and licences to occupy housing in the private rented sector
- Landlords, agents and tenants in **England ONLY**

### Holding Deposits:

#### *What is a holding deposit?*

This is the fee taken by the landlord, or agent, to reserve the property for a prospective tenant, while referencing and other checks are carried out and a Tenancy Agreement is prepared.

#### *What can an agent or landlord charge a prospective tenant as a holding deposit?*

A landlord or agent can only:

- Take **up to** 1 week's rent as a holding deposit, on the total agreed rent for the property
- Take **one** holding deposit for one property at any one time; **not** multiple holding deposits for the same property

#### *How long can a landlord or agent hold this deposit?*

The holding deposit can be held for up to 15 days while all the necessary checks are carried out and the Tenancy Agreement is prepared. This is the default '**deadline for agreement**' and for the tenancy to start. However, the 'deadline for agreement' can be shortened or lengthened if mutually agreed, and to safeguard all parties, this should be in writing.

If the tenant's application is successful and the tenancy begins, you must refund the holding deposit within 7 days, unless it has been mutually agreed that it can be used towards the first month's rent.

#### *Can the landlord or agent avoid applicants withdrawing once the application process has already begun?*

You cannot stop a tenant backing out of their application. However, if the tenant pulls out *during* the application process of their own choosing, they'll forfeit their holding deposit.

The law has been drafted deliberately to stop tenants applying for multiple properties and then deciding which one to take.

#### *What happens to the holding deposit if the landlord or agent withdraws from the process?*

You must refund the holding deposit in full, within 7 days.

#### *What happens if either party does not adhere to the timescales?*

If the tenant is delaying the process and, for example, not responding to emails or not giving the referencing agency what they need for longer than 15 days, the tenant would forfeit their holding deposit as long as they have been informed of the reasons, by the landlord or agent, in writing.

If it's the landlord or agent who's delaying the process and the delay extends beyond the 15 days deadline for agreement, they would have to refund the holding deposit in full within 7 days.

For more detailed information on Holding Deposits, please refer to the PRS website guide <https://www.theprs.co.uk/Resource/ViewFile/152>

**The law has been drafted deliberately to stop tenants applying for multiple properties and then deciding which one to take.**



## Rent:

**As an agent can I charge a balloon payment on every rent taken from 1 June and then have some of the additional funds taken out in replacement of a traditional 'fee'?**

**No.** ALL costs must be upfront and cannot be hidden from tenants.

**Can a tenant pay extra on top of their rent in a month if they wish to?**

**Yes.** However the landlord or agent must be able to demonstrate the reason why this is happening and the rent paid must be as advertised. Any agents or landlords found to be flouting the Act will face enforcement from Trading Standards or the First Tier Tribunal with severe penalties for non-compliance.

**As an agent am I still able to charge rent inclusive of utilities after 1 June 2019?**

**Yes.** Charging rent 'inclusive' of utilities is 'permitted', providing that it is clear to the tenants at the start of the tenancy; NOT in addition to the rent. It will be interpreted according to the wording in the Tenancy Agreement.

**Read more about 'permitted' payments at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/791273/TFA\\_Guidance\\_for\\_LandlordsAgents.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791273/TFA_Guidance_for_LandlordsAgents.pdf)**

## Fees:

**Can a tenant voluntarily pay a fee?**

**No.** Even if the tenant has 'agreed' voluntarily to pay a fee this may still be considered a prohibited fee.

However, if the Tenant chooses/opts to pay for a service, without it being a condition of the tenancy, then the tenant will be responsible for this fee; e.g. pay for his own inventory on the property where the landlord chooses not to have one.

**Will landlords or agents be able to charge any move-in fees?**

**No.** The ban applies across the private rented sector; to landlords, agents and third parties, such as referencing agencies.

**Can landlords or agents charge guarantor's administration or referencing fees?**

**No.** These are 'prohibited' fees under The Act. The Act does not apply just to tenants, but to the 'relevant person' who is anyone involved in the granting, continuation, renewal or termination of a contract, including prospective tenants, actual tenants, guarantors, etc. It's exceedingly widely drafted.

**Can landlords or agents keep the fees that have been charged on a tenancy signed before 1st June 19?**

**Yes.** BUT only until 31st May 2020 which is the end of the 12 month 'Transition Period'. The ban initially only affects contracts signed on or after 1st June 19, and landlords and agents can continue charging fees associated with any Tenancy Agreement signed by 31st May 2019.

From 1st June 2020, ALL fees will be banned, no matter when the Tenancy Agreement was signed unless they are 'permitted' fees. The cap on tenancy Deposits will also apply at this point, except for those in a Statutory Periodic Tenancy which were originally signed before the 1st June 2019.

**NOTE:** If the tenancy renews during the Transition Period, it becomes a new tenancy, which means the fee and deposit cap will apply.

**Can landlords or agents receive commission when selling insurance products to a tenant prior to a tenancy starting?**

**Yes.** but they must be optional and cannot be a condition of the tenancy. If, for example, an agent advises a tenant to take out contents insurance or tenants' liability insurance and recommends their preferred suppliers, leaving the decision and choice to the tenant, that would be fine. If the insurance requirement is a condition of the tenancy, it will be a prohibited fee.

## Tenancy Deposits:

**If a tenant signed the Tenancy Agreement before 1 June 2019 and paid a tenancy deposit which exceeds the cap, does the landlord or agent need to refund the excess?**

**No.** Landlords or agents are not obliged to immediately refund part of a tenancy deposit that exceeds the new cap. If a tenant signed a tenancy agreement before 1 June 2019, AND that tenancy is continuing as a contractual or a statutory periodic agreement, the amount over the 5 or 6 weeks will remain protected until the tenancy ends or is renewed.

**What will happen to the deposit that exceeds the cap after 31st May 2020?**

**Do I have to return the excess?**

A landlord or agent does not need to immediately return any part of the deposit which is in excess of the cap at this point if the tenancy has become a statutory or contractual, periodic, as this payment was made before the cap came into force.

There is a requirement to refund the deposit at the end of the tenancy in the usual way and any new or renewed tenancy agreed after this date will need to comply with the new tenancy deposit cap.

**NOTE:** At the end of the Transition Period (1st June 2020), the tenant will not be bound by all references to fees in the Tenancy Agreement that are not 'permitted' fees.

**Can the landlord, or agent charge an insurance premium for a deposit replacement scheme?**

**Yes,** but only if they are informed of the choice between paying a five or six week refundable deposit or a non-refundable insurance premium and if all parties consent to this. Landlords and

agents cannot make it a requirement for tenants to use a deposit replacement product, as the upfront charge will be seen as a prohibited payment.

However, it is important that tenants understand the products being offered.

**What will happen if the landlord or agent fails to refund the prohibited fee?**

- It will prevent the landlord from taking possession of their property using the s21 notice
- The tenant can inform their local Trading Standards or can apply to the First Tier Tribunal for the prohibited fee to be refunded
- The landlord will be liable for a £5000 penalty, per prohibited fee charged

**If I cannot put a CLEANING clause in my contract, can I still deduct an amount from the tenant's deposit for cleaning at the end of the tenancy?**

**Yes,** IF the evidence shows that the tenant has not returned the property cleaned to the same standard that it was in at the start of the tenancy. This will be a breach of the contract, and a reasonable deduction can be made from the tenancy deposit.

**No,** IF the property has been left cleaned to the same standard it was in at the start of the tenancy.



**Pets:**

**Can the landlord or agent take an increased tenancy deposit for permitting the tenant to have a pet?**

**No.** A pet 'deposit' OR any additional deposit which totals more than five or six weeks rent, depending on the annual rent will be a prohibited fee.

**NOTE:** A landlord or agent CAN negotiate an increased rent for permitting a pet in the property. However an agent MUST ensure this fee is advertised in brochures and advertising, and is transparent ahead of the tenant viewing any other property to comply with the Consumer Protection Regulation Act 2008.

**If the tenancy was signed before the 1st June 2019 and the tenant has now requested permission for a pet, can a landlord or agent still charge a pet deposit?**

**No.** In our view, the pet deposit in this instance would be a prohibited payment having been taken after the fee ban is in place. However, the agent would be able to charge a permitted fee of up to £50 for preparing the addendum to the Tenancy Agreement.

**Can the landlord or agent insist that a tenant has pet insurance when renting one of our properties?**

**No.** This would be a condition of the granting of a tenancy and this is a prohibited fee.

**Can the landlord or agent take out pet insurance, make the tenant aware that this policy has been taken out and is part of the tenancy and then charge them for this?**

**No.** A landlord or agent could purchase the pet insurance, but you cannot pass the cost on to the tenant. This would constitute a 'fee' which is prohibited under 'the Act'. Should the tenant choose to purchase the insurance, without it being a condition of the tenancy, then the tenant is responsible for the cost.

**Enforcement:**

**Who is going to enforce the ban?**

Trading Standards have a duty to enforce the ban as well as local authorities.

Tenants or 'relevant persons' can inform their local Trading Standards apply to the First Tier Tribunal or apply to the relevant redress scheme for a refund of the prohibited fee.

Read more about your local trading standards authority [here](#).

Tenants have the option of recovering prohibited fees through the First Tier Tribunal. <https://www.gov.uk/find-local-trading-standards-office>

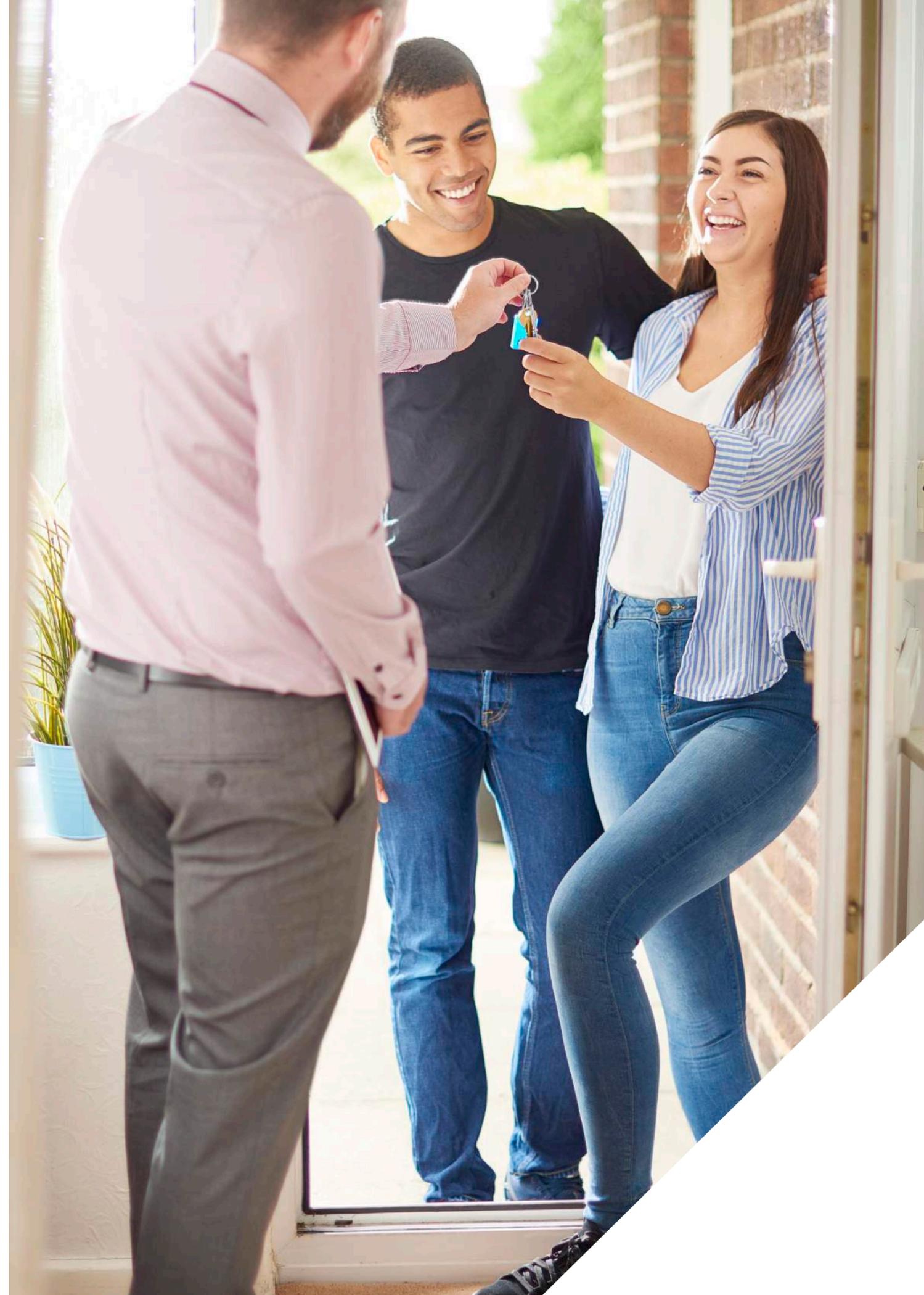
**If a landlord or agent is charged a penalty fee, will they be added to the database of rogue landlords and property agents?**

**No.** Not for a single offence. However, if two or more financial penalties are issued within a 12 month period, the local housing authority has the discretion to apply for the landlord, or agent, to be added to the database.

**Can a landlord or agent appeal against the fine?**

**Yes.** There are two types of appeal which can be made to the First Tier Tribunal, within 28 days from the day after the final notice was served::

- 1. Against the decision to impose a penalty
- 2. The amount of the penalty imposed



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