

*This Guidance is for England only. In Wales, new deposit protection rules apply for occupation contracts entered into on or after 1 September 2016.*

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## 1. Introduction

- 1.1 Tenancy deposit protection schemes ensure that deposits paid by tenants are protected and that Landlords act properly in making deductions from the deposit.
- 1.2 TDP schemes guarantee that Landlords get their deposits back at the end of the tenancy, so long as they have complied with their obligations in the tenancy agreement to protect the property.
- 1.3 Landlords must protect deposits using a TDP scheme if they have let the property on an Assured Shorthold Tenancy (AST) which started on or after 6 April 2020.
- 1.4 Landlords must also protect deposits using a TDP scheme if an AST became a periodic tenancy after that date.
- 1.5 It is advisable for Landlords to protect deposits in a TDP scheme even where the AST started before that date. The restriction on security deposits decided in December 2014 that applies in these circumstances.
- 1.6 If a tenancy is not an AST, Landlords do not have to use a TDP scheme for the deposit. However, it is good practice to do so as a matter of good practice.

## 2. Capped Security Deposits

Under the Tenant Fees Act 2019, security deposits for new or renewed tenancies in England are capped at five weeks' rent if the yearly rent is under £50,000 or six weeks' rent if the yearly rent is £50,000 or more.

The weekly rent is worked out by dividing the yearly rent by 52.

Security deposits for tenancies entered into before the 01 June 2019 will not be affected but note landlords must return the excess deposit which exceeds the cap for a fixed period after 01 June 2019.

## 3. TDP schemes

- 3.1 There are three official TDP schemes. They are:
  - 3.1.1 Deposit Protection Scheme (DPS) - a "custodial" scheme where the Landlord pays the deposit into a bank which holds the money in a bank

account. When the DPS releases the deposit to the person who

a) Any scheme. A Landlord based outside the UK, unless he employs a UK-registered agent to manage the tenancy.

b) There is no charge for the scheme. It is financed entirely from the deposits held in the scheme.

c) For full details visit <http://www.depositprotection.com/>

3.1.2 MyDeposits is a scheme where the Landlord retains the deposit but pays a fee to protect the deposit against the risk of the Landlord not paying the Tenant back if the tenancy ends. If the Landlord doesn't pay the Tenant back, the insurer will pay the amount back from the Landlord.

a) Any scheme. Landlords pay a fee to join the scheme and a premium for each deposit.

b) For full details visit <http://www.mydeposits.co.uk/>

3.1.3 Tenancy Deposit Scheme (TDS) is another insurance scheme.

a) TDS is a scheme that works as the MyDeposits scheme, but it is a government-backed scheme. Landlords who belong to an approved professional body have client money protection. Approved bodies include the Association of Residential Letting Agents (ARLA), the Royal Institution of Chartered Surveyors (RICS), the National Association of Estate Agents (NAEA) and the National Association of Landlords (NALS).

b) For full details visit <http://www.thedisputeservice.co.uk/>

#### 4. What happens if the Landlord does not protect the deposit?

4.1 If Landlords do not protect the deposit when required to, their Tenants can take action against them. Landlords can be required to repay the deposit to the Tenant within one and three times the amount of their deposit.

4.2 Landlords who have not protected their Tenants' deposits in accordance with the TDP legislation and fail to provide the prescribed information, will also be unable to seek possession of their property in certain circumstances. A Landlord will not be able to return the deposit (if it was not protected with the TDP legislation) or until the prescribed information is provided.

## 5. What if there is a dispute about how much of the deposit is to be returned?

- 5.1 All the disputes will be referred to a free service to resolve disputes. It is also open to the Tenant to take the dispute to the county court.
- 5.2 Landlords must tell tenants within ten days of the end of the tenancy how much of the deposit is to be returned to them. Any part of the deposit that is not returned must remain protected in the TDP scheme until the dispute is resolved.
- 5.3 The dispute resolution service will keep the deposit until its dispute resolution service has decided how much of the deposit should be returned to the Tenant. If the Tenant has used a scheme-based scheme (MyDeposits or TDS) the Landlord must have put the agreed amount of the deposit into the scheme while the dispute resolution service considers the dispute. The scheme will then pay any amount that is due to the Tenant.
- 5.4 Please visit the schemes' websites for detailed information about their dispute resolution procedures:
- 5.4.1 <https://www.mydeposits.com/>
  - 5.4.2 <https://www.tds.co.uk/>
  - 5.4.3 <https://www.advice.co.uk/>

## 6. Holding deposits

TDP schemes do not cover holding deposits. Tenants sometimes pay a holding deposit before signing a tenancy agreement. It is best practice for landlords/agents to have a Holding Deposit Agreement with the prospective tenant so that the tenant is given to the prospective tenant about when the deposit is to be returned.

Under the Tenant Protection from Eviction Act 1994 (which affects England only), holding deposits must be capped at no more than one month's rent and must be refunded within 7 calendar days of the end of the tenancy, unless there is provision for the holding deposit to be applied to the rent or towards any permitted security deposit). Under the Tenant Protection from Eviction Act 1994, consent must be obtained from the tenant if the holding deposit is to be used towards the rent or security deposit.

If the Landlord does not enter into a tenancy agreement within 15 days of the tenant paying the holding deposit, the Landlord must repay the holding deposit to the tenant by the Tenant ('the Deadline for Agreement'). If the Landlord does not enter into a tenancy agreement within 15 days of the tenant paying the holding deposit, the Landlord must repay the holding deposit to the tenant by the Tenant ('the Deadline for Agreement').

Landlords are not allowed to protect a holding deposit with a scheme before the tenant has agreed to it. If a Tenant consents to the holding deposit being protected, this must be protected with a scheme.

A holding deposit can only be used towards the rent or security deposit, but only in limited circumstances, for example, if the tenant has provided misleading or false information.

## 7. What happens if a Landlord (or Letting Agent) does not comply with the Tenant Fees Act 2019?

7.1 A Landlord or Letting Agent in England who doesn't comply with the deposit requirements of the Tenant Fees Act 2019 in respect of new or renewed tenancies from 1st June 2019 can be liable for a fine in the sum of £5,000 for a summary offence if the offence is made within five years of the first offence and a landlord or letting agent could be liable for a fine of up to £5,000. Some local authorities may impose a financial penalty as an alternative to prosecution.

7.2 Landlords or Letting Agents in England can also be precluded from serving a Section 21 Notice in certain circumstances.

## 8. Protecting deposits using a TDP scheme

Landlords must protect their tenants' deposits using a TDP scheme if the students have an Assured Shorthold Tenancy (this will not always be the case) and the deposits were paid on or after 1st April 2007.

## 9. Protecting deposits using a TDP scheme and third party

9.1 If a Tenant's deposit is paid by someone other than the Tenant, e.g. a relative or friend, the Landlord must use a TDP scheme.

9.2 The Landlord must explain to the Tenant and third party how they are related and how the third party wants to be involved in the process. For example, if the third party wants to be involved in the process, the administrator needs to know if the third party wants to be involved in the process.

## 10. Prescribed information

The TDP scheme requires Landlords to provide their Tenants with certain "prescribed information" within 30 days of receiving a deposit. Our Prescribed Information notice contains the required information. Much of the required information will be contained in the TDP scheme so copies of the relevant Prescribed Information notice and given to the Tenant. A Landlord must provide the prescribed information within 30 days of receiving the deposit or a Section 21 Notice. A Landlord will only be able to regain possession of a property once the prescribed information has been served on the Tenant.