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Guidance on Tenant Fees and Letting Agents

Residential Landlords and Letting Agents

The Tenant Fees Act 2019 ('the Act') came into force on 1 June 2019 and applies to England only. The aim of the Act is to reduce the financial burden on a tenant can face at the start of its tenancy.

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1. Which tenancies are affected

This Act applies to the following tenancies:

- 1. Assured shorthold tenancies (including assured shorthold tenancies in social housing);
- 2. Licence to occupy (excluding licences in social housing); and
- 3. Student lettings.

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2. What payments are permitted

A tenant can be charged:

- 1. Rent;
- 2. A refundable tenancy deposit (capped at five weeks' rent if the yearly rent is less than £50,000 or capped at six weeks' rent if the yearly rent is £50,000 or more);
- 3. A refundable holding deposit (capped at one week's rent);
- 4. The following 'default' fees:
 - a. Payments in the event of a tenant defaulting on the tenancy agreement; or
 - b. Payments for a key or security device only if such payments are reasonable and the landlord or letting agent on their behalf must be able to demonstrate that they are of the reasonable and properly incurred costs; and

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b. Interest on late payment of rent (if the rent is unpaid for more than 14 days).
The rate must not exceed the rate of 3% above the Bank of England's base rate.

Letting agents must display these default fees on their website and in their office.

- 5. Utilities/TV Licence/Council Tax (landlords or letting agents cannot charge the billed amount);
- 6. £50 fee for a variation, assignment or novation of a tenancy requested by the tenant (excluding renewals or variations). A landlord may be able to charge more if such costs have been properly incurred and written evidence (invoice) is provided to the tenant; and
- 7. An early termination fee where the tenant terminates the tenancy where the tenant wishes to terminate early but not where the tenancy has a break clause). The termination fee must reflect the actual loss to the landlord (for example, loss of rent the landlord would have received if the tenancy had continued) (referencing and marketing costs).

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3. What payments are prohibited?

Landlords or letting agents are prohibited from charging tenants any fees which are not permitted under the Act (described above).

- 1. Letting fees charged to a tenant and must be fronted entirely by the landlord.
 - Varying fees
 - Fees for advertising
 - Fees for viewings
 - Fees for preparing a tenancy agreement
 - Fees for completion of a tenancy agreement
 - Fees for holding a tenancy agreement
- 2. Landlord charges for gardening or professional cleaning services (unless the tenancy agreement permits it);
- 3. Landlord charges a deposit for pets (unless the total security deposit does not exceed the caps referred to above);
- 4. The amount of a holding deposit which exceeds the caps referred to above;
- 5. Renewal fees for a tenancy agreement;
- 6. Payments for services (unless they are permitted payments), for example a fixed price for a service such as a plumber's appointment with a contractor; and
- 7. Landlord charges on their behalf are prohibited from charging increased rents for services which are prohibited under the Act.

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For the avoidance of doubt, the Act does not affect any entitlement to recover damages for breach of contract or a deduction from the tenancy deposit or court action.

4. Security Deposits

Tenancy deposit obligations under a tenancy must be capped at five weeks' rent if the annual rent is less than £50,000 or capped at six weeks' rent if the yearly rent is £50,000 or more.

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The weekly rent

annual figure divided by 52.

Security deposit but note landlord cap for a fixed term

into before the 01 June 2019 will not be affected by a tenant the excess deposit which exceeds the cap after 01 June 2019.

5. Holding Deposits

A holding deposit is a deposit taken by a landlord or letting agent to secure a property prior to signing the tenancy agreement, but you must not charge more than one holding deposit for one property at any one time. Information is given to the prospective tenant about the deposit when the deposit is taken.

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There are strict rules about holding deposits. The holding deposit must be paid within 15 days of the tenancy being entered into (although there are exceptions for rent or towards a deposit subject to the consent of the tenant).

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A holding deposit can only be used in limited circumstances, for example, where a prospective tenant provides false information or if the tenant withdraws and the landlord or letting agent is liable to pay the holding deposit.

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6. Prohibited Arrangements

Neither a landlord or letting agent can require a tenant to make a prohibited payment to a third party or require a tenant to pay a third party in connection with the tenancy. For example, you cannot require a tenant to pay for a service such as reference checks or credit checks.

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7. Amendments to the Tenant Fees Act 2015

The Act amends the Tenant Fees Act 2015 requiring letting agents who advertise on third party sites (such as Rightmove) to either publicise their fees on these sites or ensure there is a link to the agent's website where the fee list is published.

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8. What are the penalties for non-compliance?

A term in a tenancy agreement which requires a prohibited payment is void and the tenant will not be required to pay this sum under the agreement.

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If a landlord or letting agent requires a prohibited payment in error, the payment must be fully refunded to the tenant.

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The local Trading Standards authority can prosecute a landlord or letting agent for an offence. Landlords and letting agents can be fined for an offence. If a further offence is made within five years of the first offence.

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years of the first tenancy. A landlord is liable for an unlimited fine if a court finds a landlord guilty of an offence under section 21A of the Act. A fine of up to £30,000 as an alternative to a fine.

offence and a landlord or letting agent could be liable for an unlimited fine. Local authorities may impose a financial penalty of up to £30,000 as an alternative to a fine.

If a landlord or letting agent is found guilty of an offence under section 21A of the Act (under the Housing Act 2004), the court may order the landlord or letting agent to pay a fine as to whether a fine is imposed. A fine may also be imposed on property agents who are found guilty of an offence under section 21A of the Act.

If a landlord or letting agent is found guilty of an offence, this will result in a 'banning order' (under section 21A(16) of the Act) and it will be up to the relevant local authority to decide whether a fine is added to the database of rogue landlords and letting agents.

Landlords or letting agents are not able to evict a tenant using the section 21 eviction procedure to recover arrears of rent or property until they have repaid any unlawfully charged fees or to recover a retained holding deposit.

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9. Practical Steps

Agents to take:

1. Landlords and letting agents must have in place a policy to ensure that they are complying with the Act and to ensure that they are aware of the risks prior to the grant of a new tenancy;

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2. Landlords and letting agents must ensure their current tenancy agreements and holding deposits are compliant with the Act.

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3. Landlords and letting agents must ensure they keep accurate records and evidence of any payments received and ensure they are required to make which may be referred to in the following:

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- Tenancy agreements
- Receipts for payments
- Bank statements
- Correspondence
- Other records

4. Letting agents must ensure they do not advertise on third-party letting sites or provide a link to their fee list on third-party letting sites.

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