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Guidance on Tenant Fees and Letting Agents

Residential Landlords and Letting Agents

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The Renting Homes (Fees etc.) (Wales) Act 2019 which apply to landlords and letting agents in Wales. Please see our separate Guidance Note: Renting Homes (Fees etc.) (Wales) 2019 for further information on the regime in Wales.

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1. Which tenancies are affected?

This Act applies to the following tenancies:

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

This Act applies to the following tenancies:

Any new or renewed tenancies granted on or after 01 June 2019 will be affected. If you granted a tenancy before 01 June 2019, you will be able to charge fees which may be prohibited until 31 May 2020, after which all tenancies and licences (listed in Schedule 1 of the Act).

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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 one month’s rent if the yearly rent is £50,000 or more);
- 3. A refundable holding deposit (capped at one week’s rent);

A tenant can be charged:

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- 4. The following 'default' fees:
 - a. Payments in the event of a lost key or security device only if such payments are made on behalf of the landlord or letting agent on their behalf must be properly incurred
 - b. Interest for late payment (at the rate applicable to the Bank of England base rate)

en into the tenancy agreement:
lost key or security device only if landlord or letting agent on their behalf must be properly incurred and written evidence of the reasonable and necessary costs incurred

rent is unpaid for more than 14 days. The rate of interest must not exceed the rate of 3% above the Bank of England base rate

Letting agents must display their fees on their website and in their offices.

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- 5. Utilities/Communication charges (landlords or letting agents on their behalf must pay for these)
- 6. £50 fee for the landlord for the preparation of a new tenancy agreement when varying the term of the tenancy (costs are reasonable and an invoice or receipt is provided)
- 7. An early termination fee (where the tenant is exiting the tenancy before the actual loss suffered (the actual loss suffered would have received) due to the early termination)

Council Tax (landlords or letting agents on their behalf must pay for these)

ion, assignment or novation of a tenancy agreement by the tenant (excluding renewals or variations) may be able to charge more if such costs are reasonable and written evidence of the actual loss suffered (the actual loss suffered would have received) due to the early termination

t wishes to terminate early but not before the end of the fixed term. The termination fee must reflect the actual loss suffered (for example, loss of rent the landlord would have received less advertising and marketing costs).

3. What payments are prohibited?

Landlords or letting agents are prohibited from charging tenants any fees which are not permitted payments.

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- 1. Letting fees cannot be charged by the landlord. Letting fees include:
 - Viewing fees;
 - Preparation of contracts;
 - Inventories;
 - Referencing;
 - Credit checks; and
 - Key collection
- 2. Landlords cannot charge for professional cleaning services (unless this is included in the tenancy agreement)
- 3. Landlords cannot charge for pets (unless the total security deposit does not exceed the caps referred to above)
- 4. The amount of a security deposit which exceeds the caps referred to above will be a prohibited payment
- 5. Renewal fees for a renewal of a tenancy agreement;
- 6. Payments in the event of a tenancy agreement (for example a fixed penalty for breach of a tenancy agreement)
- 7. Landlords or letting agents cannot charge increased rents for an initial period of the tenancy (under the Rent Act).

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For the avoidance of doubt, the tenant is entitled to recover damages for breach of contract, either by action.

entitlement to recover damages from the tenancy deposit or court action.

4. Security Deposits

Tenancy deposits to secure the tenancy must be capped at five weeks' rent if the yearly rent is £50,000 or more.

Under a tenancy must be capped at five weeks' rent if the yearly rent is £50,000 or more.

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

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Security deposits for tenancies entered into on or after 01 June 2019 will not be affected by the new cap for a fixed term renewal month.

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5. Holding Deposits

A holding deposit is usually charged before a tenancy agreement. You can charge no more than one week's rent and only one holding deposit for one property at any one time. A Holding Deposit Agreement with the prospective tenant about when the deposit is paid or retained.

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There are strict timeframes for a holding deposit must be refunded into (although there is provision for instalment of rent or towards a holding deposit subject to the consent of the tenant).

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If the landlord and tenant fail to sign a holding deposit agreement within 15 days unless of the 'Deadline for Agreement') (unless otherwise agreed), the landlord must return the holding deposit to the tenant within 7 days of the Deadline for Agreement.

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A holding deposit can be retained in certain circumstances, for example, where a prospective tenant provides false information or if the tenant withdraws from the tenancy.

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6. Prohibited Arrangements

Neither a landlord or a letting agent can require a tenant to make a prohibited payment to a third party or enter into a contract (other than for the supply of utilities) or require a tenant to make a prohibited payment to a third party. For example, you cannot require a tenant to pay for reference checks or credit checks.

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7. Amendments to the Consumer Protection (Distance Selling) Regulations 2008

The Act amends the Consumer Protection (Distance Selling) Regulations 2008 on third party sites (such as Zillow) to ensure there is a link to the fee list published.

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8. What are the penalties and consequences of non-compliance?

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A term in a tenancy agreement prohibited payment on the tenant's behalf of this sum under the agreement.

Act and which seeks to impose a penalty on a tenant will not be required to pay

If a landlord or letting agent asks for a payment in error, the payment must be fully refunded to the tenant with interest.

payment in error, the payment must be

The local Trading Standards (or Trading Standard authority) will be the authority. Landlords and letting agents can be subject to a fine of up to £5,000 for a first offence. If a further offence is made within five years of the first, the fine could be up to £30,000 as an unlimited penalty of up to £30,000 as an unlimited penalty.

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If a landlord or letting agent is found to be in breach of the Act (under the Housing and Planning Act 2016), the relevant local authority as to whether a landlord or letting agent is added to the database of rogue landlords and property agents.

this will result in a 'banning order' which will be up to the relevant local authority as to whether a landlord or letting agent is added to the database of rogue landlords and property agents.

Landlords or letting agents will be required to follow the procedure to regain possession of the property, including any charged fees or returned an unpaid deposit.

tenant using the section 21 eviction procedure, they will be required to follow the procedure to regain possession of the property, including any charged fees or returned an unpaid deposit.

9. Practical Steps for Landlords and Letting Agents

1. Landlords and letting agents must ensure they have in place all the necessary procedures and policies.
2. Landlords and letting agents must ensure their holding deposit forms are fit for purpose.
3. Landlords and letting agents must ensure they keep accurate records and evidence of any payments that a tenant makes, including the following:
 - Tenancy agreement
 - Receipts and invoices
 - Bank statements;
 - Correspondence; and
 - Other paperwork.
4. Letting agents must publish their fee list on their website or on a third-party letting sites or provide a link to their fee list on the third-party letting sites or provide a link to their fee list on the third-party letting sites.

the following:

Landlords and letting agents must ensure they are complying with the Act and have in place all the necessary procedures and policies to grant a new tenancy;

Landlords and letting agents must ensure their current tenancy agreements and holding deposit forms are fit for purpose.

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