

# **Tenancy Deposits and Private Renting**

This leaflet is for you if:

1. you plan to rent a home from a private landlord;
2. you have paid a deposit to a private landlord.

If you have any further questions after reading this leaflet please use our free telephone advice line:

**01983 524715**

(Mondays to Fridays 9.00 to 16.00)

This leaflet is produced by:  
**Isle of Wight Law Centre**

## **What is a Tenancy Deposit?**

Before you start a tenancy with a private landlord he/she is likely to demand a deposit – money (often a month's rent) out of which the landlord can be repaid either if you don't keep the terms of the tenancy or if you do something that causes expense to the landlord.

This is called a “Tenancy Deposit”.

Do not confuse a Tenancy Deposit with a “Holding Deposit” – money paid before signing a tenancy to get the property taken off the market until the tenancy is signed. There is a short note about Holding Deposits at the end of this leaflet.

### **What to look out for when you pay the deposit**

#### *Get a receipt*

Insist on a written receipt for any money you pay – either a separate receipt or in the tenancy itself. You should avoid taking a tenancy from a landlord who won't give a receipt.

If you go ahead without a receipt, pay by cheque. If the landlord insists on cash make sure that you have a witness with you when you pay it. Write to the landlord confirming how much you have paid and what it is for.

#### *Written confirmation of terms of deposit*

The receipt or tenancy agreement should set out when the deposit is to be repaid and exactly what costs the landlord can pay out of it. These are likely to be rent, council tax, utilities, damage to the property or furniture, cost of cleaning at the end of the tenancy etc. If there is no writing confirming the debts for which the deposit can be used, it will normally be taken to include any of your obligations under the tenancy.

It is not advisable to take a tenancy from a landlord who won't set out what the deposit covers. If you decide to go ahead, confirm your understanding of what is covered by the deposit in a letter to the landlord and the amount that you have paid.

Some tenancy agreements require you to give up possession at the end of the tenancy in a good state of repair or clean (or some similar words).

This does not mean that the property must be in the same state as it was at the start (all too often with shabby decorations and needing a good clean). It usually means that you must leave it in a better state or cleaner than at the start. Such clauses can be very unfair on a tenant. If the papers you are asked to sign include such obligations, try to negotiate a change so that you give it up in the same decorative state as it was at the start, fair wear and tear excepted, and in the same state of cleanliness. If you cannot negotiate such a change you risk losing your deposit (or most of it) at the end of the tenancy and having difficulty getting it back.

### *Precautions at the start of the tenancy*

When the tenancy starts, a written record (sometimes called an “inventory” or “schedule of condition”), usually signed by both parties, should be agreed between you and the landlord. It lists all fixtures and possessions in the property and its state of repair. It notes all damage. It will be referred to when the tenancy ends. Take and keep photos of any damage at the time.

Ask the landlord or the agent to agree an inventory. If they refuse, you should consider whether you really want such a landlord.

If, for any reason there is no inventory when you sign the tenancy, you should, as soon as you get into the property, take an inventory of your own. Take photos. If possible have someone with you to act as a witness. Ask the landlord to sign it. If he/she refuses, confirm the refusal in writing to him/her and send a copy.

Whoever draws up the document, make sure that all defects (both in the contents and in the building and decorations) appear in it. Otherwise there is a risk that, at the end of the tenancy, you could be made to pay for damage done before you moved in.

Common causes of dispute include burns, scratches and marks on furniture, small holes in plasterwork where hooks have been removed, damage to walls caused by sticky tape or blue tack. If items (e.g. curtains, upholstery, carpets) are worn, note this in the inventory. Don’t forget to check for things like blocked drains and other defects in the building that are not structure or exterior and make a note of the defects.

Normally you will not be liable for “fair wear and tear”. Many landlords will not agree that, when an old chair finally broke, it was a result of fair

wear and tear. If the inventory shows the chair to have been rickety from the start it will be easier for you to prove your case.

### **At the end of the tenancy**

When you give up possession, ask the landlord to go through the inventory with you. Try to agree what damage is your responsibility. It can help if a friend is with you as a witness at this meeting.

If the landlord refuses to inspect the property with you, you should, before leaving, get one or two friends (who will be your witnesses) to go through the inventory with you, making a note of any damage or any changes to the original inventory. Take photos.

If you are responsible for gas and electricity, the meters should be read during the inspection (whether with or without the landlord). If the supply is in your name, final bills should be obtained from suppliers. If the supply is in the name of the landlord you need to work out and agree the amount for which you are responsible. This will usually consist of a monthly or quarterly standing charge – you need to work out your share on a daily basis – plus an amount for usage – calculating this can be complex. A phone bill should be correct to the point when you end the contract with the supplier or, if it is in the landlord's name, when you leave.

### *The due date of payment*

At the start of the tenancy the event that triggers your right to return of the deposit should be clearly set out in writing (see above). This may be: giving up possession to the landlord; agreement of the inventory; proof of payment of utilities; and/or the landlord obtaining estimates for work. Only when the defined event happens are you technically entitled to payment.

Some landlords delay while they get estimates. In law no delay should be more than is reasonable.

### *The landlord seeks to avoid repayment*

Some landlords will, without too much difficulty, admit that they owe the deposit but simply fail to pay. Cheques bounce, promises of payment are not fulfilled, the landlord disappears abroad for a few months etc. . .

## *Agents*

At some point your landlord may have employed an agent. You may have paid the deposit to one. You may be paying or have paid rent to one. The tenancy agreement may have been signed by the agent on behalf of the landlord. You may even have a tenancy agreement in which the agent is named as the landlord. The result can be an argument between the landlord and the agent about which should repay the deposit.

Generally the landlord is liable even if the deposit was paid to an agent. Claim the deposit from the agent only if the agent is named as the landlord in the tenancy document or if the agent has held the deposit throughout. You may need further advice on this.

## **Getting back the deposit**

### *Deduction from rent*

In order to be sure that they get back their deposit some tenants stop payment of rent before they leave. By withholding the rent they make sure that the deposit is effectively repaid. The law on this is clear.

The deposit is not repayable until the end of the tenancy when you give up possession – sometimes later. If you withhold rent you will be in arrears. Your landlord can sue you for the rent and/or for possession.

Sometimes tenants are more or less forced into stopping their rent in this way – for example if they do not have the money to pay a deposit on another home or if they know that the landlord does not intend to repay the deposit. Generally by the time the landlord can take any effective Court action the tenant will have left and the deposit will have become repayable.

### *Procedures for Claiming the Deposit*

At the point when the deposit is due back what you do next depends largely on when your tenancy started.

If the deposit is protected by a Tenancy Deposit Scheme you need to follow the procedures of the scheme.

In all other cases you have to use the Courts.

## Tenancy Deposit Schemes

### *New Deposits Only*

For tenancy deposits paid **in or after April 2007** (or paid before that date where the tenancy is renewed in or after April 2007) there are special rules that help most tenants. You will find the law on this in sections 212 to 215 of the Housing Act 2004 and regulations made under these sections.

### *Assured Shorthold Tenants Only*

To take advantage of the new rules you must have an “Assured Shorthold Tenancy”. A large majority of residential lettings is in this category. A number of conditions must be satisfied. The most important are:

- You are a “tenant”. If your agreement states that it is a “licence” agreement it may be excluded from the scheme.
- Your home is not let to you as part of your job.
- The landlord is not living in another part of the same building (except another flat in a purpose-built block).
- Your home must be let to you “as a separate dwelling”. If you and other households share use only of a bathroom, toilet or access your own room(s) will be separate. If you share use of living dining room or a kitchen where you can eat meals your home is unlikely to be “separate”.
- You have not received written notification from the landlord that the tenancy is not to be a shorthold tenancy.
- Your rent is less than £25,000 per year - £479.45 per week. This is to be increased to £100,000 on 1<sup>st</sup> October 2010 for tenancies starting before and after that date.

## What the Rules Achieve

The rules are intended to ensure:

- That the deposit is paid to the tenant as soon as it is clear how much is due – landlords will no longer be able to fob off the tenant with delay and excuses.
- That there is a quicker and cheaper way of deciding any arguments over how much is due.
- That the landlord cannot require anything else other than money by way of deposit.
- That there are disadvantages and penalties on landlords who fail to comply.

Note:

1. Although they ensure that tenants get the money due to them, they do not ensure that the terms of the deposit agreement are in themselves fair.
2. Although they limit delay they do not ensure that you will have your deposit money ready for your next landlord when you need it.

## The Types of Scheme

The schemes must be approved by the Government.

There are two types so far approved.

1. Under one type (called a “*custodial*” scheme) you pay the deposit to the landlord. The landlord must pay it to a scheme and give you written details of the scheme (this is called the “initial requirements”) within 14 days. At the end of the tenancy if you have agreed with your landlord how much is due to you and how much to the landlord, the scheme simply pays the money to you and the landlord in the agreed shares. If there is a dispute, any money not in dispute is paid to the person entitled, while the rest is kept on deposit until the dispute is resolved. Interest on the deposit is used first to cover the cost of the scheme. Any unused interest on your share of the money is paid to you.

- Under the second type of scheme (an “*insurance-based*” scheme), the landlord keeps the deposit but, within 14 days, must pay a sum to the scheme and give you written details of the scheme (“the initial requirements”). At the end of the tenancy, the landlord should pay you any part of the deposit that is not in dispute. Any part of the deposit that is in dispute must be handed by the landlord to the scheme. If the landlord fails to comply, the scheme will pay your share to you and will claim it back from the landlord.

Disputes about how much is due to be paid to you will normally be referred to mediation unless it is agreed by you and the landlord to use the Court. If either the tenant or the landlord does not correspond with the scheme, decisions as to how the deposit is divided will be made without any input from them. Make sure, after you leave, to notify the scheme of your new address. Otherwise you may not receive your deposit at all.

#### *Non-Compliance by Landlord*

The law makes the landlord liable in principle to pay you a penalty of three times the deposit if your landlord fails to put the deposit in a scheme or if the landlord fails to provide information about the scheme within 14 days of doing so. The law (Housing Act 2004) is badly drafted. Landlords have persuaded the Courts to limit the circumstances in which the penalty is payable.

By law money must have been paid and received. So doubts arise, for example, when a deposit paid before April 2007 is “carried forward” and treated as paid for a new tenancy without new money changing hands.

Some Courts have allowed landlords extra time to comply with the law—in some cases as late as the date when a claim is decided in Court.

The Court of Appeal is expected to clarify the law in the second half of 2010.

The law applies if four conditions are satisfied. These are:

- you paid a deposit to a landlord after April 2007 and
- you have an assured shorthold tenancy, and

3. the landlord has not placed the deposit in a scheme or you have not been supplied with written information about the scheme, and
4. at least 14 days have elapsed since you paid the money.

In these circumstances you may, if you wish, claim repayment of the deposit and the penalty (three times the deposit) from the landlord. The Court must order the landlord to repay the deposit or to pay it into a custodial scheme. The Court must also order the landlord to pay you three times the deposit.

Also while the landlord is in breach of the rules no notice stating that the landlord requires possession (a two month notice – sometimes called a “section 21” notice) may be given until the landlord has complied with the rules. This makes it more difficult for the landlord to get you out.

### **Recovery of Deposit through the Courts**

If your deposit is not covered by a scheme or if your landlord fails to comply with the new rules, you will have to sue in a Court to obtain your deposit or any penalty.

#### *Delay*

If your landlord delays over preliminary matters, like getting estimates, you must first trigger a right to repayment by writing to your him/her giving a reasonable further time (with a clear end date) within which to produce estimates and repay the deposit. You should say that by failing to get estimates in a reasonable time the landlord has broken the tenancy and you consider that you are entitled to your money.

When that time has expired a further letter needs to be written threatening court action unless the landlord pays the deposit within a week.

#### *Excuses and disputes*

If the landlord fails to pay without good reason (e.g. promises of cheques in the post etc.) or if the landlord disputes that he/she has to pay, write to him/her noting any admissions of liability, if there are any, and threatening to sue if the debt is not paid within a week.

## *Court Procedures*

You can then start a “small claims action” in the County Court to recover the deposit. These procedures can take several months. An issue fee is payable at the start of the case. If successful, you will get it back from the landlord. Useful leaflets guiding you through the small claims process can be found on the Court Service website <http://www.hmcourts-service.gov.uk/>. If the landlord has a strong claim against you it may not be worth going to Court.

## **Holding Deposits**

A sum of money paid to an agent or landlord to stop a property being let to another person while negotiations go on is called a “holding deposit”. If the landlord later drops out you should get it back in full. If the tenancy goes ahead the money will be credited either as rent in advance or as part of a tenancy deposit. If you later drop out there is a risk of an unscrupulous landlord refusing to repay the holding deposit.

Always insist on a clear written receipt stating the amount of the deposit and the circumstances in which it will be repayable (this should be if the tenancy is not entered for any reason) and confirming that the money will be held either as rent in advance or as a tenancy deposit once the tenancy is entered.

If the terms of the deposit are not clear and the tenancy does not go ahead, disputes can arise. A landlord may claim to have received bad references or that the failure of the transaction was in some way caused by you. You will need to argue that it was the landlord’s choice not to accept you. Real problems can arise for instance if you refuse a tenancy because it contains conditions that are difficult or impossible for you to comply with.

Holding deposits are not regulated. In your negotiations try to ensure that any “holding deposit” is small and that the terms of the deposit make it clear that it is refundable if the tenancy is not entered, no matter what the reason.

*September 2014*