



THE LAW ON TENANCY DEPOSITS HOUSING ACT 2004

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The Housing Act 2004

The Housing Act (HA) 2004 makes it law for a private landlord of an assured shorthold tenancy to secure the tenants deposit within a government designated tenancy deposit scheme within 30-days of receiving the deposit and to then provide the tenant with the prescribed information. The Housing (Tenancy Deposits) (Prescribed Information) Order 2007 (SI 2007/797) sets out that the prescribed information includes the name and address of the scheme administrator, the procedures to be followed for the return of the deposit at the end of the tenancy and in the case of a dispute.

Deposits can only be in made money and the law operates by requiring that the deposit is dealt with in accordance with section 213 of HA 2004. The law aims to safeguard tenancy deposits paid and to also facilitate dispute resolution arising from such deposits. A further aim is to ensure that where the tenant is not at fault that his deposit is returned to him within 10-days of the end of the tenancy.

The provisions are not retrospective in relation to deposits paid before the relevant law came into effect. However these new provisions will apply to the new tenancy of the same property with the same parties arising after the coming into effect of these provisions and a deposit continues to be held from the previous tenancy.

Deposit Protection Schemes

There are two types of deposit protection schemes: custodial and insurance based. Both schemes provide alternative dispute resolution mechanisms to resolve deposit disputes.

The custodial scheme requires the landlord to pay the deposit into a designated account held by a relevant scheme administrator. There is one scheme at present called the Deposit Protection Service. It is a free-to-use scheme available online or by postal service and is open to both private landlords and letting agents. You may access more information at www.depositprotection.com

There are two insurance schemes:

- The Tenancy Deposit Solutions Ltd (visit www.mydeposit.co.uk)
- The Dispute Service Limited (www.tds.gb.com).

The insurance scheme operates by enabling the landlord to retain the deposit but on the basis that he pays the scheme operators a premium for their service, which may be required in the event of a dispute. If there is a dispute at the end of the tenancy as to whether or how much of the deposit is to be returned to the tenant, then the landlord will be required to transfer the deposit to the scheme administrator until either the parties agree or the matter is resolved at court.

Non-Compliance

If the landlord fails to comply with the initial requirements of a scheme, or has failed to give the tenant the relevant information, an application can be made to the County Court by the tenant or the person who made the deposit on behalf of the tenant. The court may then order the deposit holder to repay the deposit, or to pay the deposit as required under the custodial scheme.

If the applicant is a former tenant, no longer in the property, the courts has the discretion to order the person holding the deposit to repay all or part of it to the applicant within 14 days.

In addition, the landlord may be ordered to pay between one and three times the deposit amount to the applicant within 14 days of the order being made (HA 2004, s214).

Furthermore s215 (2A) confirms that for so long as the landlord is not in compliance with s213, he will not be able to serve a section 21 notice to evict the tenant.

CONTACT INFORMATION

Contact Information

For further information contact DepositDispute.com or email info@depositdispute.com