

The Tenancy Deposit Scheme is due to come into force on 6 April 2007- (ss.212-216 Housing Act 2004/ SI 2007/305). From 6 April 2007 all deposits taken by landlords for Assured Shorthold Tenancies (AST) in England and Wales *must* be protected by a tenancy deposit protection scheme.

Existing tenancies are not affected. Neither are periodic tenancies which relate back to a pre 6 April 2007 tenancy, but if the tenancy is renewed in a fresh AST then it will be caught by the scheme. Of course if a landlord chooses not to take a deposit then the 6 April 2007 will pass by quietly, but not many private landlords risk the “no deposit needed” stance in the transient rental market.

The sanctions for non compliance in an authorised scheme are contained in s.215 of the Housing Act 2004 and prevent the use of the “powerful” s.21 Housing Act 1988 (HA 1988) notice in certain circumstances. Given the fact that a valid s.21 HA 1988 notice is a private landlords best tactic to remove a tenant, it is crucial that a landlord participates in an authorised tenancy deposit scheme.

Each scheme contains an Alternative Dispute Resolution (ADR) service which will be free. Disputes will only go to the county courts if the landlord and tenant do not agree to use the ADR service and it is hoped that recourse to the county court will be infrequent.

In the custodial scheme, where a landlord or tenant does not co-operate in order to release the deposit, for example by not agreeing to the release the full or part of the deposit, and not agreeing to resolve the dispute through ADR or court, ADR will be the default mechanism. If there is a dispute, the scheme will continue to hold the amount until the ADR or courts decide what is fair. The scheme administrator will divide the disputed amount as a result of the ADR service's, or courts, decision.

In the insurance-based scheme, where the landlord is contactable by the scheme but refuses to co-operate, it will be mandatory for the case to be referred to the scheme for resolution through its ADR service. The scheme itself will pay the amount due to the tenant as a result of the ADR service's decision. If the landlord or tenant choose to use the court, and then the landlord stops cooperating, the scheme will pay out any amount determined as owed to the tenant and then recover the money from the landlord.

The Government awarded contracts to three companies to run the tenancy deposit schemes back in November 2006. If it's a free service the landlord wants then s/he needs to use the Deposit Protection Service. If the landlord wants to hold onto the deposit, then they will have to opt for one of the insurance schemes and a premium will be payable.

How they all run in practice remains to be seen. It could be the case that the county courts see an increase in small claims for the recovery of fees against errant landlords, but again this remains to be seen.

The three schemes are outlined below:

The Deposit Protection Service (The DPS) - the only custodial deposit protection scheme. This scheme is free to use and open to all Landlords and Letting Agents because it will be funded entirely from the interest earned from deposits held. For more information see www.depositprotection.com

Tenancy Deposit Solutions Ltd (TDSL) a partnership between the National Landlords Association and Hamilton Fraser Insurance. This insurance-based tenancy deposit protection scheme enables landlords, either directly or through agents, to hold deposits. Letting agents can also join the scheme. For more information see www.mydeposits.co.uk

The Tenancy Deposit Scheme (TDS) is an insurance-backed deposit protection and dispute resolution scheme run by The Dispute Service that builds on a scheme established in 2003 to provide dispute resolution and complaints handling for the lettings industry. The new scheme enables letting agents and landlords to hold deposits. For more information see www.tds.gb.com

So when your client comes for advice as their tenants have not been paying, make sure your checklist includes asking about the tenancy deposit scheme!



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