Tenancy deposits

Who is this fact sheet for

This fact sheet is for people starting a new tenancy with a private landlord or letting agent from 6 April 2007. It only applies to **assured shorthold tenants**. Most new private tenancies are likely to be assured shorthold, unless your landlord lives with you or your accommodation goes with your job. If you are unsure about what kind of tenancy you are starting, you should get advice.

Protection for tenants

Most landlords and letting agents ask tenants for a deposit as security against damage or non-payment of rent. It can be difficult to get it back when you leave. However, if you've paid a deposit on or after 6 April 2007, your landlord must use a tenancy deposit protection scheme to safeguard it.

What is a tenancy deposit protection scheme

A tenancy deposit protection scheme safeguards your deposit. This means you can be sure that you will get your deposit back at the end of the tenancy, as long as you are entitled to it. For example, your landlord may be entitled to some of the deposit if there is any damage or if you haven't paid all your rent. The scheme also provides a service to sort out disagreements about the deposit without going to court.

There are two types of scheme and it is up to your landlord to choose which one they want to join. One type of scheme is a custodial scheme and the other is insurance-based. The main difference is that:

- in the custodial scheme, your landlord pays the deposit into the scheme and the scheme looks after it
- in an insurance-based scheme, your landlord keeps the deposit, but has to pay insurance to the scheme.

How do I know if my deposit is protected

If you are looking for a place to rent, ask the landlord which tenancy scheme they will use to safeguard your deposit.

Your landlord must give you details of the scheme they are using to protect it.

It is also important that you and your landlord agree, in writing, what condition the place is in when you start renting it, including a list of the furniture and fittings (known as an **inventory**). This should help prevent disagreements at the end of the tenancy.

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What happens at the end of the tenancy

You should get your deposit back within ten days if you and your landlord agree about how much you should get back. The way this works, and what happens if there is a disagreement, depends on the type of scheme your landlord is using. If there is a disagreement, make sure the landlord and the scheme have your contact details such as a forwarding or email address or a telephone number.

It is reasonable for your landlord to take money off the deposit to cover, for example, damage to the property or furniture, or missing items which were listed in the inventory. But they should not take money off the deposit to pay for fair wear and tear, in other words, damage which has taken place over time through normal use.

Custodial scheme
If your deposit is being held in the custodial scheme and you and your landlord agree how much you should get back, you both need to let the scheme know by completing a specific form. The scheme will then pay you the agreed amount within ten days.

If there is a disagreement about how much of the deposit you should get back, the scheme will hold on to the disputed amount until the disagreement has been sorted out and pay the rest to you.

Insurance-based schemes
In an insurance-based scheme, your landlord will have kept your deposit. They must return it to you within ten days of you asking for it, as long as you both agree how much you should get back.

If you and your landlord disagree about how much of your deposit you should get back, they must pay you the amount which isn't disputed and pay the rest into the scheme until the disagreement has been sorted out.

For example, you paid a £600 deposit. Your landlord wants to keep £200 to replace damaged furniture, but you believe the damage was there before you moved in. Your landlord must give you £400 and put the other £200 into the scheme until your dispute is settled.

If the landlord does not pay you what you are entitled to, the insurance scheme will pay it.

Sorting out disagreements about deposits

Each scheme has a free service which landlords and tenants can use to sort out disagreements about deposits, instead of going to court. This is called an **alternative dispute resolution (ADR)** service. The ADR service will decide how much of the deposit you should get back. The tenancy deposit scheme will then pay you the money.

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If you agree to use the ADR service, you will have to agree with whatever decision is made. You will not then be able go to court.

If you or your landlord does not want to use the ADR service, you will be able to go to court to try to get your deposit back.

What if my landlord does not protect my deposit

If your landlord or an agent acting for your landlord does not protect your deposit using a tenancy deposit protection scheme, or does not provide you with the required information about the scheme and your deposit, you could take them to court. However, before taking court action you should write to your landlord first to give them the chance to protect the deposit and/or to provide the information.

If the court finds that your landlord did not protect your deposit within 30 days of receiving it, then it must order your landlord to pay you a sum of money as a fine. The court can decide how much of a fine has to be paid. It will be between one and three times the amount of your deposit.

The landlord should still be fined for not protecting your deposit within the 30 day time limit even if the deposit has been protected by the time of the court hearing. However, in these circumstances, the court may order a lower fine.

If your deposit is not protected by the time of the court hearing, your landlord will be fined and the court can either order your landlord to pay you back the deposit, or to pay it into the custodial scheme.

If your tenancy has ended by the time of the court hearing, the court can order your landlord to pay you back some or all of your deposit. The court will also decide how much of a fine has to be paid.

There is a special procedure which private landlords often use to evict tenants by giving two months' notice (called a **section 21** notice) and without having to give reasons. Your landlord is generally not allowed to use this procedure if they don't protect your deposit using a tenancy deposit protection scheme, or do not give you the required information about the scheme and your deposit.

If your landlord hasn't protected your deposit in a scheme within the 30 day time limit, they can only give you a section 21 notice if:

- they return the deposit to you in full or with deductions agreed by you, or
- you make a tenancy deposit claim and the court has decided the outcome, or the action has been withdrawn or settled.

If your landlord hasn't provided the required information about the scheme and deposit, but they have protected your deposit within the 30 day time limit, they can give you a section 21 notice, but only after:

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- they give you the required information, or
- they return the deposit to you in full or with deductions agreed by you, or
- you make a tenancy deposit claim and the court has decided the outcome, or the action has been withdrawn or settled.

If your landlord is trying to evict you, you should talk to an experienced housing adviser straightaway.

What if I paid a deposit before April 2007

Landlords don't have to use a tenancy deposit protection scheme for deposits paid before 6 April 2007, unless you renewed your tenancy after this date. Renewing your tenancy includes signing a new tenancy agreement or continuing to rent your home after your fixed term has ended, without signing a new agreement. If you paid a deposit before April 2007 and you have a disagreement with your landlord about it, try to come to an agreement.

If that doesn't work, you will have to think about taking your landlord to court. If you're in this position, you should get advice.

Further help

Citizens Advice Bureau
Citizens Advice Bureaux give free, confidential, impartial and independent advice to help you solve problems. To find your nearest CAB, including those that give advice by e-mail, click on nearest CAB, or look under C in your phone book.

Tenancy deposit protection schemes
You can contact the schemes to find out if your deposit is protected. Each scheme can only provide information about deposits that it is protecting. It will not be able to tell you if your deposit is protected in another scheme.

The custodial scheme is called The Deposit Protection Service. Most small landlords will probably use this scheme. The Deposit Protection Service also offers an insurance-based scheme. For information on either scheme, contact 0844 472 7000 or visit their website at www.depositprotection.com.

The Tenancy Deposit Scheme (run by the Dispute Service Limited) is an insurance-based scheme, aimed mainly at letting agents. You can contact the scheme by calling 0845 226 7837 or visiting the website at www.thedisputeservice.co.uk.

The Tenancy Deposit Scheme and the Residential Landlords Association (RLA) also provide an insurance-based scheme called DepositGuard. It is only for members of the Residential Landlords Association. More information about DepositGuard is available from the RLA website at www.rla.org.uk.

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'mydeposits' is an insurance-based scheme, aimed mainly at landlords. You can contact the scheme by calling 0844 980 0290 or visiting the website at www.mydeposits.co.uk.

Other information on Adviceguide which might help

- Renting from a private landlord
- Common problems with renting
- Tenancy agreements
- Getting repairs done while renting
- Finding accommodation
- Student housing

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