

What is the Tenancy Deposit Scheme?

*An explanatory leaflet for landlords
and tenants*



THE DISPUTE SERVICE

Introduction

Many tenants in the private sector give their landlords a deposit against possible non-payment of rent or damage to property. When a tenancy comes to an end, there is usually no disagreement about the return of the deposit. But sometimes there is, and this can cause much hardship and inconvenience to both landlord and tenant.

The Housing Act 2004 (Chapter 4, sections 212-5; & Schedule 10) made provision for both the protection of tenancy deposits and the resolution of disputes over their return. The Dispute Service has been awarded a contract by the Government to run one such scheme: The Tenancy Deposit Scheme (TDS).

The legislation comes into effect on 6 April 2007. After that date all deposits taken for Assured Shorthold Tenancies will have to be covered by a tenancy deposit protection scheme.

What are the new legislative requirements?

- Any landlord or agent who takes a deposit from a tenant for an Assured Shorthold Tenancy must safeguard it in an approved tenancy deposit scheme...
- ...and the tenant must be told which one.
- The deposit must be in money.
- Landlords in breach of these provisions will not be able to issue S 21 notices, and may have to pay the tenant compensation of three times the deposit.
- The landlord/agent must submit the deposit to the operators of their scheme when requested to do so.
- Each scheme must have procedures for resolving disputes without going to court.
- There are strict time limits for the return of the deposit if there is no dispute.
- The Act allows for both custodial and insured schemes. Custodial schemes are where the deposit is lodged with an independent third party i.e. outside the control of the landlord. Insured schemes allow the landlord/agent to retain control of the deposit as long as they are subject to suitable insurance arrangements.
- Secondary legislation will fill out the detail, including time limits for dealing with disputes.

What is TDS?

TDS has been developed to ensure that the deposits are protected and that disputes about their return are resolved swiftly, inexpensively and impartially.

Under TDS:

- deposits will be protected during the tenancy
- where there is no dispute at the end of the tenancy, deposits will be returned promptly
- where there is a dispute about the return of the deposit it will be dealt with fairly by the Independent Complaints Examiner (ICE)
- the ICE will make his decision quickly, and the deposit will be paid out without unnecessary delay.

It is modelled on the successful Tenancy Deposit Scheme for Regulated Agents (TDSRA), a voluntary scheme which has been operated by The Dispute Service from 1 May 2004 and will be absorbed by TDS on 6 April 2007. TDSRA had 725 members with about 1,500 offices. In that time, the ICE and his colleagues resolved over 900 deposit disputes. We anticipate that the new Scheme, TDS, will have a considerably larger membership, extending to private and corporate landlords and other deposit-holders.

What is The Dispute Service Ltd

The Dispute Service Ltd is an independent, not-for-profit company established in 2003 to resolve complaints and disputes arising in the private rented sector speedily, cost-effectively and fairly. As well as TDS, the Company deals with complaints against members of The Association of Residential Letting Agents. The Dispute Service also runs a similar scheme, under the auspices of the Ombudsman for Estate Agents, for its members who undertake lettings.

Who can join TDS?

Any private landlord or agent offering residential property for rent is eligible to apply to join TDS. They will be asked to provide relevant information – as set out in the Rules of the Scheme – to determine if they can be accepted as members, and what their subscription will be.

What is an Approved Body (AB)?

An AB is a Professional Body, Accreditation Scheme or Trade Association approved after assessment by the Company to give their members a streamlined application process and a reduced subscription. They are also expected to take appropriate disciplinary action against their members who fail to comply with the rules of the Scheme. The Association of Residential Letting Agents, Royal Institution of Chartered Surveyors and the National Association of Estate Agents are ABs, and we expect other landlord and agent organisations to join them shortly.

How are the deposits held and protected?

The member firm holds the deposit, in a special client account. In most cases the tenant and the landlord will decide between them, assisted by the agent if one has been involved, how the deposit should be allocated. If there is a dispute, the landlord or agent has a couple of weeks to resolve it. After that, any of the parties – landlord, agent or tenant – can approach the ICE. He will appoint an adjudicator to assist him in considering the evidence they provide, and will aim to issue his decision within 15 working days of receiving all the necessary papers.

If there is a dispute, what happens to the deposit?

The member will transfer the disputed amount to The Dispute Service. It has a special cash fund which enables the ICE to carry on with an adjudication and to pay out the deposit even if the member has not sent it. If the member has not sent the deposit, The Dispute Service will claim it from its insurers as necessary. It will then pursue the member for repayment. The Dispute Service will pay out the deposit according to the instructions of the ICE following his award.

How are disputes resolved?

- You have 20 working days to raise a dispute, and the Member has 10 working days to resolve it.
- If not, you decide if you want to go to court, or to have the ICE deal with it – which is what most people prefer.
- Send details of the dispute on form TDS 2 Notification of Dispute, together with relevant documentation, to the ICE.
- Whoever is holding the deposit must send the amount in dispute to the ICE.
- The ICE will copy the details of the dispute to other party, asking them to tell him within 5 working days if they intend to challenge it. They have a further 5 working days to send in their side of the story i.e. 10 days altogether.
- The ICE will appoint an adjudicator to assist him, with a view to issuing an adjudication within 15 working days of receiving all the necessary paperwork.
- The disputed amount will be paid out in accordance with the adjudication within a further 10 working days.

Do all landlords and agents have to join TDS?

No. There are two other schemes. One is a custodial scheme managed by Computershare Ltd and requires the landlord/agent to place deposits with them at the start of the tenancy. The other is run by a company supported by the National Landlords Association, and is also insurance-based.

How much does it cost to join TDS?

The current subscriptions for agents and landlords can be found on our website (www.tds.gb.com) under *Schedule of fees*.

Agents can, of course, recharge the subscription across their portfolio. This will not be onerous to their landlords as it will work out at very little for individual properties.

A reduction in the fees may be negotiated if the organisations to which members belong are ABs.

Provisional subscriptions for corporate landlords are available on application.

Where members submit data for entry on to the tenancy database on paper rather than electronically, there will be a charge for each document. Please note: the data will not be entered until the fee has been paid.

The service is **free** to tenants.

Management of TDS

The Scheme is managed by The Dispute Service. The ICE is its Chief Executive and reports to a Board currently made up of people from the residential lettings industry and independent members. The Board of The Dispute Service has no role in the resolution of disputes.

Why is using Alternative Dispute Resolution better than sending disputes to court?

Deposit disputes need to be resolved quickly and cheaply. Tenants usually need the money as a deposit on their next property, and landlords need to know how much will be available to spend on redecoration and repair. Going to court takes time and can be expensive and stressful.

Our successful adjudication process is based on an expert assessment of documentary evidence (which can also include photographs and video). TDSRA demonstrated that we could complete nearly all adjudications well within the time specified in our contract with the Government.

Who should I contact?

If you want:

- to get more information about the Scheme
- to find out about joining the Scheme
- advice about TDS
- resolution of a dispute about a deposit

Please contact The Dispute Service at:

PO Box 541
Amersham
Bucks HP6 9ZR

Telephone: 0845 2267837
Fax: 01494 431 123
email: deposits@tds.gb.com

If you want to get the forms and other published information, please visit www.tds.gb.com or contact The Dispute Service.



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