

1. Introduction

- 1.1 Tenancy deposit protection schemes ensure that deposits paid by tenants are protected and that Landlords act properly in making deductions from the deposit.
- 1.2 TDP schemes guarantee that Landlords return their deposits back at the end of the tenancy, so long as they have complied with their obligations in the tenancy agreement.
- 1.3 Landlords must protect deposits using a TDP scheme if they have let the property on an Assured Shorthold Tenancy (AST) which started on or after 6 April 2007 (the date that the legislation came into force).
- 1.4 Landlords must also protect deposits using a TDP scheme if an AST became a periodic tenancy after that date.
- 1.5 It is advisable for Landlords to protect deposits in a TDP scheme even where the AST started before the date that the legislation was converted into a periodic tenancy. The Tribunal has decided in December 2014 that the restriction on security deposits (see section 3.2 below) applies in these circumstances.
- 1.6 If a tenancy is not an AST, Landlords do not have to use a TDP scheme for the deposit. However, it is good practice to do so.

2. Capped Security Deposits

Under the Tenant Fees Act 2019, security deposits for new or renewed tenancies in England and Wales are capped at five weeks' rent if the yearly rent is under £50,000 or six weeks' rent if the yearly rent is £50,000 or more.

The weekly rent is worked out by dividing the yearly rent by 52.

Security deposits for tenancies entered into before the 01 June 2019 will not be affected but note landlords must return to a tenant the excess deposit which exceeds the cap for a fixed period of 10 days after 01 June 2019.

Security deposits for tenancies entered into after 01 June 2019 are currently capped but the Renting Homes (Fees etc.) (Wales) Act 2019 gives the Welsh government the power to introduce caps in the future.

3. TDP schemes

- 3.1 There are three different types of TDP schemes. They are:
 - 3.1.1 Deposit Protection Scheme (DPS) - a "custodial" scheme where the Landlord pays the deposit to a company which holds the money in a bank

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account. Where the person who

the DPS releases the deposit to the

a) Any Landlord based outside the UK who is not registered with the scheme.

A Landlord based outside the UK, unless he employs a UK-registered agent to manage the tenancy.

b) There is no insurance scheme. It is financed entirely from the deposits held in the scheme.

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c) For full details visit <http://www.depositprotection.com/>

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3.1.2 MyDeposits is a scheme where the Landlord retains the deposit but pays for the deposit against the risk of the Landlord not paying the Tenant the amount of the deposit if the Landlord doesn't pay the Tenant the amount of the deposit at the end of the tenancy, the insurer will pay the amount back from the Landlord.

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a) Any Landlord who joins the scheme. Landlords pay a fee to join the scheme and a premium for each deposit.

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b) For full details visit <http://www.mydeposits.co.uk/>

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3.1.3 Tenancy Deposit Scheme (TDS)

is another insurance scheme.

a) TDS is a government-backed scheme as the MyDeposits scheme, but it is not a government-backed scheme. Landlords who belong to an approved professional body (ARLA, RICS, NAEA, NPSA) have client money protection. Approved bodies include the Association of Residential Letting Agents (ARLA), the Royal Institution of Chartered Surveyors (RICS), the National Association of Estate Agents (NAEA) and the National Property Services Association (NPSA).

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b) For full details visit <http://www.thedisputeservice.co.uk/>

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4. What happens if the Landlord does not return the deposit?

What happens if the Landlord does not return the deposit?

4.1 If Landlords do not return the deposit, Tenants can take action. If the Landlord does not return the deposit to the Tenant at the end of the tenancy, the Tenant can claim one and three times the amount of their deposit.

If Landlords do not return the deposit when required to, their Tenants can be required to repay the deposit to them. If the Landlord does not return the deposit to the Tenant at the end of the tenancy, the Tenant can claim one and three times the amount of their deposit.

4.2 Landlords who have not returned the deposit to the Tenant at the end of the tenancy in accordance with the TDP legislation may be liable to pay the Tenant one and three times the amount of their deposit in certain circumstances.

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5. What if there is a dispute about the deposit?

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5.1 All three schemes provide a dispute resolution service. It is also open to the Tenant to refer the dispute to court.

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5.2 Landlords should tell the Tenant how much of their deposit they have kept back at this stage. If the dispute is resolved, the Landlord should return the deposit to the Tenant.

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5.3 The custodial scheme or the court service or the court. The Tenant. Under the Landlord must pay the dispute resolution any amount due to

deposit until its dispute resolution the deposit should be returned to the schemes (MyDeposits or TDS) the the deposit into the scheme while dispute. The scheme will then pay

5.4 Please look at the information on their dispute resolution

websites for detailed information about

5.4.1 <http://www.d>

5.4.2 <http://www.m>

5.4.3 <http://www.th>

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6. Holding deposits

TDP schemes do not cover a holding deposit before they have been entered into by landlords/agents to enter into a tenancy so that clear information about the deposit is to be repaid or re

tenants sometimes pay a holding deposit agreement. It is best practice for a Holding Deposit Agreement with the prospective tenant about when the

Under the Tenant Fees Act 2019 (England) and the Renting Homes (Fees etc.) (Wales) Regulations 2019, holding deposits must be capped at one week's rent at the time the tenancy being entered into. The cap will be applied to the first instalment of rent. Under the Tenant Fees Act 2019 (England) a holding deposit is to be a maximum of one week's rent. Under the Renting Homes (Fees etc.) (Wales) Regulations 2019, a holding deposit is to be a security deposit, however,

(England only) and the Renting Homes (Fees etc.) (Wales) Regulations 2019, holding deposits must be repaid within 7 calendar days of the provision for the holding deposit to be made (less any permitted security deposit). The cap will be obtained from the tenant if the holding deposit is a security deposit. Under the Renting Homes (Fees etc.) (Wales) Regulations 2019, a holding deposit can be applied to the rent or other charges if not expressly required.

If the Landlord and Tenant agree to a holding deposit receipt of the holding deposit must be provided to the tenant (unless an extension is agreed) and the tenant must repay the holding deposit to the landlord within 7 days of the

tenancy agreement within 15 days of the receipt of the receipt ('the Deadline for Agreement') and the tenant must repay the holding deposit to the

Landlords are not required to enter into a holding deposit with someone becomes a Tenant until a holding deposit is applied to the security deposit

holding deposit with a scheme before the tenant enters into the holding deposit being protected with a scheme.

A holding deposit can be used for the first instalment of rent where a prospective tenant has entered into a tenancy

limited circumstances, for example, where the tenant has provided false information.

Under supplementary regulations (Specified Information) (Wales) 2019, landlords are required to provide certain information to prospective tenants prior to collecting a holding deposit. Failure to provide this information may be an exception to retain a holding deposit, where the tenant fails to take all reasonable steps to enter into

Under the Tenant Fees Act 2019 (England) and the Renting Homes (Fees etc.) (Wales) Regulations 2019, residential landlords in Wales are required to provide certain information to prospective tenants prior to collecting a holding deposit on or after the 28 February 2020. Failure to provide this information may be an exception to retain a holding deposit, where the tenant fails to take all reasonable steps to enter into

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that they do not wish to be repaid.

Please see our **Guidance** template letters for further regarding holding deposits

- *Agent's Letter to Pr*
- *Landlord's Letter to (Wales)*

7. What happens if the Landlord does not comply with the Tenant Fees Act 2019?

7.1 A landlord or letting agent who doesn't comply with the deposit requirements under the Tenant Fees Act 2019 in respect of new or renewed tenancies from the 1st September 2019 is liable for a first offence. For a second offence, this will be liable for an unlimited fine. The maximum penalty of up to £30,000

7.2 Landlords or Letting Agents who do not comply with section 21 (Form 6A)

8. What happens if the Landlord does not comply with the Renting Homes (Fees etc.) Act 2019?

8.1 A landlord or letting agent who doesn't comply with the deposit requirements under the Renting Homes (Fees etc.) Act 2019 in respect of new or renewed tenancies (ASTs) from the 01 September 2019 is liable for a first offence. The maximum penalty of up to £1,000 for a first offence as a landlord or letting agent

8.2 Landlords or letting agents who do not comply with section 21 will not be able to evict a tenant if they do not return an unlawfully retained holding deposit

8.3 A local housing authority will take a decision as to whether a person is a landlord or letting agent under the Housing Wales Act 2014.

9. Protecting deposits from students

Landlords must protect student deposits if they have an Assured Shorthold Tenancy (AST) and the deposits were received on or after 1st September 2019

10. Protecting deposits made by tenants

10.1 If a Tenant's deposit is made by someone other than the Tenant, e.g. a relative or friend, the Landlord must ensure the deposit is protected under a scheme.

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10.2 The Landlord should find out how much, for example, the deposit wants the deposit re

rd party how they are related and to be involved in the process. For needs to know if the third party

11. Prescribed information

The TDP legislation requires their Tenants with certain "prescribed information" v Information template can be contained in literature pr literature should be attach Tenant.

provide their Tenants with certain giving a deposit. Our Prescribed of the required information will be heme so copies of the relevant information notice and given to the

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