

Tenancy deposits

There was an important change in the law on 6th April 2007. In many cases, deposits for private sector tenancies will have to be protected.

This change affects tenancies created from that date. It affects "assured shorthold tenancies", which nowadays covers the majority of tenancies under "buy to let". This change has come in as the Government was persuaded the present situation was often being abused. This was mainly in the sense of some landlords not being "fair" and not returning deposits, or at least the right amount, at the end of the tenancy. When Parliament debated all this, it was reckoned the amount wrongly withheld from tenants nationally was some £16.5 million and that around 20% of tenants felt they had been treated wrongly.

So, for all tenancies covered from 6th April, a deposit will have to be safeguarded in one of the approved deposit schemes. There are two alternatives. The first is to pay the money into "The Deposit Protection Service". This will be free to use and open to all landlords and letting agents. The landlord will have to pay the money in. The scheme will be funded by the interest earned. The other involves protecting the deposit through insurance. Here, there are two companies. These are Tenancy Deposit Solutions Ltd and The Tenancy Deposit Scheme. In both these two cases the deposit can be kept.

Whatever the landlord chooses, the tenant within 14 days of the taking of the deposit will have to be given a formal notice saying how the deposit has been protected. When the tenancy comes to an end, then assuming the terms of the tenancy have been complied with by the tenant, the deposit should be returned promptly. If the parties cannot agree, then there is to be a free dispute resolution service. Either after agreement or such resolution the deposit or relevant part of it should be returned within 10 days. If a landlord does not properly protect the deposit, then there can be important consequences. The tenant will be able to ask the Court either to order the payment of the deposit into DPS or possibly return it to the tenant. Moreover, if the case is made out, the court must also order the landlord to pay the tenant three times the deposit in effect as compensation. Since the average deposit nowadays is around £700, this is significant!

Also and perhaps most importantly, this affects the ability for the landlord to get back possession. A landlord will be unable to get back possession under the standard two month notice procedures if there has been a failure to comply with the deposit scheme rules. However a landlord would be able to ask the court for a possession order if one of the other relevant grounds is found to exist, the most common likely to relate to two months' or more rent arrears.

So these rules are bound to catch some landlords out, with potential nasty consequences! Remember therefore if a landlord you will need to make sure you comply. If a tenant then this is perhaps good news in view of the problems with deposits that have existed in the past.