

The Tenancy Deposit Scheme (TDS) initially came into force for all new Assured Shorthold Tenancies (AST's) created on or after the 6th April 2007.

On the 23rd June 2015, the Deregulation Act 2015 extended the TDS so that it now applies to all AST's, even those created before the 6th April 2007 for Section 21 Notice purposes.

It is extremely important that landlords and tenants are aware of the implications.

Below is a brief summary of the TDS. To obtain more information, please go the Government's website on the issue, www.direct.gov.uk/tenancydeposit

The Scheme

If you have not protected a tenant's deposit you could be ordered to repay three times the amount to the tenant in addition to the return of the deposit.

Deposits are protected to ensure:

Tenants get all or part of their deposit back, when they are entitled to it any disputes between tenants and landlords or agents will be easier to resolve tenants are encouraged to look after the property they are renting.

The deposit must be protected in a government-authorized tenancy deposit scheme.

This new rule applies if the tenancy is an assured shorthold tenancy.

At the beginning of a new tenancy agreement, the tenant pays their deposit to their landlord or agent as usual. The landlord or agent must then ensure it is protected. Landlords and agents have a choice of scheme providers, offering two types of protection.

Custodial schemes

Money is held by the scheme until it is time for it to be repaid at the end of the tenancy. The custodial scheme is free to use. The landlord simply puts the deposit into the scheme at the beginning of the tenancy.

Insurance-based schemes

Under the insurance schemes the landlord keeps the deposit, and pays the insurance scheme to insure against the landlord failing to repay the tenant any money due to him. There is a choice of two insurance-based schemes.

Within 30 days of taking the deposit, you must provide your tenant with details of how the deposit is being protected.

There is also 'Prescribed Information', which has to be provided to the tenant. The full list of the information and the relevant Statutory Instrument 2007/797 is copied at the end of this helpsheet.

Essentially, the information can broadly be divided into two categories:

Firstly, basic tenancy information, this is information which most tenancy agreements of any quality would ordinarily provide, such as tenant's details, landlord's details, amount of deposit paid, when and how the deposit will be returned to the tenant or retained by the landlord. This information is contained within agreements ordered from Legalhelpers Limited.

Secondly, detailed information about the scheme into which the deposit has been paid. The individual Scheme providers will provide this information. Currently, there are three scheme providers, but there could be more. The information here is much more detailed.

Terms in the Tenancy Agreement - In relation to the Tenancy Agreement, you do not need to put this information into the Agreement. Rather, the scheme provider will provide all the relevant information to you, which you should then ensure has been passed onto the tenant. However, you must ensure that the tenant has this information. Ideally, you should ask them to sign something to say they have received it.

In relation to clauses within the tenancy agreement regarding the TDS, there are no required or necessary terms applicable. However, if you know which scheme you are wishing to use in advance of ordering a Tenancy Agreement, it would be useful although not essential to provide this information and Legalhelpers will automatically include it in the Tenancy Agreement.

In simple terms:

- Legalhelpers Limited ensures all the relevant information required for the first category as detailed above is in the tenancy agreement.
- After you have the Tenancy Agreement, you need to place the deposit into one of the schemes and provide this information to the tenant. The Scheme Provider will provide all the information required for the second category at this stage.

Moving out:

At the end of tenancy the condition and contents of the property should be checked against the agreement made at the start of the tenancy. The landlord or agent then agrees with the tenant how much of the deposit will be returned to them.

Within 10 days the agreed amount of the deposit will be returned to the tenant.

Resolving disputes

If no agreement can be reached about how much of the deposit should be returned, there will be a free service to help resolve disputes offered by the scheme which is protecting the deposit.

The Government website provides information about the schemes and contact details. Clearly, it is up to individual landlords to decide which scheme to use, should they take a deposit.

Contact Us

Please visit our website at www.legalhelpers.co.uk for more information. Alternatively, you may contact us:

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HOUSING, ENGLAND & WALES

The Housing (Tenancy Deposits) (Prescribed Information) Order 2007

<i>Made</i>	<i>13th March 2007</i>
<i>Laid before Parliament</i>	<i>15th March 2007</i>
<i>Coming into force</i>	<i>6th April 2007</i>

The Secretary of State, as respects England, and the National Assembly for Wales, as respects Wales, in exercise of the powers conferred by sections 213(5) and (10) and 250(2)(b) of the Housing Act 2004^[1], make the following Order:

Citation and commencement

1. This Order may be cited as the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 and shall come into force on 6th April 2007.

Prescribed information relating to tenancy deposits

2. —(1) The following is prescribed information for the purposes of section 213(5) of the Housing Act 2004 ("the Act")—

- (a) the name, address, telephone number, e-mail address and any fax number of the scheme administrator^[2] of the authorised tenancy deposit scheme^[3] applying to the deposit;
- (b) any information contained in a leaflet supplied by the scheme administrator to the landlord which explains the operation of the provisions contained in sections 212 to 215 of, and Schedule 10 to, the Act^[4];
- (c) the procedures that apply under the scheme by which an amount in respect of a deposit may be paid or repaid to the tenant at the end of the shorthold tenancy^[5] ("the tenancy");
- (d) the procedures that apply under the scheme where either the landlord or the tenant is not contactable at the end of the tenancy;
- (e) the procedures that apply under the scheme where the landlord and the tenant dispute the amount to be paid or repaid to the tenant in respect of the deposit;
- (f) the facilities available under the scheme for enabling a dispute relating to the deposit to be resolved without recourse to litigation; and
- (g) the following information in connection with the tenancy in respect of which the deposit has been paid—
 - (i) the amount of the deposit paid;
 - (ii) the address of the property to which the tenancy relates;
 - (iii) the name, address, telephone number, and any e-mail address or fax number of the landlord;
 - (iv) the name, address, telephone number, and any e-mail address or fax number of the tenant, including such details that should be used by the landlord or scheme administrator for the purpose of contacting the tenant at the end of the tenancy;
 - (v) the name, address, telephone number and any e-mail address or fax number of any relevant person;
 - (vi) the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy; and
 - (vii) confirmation (in the form of a certificate signed by the landlord) that—

(aa) the information he provides under this sub-paragraph is accurate to the best of his knowledge and belief; and

(bb) he has given the tenant the opportunity to sign any document containing the information provided by the landlord under this article by way of confirmation that the information is accurate to the best of his knowledge and belief.

(2) For the purposes of paragraph (1)(d), the reference to a landlord or a tenant who is not contactable includes a landlord or tenant whose whereabouts are known, but who is failing to respond to communications in respect of the deposit.