

Withheld Deposit: Advice for Assured Shorthold Tenants

Who is protected by the scheme?

From the 6th April 2007 a landlord MUST use a tenancy deposit scheme if a security deposit or 'bond' is taken for an assured shorthold tenancy. The law does not apply to any other forms of tenancy. Most private letting arrangements will be assured shorthold tenancies so long as;

- Your landlord is a private sector landlord/letting agent or a Private Registered Provider of Social Housing (PRPSH)/Registered Social Landlord (RSL) and;
- your tenancy began after 15th January 1989 and;
- you are a private individual and;
- living in separate accommodation to your landlord and;
- living in the property as your principal home.

You should consult your tenancy agreement, which should usually state if you have an assured shorthold tenancy. Many trade unions offer 30 minutes of free legal advice should you require any further advice.

If your tenancy started before 6th April 2007 your deposit will not need to be protected UNLESS you have renewed your tenancy after this date.

What is a deposit?

A security deposit is a sum of money the landlord can ask for in the event of damage to property, rent arrears etc, but not for 'fair wear and tear'.

Your landlord or letting agency will ask for this sum prior to the start of the tenancy and the sum should be returned to you at the end of the tenancy, provided that you are entitled to it.

What is a deposit protection scheme?

A deposit protection scheme 'protects' your deposit and ensures your deposit is returned to you if you are entitled to it. The scheme was introduced to help prevent rogue landlords unfairly keeping tenants deposits at the end of the tenancy.

There are three different schemes available;

The Deposit Protection Service

The Pavilions
Bridgwater Road
Bristol

BS99 6AA
Tel: 0844 472 7000
E-mail: enquiries@depositprotection.com
Website: www.depositprotection.com

The Dispute Service Limited

PO Box 1255
Hemel Hempstead
Hertfordshire
HP1 9GN
Tel: 0845 226 7837
Fax: 01442 253193
E-mail: deposits@tds.gb.com
Website: www.thedisputeservice.co.uk

mydeposits

Ground Floor
Kingmaker House
Station Road
New Barnet
Hertfordshire
EN5 1NZ
Tel: 0844 980 0290 (Mon-Fri 8.30am-5.30pm)
Fax: 0845 634 3403
E-mail: customerservices@mydeposits.co.uk
Website: www.mydeposits.co.uk

It is up to the landlord which scheme s/he uses. You will have protection in all three but the schemes are different. The Deposit Protection Service is the more commonly used scheme, this is a custodial scheme which 'holds onto' your deposit on behalf of your landlord. The insurance based schemes allow the landlord to 'hold on' to your deposit but guarantee the deposit to you if the landlord refuses to pay at the end of the tenancy (if you are entitled to it!).

More information can be found on each of the scheme's website or at www.direct.gov.uk.

What do I have to do?

As a tenant you do not have to do anything. It would be advisable to ask your landlord or letting agency which deposit protection scheme they will be using.

Once your deposit is protected you will be sent paperwork from either the deposit protection scheme or your landlord containing the details of your deposit and the scheme it is protected in. You should make sure you keep the details of the scheme safe as you will need it to claim your deposit back.

What does my Landlord have to do?

If your tenancy started after 6th April 2007 but before the 6th April 2012, your landlord must protect your deposit in one of the schemes within 14 days of receiving your deposit.

For tenancies which started after 6th April 2012 your landlord must protect your deposit within 30 days of receiving your deposit.

Your landlord is also required to write to you within 30 days of him/her receiving the deposit providing details of the deposit and which scheme s/he is using.

Your landlord will not have protected the deposit by putting it in a separate bank account. It must be entered into one of the above schemes.

If a landlord fails to protect a deposit paid on or after 6 April 2007 or does not provide you with the details of where your deposit is being kept you can take Court action to recover your deposit and receive three times the amount of your deposit as compensation!

Your landlord will not be able to evict you using the accelerated possession procedure if they have not protected your deposit. This means unless you give your landlord 'grounds' to evict you under Section 8 of the Housing Act (being two months in rent arrears, damaging the property etc) your landlord will not be able to evict you until s/he protects the deposit. For more details on possession please read the Thompsons Solicitors guide to [Repossession in Assured Shorthold Tenancies](#).

However as a result of a Court of Appeal case '1' in 2010, if you are still a tenant at the time you take your landlord to Court, as long as the landlord puts your deposit into a scheme you cannot claim three times the deposit as compensation. You can still take your landlord to Court to get him/her to protect your deposit and you can claim your costs back for doing so.

Your landlord must also ensure that s/he re-registers the deposit with the scheme if you sign a new assured shorthold tenancy and the landlord retains your deposit.

¹[Tiensia v Vision Enterprises Ltd \(t/a Universal Estates\) and Honeysuckle Properties v Fletcher](#)

I have left the property – How do I get my deposit back?

You should firstly contact the deposit protection scheme and request your deposit back. The scheme will contact the landlord and ask if the deposit requested can be returned. If the landlord agrees to this request the scheme will authorise the repayment and you will receive the deposit back.

If you have damaged the property or have outstanding rent arrears your landlord has a right to withhold part or all of the deposit.

If the landlord does not agree to your request for your deposit, you have three options,

1. you can cancel your request/accept your landlord's reduced offer.
- or
2. you can challenge the landlord's decision through the schemes alternative dispute resolution service.
- or
3. you can challenge your landlord's decision in the **Small Claims Court**.

My landlord failed to protect my deposit – What do I do?

If your landlord has failed to protect your deposit the Courts will order your landlord to protect the deposit and award you three times the amount of the deposit as compensation under **s213-214 of The Housing Act 2004**. So if your deposit was £500 you will claim for £2000 (your deposit plus three times the deposit as compensation).

After taking legal advice, you could issue proceedings in the Small Claims Court (in your local County Court) which deal with cases under £5,000. You will need to obtain a N208 form from the County Court or online at <http://www.justice.gov.uk/about/hmcts/>. A fee will be payable, how much will depend on how much you are claiming.

You can also claim interest from the defendant. Some written contracts include terms relating to interest. If there is no such term, it is set at 8% per annum under s69 County Courts Act 1984 and calculated on a daily basis. If you want to claim interest you must say so on the claim form.

It is not always necessary to instruct a solicitor to act for you in this matter so long as the amount you are claiming is under £5,000.

You will only be able to claim three times the amount of the deposit as compensation if:

1. your landlord fails to protect during the tenancy
2. your landlord has not protected the deposit by the time your case goes to a hearing, and
3. your tenancy has not ended.

If your landlord protects your deposit before the hearing date, you will not be entitled to claim compensation. The Court will strike out the claim and you should ask the Court to make an order that your landlord pays your costs (usually just the Court fee).

My landlord failed to protect my deposit, I've left the property and s/he will not return my deposit – Can I still take action?

Unfortunately, a recent case '2' in the Court of Appeal has decided that a tenant will be unable to bring a claim under the tenancy deposit laws after the tenancy has ended.

You do however still have 6 years from the date the deposit became payable to take the matter to Court to get your deposit back. Whilst you won't be able to get three times the amount of the deposit as compensation, you have the right to challenge the landlord's decision to keep part or all of the deposit.

After taking legal advice, you could issue proceedings in the Small Claims Court (in your local County Court) which deal with cases under £5,000. You will need to obtain a N1 form from the County Court or online at <http://www.justice.gov.uk/about/hmcts/>. A fee will be payable, how much will depend on how much you are claiming. You should also read the Thompsons Solicitors guide to the Small Claims Court.

Is this situation different if I am a joint tenant?

You still have the same rights if you are a joint tenant. However, in order to take legal action, all of the tenants must enter a claim together. One of you can act as the other's representative as long as you have all of tenants permission to take legal action and all tenants must be named on the claim form.

²Gladehurst Properties Ltd v Hashemi [2011]

Other sources of help and information

Shelter

Shelter is a charity that offers help with housing, mortgage debt or problems with welfare benefits.

Tel: 0808 800 4444

england.shelter.org.uk

Citizens Advice Bureau

Citizens Advice Bureau can offer free independent and confidential advice on a range of problems including housing.

Tel: 020 7833 2181

www.citizensadvice.org.uk

Direct Gov

The Government's own website providing useful information on a whole range of issues.

www.direct.gov.uk

www.direct.gov.uk/en/TenancyDeposit/DG_066383

THIS FACT SHEET IS INTENDED AS A GENERAL STATEMENT OF THE LAW AND DOES NOT PURPORT TO RENDER SPECIFIC LEGAL ADVICE. SPECIFIC ADVICE ON A PARTICULAR PROBLEM SHOULD ALWAYS BE SOUGHT

Last updated April 2012 CC