

# Tenancy Deposit Protection

## *Compliance & Disputes*



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# What is Tenancy Deposit Protection?

- The Housing Act 2004 made provision for both the protection of tenancy deposits and the resolution of disputes over their return.

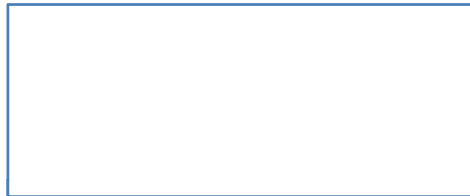


- The legislation came into force on the 6<sup>th</sup> April 2007.
- All deposits for Assured Shorthold Tenancies (ASTs) have to be registered for protection. This applies to ASTs where the annual rent does not exceed £100,000 in England and Wales.

- Changes due to the Localism Bill – enacted 6th April 2012



# Different types of Deposit Schemes



## Insurance Based

- Deposit paid and held by the Scheme
- Scheme funded by interest (and tax payers' money!)
- Refunds of the deposit require approval of member and tenant
- Difficult to obtain the deposit where one of the parties is uncontactable

- Members pay and fee and hold the deposit
- The scheme is only contacted in the event of a dispute
- The insurance pays out in the event a member fails to pay
- Failure to pay will see membership terminated

# What are the requirements of TDP?

- the tenants, and any relevant party, must be told which scheme by giving them:
  - ✓ the Tenancy Deposit Protection Certificate
  - ✓ the Prescribed Information
  - ✓ a leaflet 'What is the Tenancy Deposit Scheme'
  - ✓ a tenancy agreement with clauses relating to TDS
- the deposit must be in money;
- the landlord/agent must submit the deposit to TDS when requested
- when in breach, you may be liable for a fine of between one and three times the deposit and you may be unable to enforce a Section 21 notice
- each scheme must have procedures for resolving disputes without legal action – Alternative Dispute Resolution

# What is the importance of The Localism Act?



- The deposit must be protected and the Prescribed Information provided **within 30 days of receipt** (increased from 14 days).
- This is an **absolute time limit** and a tenant will be able to make a claim from 31 days after deposit payment if the requirements relating to protection and prescribed information have not been met.
- The claim will be for the return of the full sum of the deposit along with a penalty of between one and three times the sum of the deposit, to be awarded at the discretion of the Court.



The Government Standard

# How do the penalties work?



- The claim can still be made even if the deposit has been protected, or the Prescribed Information provided, after 30 days
- If a landlord fails to meet the **initial requirement** to protect the deposit, **no Section 21 Notice can be served** until either the landlord returns the deposit to the tenant in full or with such deductions as the tenant agrees; or if the tenant has taken proceedings against the landlord for non-protection and those proceedings have been concluded, withdrawn or settled
- If a landlord fails to serve **Prescribed Information**, (s)he cannot serve a Section 21 Notice until the Prescribed Information has been served - but this can be more than 30 days after receiving the deposit. This will not prevent a tenant from issuing proceedings for late provision of the prescribed information and seeking a penalty award.
- Tenants can make an application to a county court for a penalty award even where the tenancy has ended – so the penalty does apply to former tenants.



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UK



# Deposits and holding deposits



## Deposit

- Taken prior to a tenancy being entered into to protect the landlord from loss if the tenant fails to proceed
- Normally whilst credit checks are being completed
- Once confirmed, the holding deposit can be refunded to the tenant, or 'converted' into the deposit

- a tenancy deposit is the deposit that the tenant pays as a security against any breach of the tenancy agreement
- Once the tenant has obligations placed on him under the terms of the tenancy agreement the deposit is relevant and must be protected.
- Therefore the legislation applies to money taken as part of the tenancy agreement which is intended to protect the landlord against a breach of that agreement.

# Reasons for Deposit Disputes

## Reasons for Disputes by Calendar Year

Types of Dispute	2007	2008	2009	2010	2011	2012
Cleaning	50%	52%	49%	47%	49%	52%
Damage	36%	45%	43%	39%	43%	45%
Decoration	18%	25%	26%	24%	25%	28%
Rent Arrears	22%	18%	16%	15%	16%	18%
Gardening	14%	13%	13%	12%	11%	12%
Other	47%	48%	50%	55%	55%	56%



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## Who can submit a dispute?

*Parties to the Tenancy Agreement and the member.*

- Tenant(s)
- Landlord



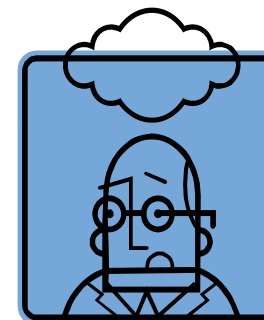
## What happens during a dispute?



- On-line submission or via post by any party
- Case reviewed to determine eligibility.
- TDS write to all the parties for their account
- Deposit holder supplies disputed amount or as in most cases the entire deposit.
- Responses with evidence reviewed to determine how the case is best dealt.
- Case sent to one of our adjudicators.
- Report of adjudication prepared and published.
- Any awards made to the parties within 10 days, normally 5.



# The starting point for ADR...



TENANT'S DEPOSIT



No evidence to support claim



The natural path is for the deposit to be returned to the tenant



# 5 key things to help you get it right

1. Make sure a full schedule of condition and inventory of is conducted at check in and out.
2. Register deposit and serve Prescribed Information within 30 days of receiving it.
3. Present protection certificate of registration to the tenant(s) and any relevant party within 30 days.
4. Update the TDS Tenancy Database with any changes, and documents, if applicable.
5. Renew the tenancy deposit protection at renewal



# And 5 more....

1. Keep a documented audit trail during the tenancy and confirm changes in writing.
2. Use dated photographs and embed into your inventory to support the written word
3. If there is a dispute, try to negotiate a settlement. Use our case studies as a guide.
4. If there is a dispute, make sure you send us all the evidence you want us to consider.
5. Send the total amount in dispute.



# Talking disputes – what TDS can deal with

- ❑ A dispute that involves the distribution of a tenants' deposit after the tenancy has lawfully ended.
- ❑ Awards can only be made up to the value of the deposit registered for protection;



What about  
all the other  
things you  
did wrong?

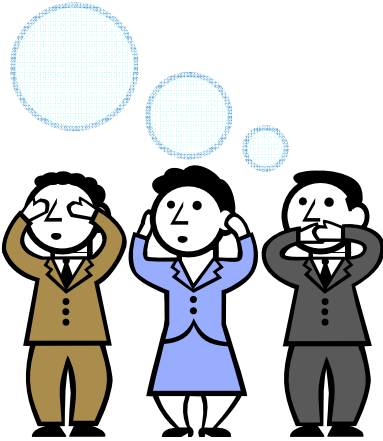




It wasn't like that when I moved in...



The Government Standard

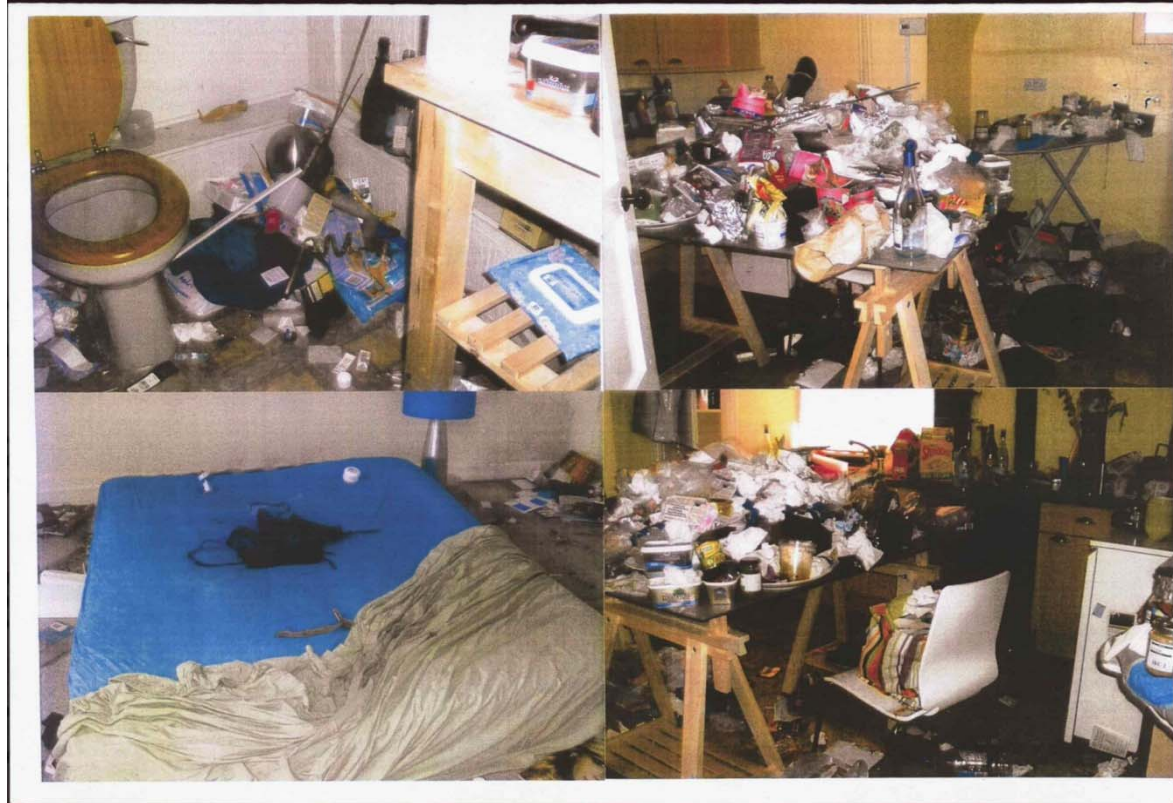


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“The tenants vacated the property leaving it dirty throughout including the carpets as they smelt (please see the pictures)”











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- ✓ **LinkedIn:** TDS Members
- ✓ **Blog:** <http://blog.tds.gb.com/blog/>
- ✓ **Free guide**

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