

What is the Tenancy Deposit Scheme?

*An explanatory leaflet for landlords
and tenants*

Second edition



THE DISPUTE SERVICE

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Introduction

Many tenants in the private sector give their landlords a deposit against possible non-payment of rent or damage to property. When a tenancy comes to an end, there is usually no disagreement about the return of the deposit. But sometimes there is, and this can cause much hardship and inconvenience to both landlord and tenant.

The Housing Act 2004 (Chapter 4, sections 212-5; & Schedule 10) made provision for both the protection of tenancy deposits and the resolution of disputes over their return. The Dispute Service was awarded a contract by the Government to run one such scheme: The Tenancy Deposit Scheme (TDS).

The legislation came into effect on 6 April 2007. Since then all deposits taken for Assured Shorthold Tenancies have had to be covered by a tenancy deposit protection scheme.

What are the requirements in the Housing Act 2004?

- Any landlord or agent who takes a deposit from a tenant for an Assured Shorthold Tenancy must safeguard it in an approved tenancy deposit scheme...
- ...and the tenant must be told which one.
- The deposit must be in money.
- Landlords in breach of these provisions will not be able to issue S 21 notices, and may have to pay the tenant compensation of three times the deposit.
- The landlord/agent must submit the deposit to the operators of their scheme when requested to do so.
- Each scheme must have procedures for resolving disputes without legal action – i.e. by Alternative Dispute Resolution – but they can go to court if they prefer.
- There are strict time limits for the return of the deposit if there is no dispute.

- The Act allows for both custodial and insured schemes. Custodial schemes are where the deposit is lodged with an independent third party i.e. outside the control of the landlord. Insured schemes allow the landlord or their agent to retain control of the deposit as long as they are subject to suitable insurance arrangements.
- Each Scheme has produced its own rules. Those for TDS are set out in TDS A *Tenancy Deposit Scheme: Rules of Membership*.

What is TDS?

TDS has been developed to ensure that the deposits are protected and that disputes about their return are resolved swiftly, inexpensively and impartially.

Under TDS:

- deposits will be protected during the tenancy.
- where there is no dispute at the end of the tenancy, the deposit should be returned promptly by whoever is holding it.
- where there is a dispute about the return of the deposit it will be dealt with fairly by the Independent Case Examiner (ICE).
- the ICE will make his decision quickly, and the deposit will be paid out without unnecessary delay.

Who can join TDS?

Any private landlord or regulated letting agent offering residential property for rent is eligible to apply to join TDS. They will be asked to provide relevant information – as set out in the Rules of the Scheme – to determine if they can be accepted as members, and what their subscription will be.

What is The Dispute Service Ltd?

The Dispute Service Ltd is an independent, not-for-profit company established in 2003 to resolve complaints and disputes arising in the private rented sector speedily, cost-effectively and fairly. As well as TDS, the Company deals with complaints against members of The Association of Residential Letting Agents. Agents who wish to join must be members of one of the Approved Bodies mentioned below.

What is an Approved Body (AB)?

An AB is a Professional Body, Accreditation Scheme or Trade Association approved after assessment by the Company to give their members a streamlined application process and a reduced subscription. They are also expected to take appropriate disciplinary action against their members who fail to comply with the rules of the Scheme. The Association of Residential Letting Agents, Royal Institution of Chartered Surveyors, the National Association of Estate Agents, the National Approved Lettings Scheme and the Law Society are ABs.

How are the deposits held and protected?

The member firm holds the deposit, in a separate client account. In most cases the tenant and the landlord will decide between them, assisted by the agent if one has been involved, how the deposit should be allocated. If there is a dispute, the landlord or agent has the opportunity to resolve it. If that fails, any of the parties – landlord, agent or tenant – can approach the ICE. He will appoint an adjudicator to assist him in considering the evidence they provide, and will aim to issue his decision within 28 days of receiving all the necessary papers.

If there is a dispute, what happens to the deposit?

The member will transfer the disputed amount to The Dispute Service. It has a special cash fund which enables the ICE to carry on with an

adjudication and to pay out the deposit even if the member has not sent it. The Dispute Service will pay out the deposit according to the instructions of the ICE following his award.

If the member does not send the disputed deposit, The Dispute Service will take legal action to recover it. The company will claim it from its insurers if the member is unable to pay e.g. because it has become insolvent.

How are disputes resolved?

- The tenant has 20 working days to tell the member that they wish to dispute their proposed allocation of the deposit, and the Member has 10 working days to resolve it.
- If not, the parties decide if they want to go to court, or to have the ICE deal with it – which is what most people prefer. Either way, the disputed deposit must be sent to TDS.
- Send details of the dispute on form TDS 2 *Notification of Dispute*, together with relevant documentation, to TDS.
- Whoever is holding the deposit must send the amount in dispute to TDS.
- The ICE will copy the details of the dispute to the other parties, giving them 10 working days to send in their side of the story.
- The ICE will appoint an adjudicator to assist him, with a view to issuing an adjudication within 28 days of receiving all the necessary paperwork.
- The disputed amount will be paid out in accordance with the adjudication within a further 10 working days.

Do all landlords and agents have to join TDS?

No. They can join one of the two other schemes. One is a custodial scheme managed by DPS Ltd and requires the landlord/agent to place deposits with them at the start of the tenancy. The other is run by Tenancy Deposits Solutions Ltd, trading as mydeposits.com, and is also insurance-based.

How much does it cost to join TDS?

The current subscriptions for agents and landlords can be found on our website (www.thedisputeservice.co.uk) in TDS K *Schedule of fees*.

Agents can recharge the subscription across their portfolio. This will not be onerous to their landlords as it will work out at very little for individual properties.

Provisional subscriptions for corporate landlords are available on application.

Where members submit data for entry on to the tenancy database on paper rather than electronically, there will be a charge for each document. Please note: the data will not be entered until the fee has been paid.

There is generally no further charge for the resolution of disputes, which is **free** to tenants.

Management of The Dispute Service Ltd

The Scheme is managed by The Dispute Service Ltd. The ICE is also the Company's Chief Executive. The Dispute Service Ltd has a Board of five which is responsible for the operation and financing of the business. The Company also has a Council of twelve people with experience of, or interest in, residential lettings. It is concerned with the conduct of disputes in general, and to protect the independence of the ICE. Neither the Board nor the Council has any role in the resolution of disputes.

Why is using *Alternative Dispute Resolution* better than sending disputes to court?

Deposit disputes need to be resolved quickly and cheaply. Tenants usually need the money as a deposit on their next property, and landlords need to know how much will be available to spend on redecoration and repair. Going to court takes time and can be expensive and stressful.

Our successful adjudication process is based on an expert assessment of documentary evidence (which can also include photographs and video).

Who should I contact?

If you want:

- to get more information about the Scheme
 - to find out about joining the Scheme
 - advice about TDS
 - resolution of a dispute about a deposit
 - to obtain forms and other published information
- ... **please refer to our website at www.thedisputeservice.co.uk**