



protecting  
tenancy  
deposits

TDS and the late protection of  
deposits  
An updated guidance note for  
members  
June 2011

## Recent Court cases about the late protection of deposits

TDS members will no doubt have questions about the effect of recent Court judgements on the late protection of deposits.

Two Court of Appeal decisions have limited the circumstances in which the Courts will apply the statutory penalty for the late protection of deposits.

**In the case of Tiensia v Universal Estates** the Court of Appeal decided that landlords could avoid the penalty provided that the deposit was protected prior to any court hearing to consider a claim by the tenant. In this case the deposit was protected late but before the tenancy had ended. The Court felt that this interpretation was:

*“... consistent with the purpose of the legislation. That purpose is to achieve the due protection of deposits paid by tenants, ideally within the 14-day period but, if not, then later. It cannot be its purpose to punish landlords who may for example, for innocent reasons, be just a day late in securing such protection”*

However, this is by no means an invitation to not bother protecting the deposit unless the tenant starts Court proceedings - the Court was clear that if a tenant was compelled to take proceedings to get their deposit protected, then they would be entitled to claim their legal costs and expenses.

In the latest case of **Gladehurst Properties Ltd v Hashemi** the Court had to consider the situation where the deposit had been placed in protection after the tenancy had ended. Here it went further and decided that tenants are not able to make any claim for the penalty payment once the tenancy is over. For the penalty to apply, the Court considered that it must still be able to order the return of the deposit to the tenant or its payment into the custodial scheme – which can only be where the tenancy is still ongoing.

## Has the law changed?

No. These judgements were concerned with interpretation of the existing law and the application of the statutory monetary penalty of three times the deposit. They do not change the fundamental legal requirement for landlords to protect deposits. Under the Housing Act 2004, all deposits must by law be protected with a government authorised tenancy deposit scheme within 14 days of payment of the deposit. The landlord must also serve the tenant with a notice giving prescribed information.

Landlords still need to protect deposits – if they don't they won't be able to use section 21 of the Housing Act 1988 to evict tenants as the notice will not be valid if the deposit is unprotected at the time the notice is served. When claiming possession using the accelerated procedure, landlords will have to certify on the claim form that they have complied with the tenancy deposit regulations and provide evidence of that compliance.

Landlords who fail to protect deposits are also missing out one of the key benefits of the Tenancy Deposit Scheme – access to quick, free, and fair dispute resolution. If a landlord has not protected the deposit and the tenant disputes proposed deposit deductions, a landlord's only option may be to go to court – a costly and time consuming exercise.

## So should I still protect deposits?

Yes. Landlords need to protect deposits to:

- comply with the law – the requirement to protect deposits is still there!
- be able to rely on Section 21 of the Housing Act.
- have access to free dispute resolution.

## What are the TDS requirements for the protection of deposits?

Paragraph 8.2 of our Membership Rules contains the initial requirements of the Tenancy Deposit Scheme which members must meet.

**Within 14 days** of having received the deposit, **or within 14 days** of the tenancy becoming an Assured Shorthold Tenancy within the meaning of the Housing Act 1988 if this occurs after the receipt of the deposit:

- the tenant must have received the Prescribed Information, including the explanatory leaflet [What is the Tenancy Deposit Scheme?](#) and
- the deposit must have been registered on the TDS tenancy database.

## What happens if I miss the deadline?

We **may** award a disputed deposit to the tenant without adjudication where there is a breach of these initial requirements (see paragraphs 4.5, 14.2 and 14.3 of our Membership Rules). In practice however we take a sensible view. We look at each case on its merits so that we do not prejudice the tenant or deposit holder. To deal with a dispute where the deposit has been registered late we need to be satisfied that:

- the deposit has been registered before the fixed term period of the tenancy ends, and
- there is no detriment to the tenant, and
- that the deposit holder intended to protect the deposit, and
- that due to an honest mistake they did not meet the 14 day deadline.

## So do recent Court judgements make any difference to how TDS works?

We accept that a member who has missed the deadline through a genuine omission, and who has not attempted to avoid compliance with the law, should not be unfairly penalised. We note that the courts make a similar distinction.

As members of TDS, you agree to follow our Scheme rules. We remain of the opinion that it is reasonable for these Rules to continue to include these initial requirements. We are not bound to offer membership or protect a deposit if we have reason to believe the applicant is seeking to avoid their obligations either to the Scheme or under the law. Our Rules are consistent with the tenancy deposit protection legislation and are fair and reasonable. Recent Court judgements do not in our view fundamentally change the way the Scheme works.

## How will the late registration of deposits affect members?

We record all instances where members protect deposits some time after the deposit has been received and outside the 14 day deadline in our Rules. Where this is not simply down to an honest mistake we will discuss this with the member concerned. The continued late registration of deposits will affect their membership subscription and – ultimately – their membership of TDS.



**Steve Harriott**  
**Chief Executive**  
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### Contact details

Tenancy Deposit Scheme  
PO Box 1255  
Hemel Hempstead  
Herts HP1 9GN  
Tel: 0845 226 7837  
Fax: 01442 253 193  
Email: [deposits@tds.gb.com](mailto:deposits@tds.gb.com)  
Web: [www.tds.gb.com](http://www.tds.gb.com)

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