

# Tenancy Deposits

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The Housing Act 2004 has brought in new rules governing Tenants Security Deposits and how they must be held. It is to protect tenant's deposits being unfairly held by unscrupulous Landlords. From April 6<sup>th</sup> 2007, Security Deposits held in respect of Assured Shorthold Tenancies can only be held by Agents or Landlords who are part of a government approved scheme.

Unless a Letting Agent or Landlord is registered with an approved scheme they will NOT be allowed to hold a tenant's security deposit. This legislation will apply to all new Assured Shorthold Tenancies entered into on or after 6<sup>th</sup> April 2007 and any Assured Shorthold Tenancies, which are renewed on or after 6<sup>th</sup> April 2007.

The legislation will require tenancy deposits to be safeguarded explicitly by schemes which also provide for the resolution of any disputes over their return. The Government have introduced 2 types of approved schemes. A Custodial Scheme and an Insurance Backed Scheme.

The Custodial Scheme known as The Deposit Protection Service is managed by Computershare Investor Services Plc who will run the single custodial deposit scheme, with the Chartered Institute of Arbitrators providing the Alternative Dispute Resolution (ADR) Service. The Tenant will pay the deposit to the Landlord/Agent and then the Landlord/Agent will pay the deposit into the Custodial Scheme.

There are 2 Insurance Backed Schemes –

1. The Dispute Service Ltd who will be running an insured scheme directed primarily at Letting agents and will also run the scheme's Alternative Dispute Resolution service
2. Tenancy Deposit Solutions a consortium of the National Landlords association and Hamilton Fraser Insurance Services Plc who will administer an insured scheme, directed primarily at Landlords. The Chartered Institute of Arbitrators will provide the alternative Dispute Resolution Service.

Arron James Karis have joined both the Custodial Scheme and the Insurance Scheme run by The National Landlords Association and Hamilton Fraser Insurance Services Plc; this will allow us to continue to hold Tenants Deposits.

If there are disputes over how the deposit should be allocated which cannot be settled between the Landlord and Tenant then the free Alternative Dispute Resolution Service offered by the schemes can be used.

The Tenant will have to initially complete a complaint form but the onus will be on the Landlord to prove the deductions they are making are fair – it will not be sufficient for the Landlord simply to say 'the walls are marked'. The only real practical way of doing this is by using a professional Inventory Clerk who will produce a 'Statement of Condition' a Check In Report and a Check Out Report that will be so detailed that the tenants will not be able to argue with them.

The Insurance Scheme will attract a charge of £55.00 per Tenancy and the Custodial Scheme £25.00 per Tenancy to cover administration.

For Property that we manage there will be no charge other than the fees above.

For our Let Only Service it has been our policy to pass the deposit over to the Landlord along with the first months rent less our fees. From now on we will only be able to pass the deposit to a Landlord when we have seen evidence that they are registered under one of the schemes. If not we will pass the deposit directly to the Custodial Scheme.

With our Let Only Service the fee is due at the start of the tenancy and up to now we have deducted this from the first month's rent and deposit before passing on the balance to the Landlord. As we will no longer be able to deduct our fees from the deposit there may be instances where the Landlord will need to pay part of our fee before the tenancy commences and we will inform Landlords accordingly.

Our Terms of Business, AST, and Management Agreements will be reviewed to include any relevant clauses.

If a Landlord fails to place a deposit under either one of the Tenancy Deposit Protection Schemes, the tenant will have the following protection:

- Until the deposit has been safeguarded by a scheme the Landlord is unable to gain possession of the property serving the Section 21 Notice
- The tenant can apply for a court order forcing the Landlord to place the deposit under the protection of one of the schemes and/or requiring the Landlord to provide the tenant with the prescribed information about the location of the deposit e.g. the scheme details
- Where a court is satisfied that the Landlord has failed to comply with the requirements and the deposit is not being held in accordance with an authorized scheme the court must either:
  1. Make an order requiring that within 14 days the deposit amount is repaid to the tenant, or
  2. Order the Landlord to pay the deposit amount into the designated account held by the custodial scheme administrator
  3. The court must also order the Landlord to pay within 14 days to the tenant an amount equivalent to three times the deposit amount

Further Information on the Tenancy Deposit Protection Schemes can be found on the website: [www.communities.gov.uk/tenancydeposit](http://www.communities.gov.uk/tenancydeposit)