

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 (<http://www.thompsons.law.co.uk/trade-unions/trade-union-member.htm>) 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 <http://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](#).

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,

you can cancel your request/accept your landlord's reduced offer.

or

you can challenge the landlord's decision through the schemes alternative dispute resolution service.

or

you can challenge your landlord's decision in the [Small Claims Court](#).

You 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, if the landlord pays you back the deposit before you get to Court, 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 £10,000. You will need to obtain a N1 form from the County Court or online at <http://www.hmcourts-service.gov.uk/>. 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](#).

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 your 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 £10,000. You will need to obtain a N208 form from the County Court or online at <http://www.hmcourts-service.gov.uk/>. 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 £10,000.

If, you take legal action and your landlord has still not protected your deposit, the court will order your landlord to:-

give you your deposit (if your tenancy has ended); or
pay the deposit into one of the tenancy deposit protection scheme within 14 days (if you are still within your tenancy).

If the court makes either order, it must then order your landlord to pay you a sum of money as a penalty, which could be up to three times the value of your deposit.

NOTE: If your tenancy ended before 6 April 2012 and you paid a deposit between 6 April 2007 and 5 April 2012 will still be able to take a claim against your landlord for the return of their deposit but you will not be able to claim any compensation for the landlord's failure to protect their deposit.

Is the 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 tenant's permission to take legal action and all tenants must be named on the claim form.

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

<http://england.shelter.org.uk/>

Citizens Advice Bureau

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

Tel: 020 7833 2181

<http://www.citizensadvice.org.uk/>

Direct Gov

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

<http://www.direct.gov.uk>

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