



protecting  
tenancy  
deposits

# What is the Tenancy Deposit Scheme? For landlords and tenants

4<sup>th</sup> Edition  
April 2012



## About The Dispute Service

The Dispute Service is an independent, not-for-profit company set up in 2003 to resolve complaints and disputes about tenants' deposits in the private rented sector – speedily, cost-effectively and fairly. We operate the Tenancy Deposit Scheme, which is one of the three approved tenancy deposit protection schemes.

## What is the Tenancy Deposit Scheme?

The Tenancy Deposit Scheme (TDS) protects the deposits that tenants give to private landlords. It also offers a way of resolving disputes about returning those deposits.

Tenancy deposit protection schemes apply to all assured shorthold tenancies that started on or after 6 April 2007 in England and Wales where the annual rent does not exceed £100,000 a year.

Under the Tenancy Deposit Scheme:

- deposits will be protected during the tenancy;
- the person or organization holding the deposit must return it to the tenant promptly at the end of the tenancy, provided there is no dispute about returning it;
- any dispute about returning the deposit will be dealt with fairly by the Independent Case Examiner;
- the Independent Case Examiner will decide the dispute quickly, and the deposit will be paid out without unnecessary delay.

Tenants can check if their deposit is registered with the Tenancy Deposit Scheme by visiting [www.tds.gb.com](http://www.tds.gb.com) and going to the **Is my Deposit Registered?** page. Tenants enter their unique tenancy code or their surname, the amount of the deposit, the tenancy postcode, and the date their tenancy started.

## What are the legal requirements?

The Housing Act 2004 states that any landlord or agent who takes a deposit from a tenant for an assured shorthold tenancy must put it in an approved tenancy deposit protection scheme. Landlords or agents who fail to do this within 30 days of receiving the deposit can be fined up to three times the value of the deposit as a result of court action. They also cannot serve a Section 21 notice to end a tenancy and regain possession of the property until:

- the deposit has been repaid; or
- legal proceedings for failing to protect the deposit have ended.

The Housing Act also states that:

- the tenant must be told which tenancy deposit protection scheme their deposit is held in;
- the deposit must be in money;
- landlords who do not give the tenant the information they are required to under the law about protecting their deposit will not be able to issue the tenant with a Section 21 notice;
- the landlord or agent must give the deposit to the scheme operators when asked to do so;
- each scheme must have procedures for resolving disputes without legal action (using 'alternative dispute resolution'), but the parties can go to court if they prefer.

If there is no dispute, the deposit holder must return the undisputed deposit amount to the tenant within 10 days of being asked to repay it.

The Act allows for deposits to be held in:

- a custodial scheme – the money is held by an independent third party outside the landlord's control;
- an insurance-based scheme – the money is held by the landlord or their agent, provided they have suitable insurance arrangements.

Each tenancy deposit protection scheme has its own rules. The rules for TDS are set out in the following documents:

- **The Tenancy Deposit Scheme for Lettings Agents and Corporate Landlords: Membership Rules**
- **The Tenancy Deposit Scheme for Landlords: Membership Rules**
- **The Tenancy Deposit Scheme Rules for the Independent Resolution of Tenancy Deposit Disputes**

You can view these documents at [www.tds.gb.com](http://www.tds.gb.com)

## **Who can join the Tenancy Deposit Scheme?**

The Tenancy Deposit Scheme is open to landlords and regulated letting agents offering residential property for rent. They will be asked to provide relevant information – as set out in the TDS rules – to determine if they can be accepted as members, and what their subscription will be. Landlords and letting agents who wish to join must be members of one of the approved bodies mentioned below.

## **What is an approved body?**

An approved body is any professional body, accreditation scheme or trade association that TDS has approved to give their members a streamlined application process and a reduced subscription. Approved bodies are also expected to take appropriate disciplinary action against their members who fail to comply with the TDS rules. The following are all approved bodies: 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.

## **How are deposits held and protected?**

Normally, the tenant and the landlord decide together where the deposit will be held, helped by any letting agent who is involved. The deposit-holder must be a member of the Tenancy Deposit Scheme. If there is a dispute about the deposit, the landlord or letting agent can try to resolve it. If that fails, any of the parties – landlord, agent or tenant – can take the dispute to the Independent Case Examiner, who will:

- appoint an adjudicator to help consider the evidence provided by the landlord, agent or tenant; and
- aim to issue a decision within 28 days of receiving all the necessary papers.

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

The member should send the disputed deposit amount to TDS. After the Independent Case Examiner has considered the matter, TDS will make a payment to the tenant according to the Independent Case Examiner's instructions.

If the member does not send the disputed deposit amount to TDS, TDS will take legal action to recover it. TDS has a special cash fund that enables the Independent Case Examiner to continue an adjudication in these circumstances. If the member cannot pay what the Independent Case Examiner requires, for example because it has become insolvent, TDS will pay instead and make a claim to its insurers.

## **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 the dispute is not resolved, the parties decide if they want to go to court, or to have the Independent Case Examiner deal with it. This is what most people prefer. Either way, the disputed deposit must be sent to TDS.
- The party who wishes to put the dispute to TDS must use the **Notification of a Deposit Dispute** form to state the details of the dispute, and provide any relevant supporting documents.
- Whoever is holding the deposit must send the disputed amount to TDS.
- The Independent Case Examiner, working alongside TDS, 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 Independent Case Examiner will appoint an adjudicator to help it issue a decision within 28 days of receiving all the necessary paperwork.
- The disputed amount will be paid out according to the Independent Case Examiner's decision within a further 10 working days.

## **Why is it better to resolve a dispute through the Independent Case Examiner than going 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 things like redecoration, damage or repairs. Going to court takes time and can be expensive and stressful.

The Independent Case Examiner's successful adjudication process is based on an expert assessment of documentary evidence (which can also include photographs and video).

## **Do all landlords and agents have to join TDS?**

No. They can join one of the two other tenancy deposit protection schemes: The Deposit Protection Service and MyDeposits.

## **How much does it cost to join TDS?**

You can find the current subscriptions for agents and landlords on the TDS website. Agents can recharge the subscription to landlords.

Provisional subscriptions for corporate landlords are available on application.

Where members submit data in hard copy to be entered on the tenancy database, there will be a charge for each document submitted. The data will not be entered until the fee has been paid.

There is normally no further charge for resolving disputes, which is free to tenants.

## **Management of TDS**

TDS is overseen by a Board, which is responsible for the operation and financing of the business. The Board does not have any role in resolving disputes.

**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)

**Revised April 2012**

**© The Dispute Service Limited 2012**