



Deposit management:

Protection, dilapidations and dispute
resolutions



What is a security deposit?

Security deposits have been used in tenancies for many years. They are sums of money that the landlord/agent will take at the start of a tenancy with which they can recuperate losses for damage to the property at the end of the property. Deposits can be taken for all types of tenancy (e.g. Common Law, Company Lets, Assured, Assured Shorthold etc.). Since the [Housing Act 2004](#), Assured Shorthold tenancies (AST) have been under further regulation regarding the handling of this deposit. This guide aims to understand more about the rules and processes in place for deposits held for ASTs.

Why take a security deposit?

In most tenancies, landlords are effectively allowing strangers to live in their property. This comes with a certain level of risk to the landlord. They cannot guarantee that the tenants will look after the property and that it will be returned to them in good condition. Best practice is that the responsibility of the tenants be carefully detailed in the tenancy agreement and an inventory taken at the start of the tenancy. If the tenants do not return the property in adequate condition, the landlord can claim compensation for the cost of restoring the property to the condition when let, fair wear and tear excepted. Deposits are taken to ensure there is money available for this, and the landlord does not need to find and claim against the tenant when they have moved on. If a landlord does not take a deposit, they run the risk of a long court battle in order to recoup their losses. With a deposit in place, there is an immediate pot of money available for reimbursing the landlord's repair costs.

How much can I take?

The [Tenant Fees Act 2019](#) introduced a cap on security deposits for ASTs of either 5 weeks' rent where the total annual rent is below £50,000 or 6 weeks' rent where the total annual rent exceeds this amount. This was introduced to control the large sums to be paid upfront by a tenant at the start of a tenancy in order to make renting more accessible to all. Previously, deposits ranged between 6 and 8 weeks' rent mostly and sometimes exceeded this. Deposits were historically increased when taking a pet into the property, but this is no longer possible beyond the maximum 5 weeks' rent.

Protecting the deposit

The Housing Act 2004 placed obligations on landlords to protect the deposit in a scheme that has been approved by the Ministry of Housing, Communities and Local Government. Currently, there are three schemes that provide this service: the [Tenancy Deposit Scheme](#) (TDS), the [Deposit Protection Service](#) (DPS) and [MyDeposits](#). The schemes have processes in place to allow for effective dispute resolution regarding the deposit.

Rules were also created surrounding the process for protecting the deposit, particularly with regards to the timeline. Deposits must be protected within 30 days of receiving the payment (note that this is not from the start date of the tenancy).

Insured or Custodial?

There are 2 methods of protecting the deposit with the schemes mentioned above. The first is using an insured scheme. With the insured scheme, the landlord (or the landlord's agent) retains the money themselves under the protection of the insurance the scheme provides. Provided the relevant clauses are included in the tenancy agreement, the landlord/agent is able to retain the interest on this money while held. If not stated in the agreement, the tenant may be able to claim this interest. Insured schemes require a premium to be paid to the deposit company.

Custodial schemes are the second option for protecting the deposit. In this scheme, the deposit is paid to the deposit company who hold the deposit for the duration of the tenancy. This has no charge, however, interest is retained by the custodian in order to cover the costs of the scheme.

Both options have tight regulation for release of the deposit at the end of the tenancy which will be covered later.

Prescribed information

The prescribed information relating to the deposit must be provided to the tenant within the 30 days following receipt of the deposit. The wording for this is laid out in legislation (S213(4) of the Housing Act 2004) and must be followed carefully. Each scheme will have their own template to assist with this and requirements for how this should be served. The TDS for example, require an additional information leaflet to be served alongside the prescribed information. It is best practise to serve the prescribed information alongside the tenancy agreement enabling you to have the signed document at the earliest possible stage.

What happens if I don't protect the deposit correctly?

If the deposit is not protected correctly and the tenant raises an action against the landlord, they can be charged between one and three times the value of the deposit and the deposit may be ordered to be returned to the tenant. Note that this payment is due to be paid by the landlord not the agent even if the agent is at fault. The landlord may be able to reclaim this off the agent through the courts.

Additionally, incorrect protection of the deposit or service of the prescribed information could prevent a section 21 notice being able to be served on the tenant.

Returning the deposit

Much as in protecting the deposit, deposit returns are also controlled by legislation. Whether insured or custodial, the deposit cannot be returned without the agreement of both parties. This means that the landlord and tenant must agree on the proposed deductions (if any) before the deposit can be returned. In the instance that the deductions are contested, the undisputed portion of the deposit is returned to the tenant and the remainder held pending dispute resolution (see below). The deposit must be returned within 10 days from when both parties have agreed. If using a custodial scheme, once the information is provided to the scheme, they will organise the return of the deposit to the relevant parties. If insured, the landlord or their agent (if holding the deposit) will be responsible for organising this.

Dilapidations

If the deposit is not returned in the condition that it was given, then it is possible that dilapidation expenses can be taken from the deposit. It is important to remember that the tenants are allowed 'fair

wear and tear' which means that there is an expected deterioration to items that does not count as damage. This could be minor scuff marks on a wall or usage marks on furniture. When an item is damaged beyond this, deductions can be proposed. When proposing deductions, it is incredibly important to keep receipts/invoices for any repair works done.

If the tenant has left the property in an unclean state (and it was delivered to a higher standard at the start of the tenancy) then they may be charged for reasonable professional cleaning costs. Likewise, if they have broken something that can be repaired, reasonable costs can be charged to the tenant. It becomes more complicated when replacing damaged items. The tenant cannot be charged the full value of a damaged item in most situations even if a replacement needs to be provided. These dilapidations have to be calculated based on their life expectancy and current life span. See the example below:

The tenants have left the property and the kitchen table is beyond repair. The kitchen table is currently 5 years old and when it was new, it cost £500. Most furniture will be considered to have an estimated lifespan of 10 years. This table has currently lived through half its lifespan. This means that the landlord has received half the value out of the piece of furniture and is only able to claim from the tenant the value for the remaining half of its lifespan - £250. If it was only 2 years old, the landlord could claim £400 (4/5 of the cost) as it still has 8 years of its lifespan left.

In the situation where there are stains on carpets or damage to the paintwork, the same principle should be applied but replacement should only be charged where repair isn't feasible.

Make sure there is evidence for all deductions from the deposit. Complete a check-out inventory when the tenant leaves and before you do anything to the property which can be compared to the check in inventory from the start of the tenancy and used as evidence of the condition it has been left in. An independent inventory clerk is recommended as they cannot be accused of bias if it comes to dispute.

Dispute

Disputes can be highly stressful and time consuming and it is always worth considering whether pursuing a claim is worthwhile if it comes to this. It is expected that the landlord/agent and the tenant will attempt to find a resolution themselves before referring it to the deposit scheme for dispute resolution. It is often possible to resolve the issue with compromises on both sides before proceeding to resolution. In the instance where the deductions cannot be agreed then either the landlord, agent or tenant can refer the case on to the deposit scheme operator. At this stage, the undisputed part of the deposit must be returned to the tenant. The landlord or agent must then provide the evidence justifying the deductions from the deposit. The tenant is then invited to provide evidence of their own and the case is assigned an adjudicator. This is why it is so important to keep receipts and invoices and have carried out inventories. If you do not have clear evidence, it is likely that the scheme will award in favour of the tenant. The adjudication process can take up to 28 days and then a decision will be made. Payment must be made based on the result of this decision within 5 days.

Deposit alternatives

It is not necessary to take deposits and sometimes there can be alternatives that work well for both parties.

Bonds

Bonds are agreements between the landlord and a relevant party in which the relevant party agrees to be liable for the condition the property is left in and costs associated with repair/unpaid rent/bills. This is often used by the council. These are options best used when the relevant party is a trusted organisation as the landlord is relying on them following through with their contractual obligations and does not hold any money.

Zero-deposit schemes

Zero-deposit schemes are on the rise and are popular with many agents. In essence, the tenant pays a smaller amount (often 1 week's rent) to the scheme as a non-refundable payment. The scheme then guarantees the landlord for damages to the property at the end of the tenancy in the same way a deposit scheme would. In principle this arrangement can be helpful for those who are unable to obtain the large upfront amount, however, there are some further points to consider:

- There will be a high burden of proof for a landlord to claim money for dilapidations from the zero-deposit company.
- The tenant will still have to pay for any money claimed by the landlord, the scheme takes on this responsibility but will pursue repayment from the tenant.
- The tenant in the long run will have lost money.
- Often, agents receive a commission for providing this scheme which they should make aware to all parties.
- This cannot be demanded of a tenant. They always have the option of using a conventional deposit scheme.

Bright Properties are an ARLA registered letting agent based in Oxford providing personalised property management services to landlords across Oxford and the surrounding area. We aim to raise the bar for property standards across the city. Being landlords ourselves, we understand the importance of diligent property management and deliver the same high standards for your properties as we do for our own.

This guide is intended to be informative. Any advice taken from this document should be followed up with a consultation with a relevant property

**Cranbrook House, 287-291 Banbury Road,
Oxford, OX2 7JQ**

Email: contactus@brightproperties.co.uk

Tel: 01865 819020