

Tenancy Deposit Protection Scheme

Summary

The Tenancy Deposit Schemes (Scotland) Regulations 2011 Act came into force on 2 July 2012. Any tenancy deposit now accepted by a landlord must be paid into an agreed deposit protection scheme within 30 working days of the start of the tenancy.

What information must be provided to the tenant?

- The amount of the deposit paid and the date it was received by the landlord
- The date which the deposit was paid into a protection scheme
- The property address to which the deposit relates
- The landlords registration number
- The name, address and full contact details of the Deposit Protection Scheme (DPS) holding their deposit
- What deductions can be made from their deposit under the terms of their tenancy agreement

Failure to give the tenant this information could lead to the landlord being ordered to pay up to three times the amount of the deposit.

The DPS that Campbell and Dean use is "SafeDeposits Scotland". SafeDeposits is a not-for-profit company whose members are: National Federation of Property Professionals, National Union of Students Scotland, Royal Institution of Chartered Surveyors (RICS), Scottish Association of Landlords, Scottish Council for Voluntary Organisations, and The Dispute Service. SafeDeposits is free to use and is funded entirely from the interest earned on deposits held.

What happens at the end of a tenancy?

When the tenancy ends, the landlord, agent or the tenant can submit a request to the relevant scheme provider stating how the deposit should be returned. The DPS provider will then write to the landlord (or agent) and the tenant asking them to confirm whether they agree or dispute the claim made for the deposit. Where the landlord and tenant are in agreement as to how all or part of the deposit should be repaid, the net deposit will be paid accordingly within 5 working days of the provider receiving confirmation of agreement. The return of the deposit will take longer where the amount is disputed or where either party in the dispute cannot be contacted.

Disputes

- If the tenant disagrees with the landlord's application to retain some of the deposit then the tenant or landlord can request the use of a dispute resolution service provided by the DPS. If either party requests dispute resolution then the other party cannot refuse its use.
- The landlord and tenant then have to present their evidence to an independent adjudicator who will make a final decision. This decision will be made within 20 working days of receiving all evidence from both parties. The adjudicator's decision is final and binding. However both parties have the option to independently go to court to redress the recovery of any monies.

What information will be taken into account when a dispute is considered:

- Evidence: The property inventory, inspection reports, and maintenance logs
- Fair Notice: Any deduction to be sought must be notified to the tenant during the course of the tenancy
- Any dispute must be realistic due to the process involved i.e. claims for missing light bulbs will not be considered; these are deemed incidentals to letting a property
- High value items: Items of high value, such as a flat screen TV, should NOT be left in a property, as the adjudicator will normally deem them unsuitable that they were supplied
- Age of items: e.g. A blind is broken and the blind is 4 years old: If a deduction for its replacement were sought, it would be considered life expired and therefore unreasonable
- Redecoration: This is classed as being required as every 3-5 years. If a landlord was therefore claiming for the cost of re-decoration due to tenant' damage, then invoices and any other supporting evidence must be available to prove when the property was last decorated
- Appropriate materials and fittings: The correct type of flooring must be in place for each room or deductions for damage will not be considered i.e. carpet in a bathroom where lino or a tiled floor would be expected
- White goods will be classed as life expired at the end of the guarantee period. White goods outwith this period will need independent inspection to determine if they should be repaired, replaced or have worn out. A callout charge to determine this, with a written report, can be levied regardless of outcome.
- The tenancy agreement must state that the deposit can be used to cover unpaid rent and utility bills and the re-installment of gas/electric meters
- Pets: It is assumed that if a landlord allows pets at a property, then they anticipate that a pet can potentially cause increased damage and wear and tear: This will be taken into account when deciding damages so it is unlikely that normal pet damage would be awarded to the landlord.
- After an inspection: If damage is noted that has been caused by a tenant, then the tenant must be made aware of this and given fair notice that a deduction will be sought from their deposit
- No charge can be made to the tenant for the preparation of an inventory

NB Campbell and Dean always recommend that landlords set up a "rainy day fund":

It is prudent to keep 20% of rental receipts to cover emergencies such as a boiler breakdown or replacement.

Also, when a tenant moves out of a property, remedial works maybe required at a property in order to re-let it quickly. Where previously these may have been deducted from a tenants deposit this will no longer be possible. The "rainy day fund" is therefore more important than ever.