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Tenancy Deposit Schemes (Housing Act 2004)

What is the Tenancy Deposit Scheme?

This scheme was introduced by the Housing Act 2004 and applies to Assured Shorthold Tenancies entered into on or after 6th April 2007. The reason for the introduction of such a scheme was due to the many complaints by tenants about their landlord's refusal to return the deposit at the end of the tenancy, often unlawfully.

The aim of the scheme is to safeguard tenants' deposits and to facilitate the resolution of disputes arising between landlords and tenants at the end of the tenancy with regard to the deposit monies. Essentially, it ensures that deposit monies are returned to a non-defaulting tenant within 10 days from the date the tenancy came to an end.

What are the various schemes?

There are two schemes currently in place: -

1. Custodial scheme where the landlord simply puts the deposit monies into the scheme at the start of the tenancy
2. Insurance scheme where the landlord keeps the deposit monies and pays the scheme an insurance premium. This premium is for the scheme operators' services in the event that there is a dispute. If there is a dispute, the landlord pays the deposit monies to the scheme administrator until such time as the dispute is resolved.

The landlord is free to choose which scheme he uses to secure the tenant's deposit.

Why does the scheme only apply to Assured Shorthold Tenancies?

It appears that the scheme has only been introduced for Assured Shorthold Tenancies because this is the most common form of residential tenancy within the private sector and which causes the most disputes around deposit monies.

What is the Landlord required to do when a deposit is taken?

The landlord must first of all decide which scheme to use. If the landlord is using a letting agent, they should already have a system in place for securing deposit monies. If the custodial scheme is used, the deposit must be paid to the scheme administrator within 14 days. If it is the insurance scheme is used, the landlord must pay the insurance premium.

Whichever scheme is used, the landlord must ensure that the deposit monies are protected, and provide the tenant with the requisite information (prescribed under the Housing Act 2004) within 14 days of receiving the deposit.

What are the sanctions for non-compliance?

If the landlord fails to protect the deposit or fails to provide the tenant with the prescribed information under the Housing Act 2004, the tenant can make an application to the County Court for an Order that the landlord, or his agent, should pay the deposit back to the tenant, or pay it into one of the schemes.

The Court will also order the landlord, or his agent, to pay to the tenant compensation equal to 3 times the deposit monies. Such monies must be paid within 14 days of the Court Order. This is a strict liability penalty imposed on the landlord for failing to comply with the statutory provisions.

Finally, the landlord will be precluded from serving a section 21 notice all the time the deposit monies are unprotected (or the tenant has not been supplied with the prescribed information). Any notice served on the tenant will be invalid until the statutory requirements have been complied with.

What happens at the end of the tenancy?

The landlord, or his agent, should check the condition and contents of the property against the agreement made between the parties. The landlord and tenant should then agree how much of the deposit ought to be returned. The agreed sum should be returned to the tenant within 10 days.

What happens if there is a dispute?

The scheme administrators will usually have their own procedure in place for when a dispute occurs and the scheme administrators should therefore be informed immediately. However, if a dispute cannot be resolved between the parties, the matter will be resolved through Alternative Dispute Resolution or through the Court.