



COMMERCIAL ALERT

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Tenancy Deposit Schemes

A recent High Court case has highlighted the obligations that are owed to a tenant under the terms of a Tenancy Deposit Scheme (TDS). The decision has significance for both landlords and their agents.

What is a TDS?

A landlord under an assured shorthold tenancy (AST) **must** protect a tenant's deposit by using an authorised tenancy deposit scheme (TDS) operated by an approved scheme administrator. A TDS has two main objectives:

- To ensure that when a tenant pays a deposit, it will be protected and returned to the tenant at the end of the AST, except when the landlord has a legitimate claim on it.
- To resolve disputes between landlords and tenants using dispute resolution rather than via the courts.

There are two types of TDS:

- A **custodial TDS** requires a landlord to pay its tenant's deposit to a scheme administrator, who holds the deposit until the tenancy comes to an end.
- An **insurance TDS** where the landlord retains possession of the deposit, but secures it by paying a fee and insurance premiums to the scheme administrator.

What are a landlord's obligations under a TDS?

A landlord must:

- Comply with the "initial requirements" of the TDS within 14 days of receipt of the deposit.
- Give the tenant certain prescribed information within 14 days of receipt of the deposit.

What sanctions are available if a landlord fails to fulfil their obligations under a TDS?

A tenant can apply to the court for sanctions against the landlord if the landlord fails to comply with the initial requirements or give the prescribed information. If the court is satisfied that the landlord is in breach of either of these requirements, it can:

- Order the person holding the deposit to either repay it to the applicant or pay it into a custodial TDS.
- Order the landlord to pay the tenant a sum equal to **three times the amount of the deposit**.

What are the implications of the case for landlords?

On the judge's interpretation of the Deposit Protection Service (DPS) (which is a **custodial** scheme) a landlord **will not be fined** if it protects the deposit in the DPS before the tenant starts court proceedings. This is because the initial requirement of the DPS is to pay the deposit into the scheme. It is **not** an initial requirement to pay it within 14 days of receipt.

However, a landlord may well be fined if an insurance scheme was used, as it is an initial requirement of the TDS that the deposit be registered with the insurance scheme, and that all prescribed information be provided to the tenant, within 14 days of receipt.

What are the implications of the case for agents?

Agents should be aware that tenants can bring proceedings against an agent who receives a deposit and fails to protect it. Agents may wish to safeguard against the risk of penalties by obtaining an indemnity from landlords for whom they act, or by sending the deposit to the DPS themselves within 14 days.

The safest course of action for landlords and agents is to protect deposits, and provide the prescribed information, **within 14 days of receipt**.

If you would like to discuss any of the issues raised in this e-mail please contact Robert Hill on 01494 525941