

Tenancy Deposit Protection Schemes

Brief Background

The purpose of a deposit paid by a tenant at the outset of a tenancy is to allow the landlord to deduct the Cost of any disrepair or breakages caused by the tenant during the term of the tenancy. This is assessed when the tenancy ends and, if all is in order, the deposit should be returned to the tenant.

Deposits became an issue due to complaints that landlords were either absconding with the deposit money or unreasonably withholding payment on the grounds of spurious disrepairs and unfounded claims. It Became a political issue in that landlords were deemed to be more legally and financially astute than the average tenant and therefore had an unfair advantage and legislation was required to protect the tenant's money.

Legislation for assured shorthold tenancy was laid down within the Housing Act 2004 and created a requirement for landlords under the Act to protect a tenant's deposit (with rents below £25,000 per annum) and that the deposit be deposited in an authorised Tenancy Deposit Protection Scheme.

The Schemes

There are two types of scheme available to agents and landlords under the the Tenancy Deposit Protection. The three schemes available are either insurance based or custodial. Two are insurance based and the other is custodial.

Insurance based Schemes are where the landlord or agent will hold the deposit. If the landlord or agent fails to abide by the terms of the scheme or abscond with the money, the deposit will be covered by the scheme's insurance.

The Dispute Service (TDS) www.thedisputeservice.co.uk

My Deposit www.mydeposits.co.uk

The Custodial based Scheme is where the landlord or agent pays the deposit into the custodial scheme, which will hold the money independently of the landlord, agent or tenant until the end of the tenancy.

The deposit Protection Service (DPS) www.depositprotection.com

How do the schemes work

Each of the schemes' practises vary but in essence they all follow the same theme. At the end of the tenancy, either agreement is reached and the deposit released or there is a dispute and the parties are unable to reach an agreement. In this event the parties can use the **Alternative Dispute Resolution (ADR)** operated by each scheme.

The amount in dispute is held back, an adjudicator is appointed by the scheme. The adjudicator's decision is final and there is no appeal.

Should either party refuse the ADR, the case goes to the County Court.

The importance of Inventories becomes apparent should a dispute arise. A well structured and thorough Inventory, "check in" and "check out" will help the landlord win a case in withholding part/all of a deposit. If these documents are from third parties they are deemed to be more reliable.

