



#### WHO SHOULD READ THIS?

- ✓ Tenants
- ✓ Agents
- ✓ Landlords

# WHAT IS THE TENANCY DEPOSIT SCHEME?

AN ADVISORY INSURED SCHEME LEAFLET FOR LANDLORDS AND TENANTS



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# What is TDS?

The Dispute Service Ltd operates two tenancy deposit protection schemes, authorised by the government: Insured and Custodial. This leaflet deals with the Insured scheme only. There is a separate leaflet for TDS Custodial.

## TDS HAS TWO MAIN ROLES:

**1 TO PROTECT DEPOSITS** 

**2 TO HELP RESOLVE DISPUTES ABOUT DEPOSITS** 

## WHAT IS TENANCY DEPOSIT PROTECTION?

Tenancy deposit protection applies to all deposits for assured shorthold tenancies that started in England or Wales on or after 6 April 2007.

**MOST RESIDENTIAL TENANCIES IN THE PRIVATE RENTED SECTOR ARE ASSURED SHORTHOLD TENANCIES, WITH SOME EXCEPTIONS. FOR EXAMPLE, A TENANCY CANNOT BE AN ASSURED SHORTHOLD TENANCY IF:**

- ✓ THE TENANT IS A COMPANY;
- ✓ THE RENT IS MORE THAN £100,000 A YEAR;
- ✓ THE TENANCY IS FOR A HOLIDAY LET; OR
- ✓ A UNIVERSITY OR COLLEGE RENTS THE ACCOMMODATION TO ITS STUDENTS.



**BY LAW, A LANDLORD OR AGENT WHO RECEIVES A DEPOSIT FOR SUCH A TENANCY MUST PROTECT THE DEPOSIT.**



# What does tenancy deposit protection mean?

- ✓ PROTECTING A TENANT'S DEPOSIT WITH A GOVERNMENT-AUTHORISED SCHEME SUCH AS TDS;
- ✓ PROVIDING THE TENANT WITH PRESCRIBED INFORMATION ABOUT WHERE THEIR DEPOSIT IS BEING PROTECTED AND HOW IT WILL BE MANAGED.

## TENANCY DEPOSIT PROTECTION SCHEMES CAN BE ONE OF TWO KINDS:



### **Custodial**

This is where the scheme holds the deposit during the tenancy.



### **Insured**

This is where the landlord or agent holds the deposit during the tenancy, but must give it to the scheme at the end of the tenancy if there is a dispute. The scheme is insured because this guarantees that the tenants will always get the money back to which they are entitled.



**EACH TENANCY DEPOSIT SCHEME HAS ITS OWN RULES SETTING OUT IN DETAIL HOW IT OPERATES.**

**THE TDS RULES ARE AVAILABLE FROM THE TDS WEBSITE AND ON REQUEST.**



# What are the legal requirements?

These are contained in sections 212 to 215 of, and Schedule 10 to, the Housing Act 2004 (as amended). Tenancy deposit protection applies to money received by a landlord or agent that is meant to be held as security in case a tenant does not comply with their obligations.



The landlord or agent must **comply with the initial requirements** of an authorised tenancy deposit protection scheme within **30 days** of receiving the deposit.

## TO PROTECT A DEPOSIT WITH TENANCY DEPOSIT SCHEME, THE LANDLORD OR AGENT NEEDS TO:

- ✓ BELONG TO THE SCHEME;
- ✓ REGISTER THE DEPOSIT ON THE TDS DATABASE;
- ✓ PAY A MEMBERSHIP SUBSCRIPTION OR DEPOSIT PROTECTION CHARGE.

A TDS Member (landlord or agent) must also give the tenant 'prescribed information'. The information is set out in the Housing (Tenancy Deposits (Prescribed Information) Order 2007. It must also be given to anyone who paid the deposit on the tenant's behalf.

## THE PRESCRIBED INFORMATION INCLUDES:

- ✓ THE CONTACT DETAILS OF THE LANDLORD AND TENANT;
- ✓ THE RENTED PROPERTY'S ADDRESS;
- ✓ THE DEPOSIT AMOUNT;
- ✓ THIS LEAFLET;
- ✓ PAY A MEMBERSHIP SUBSCRIPTION OR DEPOSIT PROTECTION CHARGE.

The landlord or agent must also specify which tenancy agreement clauses say how the deposit can be used.

## TENANTS MUST BE GIVEN THE OPPORTUNITY TO:

- ✓ CHECK ANY DOCUMENT THE LANDLORD PROVIDES CONTAINING PRESCRIBED INFORMATION; AND
- ✓ SIGN IT TO CONFIRM THE INFORMATION IS ACCURATE.



# What if the landlord or agent does not comply?

A landlord or agent should protect the deposit in an authorised scheme and provide the tenant (and any sponsor) with the prescribed information within **30 days** of receiving the deposit.

If they don't do so, then the tenant (or the person who paid the deposit) can take the landlord or agent to court. The court can order the landlord or agent to protect the deposit or repay it to the tenant. The court can also order the landlord or agent to pay the tenant compensation of between one and three times the deposit's value.

A landlord who has not correctly protected a deposit cannot serve a notice to end the tenancy and regain possession of it under section 21 of the Housing Act 1988. The landlord can only serve such a 'section 21 notice' after the deposit has been repaid or after any court case about the deposit has ended.

A landlord who has not given the tenant prescribed information within 30 days must not issue a section 21 notice until the prescribed information has been given. If this takes place more than 30 days after the landlord or agent received the deposit, the tenant can still apply to court for compensation of between one and three times the deposit's value.



**TDS CANNOT AWARD COMPENSATION TO TENANTS IF A LANDLORD OR AGENT FAILS TO COMPLY WITH THE LAW RELATING TO TENANCY DEPOSIT PROTECTION. THIS CAN ONLY BE DEALT WITH BY THE COURTS.**



# Is my deposit protected?



TENANTS CAN CHECK IF THEIR DEPOSIT IS REGISTERED WITH TDS BY VISITING [WWW.TENANCYDEPOSITScheme.COM](http://WWW.TENANCYDEPOSITScheme.COM)

If tenants have received a Tenancy Deposit Protection Certificate, they should enter the code number from that certificate. Alternatively they can enter their surname, the deposit amount, the tenancy postcode, and the date their tenancy started.

If a member informs TDS that the protection of a deposit should be ended, TDS will make reasonable efforts to inform the tenant before ending the protection.

If the tenancy has not ended, the tenant (or one of the joint tenants) can object to the ending of deposit protection by phoning the TDS customer contact center.

If the tenancy has ended and the tenant is not satisfied with the proposed split of the deposit, then the tenant can ask TDS to resolve the dispute within three months after the end of the tenancy.





# What happens to the deposit after the landlord or agent receives it?

The landlord or the agent will hold the deposit during the tenancy. The tenancy agreement should state who receives any interest it makes.

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# What happens to the deposit at the end of the tenancy?

If there is no dispute about the return of the deposit at the end of the tenancy, the landlord or agent must pay the deposit to the tenant without delay, less any deductions that the tenant has agreed.

## **Who raises a dispute if there is no agreement about the deposit return?**

If there is a dispute about the return of the deposit or about proposed deductions, the parties should try to reach agreement without delay. Most disputes are resolved informally in this way. But if the deposit has not been returned to the tenant within 10 days of the tenant asking for it, the Housing Act 2004 allows the tenant to ask TDS to resolve the dispute.





# If there is a dispute, what happens to the deposit?

## THE LANDLORD OR AGENT CAN TAKE A PAYMENT FROM THE DEPOSIT IF:

- ✓ BOTH LANDLORD AND TENANT HAVE AGREED; OR
- ✓ THE COURT HAS ORDERED THE DEPOSIT TO BE PAID; OR
- ✓ TDS DIRECTS TO SEND THE MONEY TO TDS.



Once TDS has been asked to resolve a deposit dispute, the landlord or the agent must send the disputed amount to TDS. By this time, the landlord or agent should have paid the tenant any part of the deposit that is not an agreed deduction or in dispute.

If whoever is holding the deposit does not send the disputed deposit amount to TDS, TDS will take legal action to recover it. This will not delay TDS in resolving the dispute.

If the deposit holder cannot pay the disputed amount, for example because it has become insolvent, TDS will arrange the adjudication, pay the tenant the amount awarded by the adjudicator and make a claim to its insurers.

**The law requires TDS to guarantee only that the tenant receives the amount they are entitled to.**



# How are disputes resolved?

- ✓ The tenant will ask TDS to resolve the dispute by going online at [www.tenancydepositscheme.com](http://www.tenancydepositscheme.com) and completing a **Dispute Application Form** giving details of the dispute.
- ✓ **The deposit holder must then send the disputed amount to TDS.** TDS will copy the dispute details to the agent or landlord who is to respond to the dispute and give them 10 working days to do so. The agent or landlord will need to confirm that they want TDS to resolve the dispute, and send in their evidence. After this the tenant will also be given 10 working days to respond to the agent's/landlord's evidence, and send in any evidence that they also wish the adjudicator to consider.
- ✓ If all the parties agree to TDS resolving the dispute, TDS will appoint an impartial adjudicator to make a binding decision, normally **within 28 days** of receiving the parties' consent to resolving the dispute and receiving the evidence they wish to be considered. If landlords and agents do not reply, they are treated as consenting to TDS resolving the dispute. In all these cases, the adjudicator will normally make a decision within **28 days** after the deadline for receipt of evidence.
- ✓ Within a further 10 days or less of the adjudicator's decision, **TDS will pay the amount due to each party.**
- ✓ The adjudicator's decision will be based on the evidence sent to TDS – there will be no hearing or visit to the property.
- ✓ The adjudicator's decision is final. There is no right of appeal to TDS or to the government department in charge of the tenancy deposit protection schemes.



**FURTHER DETAILS ARE SET OUT IN THE TENANCY DEPOSIT SCHEME RULES FOR THE INDEPENDENT RESOLUTION OF TENANCY DEPOSIT DISPUTES AT [WWW.TENANCYDEPOSITScheme.COM](http://WWW.TENANCYDEPOSITScheme.COM)**

1. If a Letting Agent or Landlord is using TDS DIRECT only the tenant can raise a dispute. Agents and landlords cannot raise a dispute if they are using TDS DIRECT. TDS may at its discretion allow an agent or landlord to raise a dispute, where this has been agreed in advance as part of that agent or landlord's membership of the scheme. Where this is the case, the agent/landlord will send in their evidence at the same time as completing a Dispute Application Form giving details of the dispute. After this the tenant will be given 10 working days to respond to the agent's/landlord's evidence, confirm that they want TDS to resolve the dispute, and send in any evidence that they also wish the adjudicator to consider.



# What if the landlord or tenant can't be contacted at the end of the tenancy?

**TDS CANNOT RESOLVE A DISPUTE IF IT CANNOT CONTACT THE PARTIES TO GET THEIR CONSENT TO TDS BEING INVOLVED. IN THESE CIRCUMSTANCES, THE DEPOSIT HOLDER MUST DO THE FOLLOWING:**

- 1** ASSESS ANY DAMAGE, RENT ARREARS AND ANY OTHER LIKELY DEDUCTIONS FROM THE DEPOSIT AS THEY WOULD NORMALLY DO;
- 2** SPLIT THE DEPOSIT, PAY THE PARTY WHO IS PRESENT THE APPROPRIATE AMOUNT, AND TRANSFER THE AMOUNT DUE TO THE ABSENT TENANT/LANDLORD TO A SUITABLY CHOSEN 'CLIENT SUSPENSE (BANK) ACCOUNT';
- 3** MAKE A FORMAL RECORD OF ALL ACTIONS TAKEN, SUPPORTED BY APPROPRIATE DOCUMENTATION.

After enough time (usually at least six years) has passed from the last contact from the absent tenant/landlord, the deposit holder may then donate the absent party's share to a suitable registered charity – subject to a binding promise from the deposit holder that it would immediately pay from its own pocket any valid claim it later received from the beneficial or legal owner.

If the absent tenant/landlord returns within that time and seeks to dispute the allocation of the deposit, TDS may offer to adjudicate



# Is adjudication better than going to court?

Deposit disputes need to be resolved quickly and cheaply. Tenants usually need the money as a deposit on their next property, and landlords need to know how much will be available to spend on things like redecoration, damage or repairs.

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## Going to court takes time and can be expensive and stressful.

If TDS protects a deposit and the dispute goes to court, the disputed amount must be sent to TDS. TDS will distribute the deposit once it receives a final court order showing what is to happen to the deposit. However if a tenant or landlord does not take their dispute to the County Court within 6 months of refusing consent for TDS to resolve the dispute, TDS may at its discretion return the disputed deposit it is holding to the other party who did not refuse consent.

TDS can only resolve a dispute if the deposit has been registered with TDS. If a deposit has not been registered, the parties will have to go to court if they cannot agree a settlement.

Sometimes landlords or tenants prefer to go to court. It might be better for a landlord to go to court if they have a big claim that is well above the deposit. It might be better for a tenant to go to court if they have a counterclaim – say if they had to pay for boiler repairs because the heating did not work for several weeks. TDS cannot deal with counterclaims.

Where TDS cannot accept a dispute for adjudication, TDS will notify any other party to the dispute that this has happened. The other party to the dispute may then choose to go to court or rely on the agent's judgment if the agent is holding the deposit.



# What can TDS deal with?

Using the TDS dispute resolution service is not compulsory. If either the landlord or tenant does not agree to use the service, one of them could choose to go to court.

TDS can only deal with disputes about the deposit itself, and cannot make awards that are for more than the disputed deposit. If a larger amount is disputed, you may need to go to court. TDS cannot deal with counterclaims by tenants – such as a claim for disrepair. If you are a tenant and you wish to bring a counterclaim against your landlord, you will need to go to court.

TDS cannot deal with disputes between individual tenants, or between landlords and their agents. TDS does not act as a regulator and cannot order changes in trading practices, close down businesses, or prosecute landlords or agents. However, it does try to raise standards in the private rented sector by educating tenants, landlords and agents about the cause of disputes and how to avoid them.

## How much does it cost?

TDS is funded by the membership subscriptions and deposit protection charges that letting agents and landlords pay. All these fees are on the TDS website. TDS makes no charge to tenants for protecting the deposit. There is no charge to landlords, tenants or agents for having a dispute resolved.

## Who can join the Tenancy Deposit Scheme?

The Tenancy Deposit Scheme is open to landlords and letting agents offering residential property for rent. They will be asked to provide relevant information – as set out in the TDS Rules – to TDS before it decides whether they can be accepted as a member, and what their subscription will be.



# Our guarantee of impartiality

TDS is overseen by a Board, which is responsible for operating and financing the business. The Board, and the TDS management, have no role in resolving disputes and cannot intervene in decisions about disputes.

The scheme's Director of Dispute Resolution is responsible for resolving disputes. The most usual method for resolving a dispute through TDS is to use adjudication but the scheme may suggest negotiation, mediation or other methods.

Adjudicators work fairly and impartially. All TDS adjudicators belong to the Chartered Institute of Arbitrators and comply with our Adjudicator Code of Conduct, which is available on the TDS website. The adjudicators make decisions without favour, based on the issues in dispute and the evidence provided.

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**TDS publishes breakdowns of awards in its Annual Reports. These give an overview of how awards are split between tenants, landlords and agents.**

**You can see the adjudicators' decision-making guidelines and some example case studies at [www.tenancydepositscheme.com](http://www.tenancydepositscheme.com)**



# Data protection



TDS WILL NOT USE LANDLORDS' OR TENANTS' PERSONAL DATA FOR ANY PURPOSE EXCEPT TO OPERATE THE SCHEME (THIS INCLUDES COMPILING STATISTICAL DATA) AND RESOLVE DISPUTES.

FROM TIME TO TIME, TDS MAY INVITE LANDLORDS OR TENANTS TO PARTICIPATE IN SURVEYS. IF YOU DO NOT WISH TO BE CONTACTED FOR SURVEY PURPOSES, PLEASE INFORM TDS BY LETTER OR EMAIL TO THE CONTACT DETAILS GIVEN IN THIS LEAFLET.





 0300 037 1000

 [deposits@tenancydepositscheme.com](mailto:deposits@tenancydepositscheme.com)

 [tenancydepositscheme.com](http://tenancydepositscheme.com)

 West Wing, First Floor, The Maylands Building, HP2 7TG