

# Landlord's duties to protect tenants' deposits



October 2008

**Under the Housing Act 2004 there is now a requirement for landlords who hold deposits for tenants under an Assured Shorthold Tenancy ('AST') to safeguard these under a government-backed tenancy deposit protection scheme.**

The legislation was designed to protect tenants who have a dispute with their landlord at the end of their tenancy over how much of their deposit should be returned.

There are two different types of scheme that landlords can use:

## 1. Custodial Scheme

Whereby all deposits are held in a client bank account and returned at the end of the Assured Shorthold Tenancy subject to agreement between the parties.

## 2. Insurance-based Scheme

Whereby an insurance policy is taken-out to protect the deposit if there is a dispute during which the landlord does not produce a disputed amount to the scheme for adjudication.

## How a Landlord can find themselves liable

From April 2007 it has become an offence for a landlord to neglect to protect their tenants' deposits within 14 days of receiving them. The tenant can take their landlord to court if they have not been protected or there is no evidence of a protection in the form of a Deposit Protection Certificate. The court has the power to demand payment of three times the amount of the deposit by the landlord to the tenant as a penalty for not protecting the deposit in one of the schemes.

Under the Housing Act 2004 the landlord is always responsible for the deposit even if they use an agent to manage the property and hold the deposit until the end of the tenancy. Landlords should be aware of this and make regular checks on their agent to confirm that their deposits are kept in a separate client money account. Most importantly, if the agent becomes insolvent the landlord will still be responsible under law for the deposit.

## How well are the schemes working?

So far the schemes appear to have had a positive effect on the rental market. Recent figures released by mydeposits, who run one of the two insurance based schemes, show that in almost 80% of disputes between a landlord and a tenant the tenant gets all or some of their deposit back. Before the schemes were in place a tenant was put in a very difficult position if they had a dispute with their landlord. The only option they had was to take their landlord to court. This is a costly and time consuming exercise and resulted in landlords being able to keep deposit money they were not entitled to.

You can read more about Tenancy Deposit Schemes on the Communities and Local Government website here:

<http://www.communities.gov.uk/housing/rentingandletting/privaterenting/tenancydepositprotection/>

If you are a landlord or a tenant and wish to know more about your rights under the Housing Act 2004, or would like assistance with any matters relating to your Lease, duties or obligations, please contact us at [law@pwjsolicitors.co.uk](mailto:law@pwjsolicitors.co.uk) or by telephone on

**0208 441 1556** or **020 8364 9955**.

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