

RENT DEPOSITS AND THE RESIDENTIAL TENANT

About 4 years ago new rules were introduced to control and safeguard a deposit paid to a Landlord on the grant of an assured shorthold tenancy. Previously, Landlords tended to keep the deposit in their own account. The unscrupulous ones would come up with all sorts of reasons why they should not repay it in whole or in part to their Tenant. As a counter to that the Tenant would simply not pay the last period of rent equivalent to the value of the deposit. However that is a short term and negative policy if the Tenant wants a good reference for their next Landlord.

A Tenancy Deposit is paid to the Landlord as security in case there should be breaches of the Tenancy Agreement. At all times the deposit belongs to the Tenant until such time as the Landlord is entitled to make deductions from it or withhold it altogether.

The Tenancy Agreement itself should contain the terms and conditions relating to the deposit. Usually an amount becomes payable to the Landlord if the Tenant has damaged the property or left bills such as Council Tax, Water Rates, electricity and telephone unpaid. Both Landlords and Tenants should be aware that no deduction may be made for the cost of fair wear and tear.

EXCEPTIONS

A true Tenancy Deposit is money intended to be held by the Landlord as security for the performance of the Tenant's obligations or discharge of the Tenant's liability arising in connection with the tenancy. Here are some examples of payment or securities which probably do not fall within the rules:-

1. A preliminary payment made by the Tenant to the Landlord to ensure that the property is taken off the letting market. Here the person making such payment would be wise to ensure that either it is returned when the Tenancy Agreement is entered into or it becomes part payment of rent at that time.

2. Advanced payment of rent. Here the Landlord may require an “up front payment” which is intended to cover the last instalment of rent at the end of the term. This is not held as security but on account of rent.

3. Post dated cheques. Here the idea is that the cheque is not held as security but is intended as actual payment of rent at a later date. There is some doubt as to whether this too would amount to bending the rules as the post dated cheque may be treated as security for payment of the rent due on the date of the post dating.

4. Guarantees. A properly drawn Guarantee provided it is granted by someone of financial good standing is a good safeguard for a Landlord because the arrangement is not governed by the Deposit Protection rules. Here the Landlord still has his right of claim against the Tenant but in addition he has a separate claim against the Guarantor.

5. Administration fees. A genuine arrangement for payment of a fee to set up the processing of tenancy documentation is obviously not the same as a payment intended to be held as security. However it would be easy to set up a sham arrangement and if it is not genuinely intended to be paid as an administration fee, then the money could well be subject to the Deposit Protection Rules.

6. The last scheme that I have heard of to try and get round the rules is an agreement that if the Tenant pays the rent and complies with the terms of the tenancy then a refund of rent will be made at the end of the tenancy. That surely is a deposit by any other name and would be caught by the rules.

GOVERNMENT APPROVED SCHEMES

The Rent Deposit rules require that a deposit is held by one of three schemes authorised by the Government:-

1. Is a custodial scheme run by the Deposit Protection Service
2. Is an insurance based scheme designed for use by Letting Agents and
3. Is an insurance based scheme designed primarily for individual Landlords.

The whole idea of these schemes is to safe guard the interests of the Tenant from unscrupulous Landlords. But at the same time there is a measure of protection for Landlords where they have a genuine claim in respect of non-payment or damage. Non-payment is relatively easy to prove provided proper records are kept.

INVENTORY

Damage to property is not so straight forward and whilst Inventories are not compulsory it would be a very foolish Landlord and indeed Tenant not to have a proper Inventory at the beginning of the tenancy listing out all items of furniture and equipment belonging to the Landlord and detail of any damage that may exist at the beginning of the tenancy. One of the best ways of making an Inventory is of course to have a proper photographic record with a list of what the photograph shows. The Inventory should be most carefully checked and signed by the parties before the tenancy starts. In order to make a claim the Landlord will have to prove values or costs of making good damage. A wise Landlord will check an inventory at regular intervals during the tenancy.

CAREFUL CHECKING

In an ideal world both parties will keep a careful record of everything from day one including invoices, receipts etc. I am afraid from long and bitter experience I know how many Landlords and in particular Tenants do not read their Tenancy Agreements at all, let alone bother to check Inventories. I can tell you that after the best part of 50 years working in solicitors' offices, it never ceases to amaze me what people are prepared to sign, apparently with child like faith accepting that the document is fairly balanced and not biased in favour of the other party. Once you have signed the paperwork, you are stuck with it, unless it so manifestly unfair or contrary to the rules that the Courts will not enforce it.

COMPLIANCE

In order to comply with the rules, the Landlord has to inform the Tenant what has been done to comply, and to give the Tenant or whoever actually paid the deposit for them the prescribed information about the Deposit Scheme that is being used. This must be done

within 14 days. The penalty of failure to do that is that the Landlord, or whoever holds the deposit, must repay it to the Tenant or into the Custodial Deposit Scheme within 14 days. The Court can order the Landlord to pay the Tenant three times the value of the deposit as a penalty for non-compliance. In addition, the Landlord cannot regain possession of the premises without first complying with the rules.

DISPUTES

What happens if there is a dispute? If the parties are unable to agree on what sum can be deducted from the deposit, then there are rules to deal with the dispute. This would usually be dealt with by what is known as an Alternative Dispute Resolution, that is to say an alternative from going to Court in order to avoid the expense and delay of that process. Usually this would be decided by a surveyor whose decision will be final provided the parties agree to that.

ACTION

If you need help with tenancy agreements, be you landlord or tenant, do get in touch. Contact me on **01288 35 9000**.

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