

MOORE ALLEN & INNOCENT

Residential Property Letting & Management Services

Tenancy Deposit Protection

An explanatory
leaflet for
Landlords & Tenants

in conjunction with



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MOORE ALLEN & INNOCENT

Residential Property Letting & Management Services

We have extensive experience providing professional, impartial & independent advice in connection with all aspects of residential lettings & management, from the letting of individual cottages & houses to the management of estates, in town & country.

Our managed property team is able to keep pace with the ever-changing market place, legislation and associated regulations to ensure that both Landlords and Tenants receive the best in service standards and support. Our services include:

Market Appraisals



Letting only Service



Rent Collection



Full Management



Press & Internet Advertising



Accompanied Viewings



Advice on Regulations



Referencing & Credit Checks



Inventory Service



Client Accounting



Portfolio Management



R.I.C.S. & F.S.A. Regulated

TENANCY DEPOSIT PROTECTION FOR ASSURED SHORTHOLD TENANCIES

INTRODUCTION

From April 6th 2007, it is no longer legal for Landlords to hold new Tenants' deposits. They will have to either pay the money into a custodial scheme or participate in an insured deposit scheme either themselves or through a letting agent.

The Tenancy Deposit Protection Scheme legislation came into effect on April 6th 2007, after which all deposits taken for Assured Shorthold Tenancies have to be covered by a tenancy deposit protection scheme. The regulations also apply to tenancies extended, or amended, after that date.

Failure to comply with the new regulations may result in the Landlord being unable to enforce the tenancy agreement, regain possession or make any deductions from the deposit at the end of the tenancy.

Many Tenants in the private sector give their Landlords a deposit against possible non-payment of rent or damage to property. When a tenancy comes to an end, there is usually no disagreement about the return of the deposit. But sometimes there is, and this can cause much hardship and inconvenience to both Landlord and Tenant.

Letting Agents who are RICS members, such as **Moore Allen & Innocent**, can continue to hold deposits under the insured deposit scheme, and relieve parties to the tenancy of the stress, worry and effort involved in sometimes difficult situations.

The Housing Act 2004 (Chapter 4, sections 212-5; & Schedule 10) made provision for both the protection of tenancy deposits and the resolution of disputes over their return. The Dispute Service, of which **Moore Allen & Innocent** is a member, has been awarded a contract by the Government to run one such scheme: The Tenancy Deposit Scheme (TDS).

To comply with the rules of the scheme **Moore Allen & Innocent** hold tenancy deposits in a separate client account as 'Stakeholder' to the agreement. This means that no deductions can be made from the deposit without consent, preferably in writing, from both parties, or from the court, or an adjudication decision from TDS.

For further information on this issue, and for the best advice regarding residential property lettings & management contact either Sam Hall-Digweed or May Pinnegar at our Cirencester office, (01285 648 118) or Lindsay O'Reilly at our Lechlade office (01367 253 138).

WHAT ARE THE NEW LEGISLATIVE REQUIREMENTS?

- Any Landlord or Agent who takes a deposit from a Tenant for an Assured Shorthold Tenancy must safeguard it in an approved tenancy deposit scheme...
- ...and the Tenant must be told which one.
- The deposit must be in money.
- Landlords in breach of these provisions will not be able to issue S 21 notices, and may have to pay the Tenant compensation of three times the deposit.
- The Landlord/Agent must submit the deposit to the operators of their scheme when requested to do so.
- Each scheme must have procedures for resolving disputes without going to court.
- There are strict time limits for the return of the deposit if there is no dispute.
- The Act allows for both custodial and insured schemes. Custodial schemes are where the deposit is lodged with an independent third party i.e. outside the control of the Landlord. Insured schemes allow the Landlord/Agent to retain control of the deposit as long as they are subject to suitable insurance arrangements.
- Secondary legislation will fill out the detail, including time limits for dealing with disputes.

WHAT IS THE TENANCY DEPOSIT SCHEME (TDS)?

TDS has been developed to ensure that the deposits are protected and that disputes about their return are resolved swiftly, inexpensively and impartially.

Under TDS:

- deposits will be protected during the tenancy
- where there is no dispute at the end of the tenancy, deposits will be returned promptly
- where there is a dispute about the return of the deposit it will be dealt with fairly by the Independent Complaints Examiner (ICE)
- the ICE will make his decision quickly, and the deposit will be paid out without unnecessary delay.

It is modelled on the successful Tenancy Deposit Scheme for Regulated Agents (TDSRA), a voluntary scheme which has been operated by The Dispute Service from May 1st 2004 and will be absorbed by TDS on April 6th 2007.

Moore Allen & Innocent has been a member of the TDSRA since 2004, and in all that time only one dispute has needed to be referred for independent adjudication.

Since its inception however, the ICE has resolved over 900 deposit disputes and they anticipate that the new Scheme, TDS, will have a considerably larger membership, extending to private and corporate Landlords and other deposit-holders.

WHAT IS THE DISPUTE SERVICE LTD

The Dispute Service Ltd is an independent, not-for-profit company established in 2003 to resolve complaints and disputes arising in the private rented sector speedily, cost-effectively and fairly. As well as TDS, the Company deals with complaints against members of The Association of Residential Letting Agents. The Dispute Service also runs a similar scheme, under the auspices of the Ombudsman for Estate Agents, for its members who undertake lettings.

WHO CAN JOIN TDS?

Any private Landlord or Agent offering residential property for rent is eligible to apply to join TDS. They will be asked to provide relevant information – as set out in the Rules of the Scheme – to determine if they can be accepted as members, and what their subscription will be.

WHAT IS AN APPROVED BODY (AB)?

An AB is a Professional Body, Accreditation Scheme or Trade Association approved after assessment by the Company to give their members a streamlined application process and a reduced subscription. They are also expected to take appropriate disciplinary action against their members who fail to comply with the rules of the Scheme. The Association of Residential Letting Agents, Royal Institution of Chartered Surveyors and the National Association of Estate Agents are ABs, and we expect other Landlord and Agent organisations to join them shortly.

HOW ARE THE DEPOSITS HELD AND PROTECTED?

The member firm holds the deposit, in a special client account. In most cases the Tenant and the Landlord will decide between them, assisted by the Agent if one has been involved, how the deposit should be allocated. If there is a dispute, the Landlord or Agent has a couple of weeks to resolve it. After that, any of the parties – Landlord, Agent or Tenant – can approach the ICE. He will appoint an adjudicator to assist him in considering the evidence they provide, and will aim to issue his decision within 15 working days of receiving all the necessary papers.

IF THERE IS A DISPUTE, WHAT HAPPENS TO THE DEPOSIT?

The member will transfer the disputed amount to The Dispute Service. It has a special cash fund which enables the ICE to carry on with adjudication and to pay out the deposit even if the member has not sent it. If the member has not sent the deposit, The Dispute Service will claim it from its insurers as necessary. It will then pursue the member for repayment. The Dispute Service will pay out the deposit according to the instructions of the ICE following his award.

HOW ARE DISPUTES RESOLVED?

- You have 20 working days to raise a dispute, and the Member has 10 working days to resolve it.
- If not, you decide if you want to go to court, or to have the ICE deal with it – which is what most people prefer.
- Send details of the dispute on form TDS 2 Notification of Dispute, together with relevant documentation, to the ICE.
- Whoever is holding the deposit must send the amount in dispute to the ICE.
- The ICE will copy the details of the dispute to the other party, asking them to tell him within 5 working days if they intend to challenge it. They have a further 5 working days to send in their side of the story i.e. 10 days altogether.
- The ICE will appoint an adjudicator to assist him, with a view to issuing adjudication within 15 working days of receiving all the necessary paperwork.
- The disputed amount will be paid out in accordance with the adjudication within a further 10 working days.

DO ALL LANDLORDS AND AGENTS HAVE TO JOIN TDS?

No. There are two other schemes. One is a custodial scheme managed by Computershare Ltd and requires the Landlord/Agent to place deposits with them at the start of the tenancy. The other is run by a company supported by the National Landlords Association, and is also insurance-based. **Moore Allen & Innocent** is a member of the Tenancy Dispute Service.

MANAGEMENT OF TDS

The Scheme is managed by The Dispute Service. The ICE is its Chief Executive and reports to a Board currently made up of people from the residential lettings industry and independent members. The Board of The Dispute Service has no role in the resolution of disputes.

WHY IS USING ALTERNATIVE DISPUTE RESOLUTION BETTER THAN SENDING DISPUTES 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 redecoration and repair.

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

The TDS adjudication process is based on an expert assessment of documentary evidence (which can also include photographs and video). TDSRA demonstrated that nearly all adjudications could be completed well within the time specified.

IS AN INVENTORY COMPULSORY?

No. Having an inventory or schedule of condition in place is not compulsory under the scheme, but obviously having one can significantly reduce the incidence of disputes at the end of the tenancy and, where disputes do arise, provide the evidence-base to make resolution much easier - either through ICE or by the courts.

Contact **Moore Allen & Innocent** to discuss our inventory service.

HOW DO YOU KNOW THE DEPOSIT IS PROTECTED?

Within 14 days of the Landlord/Agent receiving the deposit from the Tenant, the Landlord/Agent must provide the Tenant with information about the scheme providing the protection, (in our case, TDS). The 14 days runs from the time the deposit is received, and not from when the funds are cleared. A Tenant will be able to contact the scheme to find out if their deposit has been protected.

FURTHER INFORMATION:

If you want:

- to get more information about the Scheme
- advice about tenancy deposit protection
- resolution of a dispute about a deposit

Contact **Moore Allen & Innocent (01285 651 831)** or

The Dispute Service at:

PO Box 541
Amersham
Bucks
HP6 9ZR

Telephone: 0845 2267837
Fax: 01494 431 123
email: deposits@tds.gb.com

If you want to get the forms and other published information, please visit www.tds.gb.com or contact The Dispute Service.

www.mooreallen.co.uk

RESIDENTIAL PROPERTY MANAGEMENT SERVICES

- **Moore Allen & Innocent** provides professional independent advice concerning all aspects of Residential Property Management, from the letting of individual cottages, houses and flats to the management of estates and portfolios.
- Keeping pace with the ever changing market, legislation and relevant regulations, we are able to provide clients with both a personal and a professional high quality service, supported by an efficient computer management system. This is reflected in the dedicated lettings and management service that we offer.
- Our tailor made, comprehensive property management is an essential part of our lettings service. After finding you a Tenant we look after them and you throughout the tenancy, including everything from collecting rent and handling all administration, to assistance with more complex issues such as new rules and safety regulations and liaising with competitively priced and reliable trades people.
- For further information please contact a member of our lettings team.

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Regulated by the RICS

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