



Christopher Hamer, The Property Ombudsman, advises on the difference between complaints about registering a tenancy and the return of a deposit.

Prior to April 2007, there was no legislation governing the handling of tenants' deposits. On 6 April 2007, the Housing Act 2004 introduced tenancy deposit protection to protect tenants' deposits and ensure that deposit disputes were dealt with as fairly as possible. The provisions of the Act only cover Assured Shorthold Tenancies commencing on or after 6 April 2007. If the property was let under any other type of agreement, or a Periodic Statutory Tenancy following an Assured Shorthold Tenancy prior to 6 April 2007, the deposit is not covered by these regulations.

Three companies were awarded contracts to run a tenancy deposit protection scheme. The Dispute Service and Mydeposits.com run insurance based schemes, (the agent or landlord retain the deposit monies), the Deposit Protection Service is a custodial deposit scheme, the monies being paid into the scheme.

A number of complaints referred to my office concern deposit related issues. It is important for the agent or landlord that receives the tenant's deposit, to ensure that the deposit is promptly registered with one of the schemes. Failure to do so could result in the landlord facing a fine of three times the amount of the deposit and also being unable to serve a section 21 Notice. I have upheld a number of complaints where the agent has failed to register the deposit and the tenant has lost the opportunity to refer a subsequent dispute to the scheme.

Where complaints about the handling of tenancy deposits are referred to my office (typically about deductions from the deposit at the end of the term), it falls to me to consider whether the agent has breached the terms of their contract with a landlord or the TPO Code of Practice.

'I have upheld complaints where the agent has failed to register the deposit either in a timely fashion or at all.'

This will not resolve the dispute over proposed deductions from a deposit; that is between landlord and tenant. Although agents act on the behalf of landlords, the fact that a landlord may not consent to the return of a tenant's deposit does not itself make the agent responsible. Agents have clear guidelines under the TPO Code of Practice to ensure deposit negotiations are fair and appropriately documented.

My consideration of such complaints relates to aspects of an agent's conduct when dealing with the administration of the deposit. Specifically, I expect a member agent to take their landlord client's instructions concerning any proposed deductions from the deposit. The undisputed amount of the deposit should then be returned to the tenant within ten working days. Having advised the agent of proposed deductions, I do not consider that a landlord can come back at a later stage and request more monies for further issues which were perhaps not initially noted at check out and I will not criticise an agent for already having returned the deposit to the tenant. Following negotiations, if the landlord and tenant

do not agree on the deductions, details of the dispute, together with the amount of money in dispute (in respect of the insurance based scheme) should then be passed over to the deposit protection scheme. The scheme will then consider the issues raised and rule return of the deposit.

Complaints have been brought to this office where the agent acting on the landlord's instructions has released the deposit, or part thereof, to the landlord following the end of the tenancy, as the landlord considers that he is entitled to the money. I do not expect an agent to release any monies without the consent of both parties. If he has done so, aware that the tenant does not consent, it is likely that I will make an award as the agent has acted in breach of their obligations both under the law and the TPO Code of Practice. The tenant is then left having to pursue the landlord through the courts for the recovery of the deposit monies. I have made awards to compensate the tenant for the distress and aggravation caused to him by the agent's actions and to try to return him to the financial position that he would have been in, had the agent acted correctly.

Finally, a number of complaints refer to a party's wish that unpaid rent can be paid from the deposit. I do not expect this to occur during the term of the tenancy, unless the written consents of landlord and tenant are obtained. Following the termination of the tenancy agreement, the landlord is permitted to recover unpaid rent from the deposit. However, the tenant should be informed of this action; if he disputes the proposal, the matter must be referred to the deposit protection scheme. ≡



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