

Guidance on a change of sharers mid-tenancy

tel: **0845 226 7837**

fax: **01442 253 193**

email: **deposits@tds.gb.com**

www.tds.gb.com

TDS appreciates that the process of tenant sharers changing mid tenancy is an area of concern for our customers.

Strictly speaking, the best approach is to bring the existing tenancy to an end, check out the named tenants and distribute the deposit. We accept though, that the best approach is not always achievable or practical.

The following guidance is intended to help you, by offering a more pragmatic approach in resolving the situation and also ensures you don't come unstuck should a dispute arise at the end of the tenancy:

1. One tenant wishes to leave mid-way through a joint tenancy and has located a replacement tenant.
2. The parties agree that a change of tenants can take place, rather than insisting that all tenants vacate.
3. The agent should collect the appropriate share of the deposit detailed in the tenancy agreement, or where it is not specifically stated, the amount should be proportionate to the number of tenants. For example, if there were four tenants, the agent would collect 25% of the deposit amount held from the incoming tenant. If this is not the case it must be clearly documented.
4. A new tenancy agreement is drawn up for the tenants who will be in occupation to sign, including the new incoming tenant. However, do be aware that by creating a new tenancy, you will be giving the tenants security of tenure for a further six months.
5. An individually negotiated clause is added to bind all tenants to the inventory for the original tenancy, with a date specified as to when the inventory was produced.
6. The incoming tenant is advised in writing that this means that their deposit refund will be based on this document. TDS recommends that the rent account is also brought up to date before the swap takes place.
7. The outgoing tenant signs a waiver confirming they have received a refund of their entitlement to any deposit under the first tenancy. They relinquish any claim to the deposit for the new tenancy agreement.
8. The agent releases the agreed sum to the vacating tenant.
9. The deposit protection for the original tenancy agreement is ended on the TDS database.
10. The deposit for the new tenancy agreement is registered and a certificate issued to the tenants, along with revised Prescribed Information if it is not already part of your tenancy agreement.

Can I just draw up an addendum to the existing tenancy agreement?

We suggest issuing a new tenancy agreement, but you can draw up an addendum if you prefer.

If you choose the addendum option, do make sure you follow the remaining guidance, especially with regards to issuing new Prescribed Information and including an individually negotiated clause to bind the incoming tenant to the original inventory.

What if the incoming tenant won't accept their deposit being assessed using the original inventory?

In this instance, they may wish to discuss with the outgoing tenant or the remaining group to agree some compromise. However, if the new tenant will not agree to do this, then you have a decision to make about whether it is better to check all tenants out and create a new tenancy, or whether you should find a replacement who will agree. Assuming that the tenancy swap is taking place mid-term, the tenant who wishes to leave will still be liable until a replacement has been found.

Why can't I just let the departing tenant and incoming tenant sort their deposit out themselves?

Well, if you choose to, you can, but the idea of this guidance is to prevent the deposit holder from being out of pocket. Be aware that should the incoming tenant not reimburse the outgoing tenant, and you have created a replacement tenancy agreement, then the outgoing tenant may be able to raise a dispute – which could leave the deposit holder with a shortfall on the deposit held.