



Key Documents



Who should read this?



Tenants



Agents



Landlords

Insured

Custodial

How the Tenant Fees Bill will affect Deposit Disputes

How the Tenant Fees Bill will affect deposit disputes

The draft Tenant Fees Bill was first introduced to Parliament in November 2017. It will apply to:

- agents and landlords in England
- all assured shorthold tenancies and licences (but excluding long leaseholds, social housing, holiday lets, company lets and non-Housing Act tenancies)
- new tenancies and renewed tenancies (including statutory periodic tenancies) that arise after the legislation comes into force.

Although the government has indicated that any new laws are unlikely to come into effect before April 2019, the Bill has important implications for how tenancy deposits are dealt with in England. Landlords and agents should start considering now the impact the Bill will have when it becomes law, to avoid nasty surprises later – because it will introduce new criminal offences. This briefing explains how the Bill is likely to affect deposits.

What fees will be banned?

The new legislation will ban landlords and their agents from requiring tenants in the private rented sector to make up-front payments before they let a property.

This means payments required, as a condition of granting, renewing or continuing a tenancy (or as a condition of making the arrangements for those things). The ban includes payments to third parties, either for services throughout the tenancy or for specific performance of a job and loans from third parties.

Examples of banned fees will therefore include things like:

- Referencing
- Credit checks
- Inventories, check in and check out reports
- Having the property treated for fleas as a condition of allowing pets in the property
- Payments required for cleaning or gardening services required during the tenancy
- Other administrative charges

What fees will be allowed?

The only things that agents or landlords will be able to charge for in advance of the start of a tenancy are:

- the rent;
- a refundable tenancy deposit capped at no more than six weeks' rent; and
- a refundable holding deposit capped at no more than one week's rent.

Alongside rent and deposits, agents and landlords will only be permitted to charge tenants fees associated with:

- A change or early termination of a tenancy when requested by the tenant
 - the legislation will also cap the amount that can be charged for a change to tenancy at £50 unless the landlord is able to show that greater costs were incurred
- A payment that is required in the event of a default by the tenant such as a late payment, or when the tenant breaches the terms of the tenancy agreement (such as replacing a lost key or late rent payment fine.). This type of payment is only permitted if the payment is required under the tenancy agreement.

Deposit replacement insurance products are not a permitted payment but may be used as an alternative to a full deposit (they must not be used “instead of”). If a tenant is not given a choice between a normal deposit and a replacement insurance scheme, then the insurance premium will be a prohibited payment.

How will the legislation affect deposits?

The new legislation does not prevent a landlord (or agent acting on the landlord’s behalf) from taking tenancy deposits. As is the case now, a tenancy deposit is money held by the landlord/agent as security during the period of the tenancy and reserved for any damages or defaults on the part of the tenant. Deposits will still need to be protected in a government approved deposit protection scheme, as is currently the case.

However when the legislation comes into effect deposits will be capped to the equivalent of 6 week’s rent. The statutory calculation must be the annual rent divided by 52, multiplied by 6.

How will the Tenant Fees Bill affect tenancy agreements?

Any clause in a tenancy agreement which requires a tenant to make a prohibited payment is not binding on the tenant. The rest of the tenancy agreement will continue to apply (so far as practicable).

We have set out below some examples of clauses we have seen in disputes, which are unlikely to be accepted after the legislation comes into force.

Clause	Effect
To pay a fee of £50.00 including VAT towards the administration involved in the finalisation of the tenancy to the landlord’s agent, this will be deducted from the deposit upon the finalisation of the tenancy.	This type of clause will not be acceptable since the charge relates to the setting up a tenancy.
To pay £114.00 inclusive of VAT for the preparation of any tenancy agreement for each extension of the tenancy.	This type of clause will not be acceptable since the charge relates to the continuation or renewal of a tenancy.
The tenants agree to pay the agents administration charges for the closing check out property report and inspection. The check out fees are as follows: tenants to pay £30.00 plus VAT each subject to a minimum charge of £30.00 plus VAT.	Agents and landlords will not be permitted to charge tenants for check out inspections.
The tenant agrees to pay additional administrative charges of: <ul style="list-style-type: none"> ● £30 inc VAT for any visit made by the letting agent’s staff, ● £30 inc VAT for bank, building society, landlord or tenancy reference and ● £60 inc VAT upon each extension of the tenancy agreement when any tenancy is extended, renewed or held over on a periodic basis after any fixed term period ● £115 inc VAT to deregister the tenant’s deposit at the end of the tenancy. 	This type of clause will not be acceptable since all of the charges claimed are not for the payment of rent or a deposit, and do not relate to a payment due where the tenant breaches the terms of their tenancy.

Our approach to common types of deposit dispute

We have set out below typical examples of tenancy deposit disputes dealt with by TDS, and have highlighted:

- **Claims for making good at tenancy end (cleaning, damage, missing items, redecoration etc)**

Landlords will still be able to claim from a tenant's deposit where a tenant has not returned their property to the standard required by the tenancy agreement. As now, landlords and agents will need to rely on good quality check in and check out evidence, as well as invoices or estimates to justify the amount claimed. Landlords will not, however, be able to claim for the cost of preparing the check in or check out reports.

- **Rent arrears, interest and late payment charges**

Landlords and agents will still be able to make claims against a tenancy deposit for rent arrears. As now, landlords and agents will need to rely on good quality rent statements, as well as a tenancy agreement that sets out clearly the tenant's obligations for the payment of rent.

Interest can still be claimed on the late payment of rent provided the requirement to pay this is stated clearly in the tenancy agreement. Interest charges must also be charged at an amount that fairly reflects a landlord's loss, and not charged at a level which amounts to a financial penalty.

Late payment charges can still be claimed for provided that they are set out in the tenancy agreement and are a fair reflection of the costs incurred as a result of the tenant's late payment of rent. Examples might include tenancy clauses requiring the tenant to pay an agent, say, £30 inc VAT for processing bounced rent payments either by cheque or standing order, or to pay, say, £20 inc VAT for each reminder letter written. Remember that this type of claim will need to be supported with evidence to show the work done.

- **Early termination of tenancies**

Where a tenant leaves a fixed term tenancy early, and there is no relevant break clause in the tenancy agreement, agents and landlords can still claim for the costs incurred as a result of the tenant's early departure. Typically these claims relate to re-letting charges and things like agent's commission. These charges must again be set out clearly in the tenancy agreement. An adjudicator will also want to see evidence to show that a landlord has been invoiced by their agent for the costs claimed.

- **Other claims commonly seen**

Landlords and agents will be able to claim for charges such as the costs of arranging contractors provided these are clearly set out in the tenancy agreement. These types of fees should ideally be chargeable to the landlord and therefore claimed as a loss to the landlord rather than a direct charge on the tenant. Adjudicators will need to be satisfied that such costs (which are in addition to the cost of the remedial work itself) are justified and reasonable in their amount.

Top tips

- Review your tenancy agreements to make sure they only require payments from tenants that are permitted by the legislation. Remember that the 'default' charges that you might wish to claim from a tenant can only be claimed if they are set out clearly in the tenancy agreement. Make sure that you have a good quality deposit use clause in your tenancy agreement – you can see the TDS example in our online guides [Prescribed Information and suggested clauses for tenancy agreements and terms of business](#) (agents), and [Prescribed Information and Clauses](#) (landlords).
- Remember that losses incurred need to be supported with good quality invoices or estimates. Awards are unlikely to be made based solely on an obligation in the tenancy agreement.