



Tenancy Deposit Scheme

What should the deposit-holder do if they can't contact one of the parties at the end of the tenancy?

Being unable to contact a tenant, to obtain their agreement about the payment of the deposit at the end of a tenancy, is a common occurrence for TDS members

Here are some pointers on the approach a deposit holder might take when they find themselves in this position

This document is for guidance only and TDS members will need to make their own decision about how they want to proceed

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The tenancy has ended and I have no means of contacting the tenant/landlord. What should I do?

As an insurance-backed tenancy deposit scheme, the law does not allow TDS to adjudicate where, despite making reasonable efforts to do so, the landlord or the agent are unable to contact the tenant, or the tenant is unable to contact the landlord or the agent. If the missing party cannot be contacted within a reasonable period, the tenant or landlord will need to claim the disputed deposit through the county court if they want to take things further, or ask the deposit holder to follow the steps outlined below.

If the landlord or the tenant (as the case may be) is successfully contacted within 3 months of the end of the tenancy, either party may still submit a dispute to TDS as an alternative to court proceedings. TDS will then ask the other party whether they consent to TDS resolving the dispute. After 3 months from the end of the tenancy have elapsed, or once court proceedings are underway, TDS cannot accept a dispute and the parties will need to agree how the deposit should be paid out or conclude the dispute through the courts.

If the landlord or the tenant cannot (despite reasonable efforts) be contacted within 3 months of the end of the tenancy, the deposit holder must:

- ascertain and record dilapidations, rent arrears and any other proposed deductions from the deposit as they would normally do;
- allocate the deposit, pay the party who is present as appropriate, and transfer any amount due to the absent tenant/landlord into a suitably designated client account (this will usually be a bank suspense account);
- make a formal record of all actions taken, supported by appropriate documentation.

Deposit holders must note that allocating a deposit in this way **will not be final and binding** if one of the parties brings a successful claim within the time limits that apply to either the courts or TDS.

Where a deposit holder releases a deposit in these circumstances, they do so at their own risk. It would be sensible to ask any payee for an indemnity. The indemnity should require the payee to repay the money if the deposit holder subsequently receives a valid claim – which could be several years after the end of the tenancy.

After a sufficient time has passed from the end of the tenancy, or from the last attempt to contact the tenant, (usually at least 6 years, or 12 years if the tenancy was made by deed) the deposit holder may at their risk donate to a suitable registered charity any deposit amount which has not been claimed. They may choose to ask the charity for an indemnity.

I have the contact details for the parties, but one or both of them are not responding. Can TDS still resolve this dispute?

There is a difference between one of the parties choosing not to respond when contacted by the deposit holder, and the deposit holder not being able to contact them at all because of a lack of available contact details.

TDS can take on a dispute providing we have the means to contact all of the parties – such as a postal address or an email address. However, if TDS' letters were returned or emails bounced back as undeliverable, we would have to decline to adjudicate.

What can I do to minimise the chance of this happening?

The Prescribed Information makes provision for a tenant's forwarding or alternative contact address to be recorded when the tenancy starts. Although tenants may not know this so far in advance, deposit holders should ensure that this is completed where possible. Also, remind tenants that it is in their interests to remember to give you up to date contact details to be used at the end of the tenancy.

My landlord needs the deposit money for rent owing, and the tenant has simply disappeared. Can't I just release the deposit to the landlord?

As stakeholder, you can only release the deposit where:

- the parties agree, preferably in writing to save confusion later; or
- a Court makes an Order/Direction about what is to happen to the deposit; or
- TDS makes an adjudication decision about the payment of the deposit.

If a deposit holder distributes the deposit in any other circumstances, they do so at their own risk. It may be prudent to ensure you protect your position in the event that you release the deposit outside of these three scenarios. As explained above, if you pay money to your landlord, you might ask the landlord to agree in writing to reimburse you in the event the tenant later reappears.

From 1st April 2013 any of the parties can raise a dispute with TDS for three months after the tenancy has ended. TDS may also extend the time limit for raising a dispute, if we think that it is fair to do so. This might, for example, be because:

- the parties have been making efforts to resolve the dispute;
- neither party will be significantly prejudiced by a decision to accept the dispute;
- one of the parties has delayed matters

When a dispute is raised with TDS, the disputed deposit must still be sent to us – even if the deposit holder has already paid it out.

Is it OK to pay out the deposit once the time limit for raising a dispute with TDS has passed?

Not necessarily - it is a commercial decision for the deposit holder. Although TDS may not be able to get involved, both landlord and tenant can pursue a dispute about the deposit through the courts for several years.