

Tenancy Deposits and the Right to Rent

Who should read this?



Tenants Agents Landlords Other

When is this effective from?



Day Month Year

What is it about?

The Immigration Act 2016 introduces new measures to supplement the Right to Rent provisions in the Immigration Act 2014. These form part of an overall strategy designed to create a 'hostile environment' for people living unlawfully in the UK.

How does the legislation affect tenancy agreements?

The legislation introduces important new provisions about ending or transferring tenancy agreements when a landlord receives written notice from the Secretary of State confirming that a tenant does not have permission to reside in the UK (a 'disqualified tenant'):

- If all tenants are disqualified, the landlord must end the tenancy agreement by giving at least 28 days written notice to the tenants. This notice is treated as a notice to quit and is enforceable as if it were a High Court order. The landlord is obliged to evict promptly and could be prosecuted if they do not.
- Where the Secretary of State notifies a landlord that one or more of the tenants is disqualified, the landlord can seek possession under section 8 ground 7B. Where the tenants do not leave, the landlord can seek a possession order from the court. Where not all of the tenants are disqualified, the court may order that the disqualified tenants' interest is transferred to the remaining tenants. This is instead of making a possession order.

So how does this affect agents and landlords?

Where the Court makes an order for possession

Any deposit dispute can be dealt with by TDS in the same way as happens currently. It is important to ask the Court to include specific directions about what is to happen to the deposit in the possession order.

Where the Court does not terminate a tenancy but instead orders that it is transferred

This is a new approach, and ultimately, TDS will need to see how the courts interpret this new legislation. To be as helpful as possible to TDS members now, we offer the following guidance:

- because a disqualified tenant's interest in the tenancy is transferred, this also transfers any interest they have in the deposit
- the tenancy does not end, so any dispute about the deposit must be dealt with at the end of the tenancy and not when the disqualified tenant(s) leave
- the Court should be asked to confirm in the possession order that the entitlement to any deposit at tenancy end is also transferred
- the agent/landlord will need to update the TDS tenancy database to remove the departing tenant(s) from the tenancy agreement
- the agent/landlord will also need to re-serve amended Prescribed Information on the remaining tenant(s).

Where do these changes apply?

These changes apply to England only. However the Secretary of State can make regulations extending the changes to Wales, Scotland or Northern Ireland.

