



# Tenancy Deposit Protection in England & Wales

a digest of statistics  
to September 2013

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February 2014

## 1. Introduction

The tenancy deposit protection legislation was introduced in April 2007 in England and Wales as a result of the 2004 Housing Act (as amended). This digest contains key statistics on deposit protection issues and will be updated on a regular basis. It has been written for members of the Tenancy Deposit Scheme and other stakeholders interested in how the tenancy deposit protection legislation has operated since its introduction on April 2007.

### Key statistics

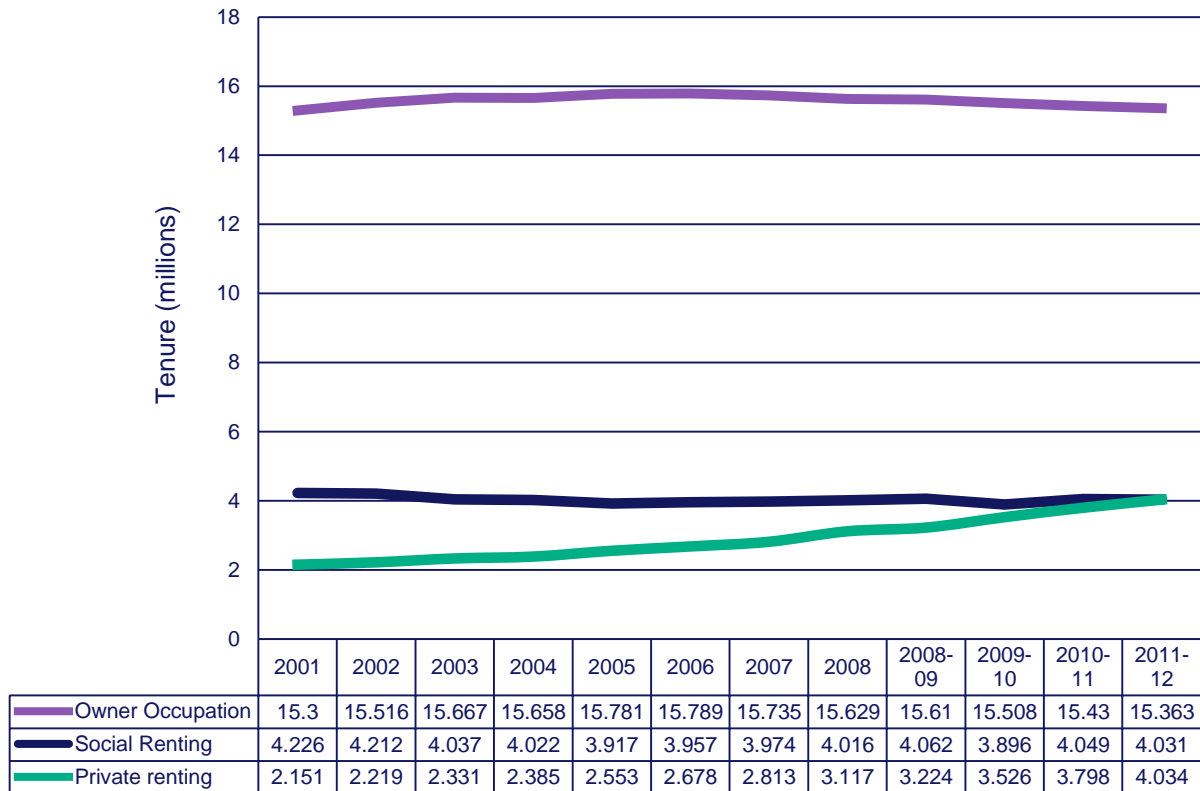
Figures include all tenancy deposit protection schemes in England and Wales and are accurate as of September 2013.

- **2.9 million** deposits are registered in a tenancy deposit protection scheme
- The value of deposits protected is **£2.9 billion**
- The average tenancy deposit is **£1,009**
- Deposits of over 4 weeks rent increased from **27%** in 2008-09 to **42%** in 2011-12.
- Just over **one hundred thousand** adjudications have been completed since 2007
- **29%** of adjudications have resulted in a 100% award to the tenant, **15%** in a 100% award to the landlord/agent, and **56%** were split between the parties
- An average **1.68%** of protected deposits are disputed through a tenancy deposit protection scheme
- Compliance with tenancy deposit protection legislation is estimated at **80.16%** (March 2012)

## The size of the Private Rented Sector

The last six years has seen a steady increase in the size of the private rented sector in England and Wales as shown in Figure 1 below.

**Figure 1: Tenure in England and Wales since 2000 (m)**



Sources: English Housing Survey 2001-11 (DCLG 2013); English housing Survey 2001-11 (DCLG 2012a); Welsh Government Dwelling Stock Estimates 2012; Welsh Government Dwelling Stock Estimates 2013

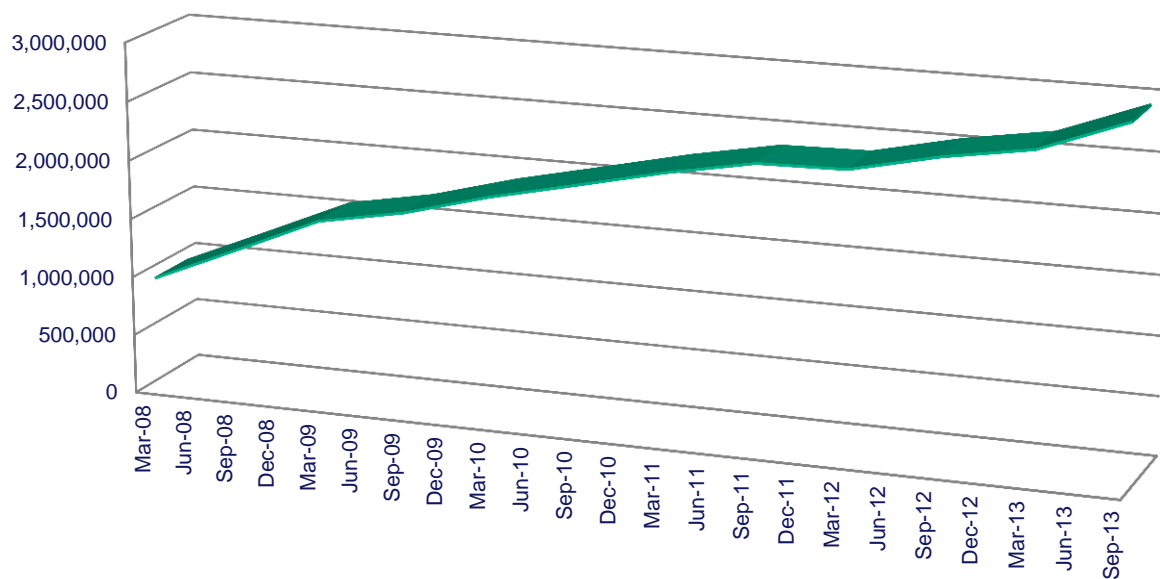
This graph shows that since 2007 there has been an increase in the private rented stock in England and Wales from 3.117m homes in 2007 to an estimated 4.034m in March 2012. In the same period the numbers of owner occupied homes in England and Wales has shown a small decline from 15.735m homes in 2007 to 15.363m in March 2012. There has also been a small increase in social housing from 3.974m homes in 2007 to 4.031m homes in March 2012.

## 2. Deposits

### The numbers of deposits protected

When the legislation was introduced in April 2007 it was not retrospective in that it only applied to new assured shorthold tenancies where a deposit was taken after 5<sup>th</sup> April 2007. As such there was a slower take-up of the scheme in the first year. Since then there has been a steady increase in the number of deposits protected to 2.939m at the end of September 2013.

Figure 2: Tenancy deposits protected from April 2007 to September 2013<sup>1</sup>



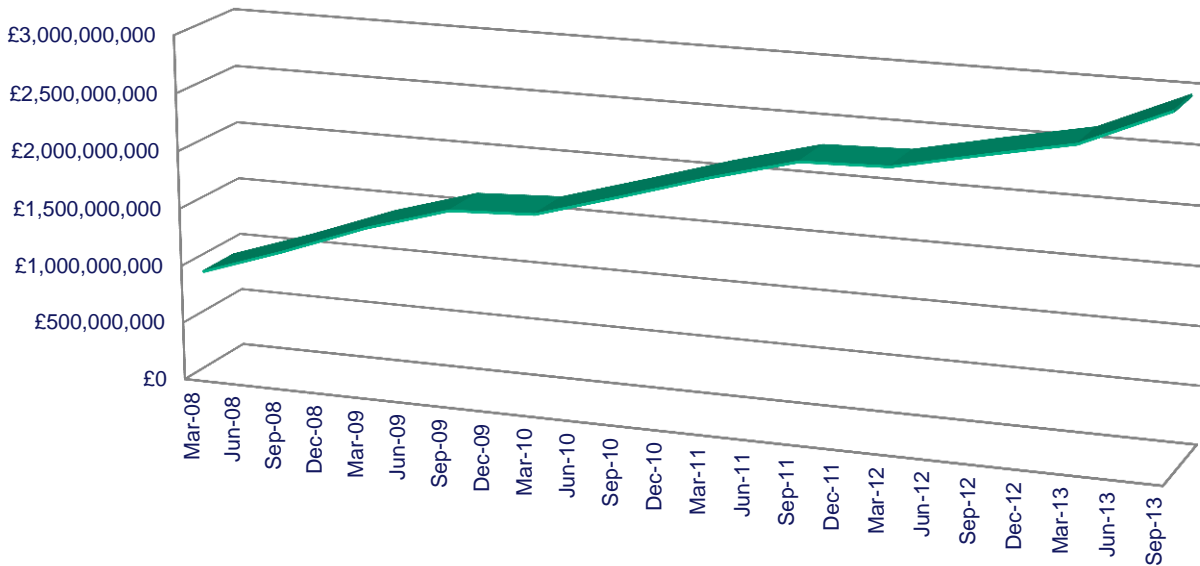
Mar-08	Sep-08	Mar-09	Sep-09	Mar-10	Sep-10
924,181	1,236,497	1,553,130	1,689,876	1,888,532	2,053,372
Mar-11	Sep-11	Mar-12	Sep-12	Mar-13	Sep-13
2,220,543	2,360,178	2,374,385	2,539,022	2,659,301	2,939,383

<sup>1</sup> DCLG data October 2013

## The value of deposits protected

The value of deposits protected has also increased over the years and now stands at £2.964bn.

Figure 3: Total value of tenancy deposits protected to September 2013<sup>2</sup>



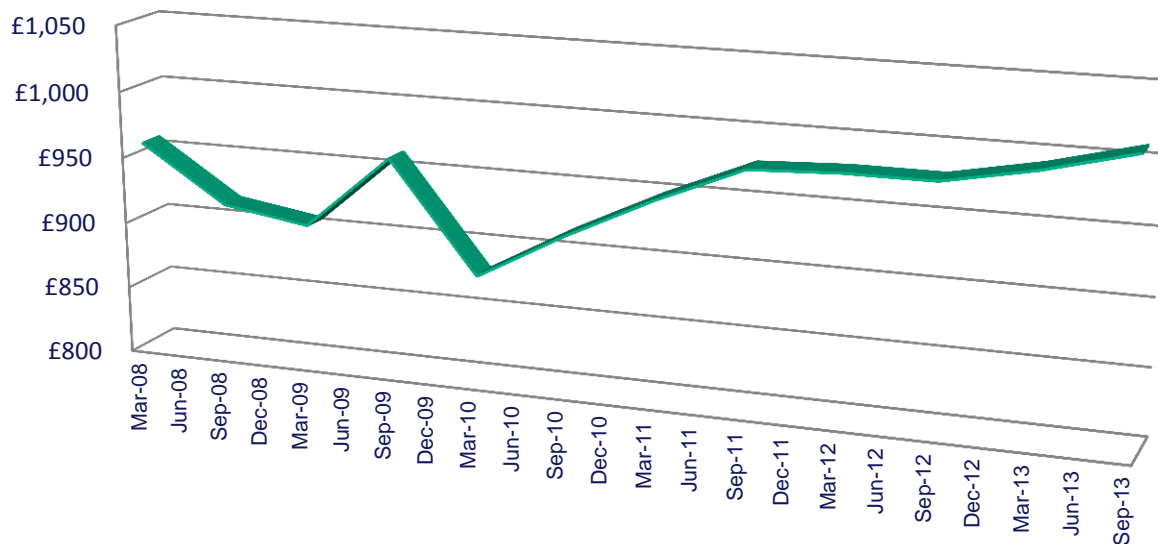
Mar-08	£885,098,501
Sep-08	£1,133,516,843
Mar-09	£1,406,482,263
Sep-09	£1,625,936,542
Mar-10	£1,661,896,693
Sep-10	£1,880,132,739
Mar-11	£2,104,219,832
Sep-11	£2,302,317,455
Mar-12	£2,325,317,455
Sep-12	£2,485,518,870
Mar-13	£2,637,843,361
Sep-13	£2,964,942,554

<sup>2</sup> DCLG data October 2013

## The average value of deposits protected

Figure 4 shows the average value of deposits protected over time and this shows that this has fluctuated from a low of £880 in March 2010 to £1,009 in September 2013.

Figure 4: Average value of deposits protected April 2007 to September 2013



Mar-08	Sep-08	Mar-09	Sep-09	Mar-10	Sep-10
£958	£916	£906	£962	£880	£916
Mar-11	Sep-11	Mar-12	Sep-12	Mar-13	Sep-13
£948	£976	£979	£979	£992	£1,009

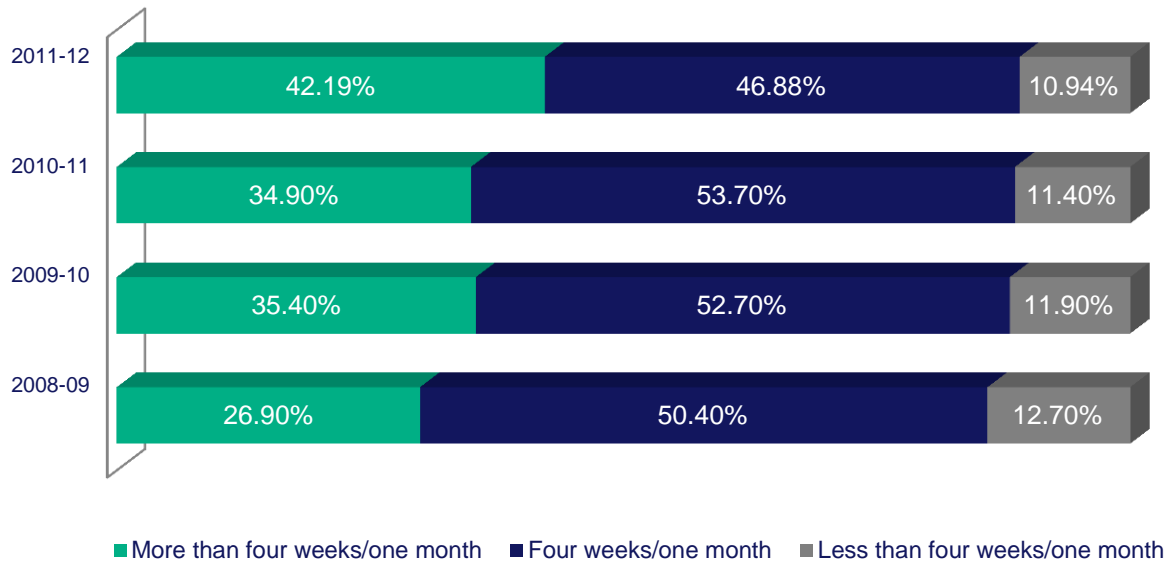
Figure 4 shows the fluctuations in deposit values over time but it should be noted that these figures hide significant variations between regions in England and Wales. The 2011-12 English Housing Survey<sup>3</sup> reported that deposit values fluctuated:

- 46.88% of deposits were four weeks/one month's rent;
- 42.19% of deposits were greater than this amount;
- 10.94 of deposits were less than this amount.

<sup>3</sup> English Housing Survey 2011-12 DCLG (2013)

What is striking is that the percentage of deposits in excess of 4 weeks rent has increased over four years from 26.9% in 2008-09 to 42.19% in 2011-12. This may reflect landlords' concerns that with deposit protection they may find it more difficult to make deductions so they increase the size of the deposits they take.

**Figure 5: Deposit values in terms of weeks rent**



### 3. Compliance rates

At the time that tenancy deposit protection was introduced into England and Wales in April 2007 there were an estimated 2.813m homes which were privately rented. Of course not all of these homes came within the remit of the legislation as it only applied to assured shorthold tenancies where a deposit was taken.

The government estimates that in the private rented sector 87.4% of homes are assured or assured shorthold tenancies<sup>4</sup>. Tenancies let on assured tenancies where deposits are taken are not required to protect those deposits.

“It is likely that there are tens of thousands of deposits where landlords are still not complying with the legislation to protect deposits.”

The 2010 Private Landlord Survey reported that deposits were taken on 84% of tenancies.

**Figure 6: Deposit required (2010 Private Landlord Survey based on dwellings)<sup>5</sup>**

Individual landlords	90%
Companies	68%
New Landlords	89%
Longer term landlords	80%
<b>All</b>	<b>84%</b>

If this 84% deposit required figure were to be applied to the 87.4% of private tenancies assumed to be assured shortholds and the deposits protected applied to this data it suggests that as at 31 March 2012 there was a 80.16% compliance with the deposit protection legislation.

**Figure 7: Compliance with the requirement to protect deposit**

Year	Private Renting (m)	Assured or Assured Shorthold Tenancies (m)	Tenancies with deposits (m)	Tenancies with protected deposits (m)	Compliance (%)
<b>2008</b>	3.117	2.724	2.288	0.924	<b>40.38</b>
<b>2008-09</b>	3.224	2.818	2.367	1.553	<b>65.61</b>
<b>2009-10</b>	3.526	3.082	2.589	1.888	<b>72.94</b>
<b>2010-11</b>	3.798	3.319	2.788	2.22	<b>79.62</b>
<b>2011-12</b>	4.034	3.526	2.962	2.374	<b>80.16</b>

There are however a number of caveats with this conclusion. The % of tenancies which are assured and assured shorthold does not differentiate between the two types of

<sup>4</sup> English Housing Survey 2011-12 DCLG (2013)

<sup>5</sup> Private Landlord Survey 2010, DCLG (2011)



tenancy and assured tenancies with deposits do not come within the remit of the legislation.

**However it is likely that there are tens of thousands of deposits where landlords are still not complying with the legislation to protect deposits.**

#### 4. Disputes

##### Numbers of disputes

In the first years of the tenancy deposit protection regime there were relatively few disputes as tenancies had not ended. Over time the number of disputes has increased as tenancies end and landlords and tenants cannot reach agreement on the allocation of the deposit.

The chart below shows that the number of disputes reduced in 2010-11 but increased again in the years since.

**Figure 8: Adjudications completed by year<sup>6</sup>**

March 2008	458
March 2009	8,098
March 2010	20,363
March 2011	18,156
March 2012	20,279
March 2013	24,448
Mar-Sept 2013	11,492
<b>Total</b>	<b>103,294</b>

##### Disputes as a percentage of tenancies protected

Before the tenancy deposit protection legislation was introduced, the National Association of Citizens Advice Bureaux reported in their 1998 report *Unsafe Deposits*<sup>7</sup> that 48% of tenants in their survey had reported having had a deposit unreasonably withheld and only one in 6 of these had been successful in getting their money back. This implied that 40% of tenants may have had their deposit withheld by their landlords without the agreement of the tenants. There appears to be little evidence available of the number of disputes that went to the County Court.

An analysis of the number of adjudications each year compared to the number of deposits protected shows a surprisingly low percentage of disputes as a proportion of the deposit protected.

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<sup>6</sup> DCLG data 2013

<sup>7</sup> Unsafe Deposits, NACAB (1988)

**Figure 9: Disputes as a percentage of the total number of deposits protected as at 31 March 2013**

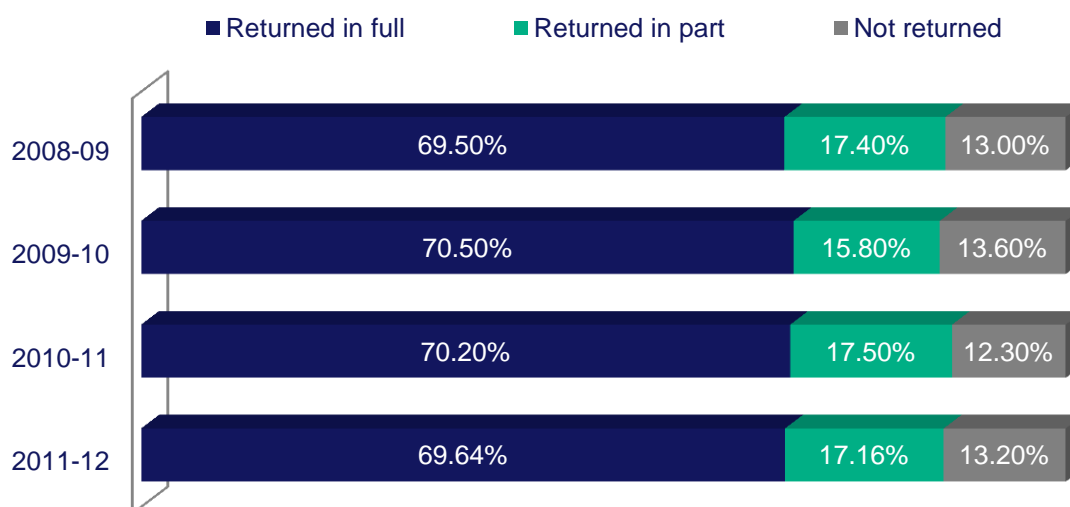
March 2008	0.05%
March 2009	0.52%
March 2010	1.08%
March 2011	0.82%
March 2012	0.85%
March 2013	0.92%

This table indicates that in the last three years the disputes percentage rate has been below 1% of tenancies protected. Given that the evidence from the sector is that tenancies on average are lasting up to 24 months this implies a dispute rate to tenancies ending of some 1.68%. This is significantly below the figures implied by the Unsafe Deposits report in 1998.

### Deposit returns

The English Household Survey asks households whose previous tenancy had been in the private rented sector in the last three years about their experiences of tenancy deposits.

**Figure 10: Tenant's views on whether deposits are returned in full**



This data shows tenants' views as to whether or not deposits were returned in full and shows a relatively consistent pattern. Tenancy deposit protection was introduced in April 2007 so the results from 2007-08 onwards now include situations where most deposits are likely to have been protected by the legislation.

This suggests that in 2011-12 a total of 13.20% of cases involved deposits not being returned at all to tenants and this could have been expected to lead to a significant number of disputes coming into the tenancy deposit protection schemes. However the level of disputes is much lower than this survey would imply it ought to be.

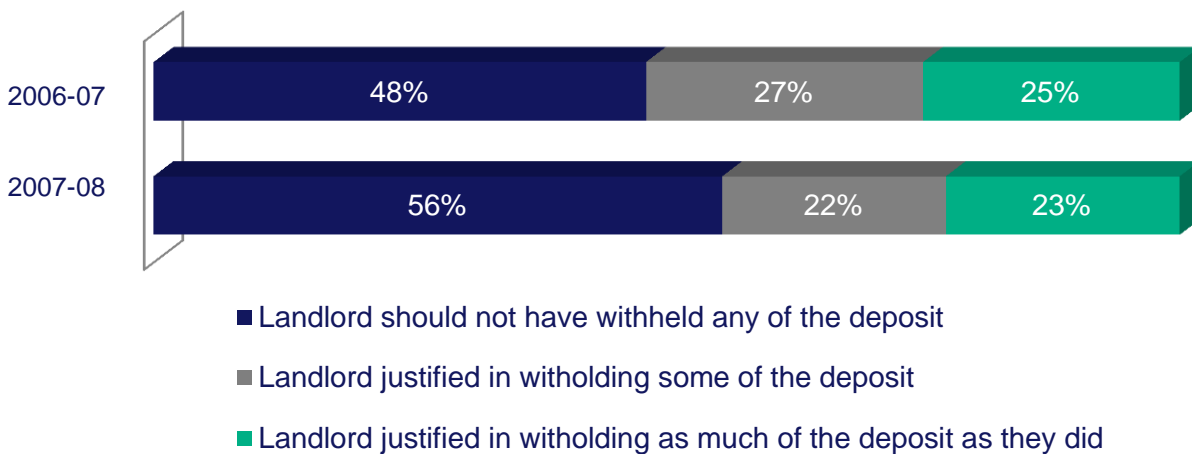
## Fair deductions?

In 2006-2008 the English Housing Surveys also asked tenants to give their views as to whether they felt the deductions from the deposit were justified. As seen below around a quarter of tenants felt that their deductions were justified in full. This implies that around three quarters of tenants felt that the deductions were not justified and as such could reasonably be expected to lead to a dispute between the landlord and tenant.

“Three quarters of tenants felt that deductions were not justified”

The fact that only 1.68% of tenancies ending have led to a dispute being raised with the tenancy deposit protection schemes suggest that either tenants do not know that the schemes can resolve disputes or that landlords are working much harder now to resolve tenancies disputes than perhaps they did before. In reality the answer is likely to be a combination of the two effects but it is surprising that there are so few disputes submitted to the three tenancy deposit schemes for England and Wales so it is likely that landlords are becoming better at resolving disputes rather than simply withholding the deposit.

Figure 11: Views on the non-return of the deposit by tenants who have had a deposit deduction made.



Source: Housing in England 2007-08, Housing in England, 2006-07

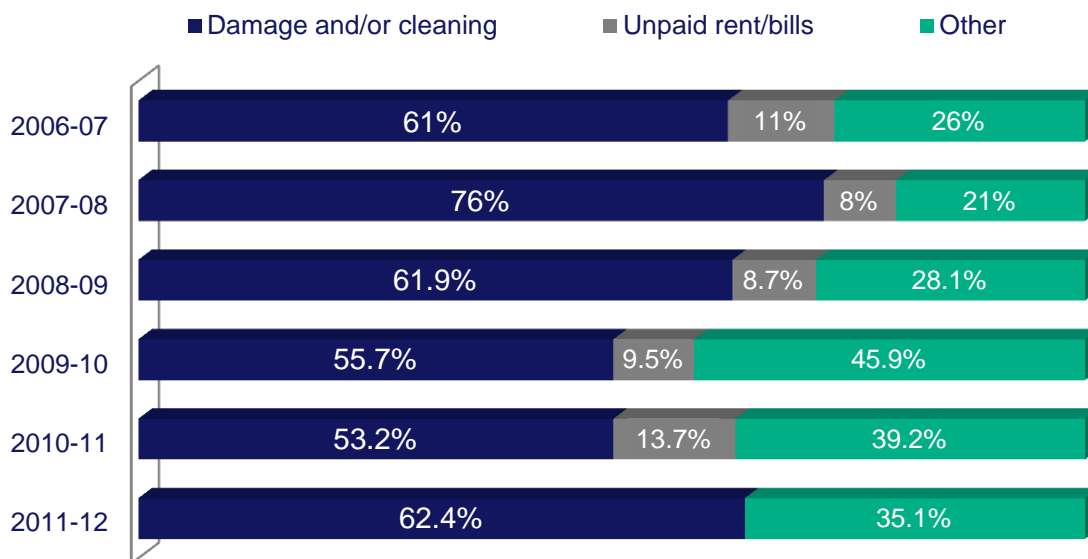
Of course what is not clear is the extent to which the existence of a tenancy deposit protection scheme with access to free Alternative Dispute Resolution means that landlords are more willing to enter into reasonable discussions with tenants to resolve tenancy disputes. It is also the case that the Tenancy Deposit Scheme membership subscription regimes reward those agent and landlord members who do not generate disputes and this may also have had some impact in reducing dispute numbers.

## Reasons for disputes

The latest government evidence in the 2011-12 English Housing Survey indicated that the most common reason for the non-return of tenancy deposits was in relation to the property being damaged or requiring cleaning (cited in 53.20% of cases in 2010-11. 13.70% of tenants reported that deposits had been withheld because of unpaid rent, an increase from previous years. 2011-12 data is incomplete.

“In 2012 cleaning appeared in 62% of cases”

**Figure 12: Reasons given for non return of deposits<sup>8</sup>**



Source: English Housing Survey 2011-12, 2010-11, 2009-10, 2008-09 Housing in England 2007-08; Housing in England 2006-07

<sup>8</sup> English Housing Survey various years, DCLG

TDS has been collecting data on the reason for disputes for the last 5 years. They show that damage, cleaning, redecoration are the most common reasons given for a tenancy deposit dispute. In the cases submitted to TDS in 2012 cleaning appeared in 52% of cases and damage in 45%.

**Figure 13: TDS data on reasons for disputes deposits<sup>9</sup>**

	2007	2008	2009	2010	2011	2012
Cleaning	50%	52%	49%	47%	49%	52%
Damage	36%	45%	43%	39%	43%	45%
Decoration	18%	25%	26%	24%	25%	28%
Rent Arrears	22%	18%	16%	15%	16%	18%
Gardening	14%	13%	13%	12%	11%	12%
Other	47%	48%	50%	55%	55%	56%

In order to minimise disputes coming through to The Tenancy Deposit Scheme detailed guides have been produced to show the action which landlords and agents need to take to avoid disputes:

**Cleaning, damage, decoration:** Have a good inventory, check in and check out report backed up with photos, video and signed off by the tenant.

**Rent arrears:** Produce an accurate rent statement showing dates of payments due, made and missing.

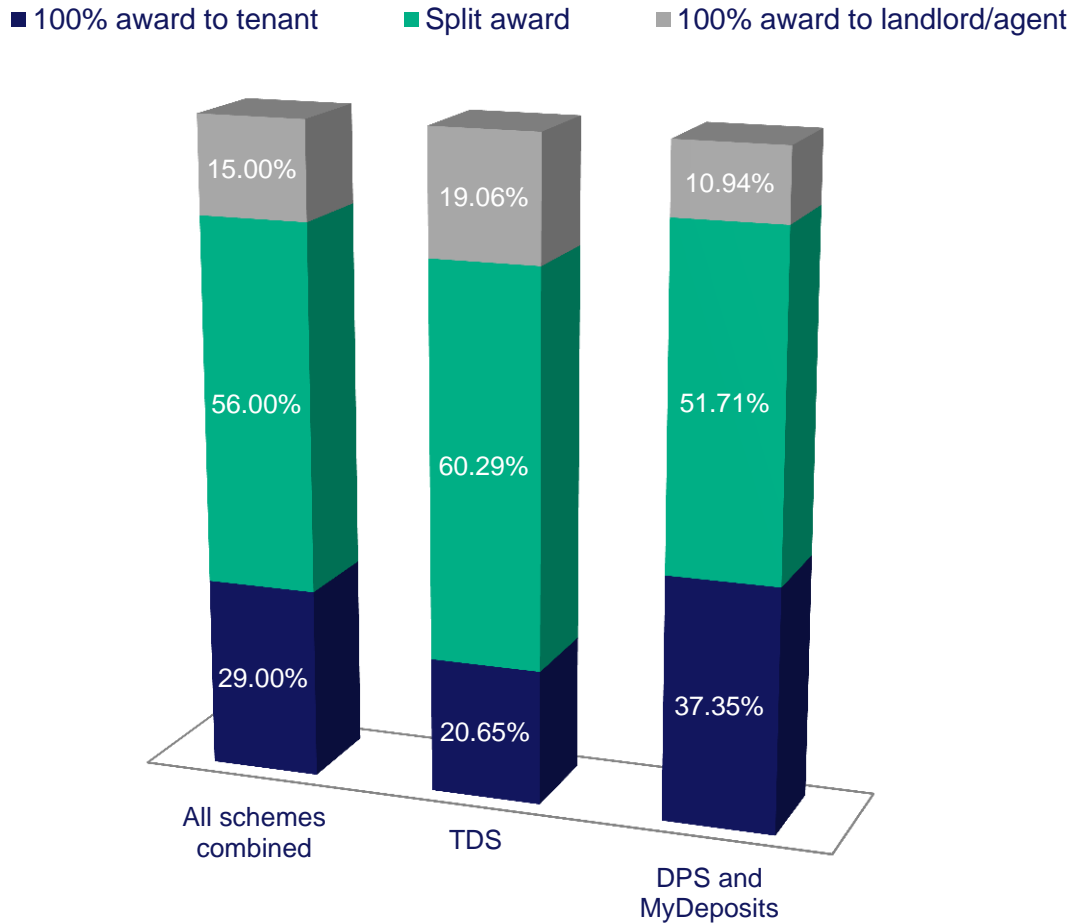
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<sup>9</sup> Tenancy Deposit Scheme 2013

## Who gets what?

A common question asked of the deposit protection schemes is who gets what in disputes. Data published by DCLG in January 2014 shows the following:

Figure 14: Allocation of disputed deposits



Sources: DCLG deposit statistics, January 2014; TDS statistics, January 2014

This data covers the period from April 2007 to September 2013 and shows that across all of the deposit protection schemes 29% of disputes result in the tenant receiving 100% of the disputed deposit in an adjudication. In the Tenancy Deposit Scheme this percentage is lower at 20.65% and probably reflects the fact that most of the TDS members are experienced lettings agents, who are much less likely to submit frivolous claims where an adjudicator awards all of the disputed deposit to the tenant.