



How To (Post-Tenancy)



Who should read this?



Tenants



Agents



Landlords

Insured

Custodial

The dispute process

You have reached the end of the tenancy but can't agree what should happen to the deposit. What should you do now?

This document explains:

- how you bring your dispute to us;
- how we deal with it;
- what information you need to give us;
- how long it might take to resolve the dispute.

What is the Tenancy Deposit Scheme?

We are an independent, not-for-profit company set up to resolve complaints and disputes about tenants' deposits in the private rented sector – and to do this speedily, cost-effectively and fairly.

We are a government-approved tenancy deposit protection scheme, offering both insured and custodial deposit protection.

Is your dispute about the deposit?

We can only resolve disputes about deductions that a landlord or agent wants to take from a deposit when a tenancy ends. The tenancy must be registered with the Tenancy Deposit Scheme (see *Is your tenancy covered by the Tenancy Deposit Scheme?* below).

We cannot resolve disputes between tenants, complaints about the conduct of letting agents, managing agents or landlords, or other disputes that are not about deductions from the deposit. So if your dispute is about any of these things, you could use one of the following routes:

- **Professional body:** If your dispute is with an agent that is a member of a professional body, you may wish to contact them.

The professional bodies include the Association of Residential Letting Agents (ARLA), the Royal Institution of Chartered Surveyors (RICS), the National Association of Estate Agents (NAEA), Safeagent (previously NALS), and the Property Ombudsman.

- **Adviser:** If your dispute is about an agent who is not a member of a professional body or if it is about a landlord, please ask for help from your local Citizens Advice Bureau, housing advice centre, law centre or other advice organisation.

- **County Court:** You could use the court to make a counterclaim against your landlord or if you think the landlord's claim should be lower because of a failure by the landlord. You may want to speak to one of the above advisers first, or contact a solicitor.

Is your tenancy covered by the Tenancy Deposit Scheme?

The Housing Act 2004, as amended, says any landlord or agent who takes a deposit from a tenant for an assured shorthold tenancy must register it with one of the approved tenancy deposit protection schemes. These schemes apply to assured shorthold tenancies that started on or after 6 April 2007 in England and Wales where the annual rent does not exceed £100,000 a year.

When paying the deposit, the tenant should by law have been given 'prescribed information'. This should have included:

- the deposit holder's name; and
- confirmation of which tenancy deposit scheme will protect the deposit.

If the deposit is being protected by the Tenancy Deposit Scheme, the deposit holder must also register it on the scheme's tenancy database.

If you have received prescribed information that refers to the Tenancy Deposit Scheme, you can check whether your deposit is registered with the scheme. Look at our website www.tds.gb.com and go to the page *Is my deposit protected?*

If you have received prescribed information that refers to the Tenancy Deposit Scheme but you do not think the deposit is registered with us, please contact us. We'll be able to tell you.

If you have not received any prescribed information, please look in your tenancy agreement for the name of your landlord/agent. Then ask them which scheme is protecting the deposit.

If the deposit is not protected by the Tenancy Deposit Scheme, we will not be able to deal with the dispute. You will then need to find out whether the deposit holder belongs to one of the other tenancy deposit protection schemes. You can check with them or ask the deposit holder.

Alternatively, you can use the Shelter website to check whether your deposit is registered with any tenancy deposit protection scheme and find useful advice on what to do if it isn't. Visit www.shelter.org.uk/depositprotection for more information.

If a deposit holder has not protected a deposit or given the required information about it, a tenant may wish to take action in a County Court. This is because, under Section 214 of the Housing Act 2004 as amended, the court may award the tenant the whole of the deposit plus between one and three times its amount as compensation for failure to register the tenancy. Only the court can award this penalty. Whether it does will depend on the circumstances of the case.

Has the landlord/agent had the opportunity to resolve the dispute?

Nearly all disputes are resolved by negotiation. So it is important that you discuss the matter with your landlord or agent before raising a dispute with us. We may reject a dispute if we feel the parties have not tried to resolve it. We will not accept a dispute until 10 calendar days after the tenancy ended.

How much is in dispute?

We will deal with any dispute, even for a small amount. However, if it is a small amount, our approach may be different. The parties should consider whether the amount is enough to justify the effort of completing a Dispute Application Form and gathering evidence to support their case. We cannot award more than the amount of the deposit.

Do you want the Tenancy Deposit Scheme to resolve your dispute, or would you rather go to court?

Either party may go to court if they prefer. We can only deal with their dispute if both tenant and landlord agree they want us to. However, if the tenant or landlord refuses to make a decision, we will deal with the dispute anyway. Most people prefer to come to us because they feel it will be quicker, cheaper and less stressful. Like the courts, we are independent and authoritative. We can deal with proposed deductions from a deposit, but we cannot award compensation.

How do I submit a dispute?

Please complete a Dispute Application Form. You can complete it online or download it from our website www.tenancydepositscheme.com and send it to us by post. This will tell us what the dispute is about and who is involved. We need you to complete this form because we have to copy it to the other party for their response. If you have difficulty with the form, perhaps because English is not your first language, please ask someone to help you.

Send the form to us with the evidence you want us to consider when dealing with the dispute. You will find a checklist on the form to help you. It is important that you send us the information that you feel will support your case. We will adjudicate on the basis of what the parties send us. Normally we won't ask the parties for more information.

You will not be able to send us extra material after we have sent your case to an adjudicator. Nor will we be able to accept new evidence after the adjudication is finished. So it is important that you send all your evidence with your Dispute Application Form or with your Dispute Response Form. If there is something you do not wish the other party to see, you must make sure you remove or cover it up so it will not be visible. We will not be able to do that for you.

We cannot accept physical evidence such as damaged items. This type of evidence does not compare an item's condition between the

start and end of a tenancy, in the same way that check-in and check-out inventories can do. However, you may wish to send us a professional report from a suitably qualified person who can give an opinion to support your claim. If you send photographs, videos or digital recordings you must sign them, give the date they were taken and say which part of the dispute they relate to.

In submitting the Dispute Application Form or Dispute Response Form, you agree that our adjudication is final and binding. There is no appeal against it within the rules of the Tenancy Deposit Scheme, but you are entitled to complain about the way your case was handled if you want to. Please see our guidance document What to do if you're unhappy with our service.

What happens then?

We will check that we can deal with the dispute and that it falls within the time limits in our rules (see How long will it take to resolve the dispute? below). We will also check that you have filled in the Dispute Application Form properly. If not, we will return it to you to complete. If everything is okay, we will tell you we have received your dispute and copy the form to the other party for their response. We will ask the deposit holder to send us the amount in dispute – even if the dispute will be going to court.

We will ask the other party(ies) to the dispute to complete a Dispute Response Form online or by downloading it from our website www.tds.gb.com. This is their chance to put their side of the story. It is important that they send us their evidence too. In particular, if a landlord/agent wants to withhold all or part of the deposit because they say the property is damaged, dirty, needs decorating, or that things are missing, they must be able to demonstrate this. If they say a tenant is behind with the rent, we will need to see a copy of the rent account. We will also check whether the tenancy agreement allows the deposit to be used to settle rent arrears.

Sometimes the party who raises a dispute does not present the full or correct picture. The other side's response can help to explain things.

In their response to a dispute raised by a tenant, a landlord/agent might raise new points that justify withholding the deposit. If so, we will ask the tenant to comment on them before we proceed with the adjudication.

Will a delay in sending the deposit to the Tenancy Deposit Scheme also delay the adjudication?

No. We will continue with the adjudication regardless. If we have not received the deposit, we will make a claim on our insurance and pursue the landlord/agent for the money.

If the deposit holder sends us only part of the deposit, we will continue with the adjudication anyway. If we make an award to a tenant, they will be paid first. There may therefore be a shortfall in the amount available to settle an award to a landlord or agent. If so, we would expect the landlord and agent to resolve this between themselves.

Will the adjudication be delayed if any of the parties refuses to co-operate?

For us to be able to adjudicate, we need the consent of all parties. This means that:

- if a tenant or landlord refuses to make a decision, or fails to respond to us, we can assume they consent;
- if we hear that a party to a dispute intends to take, or has taken, the dispute to court, we will assume they do not consent to our adjudication. We will not be able to deal with the dispute;
- if the tenant or landlord states that they do not consent to using our scheme, we will not deal with the dispute. If this happens, they will need to resolve the dispute between them or go to court.

How is the dispute resolved?

We will start by finding out the following facts:

- Have the parties sent us all the documents we need?
- Has the deposit holder paid in full their Tenancy Deposit Scheme subscription or Deposit Protection Charge?
- How much is in dispute?
- Has the deposit holder sent us the correct amount in dispute?
- How many issues are in dispute?

- Would this matter be better resolved in another way? Examples of other ways include us talking to you and the landlord/agent to see if we can help you reach agreement without a formal adjudication.

We may reject a dispute if in our opinion it is:

- being pursued unreasonably;
- frivolous – in other words, it is about something too trivial;
- vexatious – in other words, it is designed mainly to cause trouble;
- seeking to raise again – unreasonably in our view – matters that:
 - we have already adjudicated upon;
 - have already been settled by another similar dispute resolution process; or
 - have been decided by the courts.

We may at our discretion award a tenant the disputed amount without adjudication if:

- the landlord or agent has not complied with our scheme rules;
- the tenancy is not subject to a written tenancy agreement; or
- in our opinion the landlord or agent has unreasonably tried to delay repayment of the deposit or referral of the dispute.

What happens in an adjudication?

We appoint an adjudicator to consider the evidence and decide how the disputed amount should be paid. For more on how we handle adjudications, please refer to our Guide to Deposits, Disputes and Damages.

If an important document is missing, say a relevant page of the tenancy agreement, the adjudicator may ask for it. But usually we will adjudicate on the basis of what the parties send us and do not ask them for more.

When will the Tenancy Deposit Scheme pay out the disputed amount?

We normally pay any award within 5-10 working days of publishing our adjudication report. We can pay by bank transfer or cheque. Only in rare circumstances will we pay by cash.

How long will it take to resolve a dispute?

We want to resolve the dispute quickly. Here are the main steps:

- A landlord/agent must contact the tenant promptly after the end of the tenancy if they want to make any deductions from the deposit.
- A tenant who disagrees with the proposed deductions should tell the landlord/agent as soon as possible. (However, the tenant's silence does not mean agreement.) A tenant who objects to the deductions should tell the landlord/agent why.
- The landlord/agent should try to resolve the dispute promptly. If either party does not receive the deposit share they think they are entitled to within 10 calendar days of asking for it, they can ask us to resolve the dispute. A dispute should be sent to us for adjudication no later than 3 months after the tenancy ends.
- We will give the other parties to the dispute 10 working days to tell us they consent to adjudication and to send us any evidence they wish us to consider.
- We will normally complete the adjudication within 28 calendar days of us receiving:
 - the agreement of all parties to us resolving the dispute; and
 - all the evidence our adjudicator needs.

Summary

For the tenant:


- Is your dispute one that we can decide?
- Do you want to take the time and trouble to pursue it?
- Do you want us to adjudicate, or would you prefer to go to court?
- If you want to use us, are you willing to accept our adjudication as final and binding?
- Have you completed the Dispute Application Form or Dispute Response Form, and sent us all the evidence you want us to consider?
- Are you within the time limits?

For the landlord/agent:

- Have you paid us your membership subscription in full?
- Do you have a check-in inventory and a check-out inventory or report?
- Do you want to take the time and trouble to pursue this dispute?
- Do you want us to adjudicate or would you prefer to go to court?
- If you want to use us, are you willing to accept our adjudication as final and binding?
- Have you completed a Dispute Application Form or Dispute Response Form, and sent us the disputed deposit and all the evidence you want us to consider?
- Are you within the time limits?

 **0300 037 1000**

 **www.tenancydepositscheme.com**

 **Tenancy Deposit Scheme
1 The Progression Centre,
42 Mark Road, Hemel Hempstead,
Herts, HP2 7DW**