



Key Documents



Who should read this?



Tenants



Agents



Landlords

Insured

Transferring deposits between schemes

Introduction

As an agent, you may face the position where a landlord wants you to transfer a deposit from one tenancy deposit protection scheme to another.

Members must hold deposits, protected by TDS, as stakeholder. This is to prevent the deposit being paid to either the landlord or tenant without the parties' agreement. It has been argued that because of the stakeholder requirement, the deposit cannot be transferred without the consent of the tenant, but this is not accurate. The meaning of the agent holding a deposit as a stakeholder is that the agent takes responsibility for it on behalf of the landlord and tenant, not that it must remain completely untouched. There is therefore a difference between an agent paying the deposit out during the tenancy, or paying it to the landlord without the tenant's consent, and allowing it to be transferred from one protection scheme to another - especially if the money never in fact leaves the agent's bank account.

From an agent's point of view, the key requirement in any movement of the deposit is that the agent is accountable to both parties for its safety. Therefore the agent must take steps to ensure that the deposit is properly protected at all times and that all parties are kept informed.

The tenant normally has no choice about which of the three approved schemes will protect the deposit as that is the deposit holders' legal responsibility. It follows that the tenant does not have say whether or not their deposit is transferred from one scheme to another during the course of a tenancy.

As long as the tenant has confirmation that the deposit is protected by another scheme, they suffer no loss or disadvantage. Indeed, the legislation anticipated such a need and has provisions within it regarding the minimum level of protection that deposit scheme must provide during the transfer process.

Can I remove a deposit from protection with TDS?

As a deposit holder, you may face a situation where you do not want a deposit to be protected by TDS anymore. If this is the case:

- Give TDS written notice of the deposit that you no longer wish to be protected (before the tenancy has ended).

- The Housing Act requires us to determine the date on which TDS' protection of the deposit will end. This date cannot be less than three months from when we receive your notice.
- We will write to the landlord and tenant giving them at least two months' notice of when TDS' protection of the deposit will end.
- It is the member's responsibility to end the tenancy on the database, selecting the end type of transfer. Protection for these tenancies will cease once the deposit has been registered with an alternate scheme. However, failure to end them on the TDS database will result in them being included in future subscription calculations.

Remember:

You must take steps to ensure that the deposit is protected by another scheme. It is important that you do this because as an agent, the sanctions in the Housing Act for failing to protect a deposit can apply to you as well as the landlord. You must also tell us when another scheme has protected the deposit.

Once the tenancy has ended, a tenant can still raise a dispute if the deposit is protected by TDS and the stakeholder will be required to submit the disputed deposit amount.

My landlord wants me to pay them the deposit so that they can transfer it to a custodial scheme – what should I do?

- Pay the deposit to the new scheme directly rather than the landlord. This will prevent any confusion about where responsibility for it lies.
- End the protection of the tenancy on the TDS database by selecting 'transfer' and using the date of transfer as the end date.
- Where the existing tenancy agreement is going to continue, create an addendum to the tenancy agreement to confirm the changed arrangements.
- Serve new, revised, Prescribed Information in accordance with the new scheme's requirements.

- Write to all parties to tell them that the deposit has been transferred to a custodial scheme, and that it is no longer protected by TDS Insured.

My landlord has instructed a new managing agent, who now wants me to give them the deposit – what should I do?

You must take steps to ensure that the deposit is protected by the new managing agent. If the new managing agent does not register the deposit you may still be liable for it in the event that the tenant raises a dispute.

- Explain to the new agent that you need from them details of which other scheme will protect the deposit.
- You will need to provide an undertaking to the new managing agent that you will transfer the deposit monies to them once you are in receipt of the new deposit registration details.

Once you receive confirmation that the deposit has been protected you should:

- Transfer the deposit to the new agents.
- End the protection of the tenancy with TDS by selecting ‘transfer’ on the TDS database using the date of transfer as the end date.
- Where the existing tenancy agreement is going to continue, create an addendum to the tenancy agreement to confirm the changed arrangements.
- Write to all parties confirming which scheme now protects the deposit, and that it is no longer protected by TDS

The same principles apply when deposits are transferred from another TDP scheme to TDS.

For the avoidance of doubt agents should ensure that a procedure to cover such eventualities is contained in their terms of business.

Remember!

TDS will continue to protect the deposit:

- for 3 months from the date that you tell us that the deposit is to be transferred (or that you no longer wish it to be protected by TDS); or
- until it is protected by another scheme, whichever occurs first.

What are the implications for deposit protection when one agent acquires another?

If an agent sells his portfolio to another agent, that is a commercial arrangement between the agents. It will not normally affect the tenancy agreement, and any arrangements in place for the protection of the deposit will continue.

If the sale is from one member to another, TDS will require written confirmation from both parties of the date of the change, giving full details of tenancies to be transferred. The buying company will also be required to give written assurance that they accept responsibility for the tenancy deposits from the above date. Upon receipt of this information TDS will transfer the tenancies between member records on behalf of the members.

The only exception to this will be where the tenancy agreement carried the name of the agent as the deposit holder. If there is a new agent, the tenancy agreement will need to be replaced by either an addendum or a new tenancy agreement. The two agents will need to co-operate to ensure that the deposit is correctly transferred from one scheme to another (if the scheme changes). The new agent will need to ensure that the deposit is protected, and all parties informed about the new arrangements.



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