



How To (Post-Tenancy)



Who should read this?



Tenants



Agents



Landlords

Insured

What if the tenant can't be contacted at the end of the tenancy?



Tenancy Deposit Scheme

Insured

Custodial

What if the tenant can't be contacted at the end of the tenancy?

In this guidance, we use the expression “call in” as shorthand to describe the process whereby TDS asks the member/stakeholder to pay disputed deposit monies to TDS.

If either the landlord or the tenant raises a dispute about a deposit with TDS, TDS will call in the disputed amount. Once the money has been called in, TDS can only make payments from it with the agreement of the parties, or in accordance with an adjudicator's decision or a court order.

In cases where the tenant cannot be contacted at the end of the tenancy, there may not be any need to raise a dispute with TDS – and

consequently no need for TDS to call in the deposit. In these circumstances members can use the absent tenant procedure to pay their landlord clients direct, without going through adjudication or the courts. The procedure is set out in full in TDS' Rules for the Independent Resolution of Tenancy Deposit Disputes and is summarised below.

The advantage for members is that using the absent tenant procedure reduces the number of disputes that members need to lodge with TDS, which in turn affects membership fees. The advantage for landlords is that their claim against the deposit may be paid more quickly.

Absent tenant procedure – summary

The member must:

- make every practical effort to contact the tenant(s) within 3 months from the end of the tenancy, using information readily available
- assess any damage, rent arrears and any other likely deductions from the deposit as they would normally do
- split the deposit, paying any amounts due to the agent/landlord, and transferring the amount due to the absent tenant(s) to 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.

The absent tenant procedure is not compulsory, and member agents use the absent tenant procedure at their own risk. Decisions taken under the procedure are not binding on the tenant, who could still apply for adjudication, and who will usually have at least 6 years in which to claim their deposit through the courts. **Before** using the absent tenant procedure, member agents should ask their landlord client to confirm in writing that:

- if the tenant challenges the release of the deposit, the landlord agrees to return to the agent or TDS the amount that was released to the landlord
- the landlord is aware that the tenant(s) may raise legal proceedings to claim a refund of the deposit at some time in the future;
- the landlord is aware that TDS may still adjudicate if a dispute is raised;
- the landlord accepts the costs associated with either court action or adjudication.

This guidance document includes a letter for agents to use, explaining their ability to pay the amounts claimed from a deposit under the absent tenant procedure. There is also a model form of indemnity, under which the landlord agrees to accept the risks and cost associated with using the procedure. (It should be noted that if the member's business is sold these indemnities should be covered in any sale and purchase agreement.)

Letter to landlord

TDS deposit reference number:
Property address:
Landlord(s):
Tenant(s):
Deposit amount claimed:

Dear [landlord]

As you will be aware, your tenant(s) are no longer at their last-known address, and despite reasonable efforts, we have been unable to contact them using their last-known email address or telephone number. Where there is a dispute about the return of a tenancy deposit which cannot be resolved by agreement, an agent/landlord would normally need to either:

- obtain a court order setting out what is to happen to the deposit; or
- within 3 months of the end of the tenancy, ask the Tenancy Deposit Scheme to make an adjudication decision.

These processes are possibly unnecessary – or may not even be possible – for this deposit. The tenant(s) have not contacted us to finalise its return, and neither have they indicated that they wish to raise a dispute about it. All the circumstances surrounding the deposit suggest that the tenant expects the disputed balance to be returned to you in lieu of rent arrears and/or dilapidations. The 3 month time limit for adjudication will expire shortly.

We are able to forward to you the disputed deposit amount, should you so wish, net of any outstanding charges due and payable to [agent name/us]. In order to do this, we will need you to confirm to us in writing that:

- should the tenant challenge the repayment of the deposit at some point in the future, you may need to submit the amount we have paid you either to us or to TDS, as directed;
- you may need to defend legal proceedings raised by the tenant(s) where TDS is unable to adjudicate;
- TDS may in exceptional cases accept a dispute for adjudication after the time limit has expired;
- you accept responsibility for all costs associated with either of these scenarios, including any costs properly incurred by us.

Please note that if we do not have your agreement to pay you the disputed deposit amount, we are obliged to retain it in our client account.

Should you like us to pay out the disputed balance of the deposit as above, please sign and return the attached acknowledgement and indemnity to indicate your understanding and acceptance of the terms contained therein. These terms will continue to apply even if you use a different agent at some point in the future or if you dispose of the property.

We advise you to seek independent legal advice before replying.

Yours sincerely

Form of indemnity

[agent name and address]

TDS deposit reference number:

Property address:

Landlord(s):

Tenant(s):

Deposit amount:

Thank you for your recent letter advising that, despite your reasonable efforts to make contact with the former tenant, you have not had any response from them.

I/we confirm that I/we would like to follow the absent tenant procedure outlined in your letter.

As landlord(s) of the above-mentioned property, I/we hereby instruct you to return £[deposit amount claimed] of the tenancy deposit to me/us in lieu of rent arrears and/or compensation for the tenant's breaches of their tenancy agreement. In giving you these instructions, and in consideration of you agreeing to use the absent tenant procedure, I/we understand and agree that, even if I sell the property or use a different agent in the future:

- (a) If the Tenancy Deposit Scheme asks you or me to pay the deposit amount I/we have claimed, I/we will pay that money to you or to the Tenancy Deposit Scheme (as applicable) within 7 days of demand;
- (b) If the tenant brings any legal proceedings against you for recovery of the deposit amount that I/we have claimed, I/we will indemnify you against the costs you reasonably and properly incur in defending or settling such proceedings;
- (c) If the court awards the tenant the amount I/we have claimed under the absent tenant procedure, I will pay the amount I/we have received under the procedure to you or to TDS (as applicable);
- (d) I/we shall hold you harmless against all liability arising from the use of the absent tenant procedure, except where such liability arises from your own fraud, recklessness, negligence or failure to comply with the rules of the scheme under which the deposit is registered;
- (e) If any amounts claimed under the deposit are properly due to you, you may deduct these from the deposit before sending any balance to me, but you will be responsible for that amount if it is claimed at some point in future by the tenant.

Each landlord has signed this letter as confirmation that they agree that the landlords' obligations are jointly and individually binding on them. [delete if there is only one landlord]

I/we acknowledge that this letter is intended to make my/our obligations in this letter legally binding and that I/we have been advised to take legal advice before signing.

Signed: [landlord]

Signed: [landlord]

Date: [date]



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