

ARE YOU COMPLIANT WITH THE LAW? ONE THING TO CHECK THIS MONTH ...

By Tessa Shepperson of Landlord Law



Much of the content of this magazine is about the business of investing and developing property to rent. However, sometimes people overlook the legal rules and regulations which landlords need to comply with.

Renting property to tenants is heavily regulated. Many of these regulations carry substantial penalties for non-compliance. So, your earnings as an investor are dependent not only on your savvy investment skills but also on legal compliance to avoid fines and penalties.

Every month, we will be looking at one issue where, if you fail to comply, could cause you financial loss.

This month's topic is the first in a two-part series on deposits. Today we are looking at:

Holding deposits

A holding deposit is a payment which is paid to a landlord or letting agent by an applicant, for the landlord/agent to 'hold' the property for them.

Landlords/agents don't have to charge a holding fee, but many do, as it shows that the applicant is serious about renting the property and is not messing them around.

In 2019, the law regarding deposits was amended under the Tenant Fees legislation and new rules came into force for holding deposits.

So, what were these?

Holding deposit rules

- The deposit taken must not be more than one week's worth of rent.
- This is the only deposit that can be charged per property – so, for example, if there are to be several tenants, they cannot each be charged one week's worth of rent.
- You can only take one deposit for any property at any one time.

- You must provide the applicant/s with a draft form of tenancy agreement (which should clearly be stated to be a draft) before the holding deposit is paid.
- You also need to be clear to the applicants about what you are looking for in a tenant, and the things that might count against them.
- There is a 15-day deadline – although this period can be extended by agreement in writing – after which:
 - The tenancy agreement must be signed, or
 - The money returned to the applicant, or kept by the landlord/agent if the rules permit this.

Note that landlords/agents do not have to charge a holding deposit, and many choose not to do so.

When can the landlord/agent withhold the deposit money?

- If the applicant fails a right-to-rent check (in England).
- If the applicant provides false or misleading information which affects their suitability as tenants. For example, if they exaggerate their salary or fail to disclose county court judgements.
- If the applicant decides not to proceed with the tenancy, or
- If the applicant fails to take all reasonable steps to enter into the tenancy – for example, if they don't respond to requests or don't turn up to sign the tenancy agreement.

If none of these apply, then the deposit must either be returned to the applicant, or,

if the property is let to them, it can (if the applicant agrees to this, ideally in writing) be offset against the property rent or deposit.

If the property is in Wales

The rules are the same, except that landlords or agents must provide 'specified information' to applicants before the holding deposit is taken. If this is not done, the landlord/agent loses the right to withhold the deposit if the circumstances would otherwise permit.

What if landlords/agents fail to comply with the rules?

- Tenants can apply to the First Tier Tribunal to recover the deposit paid. Or via their Local Authority (usually Trading Standards).
- If the deposit is refundable to the applicant, then no Section 21 notice can be served until after this has been done.
- Unlawfully retaining a holding deposit is a civil offence with a penalty of up to £5,000.

And finally ...

Landlords or their agents should take care to comply with these rules when taking a holding deposit.

We will be looking at tenancy deposits in the next article.



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