

# Tenancy Deposit Scheme (Scotland) 2011

In March 2011 the Scottish Parliament passed regulations to introduce tenancy deposit protection in Scotland.

These Regulations will change the way in which you deal with deposits. Once the new Regulations come into force you will be required to hand over the deposit to one of the approved Government Schemes who will hold the deposit until the end of the tenancy. At the end of the tenancy you will need to agree with the tenant how the deposit should be allocated and advise the Scheme holding the deposit. The Scheme will then repay the deposit in accordance with the agreement unless there is a dispute between the parties over the deposit allocation.

In these circumstances the Scheme will ask for evidence from all parties as to how they feel the deposit should be allocated and the Scheme will then carry out an adjudication process and issue a draft report for review by all involved. Once comments have been received then there will be a final decision and the Scheme will pay out the deposit in accordance with that decision. This means that there will be delays in landlords and tenants getting their deposits back, particularly if there is a dispute.

The scheme is due to take effect in June 2012, so there is limited time for landlords and Letting Agents to become familiar with the new regulations.

## 10 things to help Landlords and Agents

**We have identified 10 things to help Landlords and Letting Agents prepare for the new Tenancy Deposit Protection regime.**

### **1. Understand the Regulations**

If you don't fully understand the regulations you may make mistakes in your preparation for the Scheme. Remember, the deposit is the tenant's money, so in the event that you don't prove your case, the default path is for it to be returned to them

### **2. Make sure that you have a thorough inventory and schedule of condition at check-in and check-out.**

Without these key documents you may not be able to show if the property has deteriorated during the course of the tenancy and if the deterioration is the tenant's responsibility. Make sure you have these in place for all new tenancies. Ideally, photographs will accompany the check in and check out report and make sure these are dated and preferably signed by the tenants – or better still, embedded within the reports.

### **3. Make sure you have reconciled in your accounts where the tenancy deposits are.**

Once the Scheme launches you will have strict time limits from the start of the Scheme to transfer your existing deposits. New deposits taken after the Scheme starts have to be transferred within 30 working days so it's really important that you do ensure you have the money in your account to transfer over. And remember there is a legal penalty in the Sherriff's Court of up to 3 times the deposit value if you fail to transfer deposits on time.

### **4. Review the clauses in your tenancy agreement dealing with the deposit – do they cover the things you will want to claim from the deposit?**

The tenancy agreement is the central place to record all parties' obligations – so if you charge for a replacement tenancy agreement or a check out fee, then it should be recorded here. Don't forget to update your tenancy agreement to comply with the Scheme Rules, once known. You may need to do this retrospectively by means of an addendum but if you don't make it clear what the tenancy obligations are and whether any breach can be remedied through a deposit deduction you won't be able to make deductions for these items.

## **5. Reviewing your end of tenancy procedures**

Remember when the new Scheme starts you won't be holding a deposit to help fund any necessary end of tenancy repairs. Lettings Agents may need to agree with their landlords that they can hold back some rent monies or extending credit terms with contractors. Remember, the longer it takes to arrange repairs, the longer the time the property is vacant before the next tenant moves in!

## **6. Review the terms of business**

Lettings Agents' will need to review the terms of business and the fees to be charged for handling the deposit registration and recovery process as well as dealing with end of tenancy repairs.

## **7. Get your audit trails ready now**

If there is a dispute it's essential that you have a good audit trail of everything to do with the tenancy. Check your filing and email procedures now and make sure you can quickly provide the evidence you will need to deal with a dispute. If you make an agreement allowing the tenant to redecorate, make sure the terms of doing so are recorded in writing

## **8. Sort out new arrangements with contractors regarding invoicing**

In a dispute it's really important that the invoices and estimates you get from contractors are detailed. It's even better if they are tied back to a detailed check out report at the end of the tenancy. You may need to persuade your contractors to give you the level of detail you require so start this process now.

## **9. Educate everyone regarding the changes**

You will need to ensure that staff, landlords, agents and tenants are briefed on the changes that are coming. Start doing it now so that it's not a shock when it all starts.

## **10. Review how you are going to deal with Tenancy Deposit Protection**

Lettings Agents will need to review how best to prepare for tenancy deposit protection. Landlords will need to do likewise and decide whether they want to do this new work themselves or engage the services of an Agent to do this for them.