

Tenancy Deposit Schemes

Relevant as of May 2009

From April 2007, where a landlord grants an assured shorthold tenancy he must ensure that the tenant's deposit is entered into a government designated scheme and that the tenant is provided with information about how the deposit is being protected. The scheme is designed to protect tenants by ensuring that they get all of their deposit back when they are entitled to it and to make any disputes between the parties easier to resolve. It follows widespread complaints concerning the way in which landlords of residential premises wrongfully withhold the repayment of tenant's deposits.

At the beginning of a new tenancy agreement a tenant should pay the deposit to the landlord as usual, but the landlord now has 14 days to enter it into one of the three government designated tenancy deposit schemes. The first scheme is a custodial scheme, where the landlord simply puts the deposit into the scheme at the beginning of the tenancy. This is free to use but means the landlord will lose control over the deposit monies. The other two schemes are insurance based, where the landlord keeps the deposit, but pays a fee to insure against failure to repay the money due to the tenant. The landlord must then ensure that the tenant is provided with details of how the deposit is being protected.

If at the end of the tenancy the parties cannot agree how much of the deposit should be returned to the tenant, the scheme provides a free service to resolve disputes. The idea of this is to save the parties the expense and stress involved in pursuing disputes through the courts.

There are various sanctions against a landlord who does not comply with scheme. Firstly, the landlord will lose the automatic right to regain possession of the let premises at the end of the tenancy. Secondly, the tenant can commence proceedings against the

landlord and, if the landlord has not complied with the scheme by the date of the hearing, the court can order the landlord to pay the tenant three times the amount of the deposit. In order to avoid these potentially harsh sanctions, it is important that landlord's who are planning to let premises to tenants under an assured shorthold tenancy take legal advice to ensure they are complying correctly with the scheme and dealing properly with tenant's deposits.

If you would like to speak to the Commercial Property Team regarding tenancy deposit schemes or any other commercial property matters please call 0115 9888 777 or email Department Head, Patrick Wood on pwood@fraserbrown.com

