

Clauses for inclusion in tenancy agreements and terms of business



Introduction

1 This document contains the Prescribed Information which Scheme members are statutorily required to give to their tenants, and other matters which must be included in formal agreements to enable the operation of the Tenancy Deposit Scheme (TDS). It has been revised in response to feedback from Members and others about the first edition. Most of the changes are to make it more user-friendly: formatting, numbering, location of clauses. The only substantive changes concern procedures for:

- I instigating a dispute, which has been abbreviated (A.17 below)
- I dealing with situations where one of the parties cannot be contacted (A.18)

2 Many Members, and their Professional Bodies, will have incorporated the first edition into their standard documentation. They need not adopt this second edition if they do not want to or it is inconvenient. It does not negate or override the first edition, but will replace it over time.

3 Members are recommended, but not required, to replicate this precisely. While they may alter the style and look of the clauses Members must not alter the fundamental structure or any of the wording except as specifically instructed. If they opt for something substantively different, and there is a dispute, the ICE may determine that they are in breach of the Rules of TDS and act accordingly.

4 These clauses must not be used where the tenancies are to be covered by any other Tenancy Deposit Protection Scheme.

A Prescribed Information

5 This must be served within 14 days of the deposit having been received on a new AST, irrespective of whether or not the funds have been cleared. Where the tenancy started before 6 April 2007, it should be served on or before the date of renewal.

6 The Prescribed Information may be attached to the tenancy agreement, or served as a stand alone document. Where the deposit is received when the tenancy agreement is signed, it is recommended that the Prescribed Information is attached to it. Both parties must have a copy of these pages.

7 Members must also attach to the Prescribed Information TDS E *What is the Tenancy Deposit Scheme?* This can be downloaded from our website www.thedisputeservice.co.uk or ordered from The Dispute Service Ltd.

8 Both parties must sign and initial each page.

9 The “Deposit Holder” mentioned in the prescribed pages is the person, firm or company who holds the Deposit under, and is a Member of, TDS. Where this is an agent, it is not necessary to enter the landlord’s details.

10 A “relevant person” is any other person or company paying the Deposit on behalf of the Tenant e.g. the local authority, employer, parent or guarantor.

B Clauses for inclusion in the tenancy agreement

11 These must be inserted in the tenancy agreement in the section that deals with deposits.

12 TDS will also deal with non-ASTs, so clause A.4.6 deals with disputes where the deposit exceeds £5,000. This can be excluded from AST agreements.

13 The following words must be explained in the definitions:

- | Agent (where relevant)
- | Deposit
- | ICE/Independent Case Examiner
- | Landlord
- | Member
- | Stakeholder

14 There is no need to duplicate clauses in this section which are already in the tenancy agreement.

C Clauses for inclusion in terms of business (for agents)

15 These must be inserted in the relevant section of the Terms of Business between the agent and the landlord. In particular, please note clause C4, which is concerned with the situation where an agent lets the property but is not going to hold the deposit.

16 The following words must be explained in the definitions:

- Agent (where relevant)
- Deposit
- ICE/Independent Case Examiner
- Landlord
- Member
- Stakeholder

17 Depending upon the formality of the document the relevant words such as “you” and “we” may be deleted.

A Prescribed Information

This information is prescribed under the Housing Act 2004. That means that the two parties to the Tenancy Agreement must be made aware of their rights during and at the end of the Tenancy regarding the protection of and deductions from the Deposit.

A1 Address of the ~~property/premises~~ to which the tenancy relates *(delete whichever does not apply)*

Details of the deposit holder(s)

A2 Name(s)

A3 Actual address

A4 E mail address *(if applicable)*

A5 Telephone number

A6 Fax number

Details of tenant(s)

A7 Name(s)

A8 Address(es) for contact after the tenancy ends *(if known)*

A9 E mail address(es) *(if applicable)*

A10 Mobile number(s) *(if applicable)*

A11 Fax number(s) *(if applicable)*

Please provide the details requested in A 7-11 for each tenant and for other relevant persons (i.e. agent, guarantor paying the Deposit etc)

The deposit

A12 The deposit is £

A13 The holder of the Deposit will register the Deposit with and provide other required information to the Tenancy Deposit Scheme within 14 days of the commencement of the Tenancy or the taking of the Deposit whichever is earlier and provide proof to the Tenant of compliance. If the holder of the Deposit fails to provide proof within 14 days the Tenant should take independent legal advice from a solicitor, Citizens Advice Bureau (CAB) or other housing advisory service.

A14 A leaflet entitled *What is the Tenancy Deposit Scheme?*, explaining how the Deposit is protected by the Housing Act 2004, is attached to this document for the Tenant by the person holding the Deposit being Deu Estates.

At the end of the tenancy

A15 The deposit will be released following the procedures set out in clauses 8(1) – (8) the Tenancy Agreement attached/provided separately.

A16 Deductions may be made from the Deposit according to the Tenancy Agreement provided separately. No deductions can be made from the Deposit without written consent from both parties to the Tenancy Agreement.

A17 The procedure for instigating a dispute regarding deductions from the Deposit at the end of the Tenancy is summarised in *What is the Tenancy Deposit Scheme?*, which is attached to this document. More detailed information is available on:

www.thedisputeservice.co.uk

A18 TDS are specifically excluded under Statutory Instrument from adjudicating where, despite making reasonable efforts to do so, the Landlord or the Agent are unable to contact the Tenant, or the Tenant is unable to contact the landlord or the Agent. Under these circumstances, the Member must do the following:

- I make every practical effort, over a reasonable period of time but for no longer than it would take for the ICE to resolve a dispute, to contact the (ex)-tenant/landlord using information readily available.
- I determine dilapidations, rent arrears and any other prospective deductions from the deposit as they would normally do
- I allocate the deposit, pay the party who is present as appropriate, and transfer the amount due to the absent tenant/landlord to a suitably designated “Client Suspense (bank) Account”.

A19 A formal record of these activities should be made, supported by appropriate documentation.

A20 Following sufficient time (usually at least six years) having elapsed from last contact from the absent tenant/landlord the Member may then donate the amount allocated to them to a suitable registered charity – subject to an undertaking that any valid claim subsequently received by the Member from the beneficial or legal owner would be immediately met by the Member from its own resources.

A21 Should the absent tenant/landlord return within that period and seek to dispute the allocation of the deposit, the ICE may offer to adjudicate.

The Landlord confirms that the information provided to the Agent and the Tenant is accurate to the best of his knowledge and belief and that the Tenant has had the opportunity to examine the information.

The Tenant confirms he has been given the opportunity to examine this information. The Tenant confirms by signing this document that to the knowledge of the Tenant the information above is accurate to the best of his knowledge and belief.

Signed by the Tenant



Signed by the Landlord/Agent



The Deposit is safeguarded by the Tenancy Deposit Scheme, which is administered by:

The Dispute Service Ltd

PO Box 1255
Hemel Hempstead
Herts
HP1 9GN

phone 0845 226 7837
web www.thedisputeservice.co.uk
email deposits@tds.gb.com
fax 01442 253193

The Dispute Service Ltd also offers a service for enabling a dispute relating to the deposit to be resolved without having to go to court.

B Clauses to go into the tenancy agreement

B1 The tenancy deposit

This clause or the relevant parts of it must be included in all tenancy agreements – see below

B1.1 The Deposit of £ _____ is paid by the Tenant to the Agent

OR

by me/us _____ on behalf of the Tenant.

B1.2 The deposit is held by The Agent as Stakeholder. The Agent is a member of the Tenancy Deposit Scheme.

B2 Interest

Any interest earned will belong to the agent;

B3 Purpose of the deposit

The Deposit has been taken for the following purposes

I Any damage, or compensation for damage, to the premises its fixtures and fittings or for missing items for which the tenant may be liable, subject to an apportionment or allowance for fair wear and tear, the age and condition of each and any such item at the commencement of the tenancy, insured risks and repairs that are the responsibility of the landlord.

I The reasonable costs incurred in compensating the landlord for, or for rectifying or remedying any major breach by the tenant of the tenant's obligations under the tenancy agreement, including those relating to the cleaning of the premises, its fixtures and fittings.

I Any unpaid accounts for utilities or water charges or environmental services or other similar services or Council Tax incurred at the property/premises for which the tenant is liable.

I Any rent or other money due or payable by the tenant under the tenancy agreement of which the tenant has been made aware and which remains unpaid after the end of the tenancy.

B4 At the end of the tenancy

B4.1 The Agent/Member must tell the tenant within 10 working days* of the end of the tenancy if they propose to make any deductions from the Deposit.

B4.2 If there is no dispute the Member/Agent will keep or repay the Deposit, according to the agreed deductions and the conditions of the tenancy agreement. Payment of the Deposit or any balance of it will be made within 10 working days of the Landlord and the Tenant agreeing the allocation of the Deposit.

B4.3 The Tenant should try to inform the Member/Agent in writing if the Tenant intends to dispute any of the deductions regarded by the Landlord or the Agent as due from the

deposit within 20 working days* after the termination or earlier ending of the Tenancy and the Tenant vacating the property. The Independent Case Examiner (“ICE”) may regard failure to comply with the time limit as a breach of the rules of TDS and if the ICE is later asked to resolve any dispute may refuse to adjudicate in the matter.

B4.4 If, after 10 working days* following notification of a dispute to the Agent/Member and reasonable attempts having been made in that time to resolve any differences of opinion, there remains an unresolved dispute between the Landlord and the Tenant over the allocation of the Deposit the dispute will (subject to B5 below) be submitted to the ICE for adjudication. All parties agree to co-operate with the adjudication.

B4.5 The statutory rights of the Landlord and the Tenant to take legal action through the County Court remain unaffected by clauses above.

B5 Non-ASTs

This clause is optional, but must be included if the deposit exceeds £5000:

If the amount in dispute is over £5,000 the Landlord and the Tenant agree to submit to formal arbitration through the engagement of an arbitrator appointed by the ICE although, with the written agreement of both parties, the ICE may at his discretion accept the dispute for adjudication. The appointment of an arbitrator will incur an administration fee, to be fixed by the Board of The Dispute Service Ltd from time to time, shared equally between the Landlord and the Tenant; the liability for any subsequent costs will be dependent upon the award made by the arbitrator.

** These time scales can be changed by agreement with the tenant in individual cases or by the contract used as standard by the agent.*

C Clauses to go into the terms of business

c1 The tenancy deposit:

The Agent is a member of the Tenancy Deposit Scheme, which is administered by:

The Dispute Service Ltd

PO Box 1255

Hemel Hempstead

Herts

HP1 9GN

phone 0845 226 7837

web www.thedisputeservice.co.uk

email deposits@tds.gb.com

fax 01442 253193

C1.1 If we are/ the Agent is instructed by you/the Landlord to hold the Deposit, we/ the Agent shall do so under the terms of the Tenancy Deposit Scheme.

C1.2 The Agent holds tenancy deposits as Stakeholder (if not already specified with the Tenancy Agreement).

c2 At the end of the tenancy covered by the Tenancy Deposit Scheme

C2.1 If there is no dispute we/the Agent will keep any amounts agreed as deductions where expenditure has been incurred on behalf of the Landlord, or repay the whole or the balance of the Deposit according to the conditions of the Tenancy Agreement with the Landlord and the Tenant. Payment of the Deposit will be made within 10 working days of written consent from both parties.

C2.2 If, after 10 working days* following notification of a dispute to the Agent/Member and reasonable attempts having been made in that time to resolve any differences of opinion, there remains an unresolved dispute between the Landlord and the Tenant over the allocation of the Deposit it will be submitted to the ICE for adjudication (subject to C2.3 below). All parties agree to co-operate with any adjudication.

C2.3 When the amount in dispute is over £5,000 the Landlord and the Tenant will agree by signing the Tenancy Agreement to submit the dispute to formal arbitration through the engagement of an arbitrator appointed by the ICE although, with the written consent of both parties, the ICE may at his discretion accept the dispute for adjudication. The appointment of an arbitrator will incur an administration fee, to be fixed by the Board of The Dispute Service Ltd from time to time, shared equally between the Landlord and the Tenant. The liability for any subsequent costs will be dependent upon the award made by the arbitrator.

C2.4 The statutory rights of either you/the Landlord or the Tenant(s) to take legal action against the other party remain unaffected.

** These time scales can be changed by agreement with the tenant in individual cases or by the contract used as standard by the agent.*

C2.5 It is not compulsory for the parties to refer the dispute to the ICE for adjudication. The parties may, if either party chooses to do so, seek the decision of the Court. However, this process may take longer and may incur further costs. Because it is a condition of the Tenancy Agreement signed by both parties, judges may refer the dispute back to the ICE for adjudication. If the parties do agree that the dispute should be resolved by the ICE, they must accept the decision of the ICE as final and binding.

C2.6 If there is a dispute I/we must remit to The Dispute Service Ltd the full deposit, less any amounts already agreed by the parties and paid over to them. This must be done within 10 working days of being told that a dispute has been registered whether or not you or I/we want to contest it. Failure to do so will not delay the adjudication but The Dispute Service Ltd will take appropriate action to recover the deposit and discipline me/us.

C2.7 The Agent/we must co-operate with the ICE in the adjudication of the dispute and follow any recommendations concerning the method of the resolution of the dispute.

c3 Incorrect information

The Landlord warrants that all the information he has provided to the Agent is correct to the best of his knowledge and belief. In the event that the Landlord provides incorrect information to the Agent which causes the Agent to suffer loss or causes legal proceedings to be taken the landlord agrees to reimburse and compensate the Agent for all losses suffered.

c4 The following clauses can be inserted if the agent allows the landlord to hold the deposit outside TDS

C4.1 If you/the Landlord decide(s) to hold the Deposit yourself, we will transfer it to you within 5 days of receiving it. You/the Landlord must then register it with another Tenancy Deposit Protection Scheme within a further 9 days if the Tenancy is an Assured Shorthold Tenancy. If you fail to do so the Tenant can take legal action against you/the Landlord in the County Court. The Court will make an order stating that you/the Landlord must pay the Deposit back to the Tenant or lodge it with the custodial scheme which is known as the Deposit Protection Service. In addition a further order will be made requiring you/the Landlord to pay compensation to the Tenant of an amount equal to three times the Deposit. You/the Landlord will be unable to serve a Section 21 Notice on your Tenant until compliance with the above conditions and the Court will not grant you/the Landlord a possession order. We have/the Agent has no liability for any loss suffered if you/ the Landlord fail to comply.

OR

C4.2 If you/the Landlord decide(s) to hold the Deposit and the Tenancy is an Assured Shorthold Tenancy you/the Landlord must specify to us/the Agent prior to the start of the Tenancy under which other Tenancy Deposit Protection Scheme the Deposit will be covered. If the Deposit is covered by Tenancy Deposit Solutions you/the Landlord must provide proof of membership, together with a copy of the insurance policy before the Deposit can be released. If the Deposit is to be sent to the custodial scheme known as

the Deposit Protection Service (DPS) we/the Agent will forward the Deposit to the DPS and register the details of the Tenancy on your behalf OR give you a cheque for the amount of the Deposit made payable to the DPS for you to forward within nine days.



The Dispute Service Ltd, PO Box 1255, Hemel Hempstead, Herts HP1 9GN.

Tel: 0845 226 7837 Fax: 01442 253193

Email: deposits@tds.gb.com www.tds.gb.com

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