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S o l i c i t o r s

TENANCY DEPOSIT SCHEMES

From 6th April 2007 Sections 212-215 of the Housing Act 2004 come into force. These new provisions are aimed at providing consumer protection for tenants and at driving up standards in the rental market.

They essentially mean that all landlords who take a deposit from assured shorthold tenants must join a Government approved Tenancy Deposit Scheme (TDS).

It will not be possible for the parties to opt out of the provisions or side step them by calling the deposit by another name or by taking non-monetary property as a deposit.

There are two types of TDS that will be available:-

1. The Custodial Scheme

The Custodial Scheme will work by the landlord paying the deposit to a scheme administrator who will hold it in a special designated account. The interest accrued on the money will pay for the administration of the scheme and there will be no further charges. At the end of the tenancy the landlord and the tenant can apply to the scheme administrator for the deposit to be paid out in accordance with their agreement or a determination by ADR (see later) or the Courts. The deposit must then be paid out within ten days by the Administrator.

The Government has announced a contract with Computershare Investor Services Plc who will act as a scheme administrator to provide this type of TDS.

2. The Insurance Scheme

The Insurance Scheme will involve the landlord keeping the deposit but paying a premium to the scheme administrator. If there is any dispute at the end of the tenancy as to the amount to be returned to the tenant the landlord must pay the deposit to the scheme administrator who will hold it until the dispute is resolved. Once the dispute is resolved the scheme administrator must pay out the deposit money within 10 days. If the landlord failed to pay the deposit into the TDS the Scheme Administrator must still pay to the tenant the amount of the deposit owing following the agreement, settlement or court order. There are provisions to prevent tenants recovering their deposits both from the TDS and the landlord.

The Government has announced contracts with The Dispute Service Limited (primarily for landlords) and Tenancy Deposit Solutions who will both act as scheme administrators to provide this type of TDS.

Disputes

The legislation requires both schemes to offer free use of Alternative Dispute Resolution (ADR) and if the parties agree to this then they will be bound by its decision. It is

envisaged that ADR will be the primary way of resolving such disputes and that the parties will therefore be able to avoid resorting to Court action, however it is open to either party to pursue their case through the Courts rather than using ADR if they so wish.

Landlords Responsibilities

Within fourteen days of receiving the deposit landlords must provide the tenant and anyone who has paid the deposit on behalf of the tenant the following information in the prescribed form or in a form of substantially the same effect:-

- How Sections 212-215 of the Housing Act 2004 applies to their tenancy,
- Which TDS applies to their deposit,
- How the landlord has complied with the initial requirements of that TDS.

None of the TDS scheme administrators have yet published their initial requirements.

Enforcement

It is important for Landlords to be aware of their new responsibilities as there are significant consequences for non-compliance.

If the landlord fails to comply with the requirements of the legislation or with the initial requirements of a TDS then it is open to the tenant or any person who paid the deposit on the tenant's behalf to apply to the County Court for an Order.

If the Court finds that the landlord has not complied with the legislation the Court may order either that the person holding the deposit pays it into a TDS account or that they repay it to the applicant within fourteen days.

The Court must also order that the landlord pay the applicant a sum equivalent to three times the amount of the deposit within fourteen days. The Court has no discretion in this matter.

In addition to this significant monetary consequence the legislation also provides that while the deposit is not being held in accordance with a TDS or while the requirements of the legislation or initial requirements of the TDS have not been complied with no Section 21 notice seeking possession may be given.

This fact sheet is one in a series of publications designed to provide practical guidance on matters of interest to clients. Copies of all our fact sheets may be obtained free of charge on request from any of our Partners or Staff.

We believe the information contained herein to be correct as at March 2007. Whilst all possible care is taken in the compilation and presentation of this fact sheet, no responsibility for loss, occasioned by any person acting or refraining from acting as a result of the material in this fact sheet, can be accepted by the firm or the author.

The information in this Fact Sheet is not designed to be a definitive text on this issue. On the contrary, it is designed to merely serve as a guide to supplement what we can advise you on directly. If you have any particular queries, especially where the circumstances of a matter make it unusual, you should seek further advice.