

TENANT FEES ACT

FACT SHEETS

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MORE INFO

Tenant Fees Act
legislation.gov.uk/ukpga/2019/4/contents/enacted/data.htm

Permitted Payments

All payments are prohibited unless the payment is expressly permitted under the Tenant Fees Act.

PERMITTED PAYMENTS

The Tenant Fees Act prevents landlords and their agents from requiring tenants to make any payment as a condition of granting, renewing or continuing a tenancy apart from:

- Rent
- A capped refundable Tenancy Deposit
- A capped refundable Holding Deposit
- Payments in the event of a default
- Payment on variation, assignment or novation of a tenancy
- Payment on termination (surrender) of a tenancy
- Payments in respect of Council Tax
- Payments for utilities (electricity, gas or other fuel, water or sewage)
- Payments for a television licence
- Communication services (telephone other than a mobile telephone; the internet; cable television, satellite television)
- Green Deal charge

NB: The Secretary of State can amend the list of Permitted Payments but cannot remove rent from the categories of payment which are permitted.

ELIGIBILITY

The ban on tenant fees applies only in relation to tenancy agreements and licences signed on or after the 1 June 2019.

For existing tenancies, see Tenant Fees Act fact sheet 4/8 'Transitional Provision'.

RELEVANT PERSON

The Act refers to a tenant or a 'relevant person' which includes a prospective, current or a former tenant or licensee.

NB: A tenant or relevant person also includes a guarantor or anybody acting on behalf of the tenant.

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Rent

A tenant's regular payment to a landlord for the use of the property under a tenancy is a Permitted Payment.

NB: If the amount of rent payable at the start of the tenancy is more than the amount of rent payable at any later period during the tenancy, the additional amount is a Prohibited Payment.

Increases or reductions of rent are allowed where it is set out in the tenancy agreement or by agreement between the landlord and tenant after the tenancy has started.

Tenancy Deposit

A Tenancy Deposit is money held by the landlord (or agent acting on the landlord's behalf) as security during the period of the tenancy and reserved for any damages or defaults by the tenant.

Tenancy Deposits are capped at five weeks' rent where the annual rent in respect of the tenancy immediately after its grant, renewal or continuance is less than £50,000 a year and six-weeks' rent where the annual rent in respect of the tenancy immediately after its grant, renewal or continuance is £50,000 or more a year.

NB: Taking more than what is allowed in either case would mean that the amount in excess is a Prohibited Payment.

Five weeks' rent means five times one week's rent and six weeks' rent means six times one week's rent.

NB: A tenant can use a Tenancy Deposit Replacement Product providing the tenant also has the choice of a five- or six-week product.

See fact sheet 'Deposit Free Renting Schemes' for more information.

Holding Deposit

A Holding Deposit is a payment made by a tenant to a landlord (or to an agent acting on the landlord's behalf) to reserve that property.

NB: If the amount of Holding Deposit exceeds one week's rent, the amount of the excess is a Prohibited Payment.

One week's rent means the amount of annual rent payable in respect of the tenancy immediately after its grant, renewal or continuance divided by fifty-two.

See Tenant Fees Act fact sheet 3/8 'Holding Deposits'.

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Payments in the event of a default

Landlords and letting agents may require a tenant to make a payment in the event of a relevant default.

NB: A relevant default means:

1. **The loss of a key to, or other security device giving access to, the property to which the tenancy relates.**
2. **Failure to make a payment of rent in full only before the end of 14 calendar days beginning with date the rent is due as written in the tenancy agreement.**

See Tenant Fees Act fact sheet 2/8 'Default Fees'.

Payment on variation, assignment or novation of a tenancy

When a tenant has requested it, landlords and letting agents can charge to vary, assign or replace a tenancy.

The payment cannot exceed £50 (including VAT) or the reasonable costs of the person to whom the payment is to be made in respect of the variation, assignment or novation of a tenancy. Any amount in excess is a Prohibited Payment.

NB: Agents should provide evidence by receipts or invoices that demonstrate anything in excess of £50.

Payment on termination of a tenancy

Landlords and letting agents can require a tenant to make a payment for an early termination (surrender) of the tenancy agreement at the tenant's request.

NB: The payment cannot exceed the loss suffered by the landlord or reasonable costs incurred by the letting agent.

Payments in respect of Council Tax

A payment to a billing authority in respect of Council Tax is a Permitted Payment and letting agents and landlords may require tenants to pay the Council Tax on the property they rent.

Payments for utilities

A payment for or in connection with the provision of a utility is a Permitted Payment if the tenancy agreement requires the payment to be made.

NB: In the Tenant Fees Act, utility, means electricity, gas or other fuel, water or sewage.

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Green Deal

A payment towards Energy Efficiency improvement under a Green Deal charge (as set out in Section 1 of the Energy Act 2011) or any subsequent energy efficiency scheme is a Permitted Payment if the tenancy agreement requires the payment to be made.

NB: Prospective tenants must also be made aware of any obligation to pay a Green Deal charge (or any subsequent energy efficiency scheme), so they can make an informed decision.

See fact sheets 'Tenant's Energy Efficiency Improvements' and 'Minimum Energy Efficiency Standards' for more information.

Payments for a television licence

A payment to the British Broadcasting Corporation (BBC) in respect of a television licence is a Permitted Payment if the tenancy agreement requires the payment to be made.

Communication services

Landlords and letting agents are permitted to charge a payment for or in connection with providing a communication service if the tenancy agreement requires the payment to be made.

In the Tenant Fees Act, communication service, means enabling any of the following to be used: a telephone other than a mobile telephone; the internet; cable television, satellite television.

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Default Fees

PAYMENTS IN THE EVENT OF A DEFAULT

The only circumstances under which a landlord or letting agent can charge a default fee is if the tenant loses their key or other security device giving access to the property or if they fail to pay their rent on time.

NB: Landlords and letting agents cannot each make a separate charge in relation to the same default.

WHAT DOES THIS MEAN?

Loss of a key or other security device

Landlords and letting agents can charge a tenant a fee to cover the cost of replacing the lost key or security device.

Landlords and letting agents can only recover the reasonable costs that they have incurred as a result of having to replace the key or security device.

NB: The amount of any payment which exceeds the reasonable costs to the landlord or agent in respect of the default will be a Prohibited Payment.

If a tenant considers the charge is unreasonable based on the evidence provided, they can object to paying the fee or challenge the fee through the local authority, Trading Standards or First-tier Tribunal.

Late payment of rent

A late rent payment cannot be charged unless the rent has been outstanding for 14 calendar days or more since the full rent was due, as set out in the tenancy agreement, and has still not been paid.

NB: Landlords and letting agents can levy the late payment on day 14 but charge from day one.

Landlords or letting agents can only charge 3% above Bank of England base rate in interest on the late payment of rent for each day that the payment is outstanding.

NB: The base rate is the rate that the Bank of England charges to borrow money. Each month the Bank of England decides whether to change it based on economic factors. Visit the Bank of England website for more information: bankofengland.co.uk.

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Calculating late payment of rent

The Bank of England base rate is currently at 0.75%.

Calculation

Arrears x 0.0375 = Annual arrears landlords and agents can charge

Annual arrears ÷ 365 = Daily interest

Daily interest x Number of days rent outstanding = Interest due

Example - £500 rent arrears and 26 days outstanding

$500 \times 0.0375 = \text{£}18.75$

$18.75 \div 365 = \text{£}0.051$

$5.1p \times 26 = \text{£}1.34$

WHAT YOU NEED TO DO

The tenancy agreement must specify the circumstances in which payments in the event of a default may be required.

NB: If landlords and letting agent do not do this, the tenant is not liable to pay the charge.

PRACTICAL ISSUES

The amount charged must be supported by evidence in writing and provided to the person on whom the requirement to make the payment is imposed.

NB: When landlords and letting agents charge tenants for the cost of replacing the key, they must provide written evidence in the form of receipts or invoices to demonstrate that the costs are reasonable.

Letting agents should clearly breakdown any charges and the interest payable on their fees schedule in branch and on their website so that the tenant can understand these.

ELIGIBILITY

The provisions for payments in the event of a default under the Tenant Fees Act apply only in relation to tenancy agreements and licences signed on or after the 1 June 2019.

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ELIGIBILITY

A payment of damages for the breach of a tenancy agreement or an agreement between a letting agent and a relevant person is a permitted payment.

Under the Landlord and Tenant Act 1985, it is the landlord's legal responsibility to immediately address hazards which present a risk to occupiers and they must comply with their repairing obligations; irrespective of whether or not the damage was caused by the tenant's own negligence. A landlord is always responsible for repairs to:

- the property's structure and exterior
- basins, sinks, baths and other sanitary fittings including pipes and drains
- heating and hot water
- gas appliances, pipes, flues and ventilation
- electrical wiring
- any damage they cause by attempting repairs Landlords are also responsible for repairing and replacing any appliances that they supply, such as white goods or furniture

NB: If a tenant has caused damage to any of the above you may be entitled to recover damages through the courts or, provided the deposit clause in the tenancy agreement allows, via a deduction from the deposit. Landlords and agents will NOT be able to recover damages via a fee or clause inserted into the tenancy agreement. Such a clause would be classed as a Prohibited Payment.

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Holding Deposits

A landlord or agent can take a Holding Deposit from a tenant to reserve a property whilst reference checks and preparation for a tenancy agreement are undertaken.

Landlords and agents cannot ask a tenant for more than one week's rent as a Holding Deposit.

NB: If the amount of Holding Deposit exceeds one week's rent, the amount of the excess is a Prohibited Payment.

ELIGIBILITY

The treatment of Holding Deposits under the Tenant Fees Act only applies in relation to tenancy agreements and licences signed on or after the **1 June 2019**.

WHAT DOES THIS MEAN?

One week's rent means the amount of annual rent payable in respect of the tenancy immediately after its grant, renewal or continuance divided by fifty-two.

NB: The one-week cap is based on the total agreed rent for the property e.g. if there are three tenants paying a total weekly rent for the property of £200, landlords and agents cannot charge each tenant a £200 holding deposit.

WHAT YOU NEED TO DO

A Holding Deposit can be held for up to 15 calendar days; what is known as the Deadline for Agreement.

From taking the Holding Deposit, the tenancy agreement must be entered into (signed by both parties and dated) before the Deadline for Agreement.

NB: The landlord and letting agent can agree with the tenant in writing that a different day (for example an extension) is to be the Deadline for Agreement.

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REPAYING THE HOLDING DEPOSIT

The landlord or letting agent who received the Holding Deposit must repay it if:

- The landlord and tenant enter into a tenancy agreement.
- The landlord decides before the deadline for agreement not to enter into a tenancy agreement.
- The landlord and the tenant fail to enter into a tenancy agreement before the Deadline for Agreement.

If one of the above applies, the Holding Deposit must be refunded within seven calendar days of the date of that decision or the Deadline for Agreement.

NB: Holding Deposits must be repaid if the landlord or agent does not give the person who paid the deposit written notice (within 7 calendar days) explaining why they intend not to repay it.

With a tenant's written consent landlords and letting agents may 'repay' the Holding Deposit by allowing the tenant to deduct the equivalent sum from the first payment of rent or the Tenancy Deposit.

NB: If the Holding Deposit is applied to the Tenancy Deposit, under the deposit protection requirements, that money is classed as received on the date the tenancy agreement was signed.

RETAINING THE HOLDING DEPOSIT

The landlord or letting agent who received the Holding Deposit can keep it if:

- The tenant fails a Right to Rent check regardless of when the deposit was accepted.
- The tenant provides false or misleading information to the landlord or letting agent, which the landlord is reasonably entitled to consider in deciding whether to grant the tenancy because this materially affects their suitability to rent the property.
- The tenant notifies the landlord or letting agent before the deadline for agreement that they have decided not to enter into a tenancy agreement.
- The tenant fails to take all reasonable steps to enter into a tenancy agreement.

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NB: False or misleading information is information provided by the tenant that is not factually correct and seriously affected the landlord's decision to let the property. Merely failing referencing would NOT be classed as providing false or misleading information. For example, letting agents must be able to evidence that the tenant's income declaration was significantly too high, or the tenant provided information which is clearly inaccurate about their income or employment, or the tenant failed to disclose (when directly asked) any relevant information which later comes to the agent's attention, such as valid County Court Judgements.

See fact sheet 'Right to Rent Immigration Checks for landlords, agents and sub-lettings' for more information.

RECOVERY OF AMOUNT PAID

Where consent was not given to deduct the equivalent sum from the first payment of rent or the Tenancy Deposit, tenants can recover an unreturned Holding Deposit or Prohibited Payment through the First-tier Tribunal.

No Section 21 notice may be given in relation to the tenancy where all or part of the Prohibited Payment or Holding Deposit has not been repaid.

NB: A Section 21 Notice means a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 (recovery of possession on expiry or termination of an Assured Shorthold Tenancy).

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Transitional Provision

ELIGIBILITY

The ban on tenant fees applies only in relation to tenancy agreements and licences signed on or after the 1 June 2019.

NB: For existing tenancies the ban will apply to renewals (where the tenancy agreement becomes a new Fixed Term agreement) granted from 1 June 2019.

WHAT DOES THIS MEAN?

The ban applies to:

- Assured Shorthold Tenancy (AST).
- Licence to occupy.
- Student lettings provided by a specified educational institution (tenancy which meets the conditions set out in paragraph 8 of Schedule 1 to the Housing Act 1988).

NB: The ban does not apply to long lease, any non-Housing Act tenancies, a tenancy of social housing, company lets, or a licence to occupy holiday accommodation.

TRANSITION PERIOD

For existing tenancies (those signed before 1 June 2019) there is a transitional 12-month period ending 31 May 2020. During this time, agents can continue to charge fees written into existing tenancy agreements.

NB: Under the rules if an existing tenancy drops onto a Statutory Periodic or Contractual Periodic this is classed as an extension of the existing tenancy agreement.

If an existing tenancy is renewed this is classed as a new tenancy agreement and under the ban agents will not be able to charge fees.

NB: If an agent took the Check Out fee upfront, this will now become a Prohibited Payment and must be refunded to the tenant within 7 calendar days of signing the tenancy renewal.

After 12 months (31 May 2020) from when the Tenant Fees Act comes into force all Prohibited Payments will be unlawful regardless of when the tenancy started.

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If, after 31 May 2020 the landlord or letting agent accepts a Prohibited Payment, they must return it within 28 days beginning with the day it was accepted.

NB: Landlords and agents must be proactive in returning this money as there is no requirement on the tenant to request this money.

TENANCY DEPOSIT

The new rules state that Tenancy Deposits are capped at five weeks' rent where the annual rent in respect of the tenancy immediately after its grant, renewal or continuance is less than £50,000 a year and six-weeks' rent where the annual rent in respect of the tenancy immediately after its grant, renewal or continuance is £50,000 or more a year.

NB: Taking more than what is allowed in either case would mean that the amount in excess is a Prohibited Payment.

Agents do not need to refund existing Tenancy Deposits held that are over five or six weeks rent and can hold this for the duration of the existing tenancy.

Where a tenant renews their tenancy by signing a new Fixed Term agreement on or after 1 June 2019, any amount of their existing deposit which exceeds the applicable five- or six-week limit must be refunded.

NB: Agents need to refund the difference in deposit upon renewal of the contract.

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Prohibited Payments and Penalties

THE CHANGES

The Tenant Fees Act prevents landlords and letting agents from (as a condition of, or of making arrangements for, the granting, renewal or continuance of a tenancy):

1. requiring tenants and licensees in the private rented sector to pay fees or other charges on top of the rent, except for a capped refundable Tenancy Deposit, a capped refundable Holding Deposit and tenant Default Fees;
2. requiring tenants and licensees in the private rented sector to secure and pay for services or insurance from any third party or to make a loan.

NB: Third party includes referencing agencies, inventory companies or insurance companies.

A landlord and their agent must not require (except for utilities and communication services) a tenant to secure and pay for services from any third party in connection with a tenancy (e.g. a reference provider, an inventory service or an insurer).

[See Tenant Fees Act fact sheet 1/8 'Permitted Payments'.](#)

PROHIBITED PAYMENTS

All charges not specifically listed as a Permitted Payment will be prohibited under the tenant fees ban. Examples include:

- Application fees
- Tenancy set up costs
- Referencing of tenants and referencing for future landlords
- Contract negotiation
- Inventory

Landlords and agents cannot charge a higher rent in any one period compared to any other period in the tenancy.

NB: Landlords and agents cannot cover costs by charging a higher rent for the first month, or any other month.

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ELIGIBILITY

The ban on fees applies only in relation to tenancy agreements and licenses signed on or after 1 June 2019. The Act applies in relation to housing in **England** only.

NB: The Act refers to a tenant or a 'relevant person' which includes a prospective, current or a former tenant or licensee. A tenant or relevant person also includes a guarantor or anybody acting on behalf of the tenant.

ENFORCEMENT

The Act places a duty on Trading Standards offices to enforce the ban on fees but District Councils that are not Trading Standards authorities will have power to enforce if they choose to do so.

NB: Each enforcement authority is responsible for enforcement within their areas. Where a breach of the Tenant Fees Act occurs in housing located in more than one area, the breach would be taken to have occurred in each of those areas.

RECOVERY OF AMOUNT PAID

Tenants can recover Prohibited Payments or unreturned Holding Deposit through the First-tier Tribunal.

A tenant or relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of any Prohibited Payment or Holding Deposit which has not been repaid to the relevant person.

The First-tier Tribunal may order the landlord or agent to repay any amounts due and such an order is enforceable by the relevant person as if it were an order of the County Court.

NB: The period for repayment must be at least 7 calendar days but not more than 14 calendar days beginning with the day after that on which the order is made.

An enforcement authority may help a tenant or relevant person to make an application to recover an amount paid or help recover all or part of an amount which the First-tier Tribunal orders to be paid to the relevant person.

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RESTRICTION ON TERMINATING TENANCY

No Section 21 notice may be issued in relation to the tenancy so long as all or part of a Prohibited Payment or Holding Deposit has not been repaid to the relevant person.

NB: A Section 21 notice means a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 (recovery of possession on expiry or termination of assured shorthold tenancy).

As an alternative to repayment, the relevant person can consent to either:

- the payment or Holding Deposit being applied towards a payment of rent under the tenancy.
- the payment or Holding Deposit being applied towards the Tenancy Deposit in respect of the tenancy,
- some of the payment or Holding Deposit be applied to the rent and the rest be applied towards a Tenancy Deposit.

NB: The relevant person must consent in writing for that to be allowed otherwise the money will need to be repaid in order to serve a Section 21 notice.

With the consent of the relevant person, it is possible to repay part of a Prohibited Payment directly and then another part towards rent, Tenancy Deposit or a combination of both.

NB: Once the whole Prohibited Payment has been repaid, a Section 21 notice can then be served.

INTEREST ON PAYMENTS

Where an enforcement authority requires a landlord or letting agent to make a payment to a tenant, they may require the landlord or letting agent to pay interest on that amount.

Section 17 of the Judgments Act 1838 provides that where the High Court enters judgment for a sum of money, interest on the judgment debt accrues at the rate of 8% per year.

NB: If an enforcement authority requires a landlord or letting agent to pay interest on an amount it carries interest from the day specified until the day on which the amount is paid.

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FINANCIAL PENALTIES

A breach of the fees ban will be a civil offence with a financial penalty of up to £5,000.

NB: Each breach of the ban will result in a separate fine.

Successive breaches of the ban within five years (where a financial penalty has been issued or conviction secured in respect of the earlier breach) would be a criminal offence with an unlimited fine.

The Enforcement Authority may impose a financial penalty of up to £30,000 as an alternative to criminal prosecution.

NB: Any financial penalty is on top of a requirement for landlords and letting agents to repay any Prohibited Payments or Holding Deposit received.

An enforcement authority may not impose a financial penalty on a letting agent or landlord where the Holding Deposit was not returned because the tenant failed a Right to Rent check or under the Immigration Act 2016 the Home Secretary served a notice on a landlord or letting agent telling them that a person or persons occupying their property have been disqualified from renting in the UK as a result of their immigration status.

See Tenant Fees Act fact sheet 3/8 'Holding Deposits'.

Enforcing authorities can also apply for a Banning Order under the Housing and Planning Act 2016. If the Court makes a Banning Order, the local authority must make an entry in the Database of Rogue Landlords and Letting Agents.

NB: An entry to the Database of Rogue Landlords and Letting Agents may also be made if a person is convicted of two financial penalties in a 12-month period.

See fact sheets 'Housing and Planning Act 2016 Banning Orders' and 'Housing and Planning Act 2016 Database of Rogue Landlords and Letting Agents' for more information.

Where an offence is committed by a body corporate (legal entity or business) and is proved to have been committed with the consent or involvement of an officer of a body corporate, the officer as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.

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NOTICE OF INTENT

Before imposing a financial penalty, the local authority must give the landlord or agent notice of their intention to do so. This notice must be given within a period of six months, beginning with the first day on which the authority has sufficient evidence of the breach of the ban or if the breach is a continuing breach, while the breach is continuing or within six months of the last day on which the breach occurred.

NB: The notice must set out: The date on which the notice is served; Amount of the penalty; Reasons for imposing it; Information about the right to make representations.

REPRESENTATIONS

A person who is given a Notice of Intent has 28 calendar days (beginning with the day after the day on which the notice of intent was served) to make written representations to the local authority.

FINAL NOTICE

After the end of the period for representations, the local authority must decide whether to impose a financial penalty and if so, the amount of the penalty.

NB: If the local authority decides to impose a penalty, it must give the person a Final Notice imposing the penalty. The Final Notice must require payment of the penalty within 28 calendar days beginning with the day after that on which the notice is served.

The Final Notice must set out:

1. The date on which the Final Notice is served
2. The amount of financial penalty
3. The reasons for imposing the penalty
4. Information about how to pay the penalty
5. The period for payment of the penalty
6. Information about rights of appeal
7. Consequences of failing to comply with the notice

WITHDRAWAL OR AMENDMENT OF NOTICE

A local authority may at any time withdraw a Notice of Intent or a Final Notice. The authority may also reduce the amount specified in a Notice of Intent or a Final Notice or amend a notice to remove a requirement to repay a Prohibited Payment or Holding Deposit.

NB: The person who has received the notice must be notified in writing of any such withdrawal, reduction or amendment.

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APPEALS

There is a right of appeal to the First-tier Tribunal against a Final Notice. If a landlord or agent makes an appeal, the Final Notice is suspended until the appeal is determined or withdrawn.

On appeal, the First-tier Tribunal may confirm, vary or cancel the Final Notice.

NB: The maximum penalty that the First-tier Tribunal can impose is the same as the maximum amount that the local authority could have imposed.

If a landlord or agent fails to pay all or part of a financial penalty, the local authority may recover the penalty or part of it on the order of the County Court, as if it were payable under an order of the Court.

PROCEEDS OF FINANCIAL PENALTIES

Local authorities will be able to retain the money raised through financial penalties with this money reserved for future local housing enforcement.

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legislation.gov.uk/ukpga/2019/4/contents/enacted/data.htm

National Trading Standards Estate and Letting Agency Team
bristol.gov.uk/web/ntselat

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Lead Enforcement Authority

CONTEXT

The Tenant Fees Act gives authority to the Secretary of State to assign a Trading Standards office in England to be the Lead Enforcement Authority for the tenant fees ban and other relevant letting agency legislation.

Under the Act, 'relevant letting agency legislation' means:

- Tenant Fees Act
- Consumer Rights Act (fee transparency rules)
- Enterprise and Regulatory Reform Act 2013 (membership of a redress scheme)
- Housing and Planning Act 2016 (membership of a Client Money Protection scheme)

ELIGIBILITY

The Lead Enforcement Authority will oversee the operation of the relevant letting agency legislation in **England** only.

On 17 April 2019 it was announced that Bristol City Council is the Lead Enforcement Authority for the purposes of the Tenant Fees Act 2019.

WHAT DOES THIS MEAN?

It is the responsibility of the Lead Enforcement Authority to issue guidance to enforcement authorities about how they carry out their functions under the Tenant Fees Act.

The Lead Enforcement Authority must also provide information and advice to enforcement authorities for the purpose of enabling that authority to determine where there has been a breach of, or an offence under, the relevant letting agency legislation.

NB: In order to determine where there has been a breach of, or an offence under, the relevant letting agency legislation, the Lead Enforcement Authority may, amongst other things, disclose information to an enforcement authority.

WHAT DO YOU NEED TO KNOW?

The Secretary of State may direct the Lead Enforcement Authority to issue guidance about the operation of the relevant letting agency legislation to enforcement authorities in England and may give directions as to the content of that guidance.

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NB: The guidance can relate to all or some enforcement authorities and the Lead Enforcement Authority may make different provision for different kinds of authority.

If the Lead Enforcement Authority is not the Secretary of State, it is the responsibility of the Lead Enforcement Authority to keep under review and advise the Secretary of State about:

- Social and commercial developments in England and elsewhere relating to tenancies.
- Letting agency work and related activities.
- Operation of the relevant letting agency legislation.

ENFORCEMENT

Lead Enforcement Authority

The Lead Enforcement Authority may take steps to enforce the relevant letting agency legislation where it considers it is necessary or practical to do so.

The Lead Enforcement Authority may exercise any powers that an enforcement authority may exercise for the purpose of the enforcement of the legislation.

Where the Lead Enforcement Authority proposes to take enforcement action in respect of a breach of the relevant letting agency legislation, it must notify the enforcement authority in relation to the legislation in the area where the breach has occurred.

NB: If the Lead Enforcement Authority notifies an enforcement authority but does not take any action, the Lead Enforcement Authority must still notify the relevant authority of this.

Where an enforcement authority receives a notification, the authority won't have to take enforcement action in relation to the breach.

NB: The Lead Enforcement Authority may require the enforcement authority to assist the Lead Enforcement Authority in taking the enforcement action.

Enforcement Authority

Local authorities with enforcement responsibilities for letting agent legislation in England must report to the Lead Enforcement Authority when requested to do so.

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The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019
legislation.gov.uk/uksi/2019/386/pdfs/uksi_20190386_en.pdf

Propertymark fee templates
arla.co.uk/members/fee-templates

Amendments to the Consumer Rights Act 2015

CONTEXT

The Tenant Fees Act amends Section 83 of the Consumer Rights Act 2015 (duty of letting agents to publicise fees) to require letting agents to be members of a government-approved Client Money Protection Scheme and must display fees on all third-party websites.

CONSUMER RIGHTS ACT 2015

Under the Consumer Rights Act 2015 letting agents must display and publicise their fees to consumers, whether they are a member of a Client Money Protection scheme and which redress scheme they have joined.

NB: Agents must display a list of their fees at each of their premises where they deal face to face with customers and publish a list of their fees on their website.

THE CHANGES

Third-party websites

Where an agent advertises a property on a third-party website, the agent must ensure that a list of the agent's fees is published on the third-party website, or there is a link on that website to a part of the agent's website where a list of those fees is published.

NB: A third-party website means a website other than the agent's own website. Letting agents need to consider the implications of advertising property on Social Media (Facebook, LinkedIn and Twitter) and any limits on the number of characters allowed.

Letting agents must continue to display fees as set out under the Consumer Rights Act 2015 prominently in an office and on their own website.

Client Money Protection

The Consumer Rights Act 2015 is amended to say that agents must be a member of a government-approved Client Money Protection scheme and must provide the name of the scheme when displaying and publishing fees to consumers.

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CLIENT MONEY PROTECTION SCHEMES

The Housing and Planning Act 2016 is amended to allow the Secretary of State to:

- Approve specific Client Money Protection schemes
- Set out the conditions which must be complied with by the schemes
- Outline any amendments to the schemes
- Withdraw approval of any of the designated schemes

Under the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 from 1 April 2019, all property agents in England sector holding client money must belong to a government-approved Client Money Protection scheme.

NB: Client Money Protection schemes are only permitted to offer a grace period until 1 April 2020 to allow agents to open a client money account to hold client money.

See fact sheet 'Client Money Protection for letting and managing agents' for more information.

ELIGIBILITY

The rules apply to agents carrying out letting agency work in **England**.

NB: Under the Tenant Fees Act letting agency work means things done by a person in the course of a business in response to instructions received from a landlord who is seeking to find another person to whom to let housing, or a tenant who is seeking to find housing to rent.

ENFORCEMENT

If a letting agent breaches their responsibility to publish a list of fees on a third-party website that breach is taken to have occurred in each area (of a Trading Standards office in England) in which a property to which the fees relate is located.

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PENALTIES

More than one penalty may be imposed on the same letting agent by Trading Standards in relation to breaches in England.

NB: Local Trading Standards officers can fine letting agents in breach of the rules up to £5,000.

Before a fine is levied, Trading Standards must issue a Notice of Intent. This must be given within six months of Trading Standards having evidence of a breach.

NB: Within 28 calendar days of receiving that notice, the person on whom it is served can make representations.

Once the 28-day period has expired, Trading Standards can issue a Final Notice giving details of the level of fine and how it is to be paid. The notice can be withdrawn at any time.

Once a Final Notice has been issued, the person on whom it is served can appeal. Should the Final Notice not be appealed, or be upheld on appeal, and the fine not be paid, Trading Standards can ask the County Court for an order to recover that fine.

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Tenant Fees Act
legislation.gov.uk/ukpga/2019/4/contents/enacted/data.htm

Housing Act 2004
www.legislation.gov.uk/ukpga/2004/34/contents

Tenancy Deposit Scheme
tenancydepositscheme.com

TENANT FEES BAN

The ban on tenant fees affects all Assured Shorthold Tenancies and Licences signed on or after 1 June 2019.

For existing tenancies signed before 1 June 2019, there is a transitional 12-month period ending 31 May 2020. During this time, agents and landlords can continue to charge fees written into existing tenancy agreements.

If an existing tenancy drops onto a Statutory Periodic or Contractual Periodic this is classed as an extension of the existing tenancy agreement and agents and landlords will be able to charge for any fees written into the existing contract.

If an existing tenancy is renewed (new Fixed Term) this is classed as a new tenancy agreement under the Tenant Fees Act and agents and landlords are unable to charge fees.

TENANCY DEPOSIT

Under the Tenant Fees Act for all new tenancies signed on or after 1 June 2019 Tenancy Deposits are capped at no more than five weeks' rent where the annual rent is less than £50,000, or six weeks' rent where the annual rent exceeds £50,000.

WHAT DOES THIS MEAN?

The legislation does not prevent a landlord (or a letting agent acting on the landlord's behalf) from taking tenancy deposits.

NB: A Tenancy Deposit is money held by the landlord/agent as security during the period of the tenancy and reserved for any damages or defaults on the part of the tenant.

Deposits for Assured Shorthold Tenancies still need to be protected in a government authorised Deposit Protection Scheme. Deposits for other types of tenancy do not have to be protected.

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Housing Act 2004
www.legislation.gov.uk/ukpga/2004/34/contents

Tenancy Deposit Scheme
tenancydepositscheme.com

PROTECTING DEPOSITS

Under the Housing Act 2004 if a property is let on an Assured Shorthold Tenancy which started on or after 6 April 2007 the landlord must put the tenant's deposit in one of the three government-authorised Tenancy Deposit Protection (TDP) schemes:

- Deposit Protection Service (DPS): depositprotection.com
- MyDeposits: mydeposits.co.uk
- Tenancy Deposit Scheme (TDS): tenancydepositscheme.com

A landlord or letting agent must put a tenant's deposit into the scheme within 30 days of receiving it.

The landlord must return the deposit within 10 days of agreeing with the tenant how much they will get back at the end of the tenancy.

NB: If a tenant has a dispute with their landlord, then the TDP scheme will adjudicate the dispute and allocate the amount of the deposit to be returned to the landlord and tenant based on their findings.

ELIGIBILITY

The cap on Tenancy Deposits does not apply retrospectively and only applies to tenancy agreements for property in England which are entered into (signed) on or after 1 June 2019.

EXISTING TENANCIES

There is no requirement to refund deposit amounts exceeding applicable five- or six-week limit, where a Fixed Term agreement entered into before 1 June 2019 becomes a Statutory Periodic Tenancy.

NB: Where a tenant renews their tenancy by signing a new Fixed Term agreement on or after 1 June 2019, any amount of their existing deposit which exceeds the applicable five- or six-week limit must be refunded.

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Housing Act 2004
www.legislation.gov.uk/ukpga/2004/34/contents

Tenancy Deposit Scheme
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WHAT DO AGENTS NEED TO DO?

TDS Insured scheme

Agents and landlords who are members of the Tenancy Deposit Scheme (TDS) will be able to use the member dashboard to:

- Select the 'Renewed' function and enter a new fixed term tenancy end date
- Update the deposit protection at the point of paying the excess back to the tenant, to show the reduced deposit amount that will be protected with the scheme
- Pay a new deposit protection charge (independent landlord members only)
- The new deposit protection certificate produced by TDS will show the new protected amount

There is no need to re-serve the Prescribed Information.

NB: This is the procedure for TDS and other schemes polices may vary.

TDS Custodial scheme

Agents and landlords who are members of the Tenancy Deposit Scheme (TDS) will be able to use the 'Change deposit amount' function' on the TDS member dashboard to indicate the amount of any deposit to be returned to the tenant(s).

NB: Where multiple tenants are involved, the lead tenant will confirm the amount of the deposit refund to be paid to each tenant and provide their bank details.

The new deposit protection certificate produced by TDS will show the new protected amount. There is no need to re-serve Prescribed Information.

NB: This is the procedure for TDS and other schemes polices may vary.

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Damages

TENANCY DEPOSIT

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DAMAGES

The Tenant Fees Act will not affect a landlord's entitlement to recover damages for breach of the tenancy agreement. Damages can still be claimed by way of a deduction from the Tenancy Deposit.

CLAIMS

The Tenancy Deposit Scheme (TDS) will continue to consider claims for deposit deductions based on the loss suffered by the landlord or an agent (working on the landlord's behalf) as a result of the tenant's failure to comply with the tenancy agreement.

NB: TDS will not insist on proof that a cost claimed by the agent or landlord has actually been paid by them. Estimates will be sufficient, but agents or landlord will still need to demonstrate the reasonableness of any amount claimed, as they do now.

This is the procedure for TDS and other schemes policies may vary

DEPOSIT DEDUCTIONS

Tenancy set-up and renewal fees: Agents or landlords cannot charge a tenant for these. If the tenancy agreement was entered into before 1 June 2019 and the tenant agreed in their contract to pay certain renewal fees, the fees can be charged for a new Fixed Term agreement entered into (or a Statutory Periodic Tenancy arising) on or before 31 May 2020.

Check-out fees: Agents or landlords cannot charge a tenant for these. If the tenancy agreement was entered into before 1 June 2019 (or a Statutory Periodic tenancy arose before that date) and the tenant agreed in their contract to pay exit fees, such as check-out or inventory fees, the fees are payable up to 31 May 2020.

Damages for breaches of the tenancy agreement: The legislation will not affect a landlord's entitlement to recover damages for breach of the tenancy agreement by way of a deduction from the tenancy deposit or otherwise.

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NB: TDS will check that the tenant had an obligation, that the tenant failed to meet the obligation, and that the landlord or agent suffered a loss as a result. The amount claimed must be reasonable, and the landlord or agent must do what they reasonably can to keep that loss to a minimum.

Contractor call outs: Where a contractor has been called out due to tenant fault, such as a plumber having to fix a drain blocked with cooking oil, the tenant cannot be charged. Furthermore, the tenant cannot be directly charged for not allowing a contractor access to the property. This means that in the immediate, the landlord will have to pay.

NB: Landlords and letting agents can include a clause in the tenancy agreement for the cost of contractor call-outs as the result of a tenant's fault, and for missed contractual appointments, to be deducted from the security deposit. If a clause covering these issues isn't present, the costs cannot be taken from the deposit.

Time spent carrying out work: Landlords or agents will not be able to charge for their time spent completing work as a result of a tenant's breach of the tenancy agreement.

Charges for the late payment of rent: An agent or landlord can claim interest on late payments of rent, provided the rent is more than 14 calendar days overdue.

Landlords and agents may be able to claim, as damages, charges they incur as a result of any late payment, but TDS will need to see proof that the charges have been incurred, and the charges themselves will need to be reasonable. The following are examples of charges that are likely to be considered unreasonable:

- Any charge that exceeds the loss suffered by the landlord because of the late payment.
- £25 fixed penalty charge for any late payment of rent which is 7 days or more overdue.
- Interest must be paid at 8% above the bank's interest rate on any payments overdue by 7 days or more.
- A charge of £3.50 per day plus VAT shall be levied and fall due each day the account is in arrears. This is calculated from the next working day after the date that the funds were to be received until all arrears have been settled.
- Should it be necessary to send a letter with regards to late payment of rent, these are chargeable to the tenant at a rate of £35 plus VAT.
- Personal visits are charged at £75 plus VAT.
- Any rent paid other than by standing order will incur a charge of £50 plus VAT per payment.

Interest for the late payment of rent: An agent or landlord (but not both) can charge interest on rent if it is more than 14 calendar days overdue.

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NB: Interest must not be charged at a rate of higher than 3% above the Bank of England base rate and must be calculated on a daily basis from the date when payment should have been made until the date payment is made.

Changes to a tenancy: A change to a tenancy is any reasonable request to alter a tenancy agreement, after the tenancy agreement has become binding. Examples of commonly-requested changes are:

- To be able to keep a pet at the property
- To change one of the tenants on a joint tenancy
- To be given permission to decorate or alter the property

A charge can be made for any other amendment which alters the tenant's obligations in the agreement.

NB: A reasonable charge here is up to £50 (inc. VAT). A higher claim can be made but the agent or landlord must show why it was reasonable to incur a greater cost.

Landlords and agents must not charge fees for variations to their standard-form tenancy agreement that a prospective tenant requests before the tenancy agreement has become binding. If a prospective tenant wants a tenancy agreement to be amended before it has become binding (for example to allow pets or smoking) the landlord or agent must not charge a fee but may charge a higher rent to reflect the additional wear and tear.

Early termination fees: Claims for deposit deductions can still be made in connection with the early termination of the tenancy if a tenant has requested this (other than when exercising a break clause in accordance with the terms of the tenancy agreement).

For example, a landlord or agent may agree to early termination on the condition that replacement tenants are found. In this circumstance, the landlord or agent can claim from the deposit the costs associated with re-advertising the property or referencing new tenants, provided evidence is provided to confirm that the claim and its amount is reasonable.

If a suitable replacement tenant is found, the landlord or agent will only be permitted to charge rent until the new tenancy has started. Landlords are only entitled to recover rental payments that the outgoing tenant should have paid to the extent that the replacement tenant will be paying a lower amount.

NB: An agent may only charge an early termination fee that does not exceed their reasonable costs.

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Pets

TENANCY DEPOSITS

The tenant fee ban limits the value of tenancy deposits to five weeks' rent for annual rentals of under £50,000. A deposit of six weeks' rent will continue to apply where the annual rent is £50,000 or more.

PETS

Under the Tenant Fees Act, landlords and letting agents will no longer be able to take a higher security deposit for tenants with pets; the maximum five or six weeks rent for Tenancy Deposits cannot be exceeded.

NB: The Tenant Fees Act does not prevent landlords and agents from claiming damages for breach of tenancy agreement, so damage done by pets can still be claimed for. It's just that the amount of held on deposit to cover those damages is restricted to a maximum of five- or six-weeks' rent. If the deposit isn't enough to cover the damage, landlords will have to consider legal proceedings.

WHAT YOU NEED TO DO

Rent

Where a prospective tenant already has a pet before they enter the tenancy agreement, letting agents and landlords should set the rent for the tenancy at a level for the wear and tear that the pet will cause.

NB: Agents will be able to charge a higher monthly rent for tenants with pets, so long as they make the prospective tenants aware of the additional cost at the earliest available opportunity.

Advertising

Agents can advertise a property with two different rents: One for tenants with a pet and a lower one for tenants without a pet.

NB: The lower rent reflects a relatively low level of fair wear and tear and the other at a rent that anticipates a higher level of wear and tear.

Specify

Agents and landlords should be specific about what pet(s) are allowed.

NB: All pets are not alike, and neither are the owners. If agents and landlords want to be precise, attach a picture of the animal to the tenancy agreement or variation agreement.

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WHAT DOES THIS MEAN?

Change of agreement

If a tenant enters into a “no pets” tenancy agreement and then asks the landlord to change that agreement so that pets are allowed, the landlord is entitled to charge a fee for this.

NB: The Tenant Fees Act limits the fee to vary a tenancy to £50 (inc. VAT) or their reasonable costs if higher. If agents charge more than £50 (inc. VAT) they will have to be able to prove it cost them more than £50 otherwise anything in excess will be classed as a Prohibited Payment.

The fee is to reflect the work involved in considering the tenant’s request and making any necessary changes to the tenancy. It is not a fee for covering things like cleaning and flea treatment, because that it not allowed.

NB: If a tenant asks to change the terms of their tenancy agreement, the landlord can make their consent to those changes conditional on the tenant paying a higher rent. If the tenant is not willing to pay the higher rent, the landlord could refuse permission to keep the pet.

Example: Whereas previously a landlord or agent may have charged a £150 fee for allowing a tenant to keep a pet, under the Tenant Fees Act, landlords and agents could charge a reasonable administration fee for recording the change to the terms of the tenancy (such as, £50 as allowed by the legislation).

NB: The change to the terms could be to (a) allow pets (of designated descriptions) to be kept at the property and to (b) increase the rent (for example by £100 divided between the number of months the tenancy has left to run).

During the tenancy

If the tenancy agreement says, “No Pets”, a landlord can say “I will only agree to you keeping a pet if you pay me (say) £10 a month more rent”. If the tenant does not want to pay the higher rent, the landlord doesn’t have to allow the pet.

NB: If the tenancy agreement does not prevent the tenant having a pet, the landlord cannot insist on the tenant paying a higher rent just because the tenant happens to acquire a pet during the tenancy.

It is already the case that a landlord and tenant can agree that the rent will increase during a Fixed Term tenancy.

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Fixed term agreement

The first Fixed Term tenancy agreement can include a provision to say that if the tenant wants a pet the rent will increase by a certain amount.

It should be possible to make the “trigger” for the rent increase the occurrence of an event (such as the acquisition of the puppy) rather than a calendar date.

NB: This type of term in a tenancy agreement could be challenged on the grounds of it operating as a ‘penalty’. It would depend on what the percentage increase was, and whether it applied to some pets only or to all pets. For example, why should someone who wants to keep a goldfish pay the same as someone who wants a dog?

Where the tenant gets a pet towards the end of a Fixed Term tenancy, or during a periodic tenancy: the landlord could make it a condition of giving consent that the tenant signs up for a further fixed period to make sure that the extra rent will cover any damage caused.

NB: What a landlord must not do is agree to a Fixed Term at one rent, then insist on increasing the rent during that Fixed Term without the tenant’s agreement.

With a Statutory Periodic tenancy, the position is slightly different. Within 12 months of the expiry of a Fixed Term tenancy, either party can serve notice (in the prescribed form) on the other proposing a change to the terms of the tenancy, including an adjustment of rent. The party receiving the notice has three months to refer the matter to the tribunal, and if they do not do so, the new terms take effect.

NB: In practice, few landlords and tenants follow this formal procedure—they just agree a new rent or a variation to the existing agreement.

After that first year of a Statutory Periodic tenancy, a landlord cannot normally increase the rent more than once every 12 months.

NB: If the tenant wants to vary the terms of the tenancy, the landlord can refuse to agree to the variation unless the tenant agrees to pay a higher rent.

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