

# Property Matters

Tel. 01590 677128

Sue Green Property Letting

Spring 2007

## Tenancy Deposit Protection

**P**art 6 of the Housing Act 2004 introduces a number of provisions including the ability for the government to bring in laws relating to the holding of deposits on assured shorthold tenancies. Whilst the Estate Agents Act controls the holding of client money by Estate Agents, and they don't generally hold much client money, there were no specific rules relating to the holding of tenants' deposit money, of which official estimates say there is about £870 million.

The sections in the Act, 212 to 215 and schedule 10, outline two possible types of scheme that may be introduced. The original schedule 10 has been amended to cover situations that had not been considered when the original was drafted.

The new laws are due to become effective from 6th April 2007 and essentially any deposit taken from an assured shorthold tenant after this date will be covered by the new rules. Also covered will be a deposit physically collected before that date but where the tenancy is renewed after that date. It will not cover a statutory periodic run on, where the tenancy fixed term ends and the tenant is allowed to remain in occupation without agreeing a new contract, but will cover any type of new agreement replacing the previous one.

It is not, and will not become, a legal requirement to take a deposit, but any situation where a physical monetary deposit is paid, will be covered. This does mean that if a letter of guarantee is used, or no deposit at all is taken, then these new rules will not apply to that letting.

If a deposit is paid, there are two types of schemes and the person holding the deposit will be responsible for ensuring one of them covers the deposit.

The first scheme is the custodial scheme, where the scheme provider actually holds the deposit for the du-

ration of the agreement. There are no fees payable by any party and the scheme is funded by the interest earned on the deposits held. Interest is offered to tenants on the money refunded to them from the scheme. The company running this scheme already has 8 years of experience of a similar scheme running in Victoria, Australia and are a large multi national company with many interests, particularly in handling company shares.

The second type of scheme is an insurance based one. In these schemes (there are two providers for these schemes) the deposit is retained by the agent or landlord. Scheme rules may dictate which has to hold it, and the deposit is only paid over to the scheme provider at the end of the tenancy if there is a dispute about how much should be refunded to each party.

If the parties agree, the deposit is divided as per the agreement and the scheme is not really involved at all.

There are two organisations running these schemes, one from the agent market and one from the landlord market. However, both schemes will be open to landlord or agent to join, though there are criteria for membership which may make one or the other scheme

more attractive, and with charges of up to £1,600, prohibitively expensive!

These schemes are underwritten by insurance, so that if the landlord/agent does not lodge the necessary part of the deposit with the scheme within 10 days of it being requested, the insurance provider will pay the money. The insurance provider will then pursue the defaulter for the money and costs. Obviously being insurance based there are going to be insurance costs to pay.

All schemes must include free to use Alternative Dispute Resolution (ADR). Two schemes are using the Chartered Institute of Arbitrators and one is doing it via its own panel of adjudicators. This area is probably the hardest area to deal with as there is little factual information about how many disputes will be generated and the schemes are having to make their own guesses. This will probably be one of the major costs of running a scheme.

Along with controlling the money, the law requires that certain information is given to the tenant within 14 days of the start of the tenancy. Failure to use a scheme or to provide the 30 or so pieces of information to the tenant will allow the tenant to apply for a refund of the deposit and for the landlord/agent (whomever is responsible for safeguarding the deposit) to have to pay a penalty of three times the deposit to the tenant. Act with care!

This newsletter is produced and distributed on a limited basis. Whilst the information researched and provided is believed to be correct, neither the sender nor anyone involved in the production of it, accepts responsibility for its accuracy. © TFP