

The following important information has been kindly provided by our client Mark Trenfield of mlettings. Should you have any questions please feel free to contact either Richard Mathews from our office on 01793 616284 or alternatively you can contact Mark directly on the details following the article.

TENANCY DEPOSIT PROTECTION SCHEMES ARE ALMOST HERE HOW PROTECTED ARE YOU?

By Mark Trenfield (mark@mlettings.com)

With less than 40 days to go before the introduction of the new Tenancy Deposit Protection schemes, some 800,000 residential landlords across England & Wales should be preparing for the 6th April 2007 implementation date. The new laws will protect around £1.2bn of tenants' Security Deposit money which is currently held by landlords or letting agents.

Once the laws are implemented, all private landlords and letting agents who take a Security Deposit from a tenant will be required to join an approved Tenancy Deposit Protection scheme yet many landlords are still unaware of the new rules and have not yet chosen which scheme to join.

A very substantial number of landlords still need to understand the Tenancy Deposit Protection laws and choose a suitable scheme. Some landlords may intend to rely upon their Letting Agent to ensure that the Security Deposits are protected in accordance with the law, but according to information from Communities & Local Government, only 25 per cent of landlords use a letting agent. It is the personal responsibility of the landlord to comply with the new laws and not the letting agent's

Types of Scheme

Landlords and letting agents will either have to join a '**custodial**' or '**insured**' scheme.

In the **custodial** scheme the tenant pays the deposit to the landlord who, within 14 days, must pass this on to the 3rd party custodian. The landlord, also within 14 days, must notify the tenant about the scheme being used.

At the end of the tenancy, if the landlord and tenant agree how the Security Deposit should be divided, they will tell the scheme administrator what they have agreed and the money will be paid out accordingly.

Should there be a dispute over the Security Deposit, the scheme will hold the amount until the dispute resolution service or courts decide what is fair.

Interest accruing on deposits in the custodial scheme will be used to pay for its running and any surplus will be used to provide interest to the tenant, or to the landlord, if the tenant is not entitled to repayment of the full deposit.

In the **insurance** schemes the tenant pays the deposit to the landlord who retains this amount. However, the landlord must pay a premium to the insurer. Again the landlord will be required to notify the tenant about the scheme being used within 14 days of taking the Security Deposit.

At the end of the tenancy, if the landlord and tenant agree how the Security Deposit should be divided, the landlord returns all or some of the deposit. Should there be a dispute the landlord must hand over the disputed amount to the insurance scheme for safekeeping until the dispute is resolved.

If for any reason the landlord fails to comply, the insurance arrangements will ensure the return of the Security Deposit to the tenant if they are entitled to it.

Both custodial and insured schemes feature alternative dispute procedures that can be called on to settle disputes.

Failure to Protect

If a landlord fails to protect the Security Deposit then the court can order it to be paid into the custodial scheme and, to compensate the tenant, fine the landlord an amount equal to three times the unprotected deposit. In addition, the landlord will not be able to regain possession of the property using "notice only grounds for possession" under Section 21 of the Housing Act 1998 – so the consequences can be very serious.

Holding a Security Deposit is one of the few safeguards available to landlords, and over 80 percent of landlords hold them. While a minority of landlords may be discouraged from taking a Security Deposit in the future, the majority should quickly familiarize themselves with the new rules and choose the best scheme for themselves.

If you would like more information on the new Tenancy Deposit Schemes – please call Mark Trenfield at mlettings on 01793 752157 or visit <http://www.mlettings.com>.