

Tenancy Deposits

Overview

The protection of deposits paid by tenants in connection with assured shorthold tenancies has been compulsory since 6 April 2007.

Generally, if a deposit received since that date has not been protected in one of the approved schemes a landlord cannot then serve a valid section 21 notice to recover possession of the property. The tenant may also be able to bring a claim against the landlord and a court can order the landlord to pay a fine of up to 3 times the deposit (plus the return of the deposit).

This has caused great problems for some and it has been made worse by subsequent legislative amendments and cases such as Superstrike and Charalambous.

Superstrike¹ decided that where a tenancy commenced before 6 April 2007 and a deposit was paid at the outset, but that the fixed term ended after 6 April 2007 and a statutory periodic tenancy arose, then the periodic tenancy was a new tenancy and the deposit should be protected. However, if the deposit had not been protected within a specific window, then the position could not be retrieved. In that case the landlord could only serve a valid section 21 notice if the deposit was returned in full (this also meant that the Landlord was vulnerable to a claim by the tenant)

In Charalambous², the position was extended to a situation where both the deposit was paid and the periodic tenancy arose before 6 April 2007. The court accepted that there was no requirement to register the deposit at the time of the periodic tenancy because no scheme existed, but still said that the landlord could not serve a section 21 note if the deposit remained unprotected. There was some debate about whether the landlord could register the deposit late and then serve a valid notice or whether the deposit should be returned in full. That point was not fully explored by the court.

Other cases³ (although at only County Court level) have found that the need to protect a deposit when a new periodic tenancy comes in being also applies to deposits paid after 6 April 2007 which have already been protected! In other words, that a deposit validly placed in a scheme and otherwise compliant must be re-protected on the tenancy becoming periodic. This has caused much difficulty in practice and has led to some courts ruling that section 21 notices are invalid.

To some extent, these uncertainties and risks have been clarified by the coming in to force of part of the Deregulation Act 2015.

Effect of the Deregulation Act 2015 (the Act) on tenancy deposits

The parts of the Act affecting deposits came into force on 26 March 2015.

In summary the changes are as follows:-

- If the Landlord received a deposit before 6 April 2007 which then became periodic after that date then the Landlord can retrieve the situation if he protects the deposit within 90 days of 26 March 2015 (in other words by 24 June 2015) and serves the relevant prescribed information.
- If a landlord took a deposit after 6 April 2007 and which was properly protected in the TDS and which then became a periodic tenancy, there is no need to re-protect the deposit at that point. In other words, the original protection will be enough.

¹ Superstrike Ltd v Rodrigues [2013] EWCA Civ 669 914 June 2013)

² Charalambous and another v Maureen Rosairie Ng and another [2014] EWCA 1604

³ For example Gardner v McCusker (unreported) 8 May 2014 (Birmingham County Court)

[Continued overleaf >](#)

Effect of the Deregulation Act 2015 (the Act) on tenancy deposits - Continued

- To clarify the Charalambous situation, if a deposit is paid before 6 April 2007 and became periodic before that date the deposit should still be protected and there will be no penalty for failing to do so in the first place. It is likely that will have to be done within the 90 days of the Act coming into force.

It should be noted that the Act does not change the situation where a deposit is paid after 6 April 2007 and is not protected. In that situation, the Landlord cannot serve a section 21 notice unless the deposit is repaid and is vulnerable to a claim by the tenant.

Retaliatory eviction

The Deregulation Act also introduces new measures that will, in certain circumstances, prevent a landlord relying upon a section 21 notice. This is where a tenant has made a complaint to the landlord about the condition of the premises.

At present, there is no bar on serving a section 21 notice even if the tenant has a claim for disrepair or other breaches by the landlord. In some cases, tenants have felt unable to complain about problems for fear a notice will be served, hence the introduction of this legislation.

This part of the Act came into effect on 1 October 2015 and says as follows:-

A landlord will be restricted from relying on a section 21 notice if:-

- The tenant has made a written complaint regarding the condition of the premises or its common parts before a section 21 notice is given; and
- The landlord has not responded, or his response is inadequate, or if he then serves a section 21 notice.

The tenant can follow this up if necessary by contacting the local housing authority who can then serve an enforcement notice. If that is done, the section 21 notice is invalidated. However, these provisions do not apply where:-

- The tenant is in breach of duty to use the premises in a tenant-like manner;
- The premises are genuinely on the market for sale;
- The landlord is a registered provider of social housing; or
- A mortgagee is exercising its power of sale in relation to a charge in place before the tenancy was granted and wants vacant possession.

These rules will only apply to tenancies granted on or after the date the rules come into force. Nor will they apply to existing tenancies that become periodic after the date the rules come into force.

This is only a brief overview of new legislation and for more detailed advice and information you should contact Richard Bates at Rothera Sharp on 0115 9100600 or at r.bates@rotherasharp.co.uk

The information set out above should not be relied upon as legal advice and it is important that anyone wishing to utilise the rules referred to should seek proper legal advice before doing so.



For further advice, contact our Landlord & Tenant team:

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