



How To (Post-Tenancy)

Who should read this?



Tenants



Agents



Landlords

Insured

Custodial

# How TDS approaches disputes involving agents fees

This guide outlines the key principles [Tenancy Deposit Scheme \(TDS\)](#) uses in its approach to disputes involving agents' fees in England. However, it's important to note that each case is reviewed on its own merits.

## Fees Legislation – what can you charge for?

As a result of the Tenant Fees Act in England, any tenancy agreement that was signed on or after 1st June 2019 prevents landlords and agents from charging certain fees to tenants outlined in the legislation. It is therefore important to update yourself on which fees are permitted under the act and which fees are now prohibited.

The Act applies to all Assured Shorthold Tenancies (ASTs) other than social housing and long leases. It also applies to tenancies of university-owned or managed student accommodation and licences to occupy housing in the Private Rented Sector (PRS).

### Permitted fees are:

#### Rent

The amount of rent to be paid should be agreed with the tenant when agreeing to let the property. The rent should be paid at regular specified intervals and the same amount should be paid at the start and end of the tenancy.

#### Holding deposit

A refundable holding deposit can still be requested from the tenant however this cannot be more than one week's rent. It must be refunded once the tenancy has started which must be within 15 days or if the landlord decides not to rent the property.

#### Default fees/missing keys

A tenant can still be charged for late rent overdue by 14 days or greater, or if keys are lost. The landlord or agent must give written evidence of these charges.

#### Changes to the tenancy

Charges can be enforced if a reasonable amount of work is involved in amending a tenancy agreement. Fees are capped at £50.00 (incl. VAT).

#### Early termination

If a tenant leaves the tenancy early a fee can be charged, however, this must not exceed the financial loss suffered by the landlord in permitting the tenant to leave or the reasonable costs of the agent in re-letting the property, for example marketing costs.

#### Utility bills

Under the Tenant Fees Act, tenants are still required to pay bills council tax and utility bills.

You can no longer charge for example for referencing, inventories, check-in and check-out reports, renewing a tenancy or third party fees. The TDS Tenant Fees Matrix at the end of this guide provides further detail on all fees referenced in the Act and shows how the rules differ between England and Wales.

The Tenant Fees Act also capped deposits at a limit of no more than 5 weeks' rent where the total annual rent is less than £50,000, or 6 weeks' rent where the total annual rent is £50,000 or above.

TDS has created an online deposit cap calculator that instantly calculates the maximum deposit you can charge tenants based on your annual rent, if you are unsure. [Use the Deposit Cap Calculator](#)

## How TDS Approaches Disputes Regarding Fees

The legislation will not affect a landlord's entitlement to recover damages in relation to deposit disputes for a breach of the tenancy agreement. Damages can still be claimed by way of a deduction from the tenancy deposit or through a court order. TDS will continue to consider claims for deposit deductions based on the loss suffered by an agent/landlord as a result of the tenant's failure to comply with the tenancy agreement.

**To avoid disputes or prepare your case for a deduction claim, you should familiarise yourself with the points below. They provide insight into how a TDS adjudicator would approach a dispute case involving fees:**

1. The tenancy agreement must clearly explain the circumstances in which a tenant would be expected to pay a fee to an agent in line with the Tenant Fees Act. What is the fee for? When does it apply? How is it calculated?
2. The tenancy agreement must make clear that the deposit can be used to pay the permitted fee. If it does not, a tenant may be liable to pay the fee, but TDS may not be able to award it from the deposit.
3. Wherever possible, the likely amount of the charge should be set out within the tenancy agreement, particularly for lost keys, late rent interest which must not be charged at a rate higher than 3% above the Bank of England's base rate for each day payment is outstanding or reasonable charges for amends to the tenancy agreement. If it is not, we would expect to see evidence that the tenant had otherwise been informed, for example publication of fees charged on a website and in an office, when the tenancy was signed, about fees that may be incurred.
4. If it is not possible to specify in advance the exact fee, at least explain how it will be calculated. Where no indication is given, any award made will be for what the adjudicator considers to be a reasonable sum.
5. We will consider whether any charge is reasonable in relation to the work likely to be carried out by the agent. For example, if a fee is expressed as a percentage of a contractor's invoice, we may not award the full amount if the invoice is for a substantial sum and the agents' input was only to commission the contractor.
6. It would be useful to see evidence that the sum claimed for has actually been incurred. For example, we would want to see an invoice for key replacement.
7. If the agent expects to receive the fee direct, the deposit clause in the tenancy agreement must provide for payment of the fee to be made to them. Within the TDS Scheme rules, permitted fees will be paid to the agent who will then distribute fees to the landlord.

**Take a look at TDS Case Studies to learn more about how adjudicators handle real-life tenancy deposit disputes.**

Further reading can be found in the [TDS Information Lounge](#) which is full of blogs, guides and publications on tenancy deposit protection.

# TDS Fees Ban Matrix

## England

Tenant Fees Act 2019

## Wales

Renting Homes (Fees etc.) (Wales) Act 2019

### HOLDING DEPOSIT

Capped at a maximum of one week's rent and can be held for a period of 15 calendar days (called the Deadline for Agreement). Landlords and agents are required to enter the agreement before the Deadline for Agreement (an alternative date can be agreed in writing by all parties). Where a tenancy is entered into, a holding deposit must be returned within 7 calendar days. It is forfeited by the tenant if;

- the tenant pulls out;
- the tenant fails Right to Rent checks;
- the tenant provides a false or misleading statement; or
- if the tenant fails to enter into the agreement before the Deadline for Agreement.



Capped at a maximum of one week's rent and can be held for a period of 15 calendar days (this is the Deadline for Agreement). Landlords and agents are required to enter the agreement (signed and dated by both parties) before the Deadline for Agreement (which can be extended by mutual written consent). Where a tenancy is entered into, a holding deposit must be returned within 7 calendar days. It is forfeited by the tenant if;

- the tenant pulls out;
- the tenant provides a false or misleading statement; or
- if the tenant fails to enter into the agreement within the 15-day deadline.

Before a holding deposit is paid to a landlord or letting agent, the following information must be provided in writing to the tenant, either in person, by post or electronic means:

- Amount of holding deposit
- Identify the dwelling in respect of which the deposit is paid
- Name, address, telephone number and any e-mail address of the landlord (and if instructed, the letting agent)
- Nature and duration of the contract
- Proposed occupation date
- Amount of rent or other consideration
- Rental period
- Any proposed additional contract terms or proposed modifications or exclusions to fundamental or supplementary terms
- Amount of any security deposit
- Whether a guarantor is required and, if so, any relevant conditions
- Reference checks the landlord (or letting agent) will undertake
- Information the landlord or letting agent requires from the prospective contract-holder

### SECURITY DEPOSIT

The refundable tenancy deposit is capped at no more than the equivalent of five weeks' rent where the annual rent is less than £50,000, or six weeks' rent where the annual rent is £50,000 or more.



Currently no limit placed on the amount of a deposit which can be taken but should a limit be introduced, any amount above that limit will be regarded as a prohibited payment.

### PET DEPOSIT

The total deposit taken cannot exceed five or six weeks' rent. This means that if you have taken the maximum security deposit, the agent or landlord cannot take any further monies towards a pet deposit.



Agents and landlords in Wales can take a higher security deposit if the tenant has a pet.

### INTEREST ON LATE PAYMENT OF RENT

Interest can be charged on overdue rent at a maximum of 3% above the Bank of England base rate for each day it falls due until the day it gets paid. However, the interest charge cannot be levied until the tenant is at least 14 days late with payment.



Interest can be charged on overdue rent at a maximum of 3% above the Bank of England base rate for each day it remains unpaid. However, the interest charge cannot be levied until the tenant is at least 7 days late with payment.

### CHARGES FOR LATE PAYMENT OF RENT

Prohibited under the Act for new or renewed tenancies.



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### DEPOSIT DEDUCTIONS FOR RENT ARREARS

No change - this can still be claimed.



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### CHECK-IN/CHECK-OUT FEE

Prohibited under the Act.



Prohibited under the Act.

### EARLY TERMINATION COSTS

Agents and landlords can charge an early termination fee which does not exceed the financial loss that the landlord has suffered in permitting the tenant to leave early, or the reasonable costs that have been incurred by the agent in arranging for the tenant to leave early. This amount is capped until a new tenant is found.



Where a tenant wants to leave a tenancy early, the landlord or agent is entitled to charge the tenant an early termination fee such as the landlords' costs to re-let the property and any outstanding rent until a new tenant moves in.

### AMENDMENTS TO THE TENANCY AGREEMENT

Charges can be levied for any variation, assignment or novation of the tenancy (such as a change of sharer or request to have a pet) but this charge is capped at a maximum of £50.00 (inc.VAT), unless the landlord can show that greater costs were incurred.



A fee cannot be charged for any amendment made to the tenancy agreement

### LOST KEYS

Permitted under the Act but restricted to the reasonable cost of replacement (evidence must be provided through invoices or receipts).



If the tenant breaches their contract which leads to the requirement for a lock(s) to be changed, added or removed; or a key or other security device which gives access to the dwelling, the "actual cost" of replacement, change, addition or removal is permitted. Actual cost can also include cost of labour if undertaken by a third party contractor. "Actual cost" is defined as being evidenced by an invoice or receipt.

### OTHER FEES

Admin fees, negotiation fees, invoice charges, Saturday move-in fees and reference fees are prohibited under the Act.



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\*This document is intended as a guide to aid compliance with the Tenant Fees Act 2019 and the Renting Homes (Fees etc.) (Wales) Act 2019. We recommend you seek independent legal advice if you require further clarification. TDS will continue to update all guidance on the fees ban in line with new regulations.



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