

Your TDS guide to:



Code of Recommended Practice for Deposit Protection



Tenancy Deposit Scheme

Insured

Custodial

Introduction

TDS is an industry owned company which provides tenancy deposit protection schemes across the UK. We are the longest running tenancy deposit protection scheme, having started work in 2003. Our free dispute resolution service can be used where landlords and tenants cannot agree about how deposits on assured shorthold tenancies should be allocated.

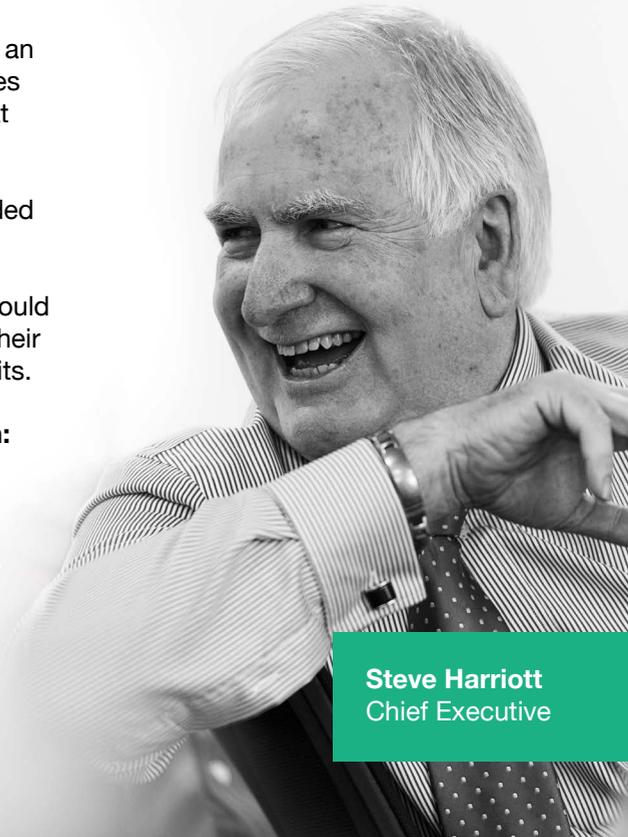
TDS currently makes adjudication decisions in over 10,000 deposit disputes a year. Adjudication is, ultimately, the last resort where an agreement cannot be reached about what should happen to the deposit after a tenancy ends.

Seeing such a large volume, and diverse range, of disputes gives us an outstanding insight into what causes tenancy deposit disputes, and what can be done better to avoid them arising. With this in mind, TDS has prepared this Code of Recommended Practice. It captures in an easy to understand statement those 'best practice' requirements which we would expect TDS members to follow in their dealings with tenancies and deposits.

The Code deals in particular with:

- protecting deposits and serving Prescribed Information
- terms of business with landlords
- tenancy agreements
- check in and check out reports
- proposing and negotiating deposit deductions.

There are no surprises here, since all these topics are already covered by TDS' existing guidance and advice to members – but having all these 'top tips' in one place provides a single point of reference.



Steve Harriott
Chief Executive

TDS will continue to guide and advise members on the ‘best practice’ requirements referred to.

The Code is also designed to work alongside other existing Codes of Practice that exist in the private rented sector. TDS can refer complainants who are aggrieved about an agent or landlord’s conduct to relevant bodies such as the Property Ombudsman, Propertymark and the Royal Institution of Chartered Surveyors where complaints may also be covered under those organisations’ Codes. When dealing with deposit disputes, we will continue to make impartial adjudication decisions on the merits of the evidence presented.



We are delighted to commend this Code to all TDS members and their tenants.

As part of our commitment to raising standards in the private rented sector, it reflects the very purpose of tenancy deposit protection – namely, to improve practices for dealing with tenancy deposits, and work to reduce disputes.



Michael Morgan
Director of Dispute
Resolution

This Code of Practice sets out the recommended requirements which letting agents and landlords should meet as members of the Tenancy Deposit Scheme.

Where a particular requirement only applies to an agent, or only applies to the TDS insurance scheme, the Code of Practice indicates this.

Members should provide relevant and effective training to make sure that their staff understand the provisions of this Code of Practice and how this relates to their legal obligations and responsibilities.

1 Deposit protection

- 1.1 All tenancy deposits must be registered with TDS within 30 calendar days of the receipt of deposit from the tenant(s).
- 1.2 The member must supply sufficient and accurate information for TDS to identify and contact all the associated tenant(s) at the beginning and end of the tenancy. The member must also keep tenant contact details up to date if they are aware of any material changes. As a minimum, the member should supply a unique email address and mobile telephone number for each and every tenant. This requirement will be waived only if the tenant has no such means of contact or is the tenant of a property in receivership whose contact details are unknown.
- 1.3 The member should keep the tenancy deposit record on the TDS database up to date, and ensure that all records on the TDS database accord with their own tenancy deposit records. In particular the member should promptly advise TDS when a tenancy has ended, or a change of sharer has taken place, and its deposit protection can be terminated.



2

Terms of business with landlords

- 2.1** Letting agents who are members of TDS should have signed terms of business on file for every letting conducted.
- 2.2** The terms of business should set out details of the service the agent is providing for the landlord. In reference to deposit handling arrangements, the document should explain:
- what actions the agent will perform when handling deposit money and the process they will follow to ensure it is properly safeguarded with a government authorised tenancy deposit protection scheme;
 - confirmation of who will issue the Prescribed Information and scheme leaflet;
 - it is best practice for the landlord to have an independent check-in, inventory and check-out report conducted – although landlords can opt out of this and indemnify the agent where doing so;
 - who is responsible for quantifying deductions at the end of the tenancy and discussing these with the tenant(s);
 - who is responsible for raising or replying to a dispute and, if the agent, whether the landlord is required to pay a fee to the agent for the preparation of the evidence file;
 - whether there are any special conditions of the letting that need to be conveyed to the tenant(s) in advance of marketing the property, or terms for the letting that need to be put in the tenancy agreement;
 - what action the letting agent will take in respect of the deposit, should the landlord terminate the agent's appointment.



3 Prescribed information

(including the TDS Scheme leaflet)

- 3.1** Members must have procedures in place to ensure that they use the correct version of the Prescribed Information.
- 3.2** The Prescribed Information (including the TDS Scheme leaflet) must be issued to the tenant(s) within 30 days of receipt of the tenancy deposit sum.
- 3.3** The Prescribed Information (including the TDS Scheme leaflet) must be issued to any relevant person(s) (someone who supplies the tenancy deposit on behalf of the tenant(s) also within 30 days of receipt of any tenancy deposit sum.
- 3.4** The Prescribed Information must be signed by the landlord or their authorised agent.
- 3.5** The Prescribed information should also be signed by the tenant(s). Where the tenant(s) have not done so, evidence must be retained to demonstrate that the tenant(s) have been given an opportunity to sign it.
- 3.6** The member should keep full and clear records to show that they have issued the deposit registration certificate, Prescribed Information and Scheme leaflet.
- 3.7** Where the tenant, landlord or premises change in relation to a tenancy deposit, the TDS database must be updated and the Prescribed Information and scheme leaflet re-issued in accordance with paragraphs 3.1 to 3.5 as above.



4 Tenancy agreement

- 4.1** The Tenancy Agreement must specify which tenancy deposit protection scheme is being used.
- 4.2** The Tenancy Agreement must specify the name and contact details of the landlord.
- 4.3** The Tenancy Agreement must specify the deposit value.
- 4.4** The Tenancy Agreement deposit value must match the value on the Deposit Protection Certificate.
- 4.5** The Tenancy Agreement must specify that the deposit for an Assured Shorthold Tenancy is held by the TDS letting agent member as Stakeholder.
- 4.6** The Tenancy Agreement must specify clearly how the deposit may be used (the 'deposit use clauses').
- 4.7** Any individually negotiated clauses (for example in relation to professional cleaning) must be clearly highlighted as being individually negotiated and not standard clauses.



5 Inventory/check-in

- 5.1 The member should seek to ensure that a comprehensive inventory and schedule of condition is provided in relation to the property.
- 5.2 Unless you have instructions to the contrary you must ensure at the start of a tenancy that any Inventory and/or schedule of condition prepared for the client by you, or an appointed subcontractor, is sufficiently detailed and up to date to allow it to be used as a fair measure at the end of the tenancy.
- 5.3 You should arrange for a tenant to be checked-in to the property accompanied either by an Inventory Clerk or other representative of the landlord or his agent. Wherever this is not practical, the tenant(s) must be provided promptly with the Inventory and/or Schedule of Condition and advised of the need to formally raise in writing any notable discrepancies, deficiencies or differences identified, within a specified period of time.
- 5.4 The member or the inventory clerk acting on the landlord's behalf should respond to any comments made by the tenant(s) about the inventory within 7 working days. The member should keep full and clear records of the tenant(s) comments and the response from the member.



6 Check-out

- 6.1 When the tenant(s) gives notice the member should issue the tenant(s) with guidance as to what is expected upon check-out.
- 6.2 For the early avoidance of any doubt the member should confirm the date on which the tenancy will end.
- 6.3 The member (or inventory clerk acting on their behalf) should advise the tenant(s) when the check out will take place in order to give them an opportunity to attend.
- 6.4 The check-out should take place as soon as possible after the tenancy has ended.
- 6.5 The member should supply the tenant(s) promptly with a copy of the completed check-out report.



7 Deposit deductions

7.1 The member should advise the tenant(s) of any proposed deductions as soon as is practicable following the end of the tenancy and check-out being carried out.

7.2 When the final check-out has been completed and if it is agreed that there are undisputed amounts the member must repay these to the tenant(s) within 10 working days of those amounts being agreed.

7.3 The agent member will seek to negotiate a settlement between the landlord and the tenant(s), where their terms of business with their landlord client require them to do so.

7.4 TDS Insurance scheme only: Where a tenant fails to respond to the agent's attempts to negotiate the agent may (after 3 months from the end of the tenancy) forward the amount of the tenancy deposit claimed to the landlord, on condition that the landlord signs a suitable form of indemnity that they will refund this sum to the agent in the event that the tenant subsequently makes a claim for the return of their tenancy deposit.

7.5 If the member submits evidence to the Tenancy Deposit Scheme the submission should:

- set out clearly the disputed amounts;
- reference the relevant deposit use clauses in the tenancy agreement;
- include cross references to the inventory, check-in, and check-out reports;
- include an easy to read rent statement (if relevant to the dispute);
- include copies of invoices or quotes relevant to the deposit deduction(s) claimed.

7.6 TDS Insurance scheme only: The disputed deposit monies must be paid to TDS within 10 days of TDS requesting them.



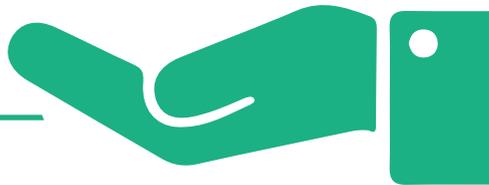
8 Fees

- 8.1 The agent should have a clear statement of the fees it charges landlords and tenants in relation to deposit protection and dispute management.
- 8.2 This must be displayed prominently on the agent's website and made available to all customers in the agent's offices.



9 Client accounts

- 9.1 **TDS Insurance scheme only:** All deposit money should be retained in a client money account. Deposit money must only be released:
- with the agreement of the tenant(s) and landlord, or
 - when the Tenancy Deposit Scheme requests payment of a disputed deposit amount to the scheme, or
 - following a decision by an adjudicator or the courts (any Court Order should include a clear direction awarding the deposit to the landlord), or
 - where the procedure detailed in paragraph 7.4 above is adopted.
- 9.2 Landlords holding deposit money should also retain it in a separate account. Deposit money belongs to the tenant(s). Where an agent passes deposit money to a landlord for protection any charges due from the landlord for fees etc must be dealt with as a separate issue and not deducted from the deposit money.





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