



PainSmith Solicitors Legal Update

02 April 2007

Tenancy Deposit Protection

Tenancy Deposit Protection (TDP) is due to begin on Good Friday 6 April 2007. PainSmith Solicitors have prepared these practice notes to assist agents and landlords with complying with the new rules. Agents should make themselves aware of the following points which may assist in devising appropriate procedures for dealing with TDP.

- First a summary of the new rules. Deposits held in respect of Assured Shorthold Tenancies **only** must be protected in one of three approved schemes. The legislation is not retroactive and will therefore only apply to tenancies which begin or are renewed on or after 6 April 2007. Tenancies created before 6 April, renewed before 6 April, for which no deposit is being taken, or which are not Assured Shorthold Tenancies are not covered.
- Where a deposit which is required to be held within a scheme is not held within a scheme then no section 21 notice can be given. This means that the tenancy cannot be terminated until a scheme has been joined. If a tenant can show in court that their deposit is not being held within a scheme when it should be then the Court is obliged to order that the deposit monies are returned to the tenant or paid into a scheme within 14 days and must further order that a sum equal to three times the value of the deposit must be paid to the tenant by way of a penalty.
- It is important to note that the agent or landlord should comply with the initial requirements of a scheme within 14 days of the start of the tenancy and until they have been complied with then no section 21 notice can be given. Therefore agents who have adopted the practice of giving a section 21 notice at the outset of the tenancy will no longer be able to do so until they have complied with the initial scheme requirements.
- Part of the requirements are that some prescribed information must be given to the tenants. It was originally thought that this information would include the landlords address and telephone details even where they had an agent instructed. On 30 March 2007 DCLG finally gave guidance that this was not the case and that where a landlord had an agent acting on his behalf in respect of the holding and protection of the deposit monies then the tenant could be given the agent's details being the agents name, address, telephone and facsimile numbers and their email address although it will still be necessary to give the landlord's name. Agents should note that this will still not excuse the need to comply with sections 47 & 48 of the Landlord & Tenant Act 1987 and sections 1,2, and 3 of the Landlord and Tenant Act 1985. Where the landlord is not instructing an Agent in this

regard then full details will have to be provided. Agents may well wish to use this as an incentive to landlords!

- Just because an agent is a member of ARLA, the NAEA, the RICS or TDSRA it does not mean that they are covered. It will be necessary for agents to take active steps to join an appropriate scheme. At this stage this will almost certainly mean that agents will need to use the custodial scheme for an interim period until their membership of one of the insured schemes is approved.
- Agents should be aware that they will not be able to deduct any monies from the deposit for repairs or unpaid rent without the tenant's consent or approval from the relevant scheme or the court. They will therefore need to make this clear to their clients and ensure that sufficient monies are held in reserve to allow for the repair and re-letting of the property while any adjudication is pending.
- Agents should make clear to their clients that all the schemes offer adjudication and that this system works entirely on the basis of papers submitted to the adjudicator. Therefore it will be necessary to have a good quality inventory and proper invoices and estimates to support any claim. Claims that do not have these are unlikely to be entertained. Agents should realise that submitting doomed claims on behalf of their clients may well put their own scheme membership at risk or lead to their membership fees being increased so there is substantial incentive to educate landlords carefully in what can and cannot be claimed for.
- The Guild of Professional Landlords has suggested a number of ways that its members could seek to avoid TDP. For example, by taking a higher rent and providing a discharge bonus. These systems will not work. The only realistic way of avoiding TDP for an AST is not to take a deposit at all. In this context it should be noted that it is illegal to take a non-monetary deposit.

Subscribers to PainSmith Solicitors telephone helpline service may wish to know that this will be operating until 8pm on Wednesday 4 April and Thursday 5 April to assist with questions regarding TDP.

Dr David Smith is a trainee solicitor with PainSmith Solicitors, a niche practice specialising in residential landlord and tenant law. He can be contacted on 01420 565310 or by email at david@painsmith.co.uk. If you wish to subscribe to the free legal updates service then you should email update@painsmith.co.uk with the phrase "subscribe updates" in the subject of the email.

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