



PainSmith Solicitors Legal Update

02 March 2007

Preparing for TDP

Most agents and landlords will be aware that Tenancy Deposit Protection (TDP) as introduced by the Housing Act 2004 is due to come into force on 6 April 2007. The DCLG has made clear that this date is non-negotiable and will not be delayed further.

Any deposit taken after midnight on 5 April in connection with an Assured Shorthold Tenancy will need to be held in accordance with the rules of one of the three approved schemes. Likewise, deposits taken in respect of renewed tenancies after this point will need to be held in an approved scheme.

There are very few ways to evade these provisions. Other than granting an Assured tenancy or making the tenancy fall outside the protection of the Housing Act 1988 - by granting it to a Company for example - there is little that can be done.

It is not yet entirely clear how all the schemes will operate as the Government has still not laid the final Statutory Instruments before Parliament. Because of this the various schemes have reserved the right to amend their operating procedures. However, draft versions of the SIs are available and this allows some information to be extracted.

The most important part of the three draft SIs sets out the information that landlords are required to provide to tenants under s213(5) of the Act. The information that must be provided is reproduced here directly from the SI.

1.—(1) The following is prescribed information for the purposes of section 213(5) of the Housing Act 2004 (“the Act”)—

- (a) the name, address, telephone number, e-mail address and any fax number of the scheme administrator of the authorised tenancy deposit scheme applying to the deposit;
- (b) any information contained in a leaflet supplied by the scheme administrator to the landlord which explains the operation of the provisions contained in sections 212 to 215 of, and Schedule 10 to, the Act;
- (c) the procedures that apply under the scheme by which an amount in respect of a deposit may be paid or repaid to the tenant at the end of the shorthold tenancy (“the tenancy”);
- (d) the procedures that apply under the scheme where either the landlord or the tenant is not contactable at the end of the tenancy;
- (e) the procedures that apply under the scheme where the landlord and the tenant dispute the amount to be paid or repaid to the tenant in respect of the deposit;

- (f) the facilities available under the scheme for enabling a dispute relating to the deposit to be resolved without recourse to litigation; and
- (g) the following information in connection with the tenancy in respect of which the deposit has been paid—
 - (i) the amount of the deposit paid;
 - (ii) the address of the property to which the tenancy relates;
 - (iii) the name, address, telephone number, and any e-mail address or fax number of the landlord;
 - (iv) the name, address, telephone number, and any e-mail address or fax number of the tenant, including such details that should be used by the landlord or scheme administrator for the purpose of contacting the tenant at the end of the tenancy;
 - (v) the name, address, telephone number and any e-mail address or fax number of any relevant person;
 - (vi) the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy; and
 - (vii) confirmation (in the form of a certificate signed by the landlord) that—
 - (aa) the information he provides under this sub-paragraph is accurate to the best of his knowledge and belief; and
 - (bb) he has given the tenant the opportunity to sign any document containing the information provided by the landlord under this article by way of confirmation that the information is accurate to the best of his knowledge and belief.

More information on TDP can be found on the DCLG website at www.communities.gov.uk/tenancydeposit.

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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