

FACT SHEET

# Residential Tenant Deposits and Eviction

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## What are the Tenancy Deposit Scheme Requirements?

The Housing Act 2004 (the '2004 Act') introduced a requirement for landlords to protect a tenancy deposit by registering it with an authorised Tenancy Deposit Scheme (TDS) provider.

A TDS provider will have its own 'rules' that you must comply with when you register a deposit (often referred to as the 'Initial Requirements').

You must also provide your tenants with certain information about the tenancy and how the deposit is protected, which is often referred to as the 'prescribed information'. The information you must provide is set out in the Housing (Tenancy Deposits) (Prescribed Information) Order 2007, which is available online.

You must register the deposit with a TDS provider, comply with its initial requirements, and then protect the deposit and provide your tenants with a copy of the prescribed information within 30 days of receiving the deposit monies. If you use a letting agent to let the property, it should ensure the TDS requirements are complied with.

Tenants often stay in a property after the end of the initial fixed term and are asked to sign a new tenancy agreement (sometimes this is referred to as an 'extension'). Provided no 'extra' deposit is paid, the identity of the landlord and tenant remains the same and the tenants are renting the same property then it is not necessary to re-comply with the TDS requirements. In any other case, the deposit must be re-registered and the prescribed information re-sent.

## The Sanctions for Failing to Comply with the Tenancy Deposit Scheme Requirements

If you or your agent fail to comply with the TDS requirements, your tenants can apply to court for an order forcing you to repay the deposit in full, and to pay to them a further amount of between one and three times the value of the deposit, as a fine for failing to comply.

You cannot serve a Section 21 Notice on your tenants until the TDS requirements (see above) have been complied with or you have paid back the deposit in full. While this does not sound particularly onerous, it can give rise to delays if you want to evict your tenants and give rise to additional costs.

It is not necessary to have complied with the TDS requirements before serving a Section 8 Notice. However, your tenants may seek legal advice when they receive the notice and may apply to the court for you to re-pay the deposit in full and to pay one to three times the value of the deposit in damages. Such a claim could be brought by way of a counterclaim if you have issued possession proceedings.

If you wish to use the section 21 Accelerated Possession Procedure, the court will check that you have complied with the TDS requirements, and you must attach proof of your compliance to the claim form.

Problems can arise where (for example) you or your agent sent the prescribed information but there is no proof that it was sent and the copy retained does not bear your tenants' signatures. If this happens, a certificate of service will need to be signed by the person that sent or handed the prescribed information to your tenants.

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This fact sheet has been provided for information purposes only and should not be construed as legal advice. Whilst every effort has been made to ensure that the information in this fact sheet is correct (as at October 2021), it is intended as a guide only and should not be relied upon. Specialist legal advice should be sought so that all the factors specific to your circumstances can be taken into account.