

TENANT FEE ACT

A GUIDE FOR

TENANTS

TENANT FEE ACT

A GUIDE FOR TENANTS

General Information

The ban on tenant fees applies only in relation to tenancy agreements and licences signed on or after the 1st June 2019.

The Act refers to a tenant or a 'relevant person' which includes a prospective, current or a former tenant or licensee. A tenant or relevant person also includes a guarantor or anybody acting on behalf of the tenant.

For existing tenancies (those signed before 1 June 2019) the ban will only apply where the tenancy is renewed after 1st June 2019 and the tenancy agreement becomes a **new** Fixed Term agreement. For existing tenancies (those signed before 1 June 2019) there is a transitional 12-month period ending 31 May 2020. During this time, agents can continue to charge fees written into existing tenancy agreements. After 12 months (31 May 2020) from when the Tenant Fees Act comes into force all Prohibited Payments will be unlawful regardless of when the tenancy started.

Under the rules if an existing tenancy drops onto a Statutory Periodic or Contractual Periodic this is classed as an extension of the existing tenancy agreement.

The ban applies to:

- Assured Shorthold Tenancy (AST).
- Licence to occupy.

The ban does not apply to long lease, any non-Housing Act tenancies, a tenancy of social housing, company lets, or a licence to occupy holiday accommodation.

Permitted Payments (Tenant Fees)



TENANT FEES

All payments are prohibited unless the payment is expressly permitted under the Tenant Fees Act.

The Tenant Fees Act prevents landlords and their agents from requiring tenants to make any payment as a condition of granting, renewing or continuing a tenancy apart from the following:

- Rent
- A capped refundable Tenancy Deposit
- A capped refundable Holding Deposit
- Payments in the event of a default
- Payment on variation, assignment or novation of a tenancy
- Payment on termination (surrender) of a tenancy
- Payments in respect of Council Tax
- Payments for utilities (electricity, gas or other fuel, water or sewage)
- Payments for a television licence
- Communication services (telephone other than a mobile telephone; the internet; cable television, satellite television)
- Green Deal charge

Rent

A tenant's regular payment to a landlord for the use of the property under a tenancy is a Permitted Payment.

If the amount of rent payable at the start of the tenancy is more than the amount of rent payable at any later period during the tenancy, the additional amount is a Prohibited Payment.

Increases or reductions of rent are allowed where it is set out in the tenancy agreement or by agreement between the landlord and tenant after the tenancy has started.

Tenancy Deposit

A Tenancy Deposit is money held by the landlord or agent acting on the landlord's behalf, as security during the period of the tenancy and reserved for any damages or defaults by the tenant.

Tenancy Deposits are capped at five weeks' rent where the annual rent in respect of the agreed tenancy immediately is less than £50,000 a year and six-weeks' rent where the annual rent is £50,000 or more a year.

Taking more than allowed in either case would mean that the amount in excess is a Prohibited Payment.

To calculate the relevant amount for 5 weeks' rent: $Monthly\ Rent \times 12 \div 52 \times 5 = Tenancy\ Deposit$

A tenant can use a Tenancy Deposit Replacement Product providing the tenant is also offered a standard tenancy deposit payment as described above.

Holding Deposit

A Holding Deposit is a payment made by a tenant to a landlord or agent to reserve that property.

If the amount of Holding Deposit exceeds one week's rent, the amount of the excess is a Prohibited Payment.

One week's rent means the amount of annual rent payable in respect of the tenancy divided by 52.

Payments in the event of a default

Landlords and letting agents may require a tenant to make a payment in the event of a relevant default.

The only circumstances under which a landlord or letting agent can charge a default fee is if the tenant loses their key or other security device giving access to the property or if they fail to pay their rent on time.

Landlords and letting agents cannot each make a separate charge in relation to the same default.

Loss of a key or other security device

Landlords and letting agents can charge a tenant a fee to cover the cost of replacing the lost key or security device. They can only recover the reasonable costs that they have incurred as a result of having to replace the key or security device.

The amount of any payment which exceeds the reasonable costs to the landlord or agent in respect of the default will be a Prohibited Payment.

If a tenant considers the charge is unreasonable based on the evidence provided, they can object to paying the fee or challenge the fee through the local authority, Trading Standards or First-tier Tribunal.

Late payment of rent

A late rent payment cannot be charged unless the rent has been outstanding for 14 calendar days or more since the full rent was due, as set out in the tenancy agreement, and has still not been paid. This can be levied on day 14 but charged from day 1.

Landlords or letting agents can only charge 3% above Bank of England base rate in interest on the late payment of rent for each day that the payment is outstanding. Each month the Bank of England decides whether to change it based on economic factors. Visit the Bank of England website for more information bankofengland.co.uk.

Payment on variation, assignment or novation of a tenancy

When a tenant has requested it, landlords and letting agents can charge to vary, assign or replace a tenancy.

The payment cannot exceed £50.00 (including VAT) or the reasonable costs of the person to whom the payment is to be made in respect of the variation, assignment or novation of a tenancy.

Any amount in excess is a Prohibited Payment.

Agents should provide evidence by receipts or invoices that demonstrate anything in excess of £50.00

Payment on termination of a tenancy

Landlords and letting agents can require a tenant to make a payment for an early termination (surrender) of the tenancy agreement at the tenant's request.

The payment cannot exceed the loss suffered by the landlord or reasonable costs incurred by the letting agent.

Payments in respect of Council Tax

A payment to a billing authority in respect of Council Tax is a Permitted Payment and letting agents and landlords may require tenants to pay the Council Tax on the property they rent.

Payments for utilities

A payment for or in connection with the provision of a utility is a Permitted Payment if the tenancy agreement requires the payment to be made.

In the Tenant Fees Act, utility, means electricity, gas or other fuel, water or sewage.

Payments for a television licence

A payment to the British Broadcasting Corporation (BBC) in respect of a television licence is a Permitted Payment if the tenancy agreement requires the payment to be made.

Communication services

Landlords and letting agents are permitted to charge a payment for or in connection with providing a communication service if the tenancy agreement requires the payment to be made.

In the Tenant Fees Act, communication service, means enabling any of the following to be used: a telephone other than a mobile telephone; the internet; cable television, satellite television.

Green Deal

A payment towards Energy Efficiency improvement under a Green Deal charge (as set out in Section 1 of the Energy Act 2011) or any subsequent energy efficiency scheme is a Permitted Payment if the tenancy agreement requires the payment to be made. Prospective tenants must also be made aware of any obligation to pay a Green Deal charge (or any subsequent energy efficiency scheme), so they can make an informed decision.

Holding Deposits



HOLDING DEPOSITS

A landlord or agent can take a Holding Deposit from a tenant to reserve a property whilst reference checks and preparation for a tenancy agreement are undertaken.

Landlords and agents cannot ask a tenant for more than one week's rent as a Holding Deposit.

If the amount of Holding Deposit exceeds one week's rent, the amount of the excess is a Prohibited Payment.

The treatment of Holding Deposits under the Tenant Fees Act only applies in relation to tenancy agreements and licences signed on or after the 1 June 2019.

One week's rent means the amount of annual rent payable in respect of the tenancy immediately after its grant, renewal or continuance divided by 52.

Only one Holding Deposit can be charged per tenancy application. A Holding Deposit cannot be charged to each tenant applying for the property. If the property is for sharers (e.g. Students) the Holding Deposit should be split equally between the sharers.

A Holding Deposit can be held for up to **15 calendar days**; what is known as the **Deadline for Agreement**.

From taking the Holding Deposit, the tenancy agreement must be entered into (signed by both parties and dated) before the Deadline for Agreement.

However, the landlord and letting agent can agree with the tenant in writing that a different day is to be the Deadline for Agreement. This means that the standard 15 calendar days can be extended if necessary.

REPAYING THE HOLDING DEPOSIT

The landlord or letting agent who received the Holding Deposit must repay it if:

- The landlord and tenant enter into a tenancy agreement.
- The landlord decides before the deadline for agreement not to enter into a tenancy agreement.
- The landlord and tenant fail to enter into a tenancy agreement before the Deadline for Agreement.

If one of the above applies, the Holding Deposit must be refunded within **7 calendar days** of the date of that decision or the Deadline for Agreement.

With a tenant's written consent landlords and letting agents may 'repay' the Holding Deposit by allowing the tenant to deduct the equivalent sum from the first payment of rent or the Tenancy Deposit.

RETAINING THE HOLDING DEPOSIT

The landlord or letting agent who received the Holding Deposit can keep it if:

- The tenant fails a Right to Rent check regardless of when the deposit was accepted.
- The tenant provides false or misleading information to the landlord or letting agent, which the landlord is reasonably entitled to consider in deciding whether to grant the tenancy because this materially affects their suitability to rent the property.
- The tenant notifies the landlord or letting agent before the deadline for agreement that they have decided not to enter into a tenancy agreement.
- The tenant fails to take all reasonable steps to enter into a tenancy agreement.

*False or misleading information is information provided by the tenant that is not factually correct and seriously affected the landlord's decision to let the property. Merely failing referencing would **NOT** be classed as providing false or misleading information. For example, letting agents must be able to evidence that the tenant's income declaration was significantly too high, or the tenant provided information which is clearly inaccurate about their income or employment, or the tenant failed to disclose (when directly asked) any relevant information which later comes to the agent's attention, such as valid County Court Judgements.*

RECOVERY OF AMOUNT PAID

Holding Deposits must be repaid if the landlord or agent does not give the person who paid the deposit written notice (within 7 calendar days) explaining why they intend not to repay it.

Where consent was not given to deduct the equivalent sum from the first payment of rent or the Tenancy Deposit, tenants can recover an unreturned Holding Deposit or Prohibited Payment through the First-tier Tribunal.

No Section 21 notice may be given in relation to the tenancy where all or part of the Prohibited Payment or Holding Deposit has not been repaid.

If, after 31 May 2020 the landlord or letting agent accepts a Prohibited Payment, they must return it within 28 days beginning with the day it was accepted.

Landlords and agents must be proactive in returning this money as there is no requirement on the tenant to request this money.

Tenancy Deposits



TENANCY DEPOSITS

A landlord or agent can take a Holding Deposit from a tenant to reserve a property whilst reference checks and preparation for a tenancy agreement are undertaken.

Landlords and agents cannot ask a tenant for more than one week's rent as a Holding Deposit.

The legislation does not prevent a landlord (or a letting agent acting on the landlord's behalf) from taking tenancy deposits.

A Tenancy Deposit is money held by the landlord/agent as security during the period of the tenancy and reserved for any damages or defaults on the part of the tenant.

The new rules state that Tenancy Deposits are capped at five weeks' rent where the annual rent in respect of the tenancy immediately after its grant, renewal or continuance is less than £50,000 a year and six-weeks' rent where the annual rent in respect of the tenancy immediately after its grant, renewal or continuance is £50,000 or more a year.

Taking more than what is allowed in either case would mean that the amount in excess is a Prohibited Payment.

ABSOLUTE CAP

Under the Tenant Fees Act, landlords and letting agents will no longer be able to take a higher security deposit for tenants with pets; the maximum 5 or 6 weeks rent for Tenancy Deposits cannot be exceeded.

The Tenant Fees Act does not prevent landlords and agents from claiming damages for breach of tenancy agreement, so damage done by pets can still be claimed for. It's just that the amount of held on deposit to cover those damages is restricted to a maximum of 5 or 6 weeks' rent. If the deposit isn't enough to cover the damage, landlords will have to consider legal proceedings.

Rent

Where a prospective tenant already has a pet before they enter the tenancy agreement, letting agents and landlords should set the rent for the tenancy at a level for the wear and tear that the pet will cause.

Agents will be able to charge a higher monthly rent for tenants with pets, so long as they make the prospective tenants aware of the additional cost at the earliest available opportunity.

Advertising

Agents can advertise a property with two different rents: One for tenants with a pet and a lower one for tenants without a pet. The lower rent reflects a relatively low level of fair wear and tear and the other at a rent that anticipates a higher level of wear and tear.

Existing Deposits

Agents do not need to refund existing Tenancy Deposits held that are over five or six weeks rent and can hold this for the duration of the existing tenancy.

Where a tenant renews their tenancy by signing a new Fixed Term agreement on or after 1 June 2019, any amount of their existing deposit which exceeds the applicable 5 or 6 week limit must be refunded.

Deposits for Assured Shorthold Tenancies still need to be protected in a government authorised Deposit Protection Scheme. Deposits for other types of tenancy do not have to be protected.

Further Information

If you require further clarity on any aspect of the Tenant Fee Ban and how it will affect you, please do not hesitate to contact us:

01332 300171

lettings@professionalproperties.co.uk