

Assured shorthold tenancy deposit protection schemes - pitfalls for landlords and letting agents

From 6 April 2007, if you let a property under an assured shorthold tenancy and take a deposit from the tenant, by law you must protect the deposit under one of the government-approved schemes. One such scheme is the Tenancy Deposit Scheme. Another is called Deposit Guard.

The law states that, within 30 days of receiving the deposit (regardless of whether it has cleared), you must protect the deposit and also provide the following documents to the tenant and any third parties who have contributed towards the deposit:

- Copy of the deposit protection certificate (the tenancy deposit scheme with which you have protected the deposit will provide you with this)
- “Prescribed information” explaining how the deposit has been protected (a standard form is normally used to set out this information on)
- The relevant leaflet for the deposit protection scheme used

A potential pitfall is that if you take a tenancy deposit which should be protected but you (or any letting agent that you use) fail to comply with the tenancy deposit protection legislation (for example by failing to serve the prescribed information) then –

- Following a Court Order you face a penalty of up to three times the amount of the deposit. This is an automatic penalty and cannot be reduced.
- You cannot serve a valid “Section 21 Notice” so as to bring the tenancy to an end on the so-called notice only/shorthold ground. It does not, however, stop you serving a valid “Section 8 Notice” (for example in relation to rent arrears or other tenancy breaches).

However, there is another potential pitfall. It is quite common for a tenant to continue to occupy a property at the end of an assured shorthold tenancy without a new tenancy agreement being physically issued, a process often described as “holding over”. A tenant who holds over is presumed to do so as a periodic tenant on exactly the same terms and conditions as the original tenancy. If both you and the tenant are happy with the arrangement, there is no need to sign a new tenancy agreement. However, a recent Court of Appeal case known as *Superstrike –v- Rodrigues* (2013) decided (on the specific facts of that case) that a periodic tenancy is an entirely new tenancy for the purposes of the tenancy deposit legislation. It would therefore be strongly advisable for you to re-serve the above-mentioned information if a tenant wants to hold over, or risk penalties as described above.

If you would like further information on this matter please contact David Ellis at Wall James Chappell on 01384 371622 or email d.ellis@wjclaw.co.uk.
