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A3 Countrywide Deposit Guide.

Objective of this handbook.

The deposit recovery process is an area that is complex and deadline driven. It is because there various stakeholders are involved that make in a challenging process. We have set out in this handbook answers to various questions raised over the past few years since the change to legislation.

At A3Countrywide we have introduced two methods of deposit recovery – Deposit Offset & Deposit Retrieval. We have set out in the handbook the constraints that we have in recovery due to the legal position of both principals to the tenancy contract. It also explains what is expected of landlords and tenants alike.

This by no means is a complete reply to the various aspects of deposit recovery , however it does deal with and answer the fundamental questions which cause so many of the complaints and concerns at the final stage of the alternative accommodation claim journey.

Useful websites for deposit information.

Source - http://www.mydeposits.co.uk/letting-agents/resources-and-guides/documents

Source - http://www.mydeposits.co.uk/tenants/faqs

Source - http://www.simplyrent.co.uk/tntfaq.htm/#Q7

Source - http://www.depositadvisoryservice.com/claim.html

Source - http://www.rightmove.co.uk/news/articles/rightmove-news/lets-with-pets

Source - http://legalservice.which.co.uk/home-property/tenancy/case-studies/landlord-threatened-to-keep-deposit.aspx

Source - http://www.thisismoney.co.uk/money/mortgageshome/article-2282789/Were-stuck-fighting-125-charge-cleaning-Tenancy-deposit-scheme-return-delays-dispute-charges.html

Source http://www.mydeposits.co.uk/sites/default/files/mydep%20DDD%20ADR%20Guide.pdf

Deposits Frequently Asked Questions.

Q1. What is tenancy deposit protection?

A. Mandatory tenancy deposit protection was introduced on 6 April 2007. The law was introduced to ensure that tenants are able to recover their deposit from their landlord or letting agent at the end of the tenancy, less any amount that the landlord/agent is entitled to withhold.

The legislation covers all deposits taken on Assured Short-hold Tenancies (AST's) in England and Wales. All deposits taken after 6 April 2007 on an AST must now be protected by one of the government-authorised deposit protection schemes.

Q2. What are the different types of tenancy deposit protection schemes?

A. There are three government authorised deposit protection schemes, two insurance based schemes and one custodial model.

Custodial

The landlord must hand over the tenant's deposit money to the custodial scheme to hold for the duration of the tenancy. The custodial scheme retains any interest earned on the deposit for that time. When the tenancy ends, both the landlord and the tenant must apply for the release of the deposit in the proportion agreed between them.

Insurance-Based

The landlord keeps hold of the tenant's deposit and pays a fee to protect it.
At the end of the tenancy the landlord is free to discuss and agree the amount of deposit to be returned, without involving the scheme.
All three schemes offer a free dispute resolution service if the landlord and tenant cannot agree over the amount of deposit to be returned at the end of the tenancy.

Q3. How do deposit protection schemes protect deposits?

A. Once a Landlord has joined a deposit protection scheme they can protect a deposit by paying a deposit protection fee to formally protect each deposit. Once purchased, the member is provided with a Deposit Protection Certificate (DPC) as proof of protection to pass to their tenant.

Q4. Who can join the deposit protection schemes?

A. Any Landlord who is resident and domiciled in the United Kingdom (excluding the Isle of Man) can apply.

Q5. What are the penalties to a landlord for failing to protect a deposit?

A. The Landlord will be unable to regain possession of the property by notice-only grounds for possession under Section 21 of the Housing Act 1988.

The Tenant can apply for a Court Order requiring the deposit to be protected, and for the Prescribed Information to be given to him/her. If the Court is satisfied that the Landlord has failed to comply, the court must either:

Order the Landlord to repay the deposit to the Tenant within 14 days of the issuing of the Court Order, or Order the Landlord to pay the deposit into the designated account held by the Custodial Scheme Administrator. The Court may also order the Landlord to pay the Tenant an amount equivalent to three times the deposit amount within 14 days of the making of the Order The Court is likely to also award costs against the Landlord

Q6. How do I find out if my deposit is protected?

A. Your landlord should provide you with a Deposit Protection Certificate (DPC) as proof of protection within 30 days. You can check if your deposit has been protected by checking the websites using the rental property address.

Q7. What information is provided on the Deposit Protection Certificate?

A. When your landlord protects the deposit they must provide the following details:
Landlord/Agent Name, Address, Contact Number, Fax/Email details

- Deposit Amount
- Date Deposit Taken
- Start Date of Tenancy
- Earliest Contractual End Date and Actual End Date of Tenancy
- Name of Tenants
- Date Deposit was Protected
- Alternative Address, Contact Telephone Number and/or email for Tenant

These details form the Deposit Protection Certificate. Your Landlord must give you a signed copy of the DPC. You should check that all the information and details are correct and then sign it. You need to inform your Landlord if any details are incorrect.

Q8. Why do you need an Alternative Address?

A. By law we need to write to you at the end of the tenancy to inform you that your landlord has unprotected your deposit. An alternative address could be:-

- Parent
- Guardian
- Relative
- Close Friend
- Employer
- Bank
- Solicitor
- University
- College

Q9. If a third party pays the deposit on your behalf, does the deposit still need protecting?

A. Yes. All persons/parties who contribute to the deposit should have their names endorsed on the DPC. We need their names, contact details and company/organisation details (if applicable). It is the landlord's responsibility to provide these details.

Q10. I was asked by my landlord to provide a holding deposit so I could secure the property. Does it need to be protected?

A. Landlords sometimes ask prospective tenants to pay a holding deposit to ensure they are committed and serious to renting the property.

In the event of deal falling through the Landlord may decide to keep the holding deposit to compensate for any inconvenience caused. Holding deposits do not have to be protected in a deposit protection scheme. However, if the holding deposit is then used as all or part of the deposit when the tenancy agreement is signed it must be protected.

Q11. When must the Landlord return all or part of the deposit?

A. **Within 10 days of the end of the AST and after you have moved out of the property**. The Landlord cannot simply retain the deposit or any part of it without giving explicit and clear written reasons for doing so. You should speak to your landlord to find out their intentions.

Q12. What are the implications if I have not paid all my rent?

A. You cannot raise a dispute over the deposit until you have resolved any issues over missing rent payments or calculating rent. You must fulfil your obligations under the terms of your AST.

Q13. What organisations can offer me help?

A. Shelter, Deposit Advisory Service, or the Citizens' Advice Bureau can provide you with assistance and advice. See website addresses on page 1.

Q14. I agree the landlord can deduct some of my deposit, but not that much. Can I dispute this?

A. Speak to your Landlord and explain why you feel the amount is unreasonable. It is advisable to put your argument into writing. Where possible give alternative costing for repair or replacement or an alternative quote for works to be undertaken.

Q15. Should my landlord charge me less if they intend to do the repair work themselves?

A. The landlord can charge a suitable, commercial rate for any work carried out. If you think it's unreasonable you may seek alternative quotes, however the Landlord does not have to instruct the alternative that you find. If the Landlord refuses to consider your alternative or adjust the deduction accordingly, ask for a written explanation.

Q16. My Landlord has provided invoices/quotations for replacement goods "as new" following damage or destruction that I have caused. Do I have to pay the full amount?

A. You should read your AST contract, as it may state that you must pay full price for replacements. However, if the damage has been subject to fair wear and tear, it may be reasonable to take that into consideration.

Q17. My Landlord has quoted me a replacement price for the damaged/missing items. Can I dispute the amount charged by the landlord if I can find cheaper, or if the item is not replaced?

A. What is important is that the amount the Landlord asked for is reasonable and justifiable. It is not part of the dispute process to decide what the Landlord does with the amount.

Q18 I have paid for cleaning /repairs to be undertaken, however the Landlord is not happy with the results. What happens?

A. The Landlord can reasonably expect cleaning or repairs to return the property to the same state at the start of the tenancy. You should ask the landlord to justify any objections to you directly. It advisable to take dated photographs, before and after, to keep receipts and guarantees and any other evidence you have.

Q19. What if the Landlord wants to claim for more than the amount of the deposit?

A. The landlord is unable to raise a dispute with the deposit stakeholder schemes for amounts greater than the deposit. The Landlord can take additional action against you by means of court action.

Q20. What is an inventory?

A. An inventory is an itemised list and condition of the contents at the property. It may contain indicative values. It should include all furniture included by the Landlord as part of the furnishings, but it should also point out the condition of the walls, curtains, carpets, bathroom, kitchen appliances, garden and property.

It should be signed by you as an accurate representation of the property at the start of the tenancy. If there are any amendments to the inventory during your tenancy they should be recorded and agreed **by both parties.**

Q21. My Landlord did not undertake an initial inspection and/or produce an inventory when I moved in. How do I produce the evidence?

A. The dispute process relies on clear evidence to assess the proof of the landlord's deduction. If an initial inspection or inventory has not been produced this could weaken the Landlord's position. However it is your responsibility as tenant to point out damage to the Landlord and not to do so may constitute negligence or deceit on your part, whether you were responsible or not. If a Landlord does inspect, make sure you do also and support your inspection with your own inventory and photographs. Get the schedule inventory signed by an independent witness if your Landlord refuses to do so.

Q22. Can I make my Landlord conduct an exit inspection prior to my leaving?

A. No, but it will weaken their position if there is a dispute. If the Landlord does not arrange an inspection, you can do your own; again it is advisable to back this up with photographs.

Q23. Can my Landlord charge me for the exit inspection and withhold it from my deposit?

A. A Landlord can charge for an exit inspection. However this charge should be stipulated in your AST and the amount agreed in advance. Many Landlords use an independent Inventory Services for both check-in and check-out inspections. Whilst this incurs a charge, it does hopefully ensure a reliable measure for resolving disputes. **The cost of inventory clerks must be shared equally by the tenant and landlord**

Q24. Can my Landlord withhold my deposit to cover outstanding utility bills?

A. You should read the terms of the AST Agreement. In most cases the responsibility for utility bills is with the Tenant. At the end of the tenancy a Landlord should arrange for a final reading of utility meter and for a final bill to be sent to the Tenant. If there are arrears on the bill then the utility companies should pursue the Tenant for the amount outstanding. In the case of the Landlord being responsible for the payment of the utility bills, the cost of these will be reflected in the rental payment. There may be provisions in your AST as to what happens in case of excessive charges.

Q25. Can my Landlord withhold my deposit for outstanding Council Tax?

A. No. You are liable for the Council Tax bill, as your Landlord will have informed the Council that you are residing in the property as a Tenant. Each Tenant in the property is jointly and severally responsible for the Council Tax liability.

Q26. If I ask for my dispute to be referred to the dispute resolution service can the adjudicator decide if the amount of deposit withheld was insufficient?

A. No. The ADR process will only adjudicate on the amount of the deposit in dispute. If therefore the Landlord withheld half the amount of the deposit, that is the maximum that can be awarded to the Landlord.

Q27. If I ask for the dispute to be referred to dispute resolution but the Landlord does not want to proceed to use it, what happens?

A. The only way the dispute can be resolved is by a Court. Once a Court Order is made, either you or the Landlord should send the sealed Order to us and we will apportion the deposit appropriately.

Q28. What happens if the Landlord refuses to lodge the disputed deposit amount?

A. This is a matter for us to resolve with the Landlord. We will ensure that you are paid any part of the deposit to which you are entitled either through our dispute resolution or if you obtain a Court Order.

Q29. My Landlord intends to make a deduction from part of my deposit but I have not received the remaining amount, what happens now?

A. The Landlord has 10 days to return all or part of your deposit. If you do not receive any of your deposit then you may raise a dispute for the full amount. We will request the Landlord sends all of the deposit to us. If the Landlord makes payment of any undisputed amount after 10 days but before lodging it with us, we will ask for proof that this has been done i.e. bank transfer receipt or written confirmation from you.

Q30. I have my tenancy with a Residential Social Landlord. I have heard there is a Housing Ombudsman what is the role?

A. The Housing Ombudsman is an independent service dealing with complaints against Landlords and any other housing disputes. http://www.housing-ombudsman.org.uk/

Q31. My deposit is paid by a third party ("Relevant Party") i.e. a parent, local authority, or specialist organisation. Can the Relevant Party raise a dispute?

The name and contact details of the Relevant Party should be list when the deposit is protected. If this is the case then the Relevant Party has the right to raise a deposit dispute on behalf of the Tenant.

Q32. I am reluctant to raise a dispute with you in case my Landlord refuses to give me a good reference. What can I do?

A. Neither you nor your landlord should suffer any negative publicity from a deposit dispute if we discover that a Landlord has given a Tenant a bad reference because they raised a dispute we will consider their Landlord's Membership.

Q33. I am on housing benefit and my Landlord has refused to return my deposit until after my last housing benefit payment has been paid. What can I do?

A. Just like outstanding rent, outstanding housing benefit has to be received by the Landlord in order to fulfil the terms of the AST. **The Landlord must return your deposit 10 days after the receipt of the benefit money**. Any deposit dispute will be dealt with after this period. If you need the deposit money for a further letting, please ask for advice from your local Social Security Office.

Q34. How long does a Member have to lodge the money with us?

A. We send your landlord a letter regarding your dispute. **The landlord is given 10 working days from the date on the letter to lodge the disputed amount with us. Failure to do this will lead to dispute resolution based only on your submitted evidence.**

Q35. What amount of the deposit should the landlord lodge with a scheme?

A. The amount of deposit in dispute is stated by you.

Q36. Will my dispute case begin if my landlord fails to lodge the disputed amount, but consents to use dispute resolution and supplies evidence?

A. No. The Member must comply with our Scheme Rules and lodge the disputed amount with us. If this money is not paid to us, the Adjudicator will only consider the Tenant's evidence. Your landlord will be subject to discipline and Membership cancellation.

Q37. What happens if the landlord lodges the disputed deposit amount late?

A. There is no obligation to extend the 10 days, however we may grant the landlord an extra 48 hours to comply.

Q38. If the landlord fails to lodge the disputed amount, consent to ADR and any evidence, what happens to the dispute?

A. If the Member does not cooperate, then the case is sent to the Adjudicator with the evidence only.

Q39. What evidence should be provided?

A. Signed AST Agreement – and everything connected to this agreement

- Check in / check out reports
- Inventory
- Schedule of condition
- Photos / video – must be date stamped for authenticity
- Invoices / **receipts to prove work have been done – cleaning, dry cleaning, gardening etc.**
- Any other relevant supporting evidence

A. Make sure the evidence you provide is relevant and your written submissions are clear, easy to understand and properly presented. The Adjudicator will analyse all evidence and submissions but may not refer to every piece of evidence submitted in the Adjudication Report.

Q40. Are estimates are deemed as sufficient evidence?

A. A **receipted invoice ONLY** will be accepted as reasonable proof that the cost has been incurred.

Q41. How long does it take for an ADR decision to be reached once all the paperwork is sent to the Adjudicator?

A. A decision is normally reached within 28 days and both parties notified within 10 days of the Adjudicators decision.

Q42. Can an Adjudicator award an amount greater than the disputed amount?

A. The Adjudicator does have authority to award an amount greater than the disputed sum but it is unlikely this will happen. The Adjudicator is not able to award an amount that is greater than the deposit amount.

If the ADR decision exceeds the disputed amount, we will notify the parties and pay the difference between the lodged sum and the final decision. The landlord will then be required to pay the remaining amount to within 10 days of the decision.

Q43. How much evidence should I supply for my dispute case?

A. The onus is on both the landlord and tenant to submit any evidence that they feel may be useful to support the case. You need to arrange all of your evidence at the start. You must not hold back relevant paperwork as this could be fatal to your case.

Q44. Can I take legal action following the dispute resolution outcome?

A. When both parties agree to use ADR, they also agree to be bound by the decision of the Adjudicator. A detailed explanation of the reasons for the decision is always provided to both parties. You may wish to challenge the decision through the Courts **but on very limited grounds**. Either way this may be a costly route to take.

Q45. Can I challenge the dispute resolution decision if I disagree with it?

A. There is no right of appeal following the decision. Both parties agree to be bound by the final adjudication decision.

You should obtain independent legal advice if you wish to challenge an ADR decision. The decision is based on the facts and principles of law, subject to reasonableness. **AST agreements are governed by the Law of Contract and statutory regulations including the Housing Act, Consumer Protection Legislation and the Unfair Contract Terms Act.**

Q46. Does the Member have to provide the Deposit Protection Certificate?

A. The Deposit Protection Certificate is provided by the Scheme to assist the member in the requirement to serve the Prescribed Information.

Q47. Can I have my deposit back at the point when I vacate?

A. As much as we would like this to be the case, **it is not possible**. The reason can be varied, and falls into two camps:

a) The tenancy has not yet ended therefore although the tenant has vacated, the landlord still is entitled to rent until they have found replacement tenants.

b) Once the tenancy has ended and the check-out report has been conducted and agreed, there may be some issues that are disputed. If these can be resolved quickly then the deposit is sent back without the need for arbitration. If there is no resolution then the matter is referred to the scheme arbitrators. They currently have a backlog of circa 3-4 months of cases to be reviewed and adjudicated. It can mean that deposits can take up to 6 months to recover and return.

Q48. What is deposit offset?

A. It is a process which we have adopted and trialled successfully since October 2013. Essentially we will fund the deposit once it has been agreed by the insurer or loss adjuster. This means that the policyholder does not have to find additional sums of money when they have been affected by traumatic event such as a flood, escape of water or fire. The deposit is paid so the policyholder can move in quickly; we then discuss whether the deposit is to be offset with the insurer or adjuster, against the contents policy.

An **offset deposit** provides the policyholder with the means to recover the deposit monies directly themselves.

A **recovered deposit** provides the insurance company with any successfully recovered monies from the deposit bond.

Q49. How is a deposit offset different from deposit recovery?

A. Deposit recovery is the same process that we have operated since 1999. Essentially A3Countrywide will fund the deposit on the basis that we will be paid back in full within 30 days for the disbursement. At the end of the tenancy we will assist with the recovery process. **We do not guarantee** the full recovery of all monies disbursed at the beginning of the tenancy, nor do we have any responsibility to do so.

Deposit Offset
If we have received confirmation that the deposit is to be offset then we will amend the registration of the deposit in to the name of the policyholder. They can then receive the deposit at the end of the tenancy by registering onto the relevant website and recovering the deposit if there is no dispute.

Deposit Recovery
If the deposit is not offset then we will recover the balance from the agent landlord, depending on whether there has been any dispute.

Q50. Why should the insurer receive the recovered deposit balance from A3Countrywide?

A. Many insurers have expressed an interest in the deposit quarantine process. This is a format whereby we will repay the deposit sums recovered direct to the insurer on a bordereaux style template. These sums are then posted directly back onto the insurers systems and is fully track able for their own internal audit processes. It reduces the potential for cheques to be lost in the post (or in files) and reduces time and touch points in the recovery process.

Q51. What is the legal position of A3Countrywide for deposit recovery and repayment?

A. A3Countrywide offers assistance to recover sums paid out that have subsequently been re-paid by the insurer. We do not guarantee the full recovery of the original sums disbursed and do not recover any difference from policyholders. We are not responsible for or have any legal responsibility for the actions of the policyholder who enters into a legally enforceable contract with the landlord or their agent.

Q52. Does A3Countrwyide chase in the deposit for me?

We will continually chase in the deposits and negotiate the recovery of any disputed deposit for "Deposit Retrieval" cases. We will also where necessary complete the instruments for arbitration and submit the documents along with evidence required.

We will where necessary enlist the advice of legal teams to provide our recovery process with current interpretation of statute that can be enforceable in an unregulated market. We will then repay the balance to the insurer.

Q53. What is A3Countrwides legal involvement in the process of deposit recovery?

A. A3Countrywides legal identity is that of facilitator, in that we do not receive any material benefit from the sums disbursed for the accommodation. Our process is designed to assist in the recovery in line with statute that governs the market and industry.

Our position is to negotiate and recover what sums are available in a timely manner. That is why we strongly urge the deposit offset process as the fairest method for both policyholder and insurers.

Q54. What is the process for stakeholder deposit schemes in the UK?

A. All Assured Short Hold Tenancies (Those where the annual rent is less than £100k per annum must be held in one of the government approved tenancy deposit schemes.

Both principals (The landlord and the policyholder) will receive deposit ID codes that have to be submitted to the scheme handlers at the end of the tenancy. If there is no dispute lodged by

either party then the deposit is released to the tenant or landlord depending on the decision made by the arbitrator.

Q55. If the landlord disagrees with the outcome are they entitled to take the matter to court?

They are perfectly entitled to do this, however the magistrate would be provided with the arbitrator's decision and this would be taken into account by the magistrate.

Q56 Are there deadlines for evidence to be submitted prior to a decision being made?

A. It is important to note that some schemes have deadlines for deposit arbitration documents to be lodged on disputed cases. The deadline time is 30 days from the vacate date of the tenancy (This is the date that the check-out has been agreed by both parties not the actual vacation date of the policyholder form the property)

Q57. What is the limit of our liability for policyholders, insurers and loss adjusters?

A. Our legal identity is that of facilitator or broker. We have no agency contract with the policyholder or landlord. We find and fund accommodation.

Q58. What is A3Countrywides obligation?

A. Our responsibility to policyholders is to help them as much as we can in respect of their responsibility towards the recovery of the deposit. This includes, holding the deposit ID codes, discussing the deposit release, negotiating where necessary, raising the necessary arbitration articles and documents with associated evidence for disputed cases and the repayment of those deposits recovered.

Q59. What are the legal entitlements of landlords against a deposit?

A. Numerous and difficult to explain although we hope that we have evidenced how complex the issue is by the questions set out in our FAQ. Essentially landlords cannot have new for old; they also have to evidence that the items they are claiming for are valid. This can be done in a number of ways. Our process is geared towards a swift move to arbitration on disputed cases as essential and valuable time can be lost arguing the issue with all parties instead of putting the case in front of the arbitrators in a timely manner to secure the best outcome.

It is important to note that neither the loss adjuster, policyholder, insurer nor A3Countywide can influence the decision of the deposit scheme arbitrators and arguing about the "issue" only serves to delay and can in some schemes prevent the recovery of the deposit.

Q60. Why A3Countrywide cannot pay back the full deposit and recover the difference from the policyholder.

A. A3Countrywide is not the principal to the tenancy agreement. It does not have any agency with the policyholder. It can not force or influence the policyholder to behave in a way that will prevent or mitigate any potential claim to the deposit at the end of the deposit.

A3Countrywide therefore cannot pay back the full sums of the deposit that is paid at the beginning of each tenancy and cannot force policyholders to pay back the differential on any shortfall of deposits recovered.

Q61 Additional charges for changes in the recovery process form that agreed at the beginning.

A. From Q2 2015 A3Countytwide will charge an additional administration fee for all those deposit offset agreements that are subsequently changed at the end of the tenancy. We believe that this is fair and reasonable because of the considerable amount of time expended to establish and put in place the changes required for the deposit to be offset at the commencement of the tenancy as agreed at the time.

It is with regret that we cannot absorb the change request submitted at the end of the tenancy to change the process that we have agreed at the beginning of the tenancy.

Q62 What type of tenancy do I have?

A. This should be clear from the written agreement you have with your Landlord or agent. If you do not have a written agreement then the type of tenancy you have will be determined by the law.

If your tenancy commenced on or after 15 January 1989 your tenancy will almost certainly be one of the following:

- Assured Tenancy
- Assured Short hold Tenancy
- Periodic Tenancy
- Licence
- Company Let

If you are not sure what type of tenancy you have you should ask your Landlord or agent, but the following guidelines may help:

- if a company or other organisation (e.g. your employer) has rented the property so that you can live in it the tenancy is almost certainly a "Company Let"
- if your tenancy started before 15 January 1989 then you need to seek advice as to what sort of tenancy you have; you will probably be a protected or regulated Tenant
- if your Landlord has given you an agreement headed "Licence" your tenancy is probably a Licence; if the rules applying to Licences have not been satisfied (i.e. it is an invalid Licence) then you will probably have either an Assured or an Assured Short hold Tenancy
- if your tenancy started between 15 January 1989 and 28 February 1997 and you were not given a "Section 20" notice you probably have an Assured Tenancy
- if your tenancy started between 15 January 1989 and 28 February 1997 and you were given a "Section 20" notice before the start of the tenancy you probably have an Assured Short hold Tenancy
- If your tenancy started after 28 February 1997 and you did not agree anything different with the Landlord you probably have an Assured Short hold Tenancy
- if you originally had an Assured or Assured Short hold Tenancy and the initial fixed term has expired (or there was no initial fixed term) you probably have a Periodic Tenancy

Q63 What is an Assured Tenancy?

A. Assured Tenancies are governed by the Housing Act 1988 and give Tenants security of tenure unless the Landlord is able to exercise one of the grounds for possession specified in the Act. There is only moderate control over the rent which the Landlord can charge.

Q64 What is an Assured Short hold Tenancy?

A. Assured Short hold Tenancies are a special type of Assured Tenancy. Assured Short hold Tenants have considerable security of tenure for an initial period, which will be six months unless a longer period is specified in the tenancy agreement, after which the Landlord has an absolute right to recover possession at two months' notice. The Landlord can also recover possession if any of the grounds applicable to Assured Tenancies apply. There is only moderate control over the rent which the Landlord can charge.

Q65 What is a Section 19A Assured Short hold Tenancy?

A. Section 19A of the Housing Act was introduced by the Housing Act 1996. New Assured Short hold Tenancies are no longer regulated by Section 20 of the Housing Act 1988 although existing Assured Short hold Tenancies will continue in operation.

Under Section 19A all new Assured Tenancies are assumed to be Assured Short hold Tenancies unless they fall within one of the listed exceptions (one of which is that both parties agree it should not be an Assured Short hold). The requirement to serve a Notice of an Assured Short hold Tenancy (normally called a Section 20 Notice) no longer exists, and there is no minimum

length of the initial fixed term, although there are significant restrictions on the Landlord's right to possession within the first 6 months.

Q66 What is a Periodic Tenancy?

A. A Periodic Tenancy is a tenancy that is automatically renewed each "period" (normally each month) until either the Tenant or the Landlord does something to end it. Periodic tenancies are usually one of the following:

Statutory Periodic Tenancies
These tenancies usually come about when the fixed terms of Assured and Assured Short hold tenancies come to an end but the Tenant stays on ("holds over") with the Landlord's consent. The terms of the tenancy remain the same. In the case of a periodic tenancy following on from an Assured Short hold Tenancy the Landlord and the Tenant both have the additional right to end the tenancy by giving the required amount of notice

Contractual Periodic Tenancies
These tenancies usually come about when an Assured or Assured Short hold tenancy is created with no initial fixed term. The tenancy runs on indefinitely until either the Landlord or the Tenant gives the required notice to the other (the Landlord can only end the tenancy in the first 6 months if he has grounds to do so.)

Q67 What is a Licence?

A. A licence permits the licensee to occupy the property.
If the property is transferred from one Landlord to another (e.g. by sale gift or death) the licence is not binding on the new owner. On the ending of a licence the Landlord has an absolute right to possession.

Q68 Are oral tenancies valid?

A. Oral tenancies (agreed by word of mouth) are valid providing that:

1. they take effect on the day they are granted
2. they are for a term not exceeding three years
3. they are granted for the best rent reasonably obtainable without taking a premium.
4. It is always better to document a tenancy in writing so that there can be no doubt about the terms of the agreement.

Q69 Does my Landlord have to give me a written agreement?

A. No. If your tenancy is an Assured or Assured Short hold Tenancy you can, however, request a written agreement once the tenancy has started.

Q70. Does my Landlord have to confirm any details in writing?

A. If your tenancy is an Assured or Assured Short hold Tenancy you can require the Landlord to confirm certain details of the tenancy in writing. You should make your request to the Landlord in writing, and he/she must respond within 28 days. The details which the Landlord must confirm in writing are:

- the date the tenancy began
- the amount of rent payable, and any rent review arrangements
- the dates on which the rent must be paid
- the length of any fixed term which has been agreed

Q71 How can I end my tenancy and leave?

A. If your tenancy is an Assured or Assured Short hold Tenancy you **cannot end** it until the end of any fixed term which is specified in the Tenancy Agreement, unless the Landlord agrees.

On the last day of the fixed term (if any) you can leave the property, whether or not you have told the Landlord you intend to do so. However, you should give the Landlord as much notice as possible as a courtesy, and in order to avoid any bad feelings. Once the fixed term (if any) has ended the tenancy will become a periodic tenancy if you remain in the property and the Landlord does not agree a brand new tenancy with you.

In this case you can end the tenancy by giving the Landlord one month's notice in writing (if the rent is paid monthly) or 4 weeks' notice (if the rent is paid weekly). If your tenancy is a Company Let you cannot end it early unless the Landlord agrees. If your tenancy is a Protected or Regulated tenancy the method by which you can end it will be specified in the lease.

Q72 What is a break clause?

A. A break clause in a lease or tenancy agreement allows either the Landlord or the Tenant (or both) to terminate a lease even if it has not run its full length.

Q73 Does the Landlord or Agent has to return my deposit?

A. Note: the rules for Tenancy Deposits changed on 1 April 2007; deposits taken and held by landlords and their agents in respect of tenancies which commenced on or after 1 April 2007 are regulated by law.

Once you have handed back your property in a satisfactory condition your Landlord (or the Agent) should return your deposit, providing that the rent is up to date. Your deposit should be returned by the **deadline specified** in the Tenancy Agreement (or if no deadline is specified within a reasonable time of you vacating the property - **say 14 days** although this is by no means guaranteed.

Reasons why a Landlord or Agent may not refund your deposit are:

- you have not cleaned the property or rectified any damage and the Landlord is waiting for estimates for the work to be done
- you have not provided a forwarding address for mail and bills you have left behind
- the Landlord knows you have left unpaid bills which may cause problems for him/her and for the next Tenants
- the Landlord has not received the last payment of Housing Benefit, or has reason to believe that your benefit has been overpaid
- the Agent cannot get the Landlord to agree that your deposit be refunded (and is not entitled to refund it without the Landlord's consent)

Q74 How can I make sure I will get my deposit back?

A The best way to ensure that you will get your deposit back is to have a good relationship with your Landlord. Most Landlords' will overlook small problems with a Tenant who has been friendly, helpful and co-operative during the tenancy.

Other things which will help are:

- make sure you have a written record ("Inventory") of the contents of the property, and the condition of the property and the contents, when you moved in
- make sure you get a receipt when you hand it over
- make sure you get a written statement (probably in the Tenancy Agreement) of what the deposit is for, what the Landlord can do with it, and when you are entitled to get it back
- if possible try to arrange for the deposit to be held by a neutral person (a reputable Agent holding your deposit as "stakeholder" should be ok; the Agent will not be able to hand the deposit to the Landlord without your consent - or to you without the Landlord's consent)
- make sure you thoroughly clean the property and repair any damage before you leave; the Landlord is not obliged to let you back into the property to put things right, and will usually get contractors to do any cleaning or repairs which you should have done (at your expense)

Q75 My Landlord won't refund my deposit - what can I do?

A. First of all you should find out why he/she will not refund your deposit, and do something about it if you agree that it is your responsibility.

If your tenancy commenced (or was renewed) after 1 April 2007 you should read the documents that you should have been given when (or soon after) you paid the deposit - these will explain the procedure for raising a dispute with the deposit protection scheme with which your deposit is registered. If you were not given any documents relating to the protection of your deposit you should ask your Landlord (or Agent) which scheme your deposit is registered with and then contact that scheme.

If you can't reach agreement with the Landlord or Agent you should write to them, demanding the return of your deposit (or the part of your deposit which you think they should return) within 14 days, making clear that you will put in a claim to the local County Court if you do not receive the payment by the deadline. If you do not receive your deposit by the deadline you should then consider making a claim via the County Court. You should remember that your deposit belongs to you; providing you can prove that you paid the deposit in the first place it will be for the Landlord or Agent to convince the Court that it should not be returned.

Making a claim via the County Court is easy and relatively quick and cheap. You will not need to employ a solicitor. You get form "N1" and the associated notes from your local County Court, fill it in (which you will be able to do on the spot), and hand it in with the appropriate fee (e.g. £50 for a claim of £500 - the fee is added to the claim and you get it back from the Landlord if you win). The counter staff at the Court, or your local Citizen's Advice Bureau, will help you fill it in if you ask.

Q76 What are my responsibilities for repairs to the property?

A. The respective responsibilities of the Landlord and Tenant for repair and maintenance of the property should be specified in the agreement between them. If they are not the responsibilities will depend on a number of factors including the length of the tenancy and the date it commenced.

In general **the Landlord** will normally be responsible for:

- ensuring that the property is fit for habitation at the beginning of the tenancy (if let furnished)
- repairing the structure and exterior of the building
- repairing and keeping in working order the water, electricity and gas (if fitted) supplies, and the sanitation (drains, basins, sinks, baths and WCs)
- repairing and keeping in working order the room and water heating equipment
- the common areas in multi-occupancy dwellings

You **(The Tenant)** will normally be responsible for:

- Using the premises in a tenant-like manner, doing such small jobs as unblocking drains, cleaning chimneys, mending fuses, etc.
- repairing and damage which he or she has caused
- keeping the premises clean

Q77 Is the Landlord responsible for the gas appliances?

Under the Gas Safety Regulations Landlords must:

- maintain all gas appliances in properties they let to Tenants
- ensure that all gas appliances are inspected annually by an approved inspector
- keep a proper record of all inspections of gas appliances
- provide the record of inspections to Tenants

Q78 Can the Landlord visit the property while I am renting it?

Landlords have a statutory right of entry to the property for inspection and repairs under the Rent Act 1977 and the Housing Act 1988. The Landlord also has a right of entry under the Landlord and Tenant Act 1985 if the Landlord is obliged by Section 11 of that Act to carry out essential repairs. The Landlord's right to make reasonable visits to check the condition of the property is also normally included in the agreement with the Tenant.

The Landlord should always take care not to interfere with the Tenant's right to peaceably occupy the premises without interference, and should give notice of his/her intention to enter the property. Normally the Landlord should give you at least 24 hours' notice, and only call at a reasonable time during the day or evening.

Q79 Can I assign my tenancy (i.e. transfer it to someone else)?

A. You should **never assign** or transfer your tenancy without seeking advice as you may lose your security of tenure and entitle your Landlord to repossession if you do so.

Q80 Can I have a joint tenancy with someone else?

A. Up to three people may be granted a joint tenancy. In a joint tenancy each Tenant is jointly liable for observing the terms of the tenancy. If, for instance, one or more joint Tenants leave then the remaining Tenants have to pay the full rent.

Q81 Can I take in a lodger or share the property?

A. **No**.

Q82 Can the Landlord increase the rent?

A. If the tenancy is a Protected or a Statutory Tenancy the rent cannot exceed the registered amount for that property. If there is no registered rent a Tenant can apply at any time for an assessment.

If the tenancy is an Assured Tenancy the Landlord may initially charge any amount. The rent cannot subsequently be changed unless the terms of the tenancy agreement permit it, or, after the end of any fixed term, the procedure specified in the Housing Act 1988 has been followed. If the tenancy is an Assured Short hold Tenancy the Landlord may initially charge any amount. You may apply at any time to the local Rent Assessment Committee for a reasonable rent to be fixed, and any amount fixed will be the maximum chargeable for the remainder of the initial fixed term. At the end of the fixed term the tenancy will become a periodic tenancy, and the Landlord can normally increase the rent each year.

Q83 Are there any good books you can recommend to Tenants?

Tenant's Survival Guide
Author: Lesley Henderson
Publisher: Robert Hale
Price: 9.99 pounds
ISBN: 0-7090-6529-9
Available from: Internet Bookshop

The Which? Guide to Renting and Letting
Author: Peter Wilde and Paul Butt
Publisher: Which? Ltd
Price: 10.99 pounds
ISBN: 0-85202-783-4
Available from: Which? Books

GENERAL DEPOSIT ADVICE

When you pay a deposit on a tenancy, your landlord has to have it protected in a deposit protection scheme.

If your deposit isn't in a scheme, like many other tenants, you risk unfair deductions or not getting it back at all.

Deposit Protection legislation gives tenants the opportunity to enforce their rights.
You are eligible to claim an additional award of up to 3x your deposit (as well as having your original deposit protected/returned) if:

- the deposit was never protected *or*,
- the deposit was protected but they were not given sufficient information *or*,
- the deposit was protected and sufficient information was given but it either action was not performed within 30 days of the deposit being paid.

We know that there are countless instances where deposits are wrongfully kept, disputed or simply lost due to landlords not offering tenants the minimum protection they are entitled to under the law.

The first step in any deposit claim is to check if the deposit is protected. If it is registered with a scheme, we ensure that it is sufficiently protected by proof reading all documents that were given to you.

We negotiate with your landlord/agent to reach a settlement all parties are happy with.
We keep communication with your landlord/agent professional and friendly with a vision to safeguard any ongoing tenancies.

Your landlord must put your deposit in a government-backed tenancy deposit scheme (TDP) if you rent your home on an assured short hold tenancy that started after 6 April 2007. In England and Wales your deposit can be registered with:

1. Deposit Protection Service (Custodial and Insured)
2. My Deposits - including deposits that were held by Capita
3. Tenancy Deposit Scheme

Your landlord can accept valuable items (e.g. a car or watch) as a deposit instead of money, but they won't be protected by a scheme.

There are separate TDP schemes in Scotland and Northern Ireland.
They make sure you'll get your deposit back if you:
Meet the terms of your tenancy agreement
Don't damage the property pay your rent and bills?

Your landlord or letting agent must put your deposit in the scheme within 30 days of getting it. At the end of your tenancy. Your landlord must return your deposit within 10 days of you both agreeing how much you'll get back. If you're in a dispute with your landlord, then your deposit will be protected in the TDP scheme until the issue is sorted out.

Holding deposits
Your landlord doesn't have to protect a holding deposit (money you pay to 'hold' a property before an agreement is signed). Once you become a tenant, the holding deposit becomes a deposit, which they must protect.

Deposits made by a third party
Your landlord must use a government approved scheme even if your deposit is paid by someone else, e.g. a rent deposit scheme or your parents.

Information landlords must give tenants
Once your landlord has received your deposit, they have 30 days to tell you:

- the address of the rented property
- how much deposit you've paid
- how the deposit is protected
- the name and contact details of the tenancy deposit protection (TDP) scheme and its dispute resolution service
- their (or the letting agency's) name and contact details
- the name and contact details of any third party that's paid the deposit
- why they would keep some or all of the deposit
- how to apply to get the deposit back
- what to do if you can't get hold of the landlord at the end of the tenancy
- what to do if there's a dispute over the deposit

Contact a tenancy deposit scheme (TDP) if you're not sure whether your deposit has been protected.

Deposit Protection Service (Custodial and Insured) Telephone: 0330 303 0030
My Deposits Telephone: 0844 980 0290
Tenancy Deposit Scheme deposits@tds.gb.comTelephone: 0845 226 7837

Getting your deposit back
You can apply to your local county court if you think your landlord hasn't used a TDP scheme when they should have.

Get legal advice before applying to court.

If the court finds your landlord hasn't protected your deposit, it can order the person holding the deposit to either:

- repay it to you pay it into a custodial TDP scheme's bank account within 14 days
- The court may also order the landlord to pay you up to 3 times the deposit within 14 days of making the order.

At the end of the tenancy
The court may decide that you won't have to leave the property when the tenancy ends if your landlord hasn't used a TDP scheme when they should have.

If there's a dispute over a deposit

Your tenancy deposit protection (TDP) scheme offers a free dispute resolution service if you disagree with your landlord about how much deposit should be returned.
You don't have to use the service but if you do, both you and the landlord have to agree to it.
You'll both be asked to provide evidence, and the decision made about your deposit will be final.

If you can't contact the landlord
You can 'raise a dispute' to get your deposit back if you can't contact your landlord and your deposit is held by one of the approved TDP schemes:

1. My Deposits
2. Tenancy Deposit Scheme (TDS)
3. Deposit Protection Service Insured

The TDP scheme will refund your deposit if the dispute resolution service agrees.
There may be a limit on the time you have to raise a dispute. Contact the TDP scheme as soon as possible.

You can get more help and advice from:

- your local Citizens Advice office
- a solicitor or advice agency
- Shelter in England or Shelter in Wales

Deposit Information On Deductions to the deposit

In June 2011, the value of this guide was recognised by the Rt Hon Grant Shapps MP, Minister for Housing and Local Government, who stated in answer to a Parliamentary Question:

"***We welcome the recently published guidance on the dispute resolution process which the three scheme providers produced to help landlords and tenants understand the process and to ensure consistency in adjudication decisions across the three schemes***".

DETAIL

All three deposit protection providers have signed up to the guidelines in this document, and will continue to operate their dispute resolution services using these principles. They will be reviewed and updated as necessary, to reflect current methodology and best practice.

For many years, residential landlords have taken a financial deposit from a prospective tenant to protect against breaches of the tenancy agreement. These breaches could be for things like cleaning, damage/loss of property, unpaid rent or bills.

The deposit remains the property of the tenant at all times. It is held by the landlord or his agent until the end of the tenancy. The deposit should not be used to subsidise the outgoings or expenditure of the landlord or his agent unless the parties specifically agree to this or the tenancy agreement allows it.

The deposit is regarded as the tenant's money. This means that it should be returned to the tenant at the end of the tenancy, if they have honoured the terms of the tenancy agreement. Since April 2007 tenancy deposits for Assured Short hold Tenancies in

England and Wales have to be protected by an authorised tenancy deposit protection scheme.

What is Alternative Dispute Resolution (ADR)?

ADR is an alternative way of resolving disputes, other than by using the traditional route of the Courts. It is an evidence based process, where the outcome is decided by an impartial and qualified adjudicator. It is not a process of mediation, arbitration, or counseling and the parties will never be required to meet with the adjudicator.

Nor will the adjudicator visit the property subject to the tenancy agreement or dispute. All tenancy deposit protection schemes use the 'adjudication' method to deal with deposit disputes. The parties in dispute are required to submit their evidence to the adjudicator. They will need to do this within specified timescales laid down by the individual deposit protection scheme. You should check the processes you are required to follow with your particular scheme. The adjudicator will analyse and consider the evidence and make a binding decision as to how the disputed amount of the deposit should be distributed.

Remember that the tenant has no obligation to prove his argument, because the deposit remains his property until successfully claimed for by the landlord. A landlord must prove that he has, on the 'balance of probability', a legitimate claim to retain all or part of the deposit. If he can't, the adjudicator must return the disputed amount to the tenant.

Because participation in this ADR process requires consent by both parties, the final decision of the adjudicator is binding on both the landlord and tenant. It cannot be challenged except through a Court of Law – although the parties should seek their own independent legal advice first. The

Schemes are NOT permitted to re-open cases unless it can be shown that the Scheme did not follow the processes laid down in its own rules, or did not take into account all the evidence submitted by the parties.

In extreme circumstances adjudicators may ask for further evidence or clarification on a particular matter from either party. In some cases, the adjudicator may decide that the case would be better dealt with through a formal court process. However, in the majority of cases the adjudicator will make a decision based on the evidence he has in front of him. So:
• make sure you submit the evidence you want taken into account
• make sure you send it to the Scheme within the specified timescales

Who are the Adjudicators?

All three tenancy deposit protection schemes use adjudicators to make binding decisions on the return of the disputed deposit amount. These adjudicators are sometimes employed directly by the Scheme or are independent individuals under contract to the Scheme. Regardless of their employment status, the Schemes are contractually bound to ensure that adjudicators are appropriately qualified and have the skills necessary to make fair and reasoned decisions. It is not compulsory for a Scheme to state the name of a particular adjudicator or to disclose their identity to either the landlord or tenant.

Avoiding Disputes

All Schemes have found that most disputes are resolved simply by the landlord and tenant getting involved in a discussion about the deposit at the end of the tenancy, whether this is through their agent or otherwise. Disputes can also be avoided by both parties - **but especially the landlord** - having a realistic expectation about what condition the property should be returned in at the end of the tenancy. The most common causes of deposit disputes are, unsurprisingly, cleaning charges and wear and tear.

Adjudicators use established legal principles when considering disputes. Sometimes, these principles do not meet the parties' expectations. And of course, many disputes are unavoidable simply because the tenancy agreement or pre-tenancy procedures were not set up or followed correctly to begin with.

We recommend that in the first instance, landlords and agents take these steps at the end of the tenancy:
• Remind the tenant of their obligations under the tenancy agreement before it ends, preferably yin writing. Many tenants stay in the property for a considerable amount of time and may not be

familiar with the terms of their original agreement. A gentle reminder about what is expected of them can make discussions over deductions from the deposit easier to bear.

• Wherever possible, ensure that the tenant(s) attend the 'check-out' process. Ensure that their comments are noted if they disagree with anything during the process, and make reference to these comments when responding over deductions.

• The landlord should take into account **betterment and fair wear and tear**; this will help manage their expectations of what they can claim from the deposit.

• The landlord should talk to the tenant (Or A3Countrywide) about whether they want to claim anything from the deposit. Communication at an early stage is important when trying to resolve issues.

• If the deposit is protected by an insurance based scheme, the landlord should return to the tenant any portion of the deposit that is not subject to a dispute, immediately. In the case where the deposit is held by the custodial scheme, please refer to their procedures for releasing undisputed amounts.

What evidence will an adjudicator be looking for when Considering a dispute?

A common misconception is that the tenancy deposit protection schemes are biased toward either the landlord or the tenant. When a dispute reaches adjudication, an adjudicator's starting position mirrors that of the courts. The deposit is first and foremost the tenant's money; this remains the case until the landlord can justify their claim to it. **The onus is on the landlord to show why they are entitled to claim money from the deposit. T**he adjudicator must make a binding decision on the basis of the information provided by both tenant and landlord. This process is evidence based. The landlord must support their claim with evidence to show that the tenant has broken the tenancy agreement, and that the landlord has suffered, or is likely to suffer, a loss as a result. The landlord needs to act realistically when assessing the amount they want to claim.
The adjudicator cannot make any assumptions, or construct a claim on behalf of the landlord or tenant.

The adjudicator's decision will be based on the evidence presented. The evidence provided should be both robust and reliable in order to support a claim. If a landlord makes submissions which are not supported by evidence the adjudicator may have no option but to disregard them. As a result, when the deposit is returned to the tenant in deposit disputes this is primarily because the landlord has not provided a strong enough case to keep it.

You only need to submit evidence in support of a dispute where you consider it is directly relevant to the dispute. For example, evidence of unpaid utility bills is not required where the dispute concerns the cleanliness of the property at the end of the tenancy. Similarly, where the dispute is in relation to damaged contents, photographic evidence is only needed if it shows the contents affected.

An adjudicator will take into account any admissions of liability by the tenant; however evidence should still be provided to show how the tenant has broken the tenancy agreement, and the loss suffered as a result. Evidence which shows that the landlord tried to reach a compromise, or to keep the amount of their claim to a minimum, is helpful too.

The Only Evidence Submissable

1. The Tenancy Agreement

This is a necessity for all disputes. The adjudicator needs to establish the contractual Obligations that apply to the landlord and tenant. If this document is not provided it is likely that the landlord's claim will fail because the adjudicator will be unable to establish the obligations agreed between the parties.

2. Inventory Reports & Check-in/Check-out Inspections

The importance of a properly completed inventory **cannot be underestimated**. It must be robust and defensible if it is to be held up as a proper indicator of the facts and therefore viewed as acceptable by an adjudicator or court.

Tenancy deposit protection schemes do not disregard, out of hand, inventories that are not prepared by independent companies or individuals. However, they are likely to place less weight on their contents. **It may also be necessary for a landlord to provide more corroborating evidence to show the condition of the property than would normally be required if the process was carried out by qualified and independent inventory clerks**. For example, dated photographic evidence is useful to show any change in the property's condition. This is also true of any check-in/check-out document and process.

Many landlords use their agents to conduct their check-in and check-out inspections. Again these will not be disregarded. However there is an added need to show that the process, and the person **undertaking the inspection, was impartial.** Adjudicators will take into consideration the general circumstances and relationship between the parties in determining what weight to put on the evidence.

Some agents provide "in-house" services to remedy the potential breach (for example cleaning or repairs). Again, care needs to be taken to show that this process is open and transparent and that the costs incurred are justified.

If these documents have not been independently completed a tenant may be sceptical about them; it is beneficial therefore for the **tenant to have been offered the opportunity to view**, amend, and sign the documents. If they are not signed by the tenant you should explain why. **The tenant does not have to be present at the check-out inspection**, and mostly they do not attend. However they are entitled to attend if they want to; if they ask to attend the landlord/agent should take reasonable steps to meet this request. It may be helpful to provide evidence to show that the tenant was provided with details of the check-out appointment and invited to attend, but that they did not do so.

Note that where a **landlord puts the onus** on the tenant to complete their own check in inspection, this type of check in is far less robust than a 'full' check in. Just providing an inventory to the tenant and expecting them to note any discrepancies, or relying on a document that has not been signed, will not be sufficient to convince an adjudicator; the

Landlord will need to provide other evidence to show that their expectations and the tenant's obligations were fully explained to the tenant.

Where a check-in is challenged by the tenant, a full audit trail of what remedial action has occurred should be provided and a revised check-in agreed and signed.
It is preferable if check-in and check-out inspections are produced in a similar format – where possible by the same person. To enable meaningful comparisons to be made, it is also important that the same measurements of the property's condition are used in both reports.

Many check-out clerks hand write amendments on a copy of the check-in report. This often shows that the check-out was conducted in conjunction with the original. It is however always sensible to provide a separate typed report in addition to the handwritten notes. Remember that handwriting varies and that the adjudicator may not be aware of abbreviations, annotations and acronyms.

The **onus is on the landlord** to ensure that the adjudicator can establish by whom and when the handwritten notes were added. If standard descriptions and grades are used, these should be clearly explained. These should be consistent and concise. Terms such as "fair" and "OK" should be avoided and any term used to denote condition qualified and defined.

Avoid relying on standard clauses such as if an item is not mentioned or its condition not commented on then it is assumed to be in good condition. Whilst it need not be possible to note and comment on every item in a property it will be very difficult for an adjudicator to determine between subjective statements by the parties.

It is sensible to carry out periodic inspections of the property during the tenancy. Please note however that these may not be as detailed as check-in and check-out inspections at the start and end of the tenancy

3. Photographic/Video evidence

Photographic evidence can be used to support, or defend a claim against a deposit. Only photos that are relevant should be submitted. Ideally, 'before and after' photos should be submitted with a clear narrative as to what the photo is showing e.g. colours, item description, marks on surfaces etc. Do not assume that the adjudicator is seeing the same image as you – draw the adjudicator to the part of the photo you want him to focus on. **Photos should, be dated and signed by both parties, or alternatively digitally dated (preferably visible on the photograph).** Photographs need to be of a good quality to show clearly the condition of the property at any given time. Photographs are useful as supporting evidence only and do not supplicate an independent check-out inspection.

4. Invoices/receipts/estimates/quotations

These are necessary to illustrate any costs incurred in respect of repair/replacement work being carried out. This evidence should be itemised fully, to enable an accurate breakdown of the costs being charged for each type of work undertaken. Only receipts or invoices corresponding to claims being made against the deposit are necessary. If these cannot be provided, an explanation should be provided indicating why this evidence is not available.

Estimates and quotations will not be accepted as they do not demonstrate a cost actually incurred.

It is not usually supportable to claim for the landlord's time and inconvenience.

5. Cleaning Charges

Deductions made by landlords in relation to cleaning charges are regularly disputed by tenants. Many claim that the cleanliness of the property at the start of the tenancy was not clear, or that the tenancy agreement did not make clear what was expected of them. Where landlords wish to make deductions for cleaning costs, they will need to be careful to record the cleanliness of the property in **sufficient detail**, at the start and end of the tenancy. They must ensure any charges they claim are a fair reflection of the property's condition at the start of the tenancy.

The type and size of the property is an important factor when deciding whether cleaning costs are reasonable. For example, a 5 bedroom house would take longer to clean than a

1 bedroom
flat. Similarly, the cleaning of a bathroom mirror would not require an equal amount of cleaning as a bath or shower. For this reason 'Standard Charges' are often considered unreasonable by an adjudicator, unless these are specifically explained to the tenant in writing at the start of the tenancy and agreed to by the tenant in writing.

A landlord can also support their claim by producing invoices or receipts for work carried out by a professional cleaning contractor, as costs are usually balanced against market rates and geographical location.

Where landlords charge an hourly rate to clean the property themselves, this can be more problematic for adjudicators because it is harder to justify the rate against the time spent cleaning. Tenants also complain that regardless of their efforts to clean the property themselves deductions are made no matter what the state of the property at the end of the tenancy. It is important to remember that the tenant is **only obliged to return the property in the same state of cleanliness as at the start of the tenancy, after allowing for fair wear and tear**.

6. Rent Account statements

Where the dispute concerns rent arrears, account statements and/or bank statements which show arrears outstanding are important; without this sort of evidence the adjudicator will struggle to confirm whether there were any arrears. These should clearly show the property and person to whom the account relates. Where arrears have arisen, it is also useful for the adjudicator to see evidence that the tenant has been told about them, and has been given the chance to comment on them.

7. Standard Agency Charges

While it is accepted that agents can insert standard fees into their Terms of Business, tenants can challenge these. If they are considered to be unreasonable, it may not be possible to claim them. Landlords and agents should be aware that the deposit should only be retained for breaches of the tenancy agreement causing a financial loss **and not a failure to pay standard agency fees**.

For example, the Office of Fair Trading provides guidance on unfair terms in tenancy

agreements (Unfair Contract Terms Act 1977). A clause which is inserted into a contract will not automatically be deemed to be a fair clause just by virtue of its presence. The adjudicator needs to consider the merits of each case in order to decide whether the clause is reasonable.

An adjudicator can also consider when and how the tenant was made aware of his potential liability. For example, it could be considered unreasonable for a tenant to have to read a website to understand further costs which are applicable at the end of the tenancy without assessing whether the tenant has access to the internet or not. A further example could be where an agent expects a potential tenant to sign an agreement containing the charges without explanation, where their first language is not English.

The adjudicator will also want to see evidence to confirm this, and to show the extent of any loss to an agent. For example, an adjudicator will often find against a standard fee for a check-in process if the tenant never moved into the property and the check-in appointment was not required.

In summary, standard agency fees that are automatically deducted from the deposit should be reasonable and fully explained to the tenant.

8. Utility bills/Council Tax

Tenancy agreements often require the tenant to pay the charges they incur when they live in the property. For example, tenants are often required to register their details with the local authority or utility provider, and bills are therefore issued in the tenant's name.

Where these bills are unpaid at the end of the tenancy, the adjudicator is likely to take the view that the liability for the outstanding accounts is between the tenant and the local authority/utility provider, rather than with the landlord. Therefore, unless the landlord can show that the bills were not transferred into the tenant's name, or that the landlord has been required to pay any outstanding accounts, the adjudicator is unlikely to make an award to the landlord.

It is acknowledged that some utility companies do attempt to pursue landlords for "outstanding" bills and those clauses are written into many ASTs to "protect" the landlord. **However there is no liability on the landlord especially if they can ensure that they have informed the utility provider that the tenant has vacated the property, they have provided the company with the final meter reading and a forwarding address for the tenant has been supplied**. (In summary the landlord should not deduct utility bills from the deposit.)

9. Witness statements/other evidence

Sometimes the parties to a dispute feel that there are other witnesses to the case who may have useful information for the adjudicator to consider (such as neighbours, friends/associates who visited the property, or independent contractors). **The adjudicator will not contact such potential witnesses to obtain further evidence**. **The adjudicator will not cross-examine witnesses, or take evidence under oath.**

Similarly, submissions such as "I have other evidence which I can provide if it is needed" are not helpful to the adjudicator. **The parties must themselves submit all evidence which they wish to be considered by the adjudicator**.

Wear & Tear

Many landlords believe that the property should be returned to them in the same condition as at the start of the tenancy. Deductions are often claimed from the deposit for minor damage that should be expected in any normal use of the property. Similarly, some landlords seize the opportunity to 'replace' items in the property which are coming to **the end of their natural life** e.g. redecorating an entire room when minor scuff marks have been caused by the tenant.

The House of Lords defined fair wear and tear as "*reasonable use of the premises by the tenant and the ordinary operation of natural forces". The word 'reasonable' can be interpreted differently, depending on the type of property and who occupies it. In addition, it is an established legal principle that a landlord is not entitled to charge his tenants the full cost for having any part of his property, or any fixture or fitting, "…..put back to the condition it was at the start of the tenancy.*"

Landlords should therefore keep in mind that the tenant's deposit is not to be used like an insurance policy where you might get "full replacement value" or "new for old".

The landlord also has a duty to act reasonably and not claim more than is necessary to make good any loss. For example:
• Replacement of a damaged item may be justified where it is either severely and extensively damaged beyond economic repair or, its condition makes it unusable;
• Repair or cleaning is a more likely award where replacement cannot be justified;
• In cases where an item has had its value reduced or its lifespan shortened, for example by damage, an award of compensation may be appropriate;

In addition to seeking the most appropriate remedy, **the landlord should not end up, either financially or materially, in a better position than he was at start of the tenancy, or than he would have otherwise been at the end of the tenancy after having allowed for fair wear and tear**. In order to avoid allegations of betterment by the tenant, any award for damage must take into **account fair wear and tear,** the most appropriate remedy, and that the landlord should not end up either financially or materially in a better position than he was at commencement of the tenancy or as he would expect to be at the end of the tenancy.

It is very difficult for tenancy deposit protection schemes to provide guidance on the levels of deductions landlords and agents expect to be able to claim from the deposit. The nature of adjudication is that each case is considered on its own merits and no two cases are ever the same. However, adjudicators will consider the following factors when coming to a particular decision:

• **Length of tenancy** - the longer the tenancy, **the more natural wear.** Common sense, but think, for example, how much wear a carpet in your own home shows after one, two or three years. Also consider what the item's condition was when the tenancy started; was it brand new or has it already seen a few tenancies come and go.

• **Number and age of occupiers** - the more bedrooms and occupants, the higher the wear and tear that should be expected in all the common parts e.g. sitting room, passages, stairs, bathrooms and kitchen. If you are letting to a family with children, factor that in too. **Scuffs and**

scrapes are unavoidable in normal family life. A property occupied by a single person should see far less wear than a family of four, so bear this in mind when it's time for tenants to check out.

• **Wear and tear vs. actual damage** - when is it no longer normal wear? Damage i.e. breaking something is not wear and tear - meaning either replacement or repair. Light marks on a carpet might have to be viewed as unavoidable. On the other hand, damage such as nail varnish spills on the floor or iron burns that have occurred due to negligence could see the tenant liable for repair.

Consider whether the item has been damaged or worn out through natural use versus negligence when making a judgement call.

• **Quality and Condition** - consider the original quality of the item at the start of the tenancy and what it originally cost to provide. It would unreasonable for a landlord to provide a cheap and flimsy set of bedroom furniture and then blame the tenant if the items are damaged through normal usage. Adjudicators may expect to see receipts or other evidence to confirm an item's age, or its cost and quality when new. Another consideration is the quality or fabric of the property itself. Many new builds tend not to be quite as robust as older properties or conversions. Walls, partitions and internal painted surfaces tend to be thinner and therefore likely to suffer more stress, particularly in higher footfall areas of the property.

This inevitably means that there is a greater need for redecoration at the end of the tenancy period. An adjudicator may therefore consider more than a simple contribution to the cost of redecoration from the tenant to be unreasonable. In considering whether cleaning/repair is necessary versus complete replacement at the end of the
tenancy, an adjudicator will examine the check-in/out reports, any statements of condition and any photos/videos in order to compare the condition of the property at the start and end of the tenancy.

In some cases, the damage may not be so extensive as to require the complete replacement of an item at the tenant's expense (such as a kitchen worktop or carpet); however the adjudicator will award sums in recognition of any damage which has occurred. Whilst the landlord may wish to replace a damaged item, it is not always the case, even where the damage is admitted by the tenant, that the extent of the damage is such that the tenant should automatically bear the full replacement cost.

In the rare circumstances where damage (to the worktop/carpet/mattress/item etc.) is so extensive or severe as to affect the achievable rent level or market quality of the property, the most appropriate remedy might be replacement and to apportion costs according to the age and useful lifespan of the item. An example of how this might be calculated is set out below:

a) Cost of similar replacement carpet/item - £500.00
b) Actual age of existing carpet/item - 2 years
c) Average useful lifespan of that type of carpet/item - 10 years
d) Residual lifespan of carpet/item calculated as c) less b) - 8 years
e) Depreciation of value rate calculated as a) divided by c) - £50 per year
f) Reasonable apportionment cost to tenant calculated as d) times e) - £400.00

This is called **contribution.**

In Summary

It is impossible for any guide to guarantee what the outcome to a tenancy deposit dispute might be.

By their very nature, disputes are contentious and one party is likely to feel aggrieved at the end of the process. Adjudicators are looking for a fair and reasonable outcome. Follow this simple step by step guide:

1. When taking a deposit, landlords should protect it within 14 days from receipt from the tenant – either lodge it with the custodial scheme or arrange protection through an insurance scheme.
2. Landlords need to consider carefully any deductions they wish to make from the deposit and ask themselves 'is this fair?' or 'how would I feel if I was the tenant?' Landlords should discuss their concerns with the tenant. Open communication prevents a large number of potential disputes.
3. When dealing with a tenancy deposit scheme, familiarise yourself with their processes and follow them. Schemes are allowed to make awards to tenants where landlords break their scheme rules.
4. Try to view the evidence you are submitting from the point of view an independent third party who does not know the property. Will your evidence convince them of your case?
5. If you agree to adjudication then remember that you cannot appeal against the final decision unless you challenge it through the courts.