

Briefing Note 10/09/19

Tenants Fee Act 2019

*This paper is a briefing note only, the purpose is to provide landlords/agents with an introduction to the Tenants Fee Act 2019 and the Client Money Protection for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019. **Landlords and Agents such seek further legal advice to ensure compliance.***

Legislation came into force 1st June 2019

Trading Standards duty to enforce.

District Council's power to enforce.

Initially applies to new tenancies made after the 1st June 2019. It will apply to pre-commencement tenancies from 1st June 2020.

Doesn't apply to deposits collected before the 1st June 2019.

Applies to Registered Providers and Local Authorities renting out a house through an assured short hold tenancy.

Prevents landlords and managing agents making a charge or a fee unless permitted under the legislation.

Permitted Payments

1. The rent. The landlord cannot charge more in the first month than other subsequent months. For example, if a landlord requires a tenant to pay £800 in the first month and then £500 in the second month and onwards, the surplus of £300 in month one is prohibited under the Act.

2. Refundable deposits. Capped at 5 weeks rent where the annual rental income is below £50,000. Capped at 6 weeks rent where the annual rental income is above £50,000. These deposits must be protected in one of the Governments three tenancy deposit schemes within 30 days of them taking the payment.

3. A refundable holding deposit (to reserve a property). Capped at 1 weeks rent. The landlord/agent must refund this deposit if the tenant signs a tenancy agreement or if the landlord decides to pull out of the arrangement with the tenant or fails to enter the agreement before the agreed deadline (default date is 15 days unless landlord agrees in writing longer deadline with the tenant).

Landlord can retain holding deposit if tenant fails Right to Rent check, withdraws from the application process or if they take all reasonable steps to enter the tenancy but the tenant does not.

Landlord can retain holding deposit if the information given by the tenant is false or misleading to the point where it casts doubt on the tenant's financial suitability or honesty.

Where a landlord retains the holding deposit, they must provide reasons in writing to the tenant within 7 days of their decision. Failure to do so will mean the deposit must be repaid.

4. Payments in the event of a default of the tenant. A charge can only be made in relation to replacing a lost key or other security device to give access to the house or for the late payment of rent.

The charge for the lost key (security device) can only be for the evidenced reasonable costs incurred by the landlord.

In relation to late rental payments. Charge for payment that has been outstanding for 14 days or more is capped at 3% above the Bank of England's base rate for each day the payment is outstanding.

5. Payments on assignment, novation or variation of a tenancy. Capped at £50 or reasonable costs incurred if higher.

6. Payments associated with the early termination of the tenancy, when requested by the tenant. Should be no more than the loss the landlord has suffered by permitting the tenant to leave early.

7. Payments in respect of utilities, communication services and council tax. Tenants remain responsible for paying their bills.

Displaying Fees

A managing agent must display fees and membership for Redress and Client Money Protection Scheme prominently in their office, on their website and on other third party websites such as Rightmove, Zoopla or Facebook.

Penalties

Civil – usually £5000. However, if a further breach is committed within the following five years, this will be a criminal offence with an unlimited fine and a banning order offence under the Housing and Planning Act 2016. However unlawfully retaining the holding deposit does not become a criminal offence. The landlord has a right of appeal to the First-tier Tribunal.

The enforcement authority can require the landlord to repay the tenant or other relevant person any outstanding prohibited payment. The landlord has a right of appeal to the First-tier Tribunal.

Guidance

Guidance available for landlords and tenants at:

<https://www.gov.uk/government/publications/tenant-fees-act-2019-guidance>

Client Money Protection - Client Money Protection for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

The government has made it a legal requirement that property agents in the private rented sector holding client money must obtain membership from a government approved client money protection scheme from **1 April 2019**.

The following are approved schemes:

- Client Money Protect
- Money Shield
- Propertymark
- RICS
- Safeagent (previously NALS)
- UKALA Client Money Protection

Landlords must:

- hold their clients' money in an account with a bank or building society authorised by the Financial Conduct Authority
- get a certificate confirming membership of the scheme they join, and provide it to anyone who asks, free of charge
- display the certificate in any office where they deal with the public
- display on their website

Trading standards are the enforcing authority.

Penalties

Penalty for breach of the requirement to belong to a client money protection scheme may be of such amount as the authority imposing it determines; but must not exceed £30,000.

The Transparency Requirements will be breached where a property agent who is required to be a member of an approved client money protection scheme and who has been supplied with a copy of a certificate of membership from its scheme administrator; but fails to display this certificate prominently in their office(s) or on their website, and/ or fails to provide copies of these certificates free of charge to anyone who reasonably asks.

Each of the above breaches account for a separate breach of the Transparency Requirements. Therefore, where an agent has breached more than one of these requirements, they will be liable for a financial penalty for each one. For example, in the event that an agent fails to display their membership certificate and also fails to provide a copy of these certificates free of charge to anyone who reasonably asks these are two individual breaches with two separate potential financial penalties. The fine is a maximum of £5000.

Landlords can appeal to the First-tier Tribunal.

Further guidance is available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800548/CMP_enforcement_guidance.pdf