



Landlord Law Conference

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The Tenant Fees Act

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Following agreement by both Houses of Parliament on the text of the Tenant Fees Bill, it received Royal Assent on 12 February. The Bill is now an Act of Parliament and known as the Tenant Fees Act 2019.

The Tenant Fees Act outlines the Government's approach to banning letting fees paid by tenants in the private rented sector in England and capping tenancy deposits. The ban on tenant fees comes into force on 1 June 2019.

Permitted Payments

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

- 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

Eligibility

The ban on tenant fees applies only in relation to an Assured Shorthold Tenancy (AST), Licences to Occupy and student lettings provided by a specified educational institution (tenancy which meets the conditions set out in paragraph 8 of Schedule 1 to the Housing Act 1988) signed on or after the 1 June 2019.

For existing tenancies, the ban will apply to renewals (where the tenancy agreement becomes a new Fixed Term agreement) granted from 1 June 2019. The ban does not apply to long leases, company lets, any non-Housing Act tenancies, or a tenancy of social housing.

Transitional Provision

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. 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. If an existing tenancy is renewed this is classed as a new tenancy agreement and under the ban, landlords and letting agents will not be able to charge fees.

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. 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.

Holding Deposit

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

Holding deposits must be returned except when: a tenant withdraws or does not take reasonable steps to enter a tenancy; fails a Right to Rent Check; provides false or misleading information which materially affects their suitability to rent the property.

Deadline for agreement is 15 days (unless an alternative date is agreed) following receipt of the Holding Deposit for the landlord to enter into an agreement with the tenant to grant a tenancy. If the landlord decides not to rent out the property or does not reach agreement with the tenant, then the Holding Deposit must be returned within seven days. The Holding Deposit can be deducted from the Tenancy Deposit or first month's rent with the tenant's consent.

Tenancy Deposit

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. Landlords and letting 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 five- or six-week limit must be refunded.

Default Fees

Landlords and letting agents may require a tenant to make a payment in the event of two defaults. Firstly, the loss of a key to, or other security device giving access to, the property to which the tenancy relates. Secondly, failure to make a payment of rent in full only before the end of 14 calendar days beginning with date the rent is due as written in the tenancy agreement. 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.

Fee Transparency Rules

The Tenant Fees Act amends Section 83 of the Consumer Rights Act 2015 (duty of letting agents to publicise fees) to require letting agents to be members of a government-approved Client Money Protection Scheme and must display fees on all third-party websites.

Where an agent advertises a property on a third-party website the agent must ensure that a list of the agent's fees is published on the third-party website, or there is a link on that website to a part of the agent's website where a list of those fees is published. A third-party website is a website other than the agent's own website. Letting agents must continue to display fees as set out under the Consumer Rights Act 2015 prominently in an office and on their own website.

Client Money protection

The Housing and Planning Act 2016 is amended to allow the Secretary of State to approve specific Client Money Protection schemes, set out the conditions which must be complied with by the schemes, outline any amendments to the schemes and withdraw approval of any of the designated schemes.

Under the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 from 1 April 2019, all property agents in England holding client money must belong to a government-approved Client Money Protection scheme.

Practical issues

When a tenant has requested it, landlords and letting agents can charge to vary, assign or replace a tenancy. The payment cannot exceed £50 (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. Landlords and letting agents should provide evidence by receipts or invoices that demonstrate anything in excess of £50.

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.

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.

Enforcement

The Act places a duty on Trading Standards offices to enforce the ban on fees but District Councils that are not Trading Standards authorities will have power to enforce if they choose to do so.

The Tenant Fees Act gives authority to the Secretary of State to assign a Trading Standards office in England to be the Lead Enforcement Authority for the tenant fees ban and Consumer Rights Act (fee transparency rules), Enterprise and Regulatory Reform Act 2013 (membership of a redress scheme) and the Housing and Planning Act 2016 (membership of a Client Money Protection scheme).

On 17 April 2019 it was announced that Bristol City Council is the Lead Enforcement Authority for the purposes of the Tenant Fees Act 2019.

Penalties

A breach of the fees ban will be a civil offence with a financial penalty of up to £5,000. Each breach of the ban will result in a separate fine.

Successive breaches of the ban within five years (where a financial penalty has been issued or conviction secured in respect of the earlier breach) would be a criminal offence with an unlimited fine. The enforcement authority may impose a financial penalty of up to £30,000 as an alternative to criminal prosecution.

Timescales

Announced in the Autumn Statement on 23 November 2016, the ban on tenant fees was introduced to Parliament in May 2018 as the Tenant Fees Bill. On 12 February 2019, the Tenant Fees Act was passed into law. On 1 April 2019 the Government released *Tenant Fees Act 2019: guidance for landlords and letting agents*. The ban on tenant fees will come into force on 1 June 2019.

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