

RH 19

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: The Dispute Service

Response from: The Dispute Service

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1. INTRODUCTION

The Dispute Service Ltd is a not for profit company limited by guarantee which operates tenancy deposit protection schemes across the United Kingdom, protecting tenancy deposits and offering a free and impartial Alternative Dispute Resolution service in the event of dispute.

Established in 2003 by the Royal Institution of Chartered Surveyors (RICS) and the National Federation of Property Professionals (NFoPP), it currently runs the Tenancy Deposit Scheme in England and Wales, the largest insurance backed scheme, under a contract with the Department of Communities and Local Government and the Welsh Government.

This Dispute Service is also the lead partner in SafeDeposits Scotland Ltd, which is one of three custodial tenancy deposit schemes operating in Scotland since 2 July 2012. Its partners in this venture are the Scottish Council for Voluntary Service, NFOPP, RICS, the Scottish Association of Landlords and the National Union of Students Scotland. SafeDeposits is the largest scheme administrator in Scotland.

The Dispute Service also owns TDS Northern Ireland Limited, which has operated both an insurance backed and custodial tenancy deposit scheme in Northern Ireland since April 2013. Again, it is the largest scheme administrator with over 70% of all deposits protected.

The Dispute Service protects almost 1.2 million deposits in the England and Wales insurance backed scheme, covering well over £1 billion of deposits. Since 2007 it has dealt with over 50,000 tenancy deposit disputes.

The Dispute Service has also established the TDS Charitable Foundation, which is a grant giving body to fund projects which advance education for tenants and landlords about their respective rights and responsibilities. Since its establishment in 2013 the Charity has issued grants of c£100,000 to a range of organisations operating across England and Wales.

The Dispute Service welcomes the opportunity to provide its view on the Renting Homes (Wales) Bill. Our comments are restricted to the narrow but important area of tenancy deposit protection and wider matters of practice in the sector that affect it.

2. THE RENTING HOMES (WALES) BILL

The Dispute Service supports the introduction of The Renting Homes (Wales) Bill, in particular the simplification of tenancy agreements which should give greater clarity to both parties about their respective rights and responsibilities.

However, the ability for a joint contract holder to give notice without bringing the tenancy to an end for the remaining contract holders, is an area which requires careful planning and safeguards to avoid further problems being created in the often contentious area of deposits and arrears.

It is unclear from the current proposals about the practical arrangements for the tenancy when one of the joint contract holders leaves and it is our strong recommendation that greater clarity be provided in the legislation to make it clear to all parties that the remaining tenants are liable for the future rent under the continuing contract, and the outgoing tenant has no further rental liability once the notice has expired (other than their share of the arrears at the time their occupancy ended). This should be an area covered also by the model contract.

Furthermore, the issue of the deposit is an important issue at this juncture, because it is highly likely that the departing tenant would have contributed to a tenancy deposit at the start of the tenancy, and would therefore be expecting a refund of their share to use on another property. This leaves the landlord in the difficult position of:

- Potentially needing to do a check out in order to assess how much of the deposit should be returned to the departing contract holder – which assuming the tenancy is joint and several will mean assessing damage around people still in occupancy, which is a difficult task;
- Requiring the remaining contract holder(s) to make good any shortfall in the deposit caused by one leaving and claiming their share, or arranging a replacement to cover both the rent and the deposit;
- Facing a shortfall of the deposit when the whole tenancy does end, because it was never replenished.
- Also, if the departing contract holder has paid 100% of the deposit, it is perfectly conceivable that the landlord is left with one or more tenants without a deposit.

Our recommendations:

Set out clearly in the legislation that liability for the ongoing rent once a joint contract holder vacates falls on those remaining, as does the responsibility to replenish the deposit to the required level when the departing contract holder's notice expires. This should constitute a fundamental term in the model contract.

There should be a requirement on the departing contract holder to issue a notice of their intention to leave on both the landlord and the joint contract holders, so they are both aware of the implications.

The model contract should ask the landlord and contract holder(s) to specify clearly the amount of deposit paid by each of them at the start of the tenancy, so that it eliminates disputes over the split of the deposit in the event of a joint contract holder leaving at the end of the tenancy.

Although the Bill is very detailed, we feel that this is the ideal opportunity to legislate to bring all existing tenancy deposits, which have not needed protecting to date, into protection (i.e make the requirement to protect all deposits retrospective).

It would make sense that at a time of introducing legislation to improve the standard of the sector, to ensure that by a specified date all tenants are afforded the advantages that tenancy deposit protection brings. Mandating landlords to protect all residential tenancies with a tenancy deposit scheme, irrespective of when the deposit was paid or tenancy renewed, would complement the Bill's aims.

It would also remove any confusion amongst tenants about whether their deposit should be safeguarded. All deposits should be protected.