

Briefing

A rent deposit protection service for Scotland

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Shelter

A rent deposit protection service for Scotland

Introduction

Over 173,000 households live in the private rented sector in Scotland. Despite this number, there is no statutory regulation of rental deposits and a significant proportion of private tenants have problems getting their money back at the end of the tenancy. Shelter is urging the Executive to introduce a Rent Deposit Protection Service in Scotland. All landlords would be obliged to lodge money from deposits with the service. The service would then repay the deposit within a few days of the end of the tenancy providing the landlord and tenant are in agreement. Any dispute over repayment of the deposit could be referred to a panel and resolved within a month.

In Scotland, unlike many other countries worldwide, there is no statutory regulation of rental deposits in the private rented sector. Landlords in the private rented sector in Scotland are free to determine the amount of rental deposit charged¹, how the money should be held, how quickly it should be returned and who should benefit from the interest accumulated during the tenancy. Millions of pounds in private tenants' money is therefore being held as deposits in Scotland without any regulation for how it should be returned. Research in England shows that as many as half of all private tenants may have experienced their deposit being unreasonably withheld. Unfair withholding of deposits by landlords causes hardship, misery and insecurity to people as they attempt to move from one tenancy to another.

Scale of the Problem

There are 173,000 households² living in private rented accommodation representing 6% of all households in Scotland. The average rental deposit is around £550, usually the equivalent of one months rent. Research in England has shown that 70%³ of households have paid a deposit. Assuming an equivalent level for Scotland, this would suggest that in Scotland almost £50 million of tenants' money is held by landlords as deposits.

Is tenants' money safe?

In Scotland, many landlords and letting agencies regard tenants' deposits as part of their working capital. Many landlords do not hold deposits in ring-fenced accounts, and do not return any accrued interest to the tenant.

¹ The law simply states that the deposit should not amount to more than the equivalent of two months rent.

² 2002 House Conditions Survey

³ Relates to England and Wales. Figures from The Survey of English Housing 2001-02

A significant proportion of private tenants who have approached Shelter for help have problems getting their rental deposit returned.

According to the NUS, Ayr College has reported that there are a number of private landlords misusing rental deposits in the area. Many do not give receipts for deposits or rent payments, both of which students are being forced to make in cash. The college commented that students were “lucky to receive 60% of their deposits back”. According to the college, most students now try to avoid private landlords. The college reported that unwarranted claims on the deposits students paid were rife and most students did not feel in a position to refute them or to negotiate them down.

The operation of the private rented sector is not monitored, leaving it difficult to attain an accurate figure for the number of tenancies that end in dispute. Disputes over deposits generally take place at the end of a tenancy once the former tenant has moved away, and neither landlord nor tenant are in a position to challenge one another, except through legal action. Evidence from England where research into rental deposits has been conducted gives some indication of the scale of the problem:

- In 2001, the UK government conducted a large-scale survey of English housing which found that one in five tenants had said that all or part of their deposit from their most recent tenancy had been unreasonably withheld⁴. It also found that 9% of tenants who had a private tenancy ending within the last three years said their landlord had given no reason for withholding their deposit.
- Research conducted by Shelter and the Citizens Advice Bureau in England showed that 48% of clients had had a deposit unreasonably withheld in the last five years⁵.

What can tenants do to get their money back?

The only form of legal redress for tenants who have had a deposit unfairly withheld is to take legal action at a small claims court. But people are often deterred from legal action by the complexities and costs involved.

- Court fees to bring proceedings to claim an average deposit of up to £750 would be £39, and a summons would be a further £26⁶.
- If a landlord disputes a claim then a hearing would be required. For many people this can be a difficult or daunting experience. A report into recourse to law found that people who are vulnerable or socially excluded, such as people with disabilities or

⁴ Office of the Deputy Prime Minister, Housing in England, 2001-2002

⁵ National Association of Citizens Advice Bureaux, Unsafe Deposit (1998)

⁶ The Sheriff Court Fees Amendment Order 2002

people whose first language is not English, are the least likely to take action to resolve their legal problems.⁷

- Where a hearing is required it can take many months to receive a judgement, and if a claimant wishes to appeal a decision, it will cost a further £32⁸.
- Even with a favourable judgement there is no guarantee that the money will be recovered. Sheriffs Officers may charge up to 10% to recover any outstanding debt.

Even if the deposit is recovered, the damage to a tenant has already been done, often preventing tenants from moving between rented accommodation and causing hardship and debt. People may even become homeless because they are unable to raise a new deposit for the next letting.

Tenants frequently withhold the final months' rent because they anticipate their deposit will be unreasonably withheld. However, this is a risky approach, as it would allow the landlord to evict for non-payment of rent. It also causes problems for landlords as some tenants who illegally default on their final month's rent may have caused damage, which the landlord will then have to cover in full.

In essence, a Rental Deposit Protection Scheme would simplify the return of rental deposits, to the benefit of both landlords and tenants.

Why is legislation needed now?

Perceived problems with deposit return and other aspects of private tenancy management can be damaging to the image of the private rented sector. Unlike elsewhere in Europe, and especially in contrast to Ireland, the Private Rented Sector in Scotland is stagnating and has remained at about eight per cent of the housing sector for the last 10 years.

Statutory schemes to safeguard tenants' deposits and provide independent adjudications in cases of disputes are run in other countries including parts of Europe, Australia, New Zealand and Canada. Legislation to introduce a scheme to protect tenants' deposits was brought in with the Housing Act 2004 for England and Wales.

The experience of introducing a tenancy deposit protection scheme in England has shown that voluntary regulation of rental deposits does not work. Take-up of a pilot voluntary scheme set up in 2000 was poor and by March 2002 a total of only 203 landlords and agents in five pilot areas were participating in the scheme. The voluntary scheme was wound up in June 2003 and the Government legislated for a national Tenancy Deposit Scheme in the Housing Act 2004.

⁷ Professor Hazel Genn (1999) Paths to Justice: What people do and think about going to law.

⁸ The Sheriff Court Fees Amendment Order 2002

What benefits would legislation bring?

Improving protection of deposits by an approach that incorporates the whole industry could benefit the PRS by minimising the anxiety among tenants and setting a baseline for good practice for landlords and letting agents. This could lead to increased confidence in the sector and improve the image of private rented housing, making it more attractive as a housing option and giving a much-needed boost to the sector.

Legislation would ensure that tenants get their money back fairly without having to resort to court proceedings, reducing the proportion of disputes that have to be resolved by the courts.

For landlords, better and more transparent procedures for dealing with deposits would clarify misunderstandings between tenants and landlords, and make tenants less likely to default on their final months' rent leaving landlords to cover the cost of damage they may have caused.

For tenants, the security of having their deposit in a national scheme would give them confidence to stay in the private rented sector and increase their housing choices. By preventing the hardship faced by tenants on low incomes who have their deposits unreasonably withheld, a scheme would help to prevent homelessness and housing crises.

Models of rent deposit protection schemes

Statutory schemes ranging from basic regulation to mandatory custodial systems to protect tenants' deposits and landlords' property are common in many other parts of the world.

- France, Germany and three Canadian Provinces have minimum guidelines that recommend the landlord pay interest on deposits and set out good practice for how the deposit should be held and administered. There is, however, no penalty for failure to follow the guidelines and although having clear procedures for landlords to follow may reduce disputes and delays, bad landlords can simply ignore the requirements and it is impossible to monitor and ensure compliance adequately. In three other Canadian provinces, regulation is backed up by a requirement for each individual landlord to place deposit money in a separate trust account for each tenant and pay interest to the tenant at the end of the tenancy. The requirement for ring-fenced accounts guarantees that deposits are available for return, however, it is also impossible to monitor and enforce compliance and under UK tax laws a trust account system would be difficult and bureaucratic to operate.
- A more robust system for protecting deposits is a custodial rent deposit scheme where an independent third party collects and manages deposits and provides a dispute

resolution service. The first custodial tenancy deposit scheme was established in New South Wales. The scheme is operated by Government departments that benefit from high interest rates to cover costs. The New South Wales Bond Board claim that 77% of claims are resolved between the landlord and tenant without any intervention and only 2% have to be resolved by the tribunal.

- The Housing Act 2004 introduced a custodial scheme into England and Wales. The legislation provided that, in addition to a custodial scheme where deposits are paid into and held in a central account, there could also be a range of insurance-based schemes operating throughout England and Wales. In an insurance based scheme, the landlord or agent retains the deposit and any failure on their part to repay it to the tenant is covered by the schemes' insurance arrangements. This model has been adopted in England and Wales, however it may not be appropriate for Scotland, where a single national scheme would be more effective. For a rental deposit protection service to be cost effective it will need to be self financing by raising income from the interest on deposits it holds. Allowing a number of insurance schemes would reduce the number of landlords using the central custodial scheme, and so reduce the amount of income that scheme could earn from interest payments on the money it holds. A single scheme is also much more likely to be effective in resolving disputes within a set period, especially where many tenants are involved in a dispute with a single landlord.

Important features of a model for Scotland

- A Rent Deposit Protection Service for Scotland must:
- Be a compulsory scheme for holding deposits
- Ensure rapid repayment of deposit money at the end of a tenancy
- Provide a dispute resolution service as an alternative to the courts
- Offer a set of clear guidelines outlining what is reasonable for landlords to claim from a tenants deposit, e.g. damage to property rather than wear and tear.
- Be self financing through investing deposit money

A Rent Deposit Protection Service would incorporate each of these elements, providing Scotland with a nationally recognised scheme to raise the profile and integrity of the private rented sector. We envisage a single scheme for Scotland would be the most practical and cost effective, rather than a range of alternative or insurance-based schemes.

How would a Rental Deposit Protection Service work?

Charging a rental deposit would not be mandatory, but where a deposit is asked for, legislation should set out for what purposes a deposit can be used, and how it should be administered. It is envisaged that a landlord and agent can ask for a deposit of four weeks rent and that no charges other than a deposit and advance rent can be made to set up a tenancy.

At the start of the tenancy: The landlord or agent must agree a condition/inspection report with the tenant at the point the tenant moves in. Once paid by the tenant, the landlord or agent has 7 days to send the deposit to the Rental Deposit Protection Service (RDPS) together with a lodgement form. Once lodged, the RDPS would advise the tenant and send them a reference number, if no reference number is received, the tenant should inform the RDPS who would contact the landlord. If a landlord should fail to lodge a deposit with the Service, they would be prohibited from using the notice only procedure for possession. There would be no criminal penalties for failure to comply.

During the tenancy: The RDPS would hold the deposit and retain its accumulated interest.

At the end of the tenancy: Following a final inspection, the landlord and tenant would complete a form to claim a refund of deposit money from the RDPS. If the landlord/letting agent and tenant agree how the deposit money should be repaid and both sign the form, the money would be repaid by the RDPS within seven days. If agreement cannot be reached, either party could send a deposit claim form without the signature of the other party. The deposit would not be paid out straight away. A letter would be sent to the other party advising them of the claim and giving them 14 days to apply to the RDPS tribunal. If no reply were received after 14 days the deposit would be paid to whoever claimed it. A dispute resolution tribunal would consider the inspection reports and give an opportunity to both the landlord and the tenant to support their claim. Whether it is the landlord or tenant who applies to the tribunal to resolve a dispute, it would always be up to the landlord to prove any claim since the deposit remains the tenants' money throughout.

A Rent Deposit Protection Service for Scotland

A Rent Deposit Protection Service would protect tenants from landlords that withhold deposits unfairly, while also protecting landlords by discouraging tenants from not paying the final months' rent. A protection scheme would also provide a rapid dispute resolution service to regulate the system. The self-financing nature of the scheme would ensure that dispute resolution does not provide additional financial burdens to either the landlord or tenant.

The Housing (Scotland) Bill provides a long-awaited opportunity to improve the operation of the private rented sector. The inclusion of a Rent Deposit Protection Service would play a major part in creating a smoother running sector.

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This is one of a series of position papers produced by Shelter on the Housing (Scotland) Bill. For more information, contact Grainia Long, Policy Manager, Shelter Scotland on 0131 473 7194 or grainia_long@shelter.org.uk