

## Changes to the tenancy deposit protection rules

On 26 March 2015, sections 30 to 32 of the Deregulation Act 2015 came in to force. What are the implications of this for landlords in relation to tenancy deposit schemes?



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### Deposits taken prior to 6 April 2007

It remains the case that a landlord who took (and retains) a deposit in relation to an assured shorthold tenancy **prior to 6 April 2007** and where that tenancy became a statutory periodic tenancy prior to 6 April 2007 is not required to protect the deposit in an approved scheme. However and importantly should such a landlord wish to seek possession of a property let under an assured shorthold tenancy under s21 of the Housing Act 1988 they must secure the deposit with an approved scheme and issue the prescribed information to the tenant. Both these actions must take place prior to serving a s21 notice. A failure to do so will render the s21 notice invalid. It will not give rise to sanctions for non-compliance (under s214 of the 2004 Housing Act). These provisions in effect confirm the decision in *Charolambus vs Ng* [2014] EWCA Civ 1604.

If, however, a landlord retains a deposit in relation to an assured shorthold tenancy and that automatically converted to a statutory

### periodic tenancy on or after 6 April 2007

the position is different. That deposit must be protected in an approved scheme and the tenant issued with the prescribed information. This must be done by 23 June 2015 (or before the court decides on any current proceedings under s21 or s214, should that be sooner). A failure to do so will expose the landlord to sanctions for non-compliance (s214).

### Deposits taken after 6 April 2007

Unsurprisingly, existing provisions requiring a landlord to use an approved deposit scheme and issue the tenant with the prescribed information remain intact in relation to all assured shorthold tenancies that commenced after 6 April 2007. However, the 2015 Act has tidied up the uncertainty of whether such deposits should be re-deposited and the prescribed information re-issued when an assured shorthold tenancy is renewed or when a statutory periodic tenancy arises. It is now clear that so long as the tenancy details remain the

same and the deposit remains in the same tenancy deposit protections scheme, there is no need to reissue the prescribed information when the tenancy is renewed or rolls into a statutory periodic tenancy. These provisions effectively overrule *Superstrike vs Rodrigues* [2013] EWCA civ 669.

Landlords who protected the deposit and issued the prescribed information correctly during the initial tenancy can now rest easy. The original penalties still exist of course: a landlord who fails to protect the deposit or issue the prescribed information within the prescribed 30 days remains exposed to the penalties under s214.

### **What about agents and the prescribed information?**

The Deregulation Act 2015 also clarifies that an agent acting on the behalf of the landlord where they have taken and protected the

deposit on the behalf of the landlord is able to provide the agent's details (rather than the landlord's) on the prescribed information.

This is yet another instance where Parliament has had to revisit its own work due to supposedly unanticipated consequences of what was originally envisaged as being a straightforward and unexceptional piece of housing policy. Most therefore would be unsurprised if Parliament was to come back to this issue yet again in the near future.

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