Tenants' deposits (England and Wales)

Standard Note: SN/SP/2121
Last updated: 8 September 2014
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Section Social Policy Section

In June 1998 the National Association of Citizens Advice Bureaux (NACAB) published a report based on CAB clients' experience of the payment of deposits. In the light of evidence highlighting the difficulties faced by tenants trying to reclaim their deposits from private landlords, NACAB concluded that the case for reform was 'overwhelming' and that the failure to regulate deposits damaged the image and reputation of the private rented sector.

Provisions were added to the *2004 Housing Act* to place a duty on 'the appropriate national authority' to establish at least one statutory tenancy deposit scheme. Tenancy deposit schemes (TDS) became operational from 6 April 2007 in respect of assured shorthold tenancies created in England and Wales after that date. The *Localism Act 2011* amended (with effect from 6 April 2012) sections 213 and 214 of the *Housing Act 2004* to resolve issues arising from several court cases concerning mandatory tenant deposit schemes. Measures have been included in the *Deregulation Bill*, which is currently at Committee Stage in the Lords, to tackle the implications of the Court of Appeal's decision in *Superstrike Ltd v Rodrigues* [2013].

By March 2013 over 7 million deposits had been protected in mandatory schemes but a 2013 survey of 4,000 private tenants in England conducted by Shelter found that "one in five don't know if their deposit has been protected. Almost one in ten (nine per cent) know that their deposit is definitely not protected."

This note explains the duty on landlords to protect tenants' deposits and summarises how the schemes operate. A guide to dealing with disputes over deposits has been published by operators of the TDS schemes: *Guide to deposits, disputes and damages* (March 2012).

Additional information can also be found on the GOV.UK website.

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1 The Housing Act 2004: a statutory Tenancy Deposit Scheme (TDS)

1.1 Background

The *draft Housing Bill 2002-03,* which was subject to pre-legislative scrutiny by the ODPM: Housing, Planning, Local Government and the Regions Select Committee,[1] did not contain provisions to introduce a mandatory TDS but the Committee concluded that there was a case for such a scheme.[2] The Government's response to the Committee's report was published on 10 November 2003.[3] The Government, at that time, did not agree that a statutory tenants' deposit scheme should be included in the forthcoming *Housing Bill* on the grounds that more time was needed to work up proposals.[4]

The *Housing Bill 2003-04* was presented on 8 December 2003. The original Bill did not contain measures to introduce a statutory TDS. During the Commons Committee Stage an amendment was moved that would have placed a duty on the 'appropriate national authority' to introduce a mandatory tenancy deposit scheme within 12 months of the Act coming into force.[5] The then Minister for Housing, Keith Hill, reiterated the Government's commitment to consider the case for legislation alongside the Law Commission's proposals.[6]

However, on 19 May 2004 the then Minister announced that amendments *would* be added to the *Housing Bill* in respect of tenancy deposits.[7] Thus provisions to enable the establishment

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1 Cm 5793

2 HC 751-1, ODPM: Housing, Planning, Local Government and the Regions Committee, *The Draft Housing Bill,* Tenth Report of Session 2002-03, pp 64-65, para 196

3 Cm 6000

4 *ibid* para 64

5 The full debate on this amendment (which was ultimately withdrawn) can be accessed online (scroll down to column 690) SC(E) 24 February 2004 cc690-713

6 SC(E) 24 February 2004 c705

7 HC Deb 19 May 2004 cc51-2WS

of mandatory tenancy deposit schemes were added to the *Housing Bill:* these provisions can be found in Chapter 4 and Schedule 10 to the *2004 Housing Act*.

2 The statutory TDS: April 2007 onwards

Since 6 April 2007 tenancy deposit protection has applied to all newly created assured shorthold tenancies in England and Wales where a deposit is taken.[8] There are two main aims:

- To ensure good practise in deposit handling, so that when a tenant pays a deposit, and is entitled to get it back, they can be assured that this will happen.
- To assist with the resolution of disputes by having an alternative dispute resolution (ADR) service. It should also encourage tenants and landlords to have in place, from the outset, clear agreement on the condition of the property though appropriate use of inventories.

Landlords are required to join a statutory TDS if they take deposits off assured shorthold tenants. Failure to comply can result in a penalty charge.[9] Tenants can get all or part of their deposit back if they have kept the property in good condition and meet the requirements for the return of the deposit. The scheme offers alternative ways of resolving disputes which aim to be faster and cheaper than taking court action.

Landlords are able to choose between two types of scheme: a single custodial scheme, which is free to join, and one or more insurance-based schemes. In each scheme the deposit must be returned within 10 days of the end of the tenancy, provided the landlord and tenant have agreed the amount.

A guide to dealing with disputes over deposits has been published by the three operators of the TDS schemes: *Guide to deposits, disputes and damages.*

2.1 The insurance based scheme

- The tenant pays the deposit to the landlord.
- The landlord retains the deposit and pays a premium to the insurer.
- Within 30 days[10] of receiving a deposit, the landlord must give the tenant information about the scheme being used.[11]
- At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, the landlord returns all or some of the deposit.
- If there is a dispute, the landlord must hand over the disputed amount for safekeeping until the dispute is resolved.

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8 Assured shorthold tenancies are the standard type of private sector tenancy in England and Wales – there were around 1.7 million such tenancies in existence in 2006. These tenancies are governed by Part 1 of the *1988 Housing Act.*

9 See sections 2.5 and 2.6 of this note concerning a Court of Appeal ruling on the penalty payable and amendments introduced by the *Localism Act 2011* from 6 April 2012.

10 Originally 14 days but this was extended with effect from 6 April 2012 - see section 2.6 of this note.

11 *The Housing (Tenancy Deposits)(Prescribed Information) Order 2007* (SI 2007/797) sets out the information that a landlord must give to a tenant who has paid a deposit.

- If for any reason the landlord fails to comply, the insurance arrangements will ensure the return of the deposit to the tenant if they are entitled to it.

> Example: a tenant pays a deposit of £1000. At the end of the tenancy, the landlord says he wishes to keep £200 to pay for replacing damaged furniture. The remaining £800 will be returned to the tenant. The tenant disagrees, claiming the furniture was damaged when they moved in. Both agree to go to ADR, so the disputed £200 will be transferred to the scheme administrator until the dispute is settled.[12]

Insurance-based providers include MyDeposits, the Tenancy Deposit Scheme and the Deposit Protection Service.

The costs associated with insurance-based schemes were set out during the debate on the *Housing (Tenancy Deposit Schemes) Order 2007:*

> The tenancy deposit scheme costs are as follows. There is a standard joining fee for landlords, of which there are two types. One is for landlords who belong to the National Landlords Association and another for those who do not. A landlord who does not belong to that association will pay a joining fee of £58.75 and a deposit protection fee per deposit, including VAT, of £30. They will also pay an annual renewal fee, including VAT, of £14.70. The joining fee for landlords who belong to the association is £47; their deposit protection fee per deposit is £26 and their annual renewal fee is the £14.70 that it would be if they were not in the association. The hon. Gentleman raised some other points. If he will bear with me, I will come to them later.[13]
>
> Some landlords choose to place their rented accommodation with agents who then conduct all the relevant processes on their behalf. Agents who are members of accredited organisations pay £100 per branch, excluding VAT, to join. The deposit protection fee is £20 per deposit, excluding VAT, and there is an annual renewal fee of £50. The corresponding fees for unaccredited agents are £150, £30, and £75.[14]

2.2 The custodial scheme

- The tenant pays the deposit to the landlord.
- The landlord then pays the deposit into the scheme, unlike the insurance-based schemes.
- Within 30 days[15] of receiving a deposit the landlord must give the tenant information about the scheme being used.[16]
- At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, they tell the scheme which returns the deposit, divided in the way agreed by both parties.
- If there is a dispute, the scheme holds the amount until the dispute resolution service or courts decide what is fair.

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12 Residential Landlords Association website (accessed on 30 April 2014)
13 Fifth Delegated Legislation Committee, 7 March 2007 c7
14 *ibid*
15 Originally 14 days but this was extended with effect from 6 April 2012 - see section 2.6 of this note.
16 *The Housing (Tenancy Deposits)(Prescribed Information) Order 2007* (SI 2007/797) sets out the information that a landlord must give to a tenant who has paid a deposit.

- The interest accrued by deposits in the scheme is used to pay for the scheme and any surplus is used to offer interest to the tenant, or landlord where the tenant is not entitled to it.[17]

The Deposit Protection Service runs a custodial deposit scheme while the Chartered Institute of Arbitrators is the principal provider of ADR to the scheme.

2.3 ADR v using the courts

All the schemes offer alternative dispute resolution (which is funded by the scheme providers as part of their overall running costs[18]) but landlords/tenants may opt to use the courts to resolve deposit disputes. The TDS provides the following advice in its leaflet, *The progress of a dispute:*

> Either party may go to court if they prefer. We can only deal with their dispute if both tenant and landlord agree they want us to. However, if the landlord refuses to make a decision, we will deal with the dispute anyway. Most people prefer to come to us because they feel it will be quicker, cheaper and less stressful. Like the courts, we are independent and authoritative. We can deal with proposed deductions from a deposit, but we cannot award compensation.
>
> TDS can only deal with claims against the deposit. We cannot deal with counterclaim issues in our adjudication. If a tenant feels that they are important to their case, they may wish their dispute to be resolved in the county court.[19]

Decisions under ADR are binding:

> Because participation in this ADR process requires consent by both parties, the final decision of the adjudicator is binding on both the landlord and tenant. It cannot be challenged except through a Court of Law – although the parties should seek their own independent legal advice first. The Schemes are NOT permitted to re-open cases unless it can be shown that the Scheme did not follow the processes laid down in its own rules, or did not take into account all the evidence submitted by the parties. In extreme circumstances adjudicators may ask for further evidence or clarification on a particular matter from either party. In some cases, the adjudicator may decide that the case would be better dealt with through a formal court process. However, in the majority of cases the adjudicator will make a decision based on the evidence he has in front of him.[20]

Where arbitration is used, as opposed to an adjudicator, the decision is binding and a challenge through the courts cannot follow where one of the parties is unhappy with the resulting decision.

2.4 Accountability & financial stability of TDS operators

Landlords and tenants who are discontent with the outcome of a dispute dealt with by the alternative dispute resolution service offered under the TDS schemes have questioned whether the operators of the schemes are accountable to the Government. The providers operate under a Service Concession Agreement:

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17 The *Housing (Tenancy Deposits) (Specified Interest Rate) Order 2007* (SI 2007/798) specifies that where interest is payable on money deposited in a TDS in accordance with paragraph 3(5) of Schedule 10 to the 2004 Act, the rate of interest applied will be equivalent to the Bank of England base rate less 2.32 per cent.

18 HC Deb 16 December 2010 c 938W

19 Accessed on 30 April 2014

20 *Guide to deposits, disputes and damages*, version 1.1 March 2012

> **Mark Tami:** To ask the Secretary of State for Communities and Local Government what recent assessment he has made of the operation of the Deposit Protection Scheme; and if he will make a statement.
>
> **Grant Shapps:** The Deposit Protection Service is required to submit monthly reports on key performance indicators under the terms of its Service Concession Agreement with the Department for Communities and Local Government. In addition, the Department holds quarterly monitoring meetings with the service at which any performance issues can be discussed.[21]

The scheme providers each have a complaints procedure that landlords/tenants can use if they feel that their cases have been badly handled – details can be found on the providers' websites.

Questions have also been asked about the financial stability and integrity of TDS providers:

> **Nigel Adams:** To ask the Secretary of State for Communities and Local Government pursuant to the answer to the hon. Member for Dudley North of 14 December 2009, *Official Report*, column 919W, on tenancy deposit schemes, (1) what *(a)* guarantees, *(b)* underwriting, *(c)* liabilities and *(d)* obligations were agreed in relation to support for the three tenancy deposit protection schemes under the previous Administration; [
>
> (2) what assessment he has made of the financial stability and integrity of each of the three tenancy deposit protection schemes, including the effect of low interest rates on their integrity, since May 2010;
>
> (3) what steps he has taken since May 2010 to ensure that tenancy deposit schemes can meet their financial liabilities.
>
> **Grant Shapps:** The three tenancy deposit protection schemes are operated by private companies under service concession agreements with my Department. All three schemes are designed to be self-financing.
>
> The service concession agreement that was agreed by the previous Administration with the custodial tenancy deposit protection scheme contained a guarantee that the Government would meet any shortfall arising if approved fees were not covered by the interest on deposits held. That guarantee was removed as part of a revised agreement negotiated in August 2010 which also incorporated a four year extension of the original agreement.
>
> Neither of the two insurance based tenancy deposit protection schemes' agreements have ever included any similar government guarantees, underwriting, liabilities or obligations.[22]

2.5 Court of Appeal ruling November 2010

The Court of Appeal handed down its judgement in the two conjoined cases of *Universal Estates v Tiensia* and *Honeysuckle Properties v Fletcher* in November 2010.[23] These cases concerned situations where landlords had not complied with the requirement in

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21 HC Deb 28 April 2011 c557W

22 HC Deb 5 April 2011 c855-6W

23 [2010] EWCA Civ 1224

section 213(1) of the *Housing Act 2004* to arrange for the protection of a deposit paid on an assured shorthold tenancy in an authorised scheme.

At the time the cases were taken landlords were required, within 14 days of the date on which the deposit was received, to comply with any "initial requirements" imposed by the terms of the TDS chosen. In addition, sub-sections 213(5)-(6) require landlords to provide tenants with certain prescribed information regarding the TDS scheme used. Failure to comply with these requirements give the tenant the right to apply to the county court (section 214) for an order that the deposit be repaid or put in a custodial scheme. If the court made either order prior to 6 April 2012 it also had to order the landlord to pay the tenant a sum equal to three times the amount of the deposit (s.214(4)).[24] However, The Act did not specify whether the court was to assess the question of compliance at the date of the hearing, the date when proceedings were issued or at some other date.

In *Draycott v Hannells Lettings Ltd*[25] the High Court held that, so long as the deposit was protected and the prescribed information provided prior to the tenant issuing proceedings, the court could not grant the tenant any remedy under section 214 of the 2004 Act.

In *Tiensia*, the respondent landlord issued proceedings for possession and a money judgment for rent arrears against the tenant. The tenant counter-claimed for, *inter alia*, an order under section 214 of the 2004 Act and applied for summary judgment on the counterclaim. It was common ground that, when the claim was issued, the landlord had not complied with the initial requirements of an authorised scheme or provided the prescribed information. These defects were remedied prior to the hearing of the summary judgment application. The District Judge granted summary judgment and held that the failure of the landlord to comply with the initial requirements of the scheme or provide the prescribed information within 14 days of receiving the deposit was not capable of remedy. An appeal to the Circuit Judge was allowed and Ms Tiensia appealed to the Court of Appeal.

In *Honeysuckle Properties*, the appellant landlord issued proceedings for a money judgment in respect of unpaid rent. The tenants counterclaimed for an order under section 214 of the 2004 Act. As in *Tiensia*, it was common ground that the initial requirements of a scheme had not been complied with, nor had the prescribed information been provided when the proceedings were issued, although both obligations were complied with by the time of the trial. The District Judge allowed the counterclaim. Permission to appeal was granted by the Circuit Judge who transferred the appeal to the Court of Appeal.

By a majority, the Court of Appeal dismissed the appeal in *Tiensia* and allowed the appeal in *Honeysuckle Properties*. It was held that court was only empowered to make an order under section 214 if – at the date of the hearing – there had been a failure by the landlord to comply with the initial requirements, or provide the prescribed information. If the landlord was late in complying with these obligations, but did so before the hearing, he had a complete defence to the claim.

There was a widely held view that the decision of the Court of Appeal in these cases undermined the protection offered by the mandatory tenancy deposit schemes. Subsequent amendments to the 2004 Act are explained in section 2.6 (below).

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[24] See section 2.6 for information on amendments to the penalty payable by landlords.

[25] [2010] EWHC 217 (QB); [2010] HLR 27

2.6 Amendments to the *Housing Act 2004*

During the Commons Committee Stages of the *Localism Bill* Stephen Gilbert sought to improve the existing mandatory tenancy deposit scheme to "clarify the circumstances in which landlords must protect deposits, and give judges greater discretion over the size of the penalty for landlords' non-compliance to ensure that it is appropriate."[26]

The then Minister, Andrew Stunell, said he was sympathetic to the main thrust of the proposed new clause but argued that it would make changes that did not flow from the Court of Appeal decision and would miss one of the key issues that *did* arise in the Court of Appeal.[27] He set out the Government's position in some detail:

> The key finding of the Court of Appeal concerned the application of a financial penalty for non-compliance with the requirements of tenancy deposit protection legislation in a situation when the tenancy is still in place and the landlord has protected the deposit after the deadline of 14 days. While the new clause tackles that issue, one of the reasons behind the Court's view concerned the ability of a landlord to use section 21 of the Housing Act 1988 to evict a tenant when they were found to be in breach of tenancy deposit protection legislation. Under the legislation as it stands, a landlord who fails to comply with the deposit protection legislation cannot use section 21 to evict a tenant. That is important, because section 21 is one of the key characteristics of assured shorthold tenancies to which the tenancy deposit scheme relates. It allows a landlord to evict a tenant, having given reasonable notice, on a non-discretionary basis and without having to give a reason. The ability to gain possession of their property is key to a landlord's confidence in letting out that property in the first place, and in the current economic climate, we would not want to undermine that confidence.
>
> As the Court of Appeal pointed out, under the tenancy deposit protection legislation as currently drafted, it could be argued that once a landlord has failed to protect a deposit, they would be unable to use section 21 in connection with that tenancy, even when they had subsequently protected the deposit and, where appropriate, paid the fine imposed by the court. That outcome is not the intention of the legislation, and we are therefore clear that any amendments aimed at tightening up the requirement to protect tenants within 14 days must also address that point.
>
> The Government's view is that to address fully the concerns underlying the Court of Appeal's decision, it is important to allow the courts greater discretion than currently available when setting the financial penalty. My hon. Friend the Member for St Austell and Newquay relayed the current regime to the Committee. However, subsection (11) of the new clause does not offer sufficient flexibility, because as well as allowing flexibility up to a maximum tariff, it still leaves the minimum of one times the deposit. We think that there should be no lower limit. If the objective of such legislation is to encourage landlords to comply and to protect the deposits they take, it cannot be right to levy a substantial penalty when a well-intentioned landlord had made a mistake that, for instance, could result in the deadline for protection being missed by only one day. It is essential that the courts have the discretion to do justice in those de minimis cases, but that would not be possible if the minimum sanction were to be the payment of a penalty equal to the full amount of the deposit.[28]

The Minister said he would "reflect further on how the matter might best be addressed."[29]

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[26] PBC 10 March 2011 cc948-53
[27] PBC 10 March 2011 c951
[28] *Ibid* c952
[29] *Ibid* c953

On 20 July 2011 a new Government clause was added to the *Localism Bill* to amend the tenancy deposit sections of the *Housing Act 2004*.[30] The changes, which came into effect on 6 April 2012, gave landlords 30 days rather than the original 14 to protect the deposit. Once that period has expired the tenant can immediately raise a claim against the landlord. The landlord cannot protect the deposit late without penalty. However, the penalty for late protection is now variable ranging from one, to three times, the sum of the deposit, so if the landlord has, in fact, protected the deposit before the hearing the court can take this into account and reduce the penalty payable accordingly. The amendments also cleared up some small loopholes so that the landlord cannot pay back the deposit and claim that the tenant is not then entitled to a penalty. The restriction on serving a section 21 notice where the deposit has not been protected has been tidied up so that the landlord can simply return the deposit or resolve court proceedings with the tenant and then serve the notice.

The Tenancy Deposit Scheme produced a detailed leaflet on the changes introduced by the *Localism Act 2011*. The Residential Landlords Association developed some helpful Frequently asked questions that can be accessed on its website. Landlords holding deposits that were not already protected had a limited time period (5 May 2012) in which to address this.

2.7 Superstrike Ltd v Rodrigues 2013[31]

The Court of Appeal handed down judgement in respect of this case on 14 June 2013.

Mr Rodrigues was the assured shorthold tenant of Superstrike Ltd. His tenancy began in January 2007 (i.e. *before* the mandatory deposit scheme came into force for newly created assured shorthold tenancies) and was for a fixed period of one year less one day. He paid a deposit of £606.66. At the expiry of the fixed term of the tenancy in January 2008 he became a statutory periodic tenant. Where a fixed term assured tenancy comes to an end by effluxion of time (and no new agreement is reached) a statutory periodic tenancy arises (section 5, *Housing Act 1988*).

In June 2011, Superstrike gave notice under section 21 of the *1988 Housing Act* requiring possession. Mr Rodrigues defended the claim contending, *inter alia*, that the statutory periodic tenancy was a *new tenancy* and the previously paid deposit should be treated as having been paid in respect of that new tenancy and, as the deposit had not been protected within an authorised scheme, the section 21 notice should have no effect. Effectively he argued that the trigger for the requirement to protect the deposit occurred in January 2008 on the creation of the statutory periodic tenancy. A Deputy District Judge found for Mr Rodrigues, but the Circuit Judge allowed an appeal.

The Court of Appeal held that the statutory periodic tenancy *was* a new tenancy: the deposit was held to guarantee obligations under it and was therefore to be treated as having been paid under it. It therefore followed that the provisions of the 2004 Act applied and the section 21 notice was deemed to be invalid.

A group of national housing organisations issued guidance on the implications of the Court of Appeal's decision for private landlords: *Superstrike Ltd vs Marino Rodrigues – Guidance on the implications of the Court of Appeal Judgement*.[32]

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30 HL Deb 20 July 2011 c1489-90

31 [2013] EWCA Civ 699

Then Housing Minister, Mark Prisk, indicated in a letter to the Residential Landlords Association that a legislative response to the *Superstrike* case may be forthcoming:

> There are concerns that the Court of Appeal decision means that where a deposit was taken for an assured shorthold tenancy before the introduction of tenant deposit protection and continued as a statutory period tenancy after 6 April 2007, the landlord should have protected the deposit at the start of the statutory period tenancy.
>
> This was not the intention of the legislation and we are urgently exploring whether new legislation is required to clarify the situation.
>
> I understand that concerns have also been raised that the decision could have implications for some tenancies where a deposit has been protected in an authorised scheme in relation to a tenancy begun after 6 April 2007 and the fixed term has expired, and the tenancy continues as a statutory periodic tenancy.
>
> While the Court of Appeal did not make a decision on these particular facts and we cannot advise on individual cases, as a precaution, landlords could decide to re-issue the prescribed information to their tenant(s) which should ensure they can rely on the section 21 procedure if they wish to end the tenancy. Again, we are exploring whether new legislation is required to clarify the situation.[33]

2.8 The Deregulation Bill

The legislative response to the *Superstrike* case has been included in the *Deregulation Bill*, which is currently at Committee Stage in the Lords. Clause 31 of the Bill as it currently stands would insert four new sections into Chapter 4 of Part 6 of the *Housing Act 2004* to make provision about the protection of tenancy deposits in the private rented sector. The explanatory notes to the Bill explain:

> 169. The purpose of the new provisions is to deal with certain issues arising out of the Court of Appeal's decision in the case of Superstrike v Rodrigues [2013] EWCA Civ 669. That case concerned a deposit which was received in connection with a fixed term tenancy prior to commencement on 6th April 2007. When the fixed term tenancy expired sometime after that date, the tenant continued to occupy the property under a statutory periodic tenancy in accordance with section 5 of the Housing Act 1988 and the landlord continued to hold the same deposit in connection with the periodic tenancy. The landlord in the case argued that the tenancy deposit protection legislation only applied if the deposit was physically received on or after 6th April 2007. However, the Court did not agree and found that the deposit must be treated as having been paid by the tenant and received by the landlord afresh at the start of the statutory periodic tenancy. As such, the tenancy deposit protection legislation applied and the landlord was required, at the point the tenancy became periodic, to make arrangements for the deposit to be held in accordance with an authorised scheme and to send the prescribed information to the tenant. This is contrary to the original guidance for landlords issued by the government that in this specific situation the legislation would not apply to the deposit. New section 215A is intended to deal with this issue.
>
> 170. The Court of Appeal's decision also has implications for deposits which have been protected. This is because it has been interpreted by some as meaning that every time a tenancy becomes a statutory periodic tenancy or is renewed the duty on the landlord to comply with the tenancy deposit protection requirements arises afresh at the start of the new tenancy, even though the deposit remains protected in

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32 *Superstrike Ltd vs Marino Rodrigues – Guidance on the implications of the Court of Appeal Judgement,* July 2013

33 *Government may change the law over tenancy deposits*, September 2013

accordance with the same authorised scheme from one tenancy to the next. New sections 215B and 215C are intended to deal with this issue.

171. The new clause forms part of the law of England and Wales. It will come into force on a day to be appointed by the Secretary of State in a commencement order.[34]

2.9 Expulsion from a TDS - another loophole?

Press reports have highlighted a problem that can arise where a landlord/letting agency is expelled from a TDS. For example, *Guardian Money* reported on a case involving the London based agency, Unida Place.[35] The agency reportedly registered its tenants' deposits with MyDeposits (an insurance based scheme where the agency retains the deposits paid and pays a fee to the scheme to insure the deposits in the event of a dispute). Unida Place was, allegedly, expelled by MyDeposits for failing to provide certain information, including proof that tenants' deposits were kept in a separate client account. Once expelled by MyDeposits the tenants of Unida Place could not use the scheme to recover their deposits – the expulsion meant that their deposits were no longer protected.

A landlord/agency in this situation is required to re-protect the deposits paid but if they fail to do so the only avenue open to affected tenants would be to take legal action to recover their deposits.

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34 *Deregulation Bill*, HL Bill 33, Explanatory notes, p29

35 *Guardian Money,* "Rogue landlords exploit deposit protection loophole", 19 June 2014