WHO SHOULD READ THIS?

- Tenants
- Agents
- Landlords

WHAT IS THE TENANCY DEPOSIT SCHEME GUIDE

AN ADVISORY LEAFLET FOR LANDLORDS AND TENANTS

Printer-friendly

TENANCY DEPOSIT SCHEME NORTHERN IRELAND

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Contents.

WHAT IS TDS NORTHERN IRELAND? 03

WHAT IS TENANCY DEPOSIT PROTECTION? 03

WHAT DOES TENANCY DEPOSIT PROTECTION MEAN? 04

WHAT ARE THE LEGAL REQUIREMENTS? 05

WHAT IF THE LANDLORD OR AGENT DOES NOT COMPLY? 06

IS MY DEPOSIT PROTECTED? 06

KEY FEATURES OF THE CUSTODIAL SCHEME 07

KEY FEATURES OF THE INSURED SCHEME 08

HOW ARE DISPUTES RESOLVED? 10

IS ADJUDICATION BETTER THAN GOING TO COURT? 11

WHAT CAN TDS DEAL WITH? 12

DATA PROTECTION 12

What is Tenancy Deposit Scheme Northern Ireland?

Tenancy Deposit Scheme Northern Ireland Limited is a subsidiary of TDS. It is approved by the Northern Ireland Executive as a tenancy deposit protection scheme. Tenancy Deposit Scheme NI offers Insurance-backed and Custodial deposit protection with two main roles:

1. **TO PROTECT DEPOSITS**
2. **TO HELP RESOLVE DISPUTES ABOUT DEPOSITS**

WHAT IS TENANCY DEPOSIT PROTECTION?

Tenancy deposit protection applies to all deposits taken for a private tenancy in Northern Ireland on or after 1 April 2013.

TENANCY DEPOSIT SCHEME NORTHERN IRELAND COVERS ALL PRIVATE TENANCIES IN NORTHERN IRELAND, WITH A FEW EXCEPTIONS:

- A TENANCY WITH A TERM CERTAIN EXCEEDING 99 YEARS;
- A CROWN TENANCY;
- A TENANCY OF A GOVERNMENT DEPARTMENT, OR
- A TENANCY OF THE NIHE OR A REGISTERED HOUSING ASSOCIATION.

BY LAW, A LANDLORD OR AGENT WHO RECEIVES A DEPOSIT FOR SUCH A TENANCY MUST PROTECT THE DEPOSIT.

What does tenancy deposit protection mean?

Protecting a tenant's deposit with a government-authorised scheme such as Tenancy Deposit Scheme Northern Ireland. Providing the tenant with prescribed information about where their deposit is being protected and how it will be managed.

TENANCY DEPOSIT PROTECTION SCHEMES CAN BE ONE OF TWO KINDS:

Insured

This is where the landlord or agent holds the deposit during the tenancy, but must give it to the scheme at the end of the tenancy if there is a dispute. The scheme is insured because this guarantees that the tenants will always get the money back to which they are entitled.

Custodial

This is where the scheme holds the deposit during the tenancy.

EACH TENANCY DEPOSIT SCHEME HAS ITS OWN RULES SETTING OUT IN DETAIL HOW IT OPERATES. THE TENANCY DEPOSIT SCHEME NORTHERN IRELAND RULES ARE AVAILABLE FROM THE WEBSITE AND ON REQUEST.

What are the legal requirements?

These are contained in The Tenancy Deposit Schemes Regulations 2012, as amended. Tenancy deposit protection applies to money received by a landlord or agent that is meant to be held as security in case a tenant does not comply with their obligations.

The landlord or agent must **register the deposit** with an approved scheme within **28 days** of receiving it. The landlord or agent must also provide the tenant with certain information, known as **Prescribed Information**, within **35 days** of receiving the deposit. This leaflet forms part of the Prescribed Information.

TO PROTECT A DEPOSIT WITH TENANCY DEPOSIT SCHEME NORTHERN IRELAND, THE LANDLORD OR AGENT NEEDS TO:

- BELONG TO THE SCHEME;
- REGISTER THE DEPOSIT ON THE TENANCY DEPOSIT SCHEME NORTHERN IRELAND TENANCY DATABASE;
- IN THE INSURED SCHEME, PAY A DEPOSIT PROTECTION CHARGE;
- IN THE CUSTODIAL SCHEME, PAY THE DEPOSIT TO THE SCHEME.

A Tenancy Deposit Scheme Northern Ireland customer (landlord or agent) must also give the tenant 'prescribed information'. The information is set out in the Housing (Tenancy Deposits (Prescribed Information) Order 2007. It must also be given to anyone who paid the deposit on the tenant's behalf.

THE PRESCRIBED INFORMATION INCLUDES:

- THE RENTED PROPERTY'S ADDRESS;
- THE DEPOSIT AMOUNT;
- THE CONTACT DETAILS OF THE LANDLORD AND ANY AGENT, AND THE TENANT;
- THIS LEAFLET.

The landlord or agent must also specify which tenancy agreement clauses say how the deposit can be used.

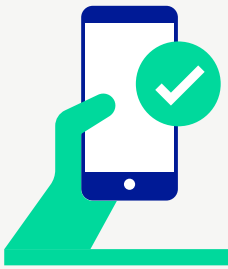
TENANTS MUST BE GIVEN THE OPPORTUNITY TO:

- CHECK ANY DOCUMENT THE LANDLORD PROVIDES CONTAINING PRESCRIBED INFORMATION; AND
- SIGN IT TO CONFIRM THE INFORMATION IS ACCURATE.

What if the landlord or agent does not comply?

A landlord or agent should protect the deposit in an authorised scheme within **28 days** and provide the tenant (and any sponsor) with the prescribed information within **35 days** of receiving the deposit. If they don't do so, a landlord can be subject to a **fixed penalty** imposed by the district council of **three times the deposit** or a fine of up to **£20,000.**

Is my deposit protected?



TENANTS CAN CHECK IF THEIR DEPOSIT IS REGISTERED WITH US BY VISITING TDSNORTHERNIRELAND.COM

TENANTS WILL NEED TO ENTER THEIR SURNAME, THE DEPOSIT AMOUNT, THE TENANCY POSTCODE AND THE DATE THEIR TENANCY STARTED.

TENANCY DEPOSIT SCHEME NORTHERN IRELAND CANNOT AWARD COMPENSATION TO TENANTS IF A LANDLORD OR AGENT FAILS TO COMPLY WITH THE LAW RELATING TO TENANCY DEPOSIT PROTECTION. THIS CAN ONLY BE DEALT WITH BY THE DISTRICT COUNCIL.

Key features of the CUSTODIAL scheme

WHO CAN USE THE SCHEME?

The Custodial scheme is available to all landlords and agents acting on their behalf in relation to a tenancy deposit.

HOW MUCH DOES IT COST?

The Custodial scheme is free to use, including access to the dispute resolution mechanism.

HOW IT WORKS

The agent or landlord transfers the deposit to Tenancy Deposit Scheme Northern Ireland at the start of the tenancy. It is held until the end of the tenancy and one of the parties requests its return. The Custodial scheme is funded entirely from the interest earned on deposits held.

REGISTERING THE DEPOSIT

The agent or landlord must pay the deposit to the scheme within 28 days of receiving it. Tenancy Deposit Scheme Northern Ireland will send the agent or landlord a deposit protection certificate to confirm the deposit is held and protected. Tenancy Deposit Scheme Northern Ireland will also contact the tenant to tell them how to manage their deposit online.

WHAT HAPPENS TO THE DEPOSIT AT THE END OF THE TENANCY?

Either the landlord (or agent) or tenant can start the repayment process following the end of the tenancy. Tenancy Deposit Scheme Northern Ireland will contact the other party and invite them to respond within 30 working days to say whether they agree or disagree.

WHAT HAPPENS IF THE PARTIES AGREE

If the parties agree, Tenancy Deposit Scheme Northern Ireland will pay out the deposit in accordance with their agreement within 5 working days.

WHAT HAPPENS IF THE PARTIES DISAGREE?

If the parties disagree, it will take longer to release the deposit. It may be necessary to use the dispute resolution mechanism to decide how the deposit should be allocated.

WHAT HAPPENS IF ONE OF THE PARTIES FAILS TO RESPOND?

If the agent or landlord fails to respond to a tenant's repayment request within 30 working days, Tenancy Deposit Scheme Northern Ireland will pay the deposit to the tenant within a further 5 working days. If the tenant fails to respond to a repayment request from an agent or landlord, Tenancy Deposit Scheme Northern Ireland will pay the agent or landlord what they have requested and will pay any balance to the tenant as soon as possible.

Key features of the INSURED scheme

WHO CAN USE THE SCHEME?

There are some restrictions on who can use the Insured scheme. Further details are set out in The Tenancy Deposit Scheme Northern Ireland Scheme Rules at www.tdsnorthernireland.com

HOW MUCH DOES IT COST?

The Insured scheme is subject to a charge per tenancy deposit protection paid by the agent or landlord when they protect the deposit. Use of the dispute resolution mechanism is free to all parties.

HOW IT WORKS

The agent or landlord holds the deposit during the tenancy and arrangements for its return should be discussed with the tenant at the end of the tenancy. The tenancy agreement should detail who receives any interest. The Insured scheme is funded through deposit protection fees. The scheme guarantees that the tenant receives the amount of the deposit they are entitled to.

REGISTERING THE DEPOSIT

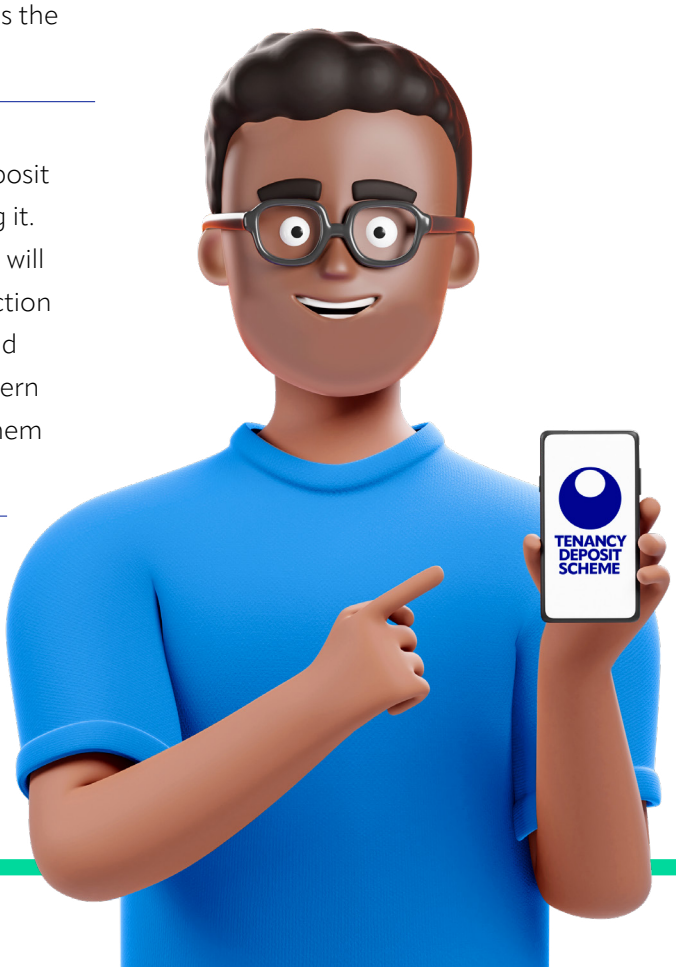
The agent or landlord must protect the deposit with the scheme within 28 days of receiving it. Tenancy Deposit Scheme Northern Ireland will send the agent or landlord a deposit protection certificate to confirm the deposit is held and protected. Tenancy Deposit Scheme Northern Ireland will also contact the tenant to tell them how to manage their deposit online.

WHAT HAPPENS TO THE DEPOSIT AT THE END OF THE TENANCY?

The agent or landlord should discuss with the tenant how the deposit is to be divided at the end of the tenancy.

WHAT HAPPENS IF THE PARTIES AGREE?

If the parties agree, the agent or landlord must pay the deposit to the tenant without delay, less any deductions that the tenant has agreed.



WHAT HAPPENS IF THE PARTIES DISAGREE?

The parties should try to reach agreement and be prepared to show the steps they have taken to do so. Most disputes are resolved this way. The tenant can ask Tenancy Deposit Scheme Northern Ireland to resolve the dispute within 3 months of the end of the tenancy if it has not been possible to reach agreement. Tenancy Deposit Scheme Northern Ireland will require the agent or landlord to send the disputed deposit to the scheme. This will be paid out at the end of the adjudication process in accordance with the adjudication decision.

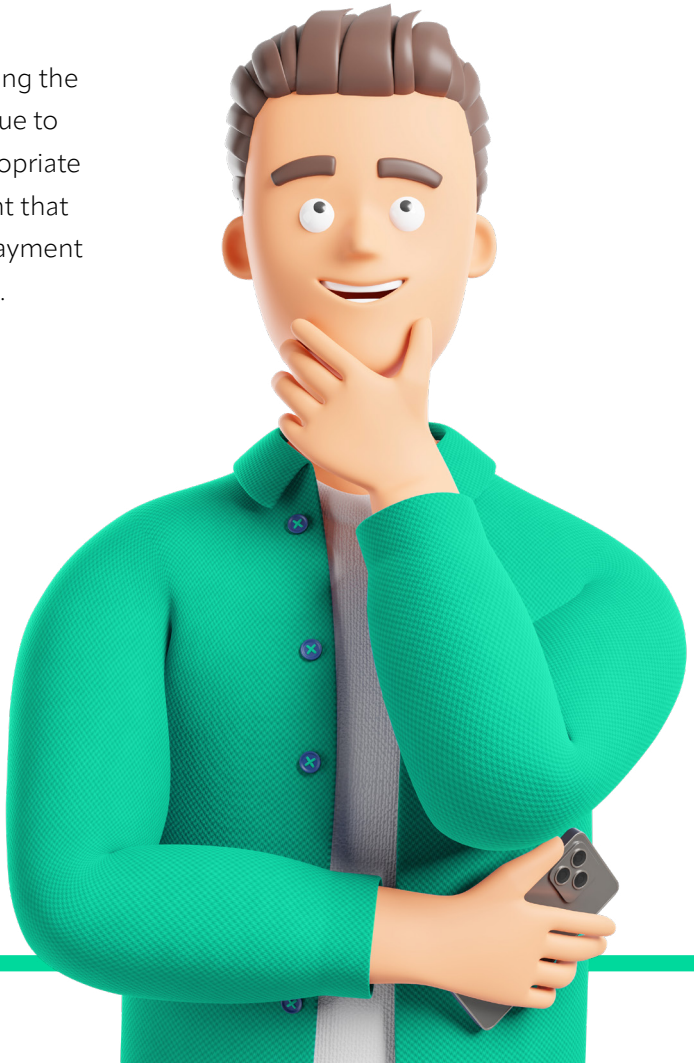
WHAT HAPPENS IF THE AGENT OR LANDLORD CANNOT CONTACT THE TENANT AT THE END OF THE TENANCY?

The agent or landlord holding the deposit can only allocate it by agreement, by a Court order, or following an adjudication decision by the scheme. A landlord should retain the deposit pending contact from the tenant.

If the tenant fails to contact an agent holding the deposit, they may assess any deductions due to the landlord and pay the landlord the appropriate amount. The agent may seek an agreement that the landlord will indemnify them for any payment to the tenant which a Court may authorise.

WHAT HAPPENS IF THE TENANT DOES NOT RAISE A DISPUTE WITH TENANCY DEPOSIT SCHEME NORTHERN IRELAND?

A tenant must raise a dispute with Tenancy Deposit Scheme Northern Ireland within 3 months of the end of the tenancy. Any disputes raised after that time will be rejected. The tenant will normally have at least six years to raise the matter in Court.



How are disputes resolved?

- **THE DISPUTE PROCESS IS THE SAME REGARDLESS OF WHETHER THE DEPOSIT IS PROTECTED IN THE CUSTODIAL SCHEME OR THE INSURED SCHEME.** An independent adjudicator will make a decision about how the deposit should be repaid, based on the evidence provided by the agent or landlord and tenant. The service is free to use and is a quick and simple alternative to court.

- **TENANCY DEPOSIT SCHEME NORTHERN IRELAND WILL ASK THE AGENT OR LANDLORD TO PROVIDE DETAILS OF THEIR CLAIM AGAINST THE DEPOSIT AND EVIDENCE TO SUPPORT THAT CLAIM.** The agent or landlord should provide this information within 10 working days. The tenant will then be invited to view the information provided by the agent or landlord and to provide their response and any supporting evidence within 10 working days. Most deposit disputes are dealt with online and the Tenancy Deposit Scheme Northern Ireland website guides the parties through the types of evidence the adjudicator would usually expect to see.

- **TENANCY DEPOSIT SCHEME NORTHERN IRELAND WILL APPOINT AN IMPARTIAL ADJUDICATOR TO MAKE A BINDING DECISION WITHIN 20 WORKING DAYS OF RECEIVING THE EVIDENCE THE PARTIES WISH TO BE CONSIDERED.** The parties will receive a copy of the adjudicator's decision and will have the opportunity to ask for it to be reviewed within 10 working days. A request for a review of a decision can only be based on an error in fact or law. If a review request is rejected, the adjudicator's decision is final. If a review request is accepted, a second adjudicator will review the decision to determine whether the outcome should change. The decision of the second adjudicator will be final.

- **TENANCY DEPOSIT SCHEME NORTHERN IRELAND WILL PAY THE AMOUNT DUE TO EACH PARTY WITHIN 5 WORKING DAYS OF THE FINAL DECISION.**

- **THE ADJUDICATOR'S DECISION WILL BE BASED ON THE EVIDENCE SENT TO TENANCY DEPOSIT SCHEME NORTHERN IRELAND – THERE WILL BE NO HEARING OR VISIT TO THE PROPERTY.**

- **USE OF THE DISPUTE RESOLUTION MECHANISM IS NOT COMPULSORY.** The tenant can still opt to go to court, but the agent or landlord is required to use the dispute resolution mechanism if the tenant requests it.

FURTHER DETAILS ARE SET OUT IN THE TDS NORTHERN IRELAND SCHEME RULES ON OUR WEBSITE HERE

Is adjudication better than going to court?

Deposit disputes need to be resolved quickly and cheaply. Tenants usually need the money as a deposit on their next property, and landlords need to know how much will be available to spend on things like redecoration, damage or repairs.

GOING TO COURT TAKES TIME AND CAN BE EXPENSIVE AND STRESSFUL

If Tenancy Deposit Scheme Northern Ireland protects a deposit in the **Insured scheme** and the dispute goes to court, the disputed amount must be sent to the scheme. Tenancy Deposit Scheme Northern Ireland will distribute the deposit once it receives a final court order showing what is to happen to the deposit.

In the **Custodial scheme**, if a tenant opts to take the dispute to Court, Tenancy Deposit Scheme Northern Ireland will pay out the deposit in accordance with the landlord's repayment request. Any sums awarded by the Court will then be settled directly between the parties.

Tenancy Deposit Scheme Northern Ireland can only resolve a dispute if the deposit has been registered with it. If a deposit has not been registered, the parties will have to go to court if they cannot agree a settlement.

Sometimes landlords or tenants prefer to go to court. It might be better for a landlord to go to court if they have a big claim that is well above the deposit. However, if a tenant wishes to use Tenancy Deposit Scheme Northern Ireland to resolve the dispute, the landlord must also take part in that process.

It might be better for a tenant to go to court if they have a counterclaim – say if they had to pay for boiler repairs because the heating did not work for several weeks. Tenancy Deposit Scheme Northern Ireland cannot deal with counterclaims.

Where Tenancy Deposit Scheme Northern Ireland cannot accept a dispute for adjudication, Tenancy Deposit Scheme Northern Ireland will notify any other party to the dispute that this has happened. The other party to the dispute may then choose to go to court or rely on the agent's judgment if the agent is holding the deposit.

What can TDS deal with?

- **USING THE TDS DISPUTE RESOLUTION SERVICE IS NOT COMPULSORY**. HOWEVER, THE LANDLORD WILL BE REQUIRED TO USE DISPUTE RESOLUTION IF THE TENANT ASKS FOR IT.
- **TDS CAN ONLY DEAL WITH DISPUTES ABOUT THE DEPOSIT ITSELF,** AND CANNOT MAKE AWARDS THAT ARE FOR MORE THAN THE DISPUTED DEPOSIT. IF A LARGER AMOUNT IS DISPUTED, YOU MAY NEED TO GO TO COURT.
- **TDS CANNOT DEAL WITH COUNTERCLAIMS BY TENANTS** – SUCH AS A CLAIM FOR DISREPAIR. IF YOU ARE A TENANT AND YOU WISH TO BRING A COUNTERCLAIM AGAINST YOUR LANDLORD, YOU WILL NEED TO GO TO COURT.
- **TDS CANNOT DEAL WITH DISPUTES BETWEEN INDIVIDUAL TENANTS, OR BETWEEN LANDLORDS AND THEIR AGENTS.** TDS DOES NOT ACT AS A REGULATOR AND CANNOT ORDER CHANGES IN TRADING PRACTICES, CLOSE DOWN BUSINESSES, OR PROSECUTE LANDLORDS OR AGENTS. HOWEVER, IT DOES TRY TO RAISE STANDARDS IN THE PRIVATE RENTED SECTOR BY EDUCATING TENANTS, LANDLORDS AND AGENTS ABOUT THE CAUSE OF DISPUTES AND HOW TO AVOID THEM.

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DATA PROTECTION

TDS WILL NOT USE LANDLORDS' OR TENANTS' PERSONAL DATA FOR ANY PURPOSE EXCEPT TO OPERATE THE SCHEME (THIS INCLUDES COMPILING STATISTICAL DATA) AND RESOLVE DISPUTES.

FROM TIME TO TIME, TDS MAY INVITE LANDLORDS OR TENANTS TO PARTICIPATE IN SURVEYS. IF YOU DO NOT WISH TO BE CONTACTED FOR SURVEY PURPOSES, PLEASE INFORM TDS BY LETTER OR EMAIL TO THE CONTACT DETAILS GIVEN IN THIS LEAFLET.

TENANCY DEPOSIT SCHEME
NORTHERN IRELAND

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