

Response to ‘Tenancy Deposit Reform - A Call for Evidence’



Summary of key recommendations

- As part of the RLA’s 2017 manifesto we recommended the creation of a new tenancy deposit trust scheme. This account would be created and maintained by the tenant, allowing for seamless transfer from tenancy to tenancy. The RLA believes this option is still the best method for improving the deposit experience for landlord and tenant alike.
- Most tenants will be able to afford a deposit or qualify for a deposit loan but first time renters may require assistance with their initial deposit payment. As such, the government should consider providing a national deposit loan for first time renters or increase the availability of local authority bonds.
- Time limits on returning the deposit should not be put in place unless the landlord can extend the timeframe in the event the tenant does not provide access to the property prior to the tenancy end.

In which capacity are you completing these questions?

Other- organisation

If you are replying on behalf of an organisation, which of the following best describes you?

Sector representative body

The Residential Landlords Association is the leading membership body for private landlords. It has over 35,000 members and a further 30,000 landlords who receive its updates and regularly view its website.

To what extent do you agree that tenants find it difficult affording a second deposit when moving within the private rented sector?

Neither agree nor disagree

Do you have any further evidence about the scale of the problem which you would like us to consider?

This will largely depend on factors such as tenant income, behaviour and geography but the majority of tenants will not struggle to find a deposit when moving within the private

rented sector. Our own research has found that only around 10% of landlords do not take a deposit. This suggests that while some will struggle, the problem is overstated.

Tenants are far more likely to be able to afford a deposit if they are based outside of London. According to Homelets in July 2019 rent in London was over £1665 while the average rent across the rest of the United Kingdom is £794. As most deposits are equivalent to 4 weeks rent (Centre for Economics and Business Research) it is clear that most problems with affordability will be found in the capital as rent there is more than double the rest of the country.

For the vast majority of tenants paying a second deposit will also be no issue. They keep the property in good condition and are not in any rent arrears so paying the deposit on a credit card will be low risk as they will receive their old deposit back shortly after moving out. Disputes over the deposit are relatively rare so this will be the case in most situations. According to TDS, in 2018 just 0.85% of their deposits went into dispute so 99.15% of tenants either agreed the deductions were fair, meaning they needed to top up a deposit, or received their deposit back in full.

Do you think that a definitive deadline for returning deposits could help improve the process?

What do you think would be the consequences of imposing a deadline for deposit returns?

This would depend on what measures are introduced so that the tenant is required and encouraged to engage with the landlord before the tenancy ends.

The RLA's advice service receives thousands of calls each year regarding proper protection and return of security deposits. Many of these calls are from landlords who believe that the existing 10-day limit already operates as a definitive deadline for returning deposits.

These landlords call the advice service after the tenant refuses them access to the property to perform inspections and identify necessary repairs. Once the tenant has moved out, these landlords assume they have a very limited time to identify any necessary repairs and get quotes to provide an accurate representation of their loss.

If the proposal is implemented, then landlords will become more likely to try to view the property early in the notice period to identify any damages. For most tenants this will not be an issue but there will be a perverse incentive for tenants who have damaged the property to refuse access. In these situations there needs to be safeguards for landlords who are denied access to view the property before the tenancy ends. Primarily because these properties

Primarily the consequences will be landlords becoming more insistent on gaining access to the property prior to the end of the tenancy. At present many tenancies incorporate clauses that require the tenant to provide access but if the tenant refuses access these clauses are effectively useless. As such the RLA recommends that if the government chooses to implement a hard deadline on deposit returns then, if the landlord can show the tenant has refused access or that severe damage has occurred to the property after the last inspection, they must be able to extend this deadline to be able to get accurate quotes for the damage.

Without these safeguards landlords are likely to become significantly more risk averse in who they rent out to, especially give the proposed removal of section 21. We recently undertook the largest ever non-governmental survey of the private rented sector and we found that 89% of the over 6000 respondents were likely to become more restrictive in who they let out to if they were denied the certainty of section 21. Similarly, if landlords are prevented from reclaiming their legitimate damages from a property, it is likely they will look to rent out their properties exclusively to tenants with excellent references from previous landlords.

What would encourage financial services providers to create a deposit loan product that is affordable for tenants?

As with any financial product, financial service providers will provide deposit loan products if the benefits of offering the service outweigh the costs and risks associated with it. As discussed above, the vast majority of tenants will be low risk and credit worthy as they can already get a loan for their deposit if necessary. Financial services providers would likely be happy to provide a service if it was available to tenants who had already proved they paid their rent on time and did not damage the property.

However, they would likely be discouraged from offering this service if they were obliged to offer the deposit loan product to all tenants regardless of prior behaviour or lack of financial history.

A potential solution to this would be for the government to offer a nationwide deposit for first time renters, or mandate that local authorities must provide bonds for first time renters. The tenant's behaviour in that first tenancy would then allow financial services providers to assess the credit-worthiness of the tenant before providing deposit loans on subsequent tenancies. If this system is adopted it could also give landlords a useful low cost method for credit checking their tenants.

Alternatively, if this deposit loan was tied to our deposit trust suggestion, this could continue to protect the tenant over multiple tenancies for as long as they paid their rent and kept their properties to a good standard.

If the local authority bond suggestion is adopted this would require mandating that local authority bonds last the life time of the tenancy however. Currently the terms of many local authority bonds mean that the landlord is only protected for the first 12 months of the tenancy. This already insufficient as the average renter lives in the same property for 4 years (English Housing Survey). However, if possession reform is implemented this will increase the risk to landlords as, in most circumstances, they will not be able to regain possession of their homes in time to rely on the bond.

Do you think the Government should continue to explore the viability of a passporting system?

Yes

The viability of passporting should continue to be explored but the RLA believes this should be focused on the creation of a deposit trust held by the tenant.

We propose that the tenant would pay an initial agreed amount into their deposit trust account prior to renting a property. This could come from their own savings or a deposit loan from another party. Once the tenant has put the agreed deposit amount in the trust they could provide the prospective landlord with the details so they can register as an interested party and agree the tenancy. The landlord would only be able to claim from the trust up to the amount that is in the account at the point they register.

With the amount that the current landlord could claim fixed, the tenant could then top up the amount within the deposit trust through the life of their tenancy. This would encourage them to maintain regular communication with the landlord to ensure that any damages are agreed during the life of the tenancy, or allow them to save up a larger deposit if they plan to move to a bigger property in the future. It would also eliminate concerns around tenants not knowing where their deposit is held. Instead, the deposit account would follow them around from property to property.

At present this kind of forward planning with deposits is not available as the onus is on the landlord to protect the tenant's deposit and these amounts are capped at five weeks due to the Tenant Fees Act.

This would act as a useful safeguard for tenants who have accidentally damaged the property, allowing them to have enough money in the deposit account to satisfy the new landlord and, because they are saving over time for it, remove the need to apply for loans.

If the tenant controlled access to their deposit and provided the landlord with the details of it, then this would end any confusion about where the deposit is held, remove the need for prescribed information to be served and empower the tenant to manage their own finances and prepare ahead of time for any losses they know they may incur.

Do you think that passporting could lead to a change in landlord and tenant behaviour?

Yes

If our proposed version of passporting was adopted, then it may well lead to a change in landlord and tenant behaviour. If tenants are responsible for ensuring there are sufficient funds for the deposit to be passported and in charge of their deposit account, they would be more likely to communicate regularly with the landlord to establish what, if any, deductions may be required from their deposit.

What measures could be put in place to tackle or prevent negative behavioural changes in a potential passporting system?

There are two key dangers with a potential passporting system; the failure of either the landlord or the tenant to engage proactively and early in identifying any necessary deductions; lack of clarity on what is a necessary deduction.

A more proactive approach by the deposit passport providers would ameliorate both of these issues. Guidance on smoothly passporting a deposit from one landlord to another should be provided to all tenants when they sign up to their passported deposit scheme. This should focus on fostering and retaining good communication with their landlord.

Similarly, comprehensive guidance on what is a necessary deduction should be made readily available to landlords. The International Journal of Law in the Built Environment investigated agent perspectives on the current deposit schemes in 2015 and they found that the decision making was inconsistent and opaque. This suggests that despite the strides being made by the deposit schemes, better guidance and more transparency on deposit dispute decisions is still needed. Particularly if landlords are expected to assess how much they can expect to recoup before the tenancy ends.

Safeguards should also be put in place to ensure that last minute damages can also be compensated from the passporting scheme. By the nature of the passporting system and the proposed time limit on returning the deposit, many landlords and tenants will seek to complete their initial inspections prior to the tenancy end. This does not account for any damages after the inspection however. As such, guidance should be produced recommending a certain amount of the deposit be retained to cover any of these losses should they occur.

What other action could be taken to make it easier for tenants to pay for a new deposit when moving home?

As discussed previously, the RLA would recommend looking at a national deposit loan scheme that would help first time renters fund deposits on their first homes or an expansion of the local authority bond scheme.

For further information:

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