



Holding deposits

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You will be aware that the tenant fee ban came into force on the 1st June 2019 and with it came clarity on the rules in relation to holding deposits. As a landlord or agent, when a tenant shows interest in a property, you will want to carry out certain checks and prepare documents before signing a tenancy agreement. At this point, if you decide to take a holding deposit from the tenant(s) to reserve the property, this guide sets out what you need to know.

From 1 June 2019...

DO	DON'T
Take up to one week's rent as a holding deposit to reserve 'the property' (this is optional)	Take one week's rent from each prospective joint tenancy for the same property
Stop advertising the property once a holding deposit has been paid	Take multiple holding deposits for the same property
BEFORE TAKING A HOLDING DEPOSIT	Unlawfully discriminate against a tenant on the basis of their disability, sex, religion or belief, gender reassignment, pregnancy or maternity, race or sexual orientation
Provide tenants with clear information about why you are requesting a holding deposit, the amount required and the circumstances under which it can be retained (see below)	Waste a tenant's time
<p>Clear information will set out the:</p> <ul style="list-style-type: none"> • amount of deposit they have paid • agreed rent for the property • specified date for reaching an agreement ('the deadline for agreement') • other material agreed terms for letting the property... 	<p>... in particular to make sure that any unusual or onerous clauses are pointed out to tenants at the earliest opportunity, ideally before the holding deposit is taken so that there can be no argument that the terms of the letting were changed, such as in:</p> <p>First Tier Tribunal decision: Ms Louise Stewart and ProjectPay Ltd v Onslows & Co Ltd 2020</p>
Provide tenants with a copy of a draft tenancy agreement	
Carry out basic checks; e.g. income and credit worthiness (explaining credit worthiness)	

Landlords will usually have two weeks (14 days) to enter into a tenancy agreement with a tenant once a holding deposit has been received by the landlord or agent. This is before the 'deadline for agreement', which is the 15th day after the holding deposit has been received. However, you may agree a different 'deadline for agreement' with the tenant in writing (which could be more or less than 14 days).

You CAN retain all, or part, of the holding deposit where a tenant:	Outright BAN on retaining the holding deposit You MUST refund a tenant's holding deposit:
Provides false or misleading information which you can reasonably consider when deciding to let a property; e.g. tenant's behaviour	In full within 7 days of: <ul style="list-style-type: none"> entering into a tenancy agreement with the tenant you choosing to withdraw from the proposed agreement the 'deadline for agreement' passing without a tenancy having been started
Withdraws from a property, without reason and you have written to the tenant explaining why you are not refunding their holding deposit	<ul style="list-style-type: none"> If you impose a requirement that breaches the ban OR If you act in such a way towards a tenant or a relevant person that it would be unreasonable to expect them to enter into a tenancy agreement with you (e.g. a landlord or agent asking a tenant to pay a fee for referencing, seeking to include an unfair term in the tenancy agreement or acting in an aggressive or harassing way)
Fail to take all reasonable steps to enter into a tenancy agreement and the landlord or agent takes all reasonable steps to do so, UNLESS a landlord or agent imposes a requirement that breaches the ban or acts in such a way to the tenant OR relevant person that it would be unreasonable to expect a tenant to enter into a tenancy agreement with them	Where you have no legitimate grounds to retain their holding deposit
Fails a right-to-rent check	If you: <ul style="list-style-type: none"> have not written to the tenant explaining why you are retaining their deposit within 7 days of deciding not to let to them if this is before the 'deadline for agreement' or within 7 days of the 'deadline for agreement' passing deposit and must return it to them
Agrees that it can be put towards the first months' rent	
Has been informed, in writing: <ul style="list-style-type: none"> why you are retaining their (or a relevant person's) holding deposit within 7 days of deciding not to let to them if this is before the 'deadline for agreement' or within 7 days of the 'deadline for agreement' passing OR you forfeit the right to retain their holding deposit and must return it to them	

Enforcement and penalties:

- Enforcement against the landlord or his agent can be made by Local Trading Standards or the First Tier Tribunal.
- Unlawfully retaining a holding deposit is a civil offence with a penalty of up to £5,000.
- Landlords cannot serve a Section 21 possession notice until the unlawfully held fee has been returned.

More detailed information on the Tenant Fees Act 2019 can be found on our website.

