

Holding Deposits

Guidance from 1st June 2019

Guidelines for holding deposits

You will be aware that the tenant fee ban came into force on the 1st June 2019 and with it comes clarity on enforcement 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

- Take **up to** one week's rent as a holding deposit to reserve 'the property' (this is optional)
- Stop advertising the property once a holding deposit has been paid

Before taking a holding deposit

- 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)

Clear information will set out the:

- 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

- Provide tenants with a copy of a draft tenancy agreement

- Carry out basic checks; e.g. income and credit worthiness (explaining credit worthiness)

DON'T

- Take one week's rent from each prospective joint tenant for the same property
- Take multiple holding deposits for the same property
- Unlawfully discriminate against a tenant on the basis of their disability, sex, religion or belief, gender reassignment, pregnancy or maternity, race or sexual orientation
- Waste a tenant's time

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:

- Provides false or misleading information which you can reasonably consider when deciding to let a property; e.g. tenant's behaviour
- Withdraws from a property, without reason
- Fails 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
- Fails a right-to-rent check
- Agrees that it can be put towards the first months' rent
- Has been informed, in writing:
 - 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

**Outright BAN on retaining the holding deposit
You MUST refund a tenant's holding deposit:**

- In full within 7 days of:
 - 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
- 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)
- Where you have no legitimate grounds to retain their holding deposit
- If you:
 - 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

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 [here](#).