

Landlords must check they hit the spot with deposits

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Claims for incorrectly handled property rental deposits are soaring and landlords should be alert to the danger and ensure they or their agents are complying with the legal requirements, if they want to avoid high penalties.

According to figures from insurers, the number of claims relating to deposits peaked at 25% of all professional indemnity claims made by estate and letting agents in the first quarter of this year, up from just 3% last year. The claims most often relate to a landlord lodging a deposit late or failing to provide the correct information to the tenant about the terms and the deposit scheme used.

Under the [Housing Act 2004](#), any deposit must be held by the landlord pursuant to an Assured Shorthold Tenancy Agreement (AST) in a registered deposit protection scheme and within 30 days, the tenant must be given specific details of the deposit protection scheme used and details about how the scheme works.

If a court rules that a landlord has failed in their duty, it can impose fines of up to three times the value of the deposit and the return of the deposit in addition to a fine, which must be paid within 14 days of the court order.

Property litigation expert, [Laura St-Galley](#) explains:

"It's the landlord who will find themselves subject to the county court order. They may be able to bring a claim against the letting agent, if there is one involved, who in turn will claim on their professional indemnity insurance. It's a costly business and bad in reputational terms for all concerned."

She added:

"The legislation has been in place for a long time, but we see both agents and landlords getting it wrong still. Where landlords have a big property portfolio, they are more likely to have the right processes in place. For small-scale landlords, or the accidental ones who may have ended up renting out their home while working elsewhere, it's worth adopting some of the practices of the big boys as it's no defence to say you didn't know or had left it to your agent.

That includes taking some time to understand the law as it affects you as a landlord and having checklists for each stage of the tenancy. Then you need to make sure they are used each time, whether you are doing it yourself or checking your agency have acted properly on your behalf. In the worst-case scenario, if you haven't used a deposit scheme when you should have, the court can rule that a tenant does not have to leave the property when the tenancy ends."

In addition to ensuring that the deposit is properly protected within the relevant time scales and that the Prescribed Information is provided to the tenant, landlords must now ensure that tenants are provided with a copy of the current "How to Rent" Guide, the current Energy Performance Certificate (EPC) and, before the tenancy commences, a Gas Safety Certificate.

This becomes even more important given that non-compliance can hinder the service and use of the [Section 21 possession notice](#) procedure. This can result in delays in recovering possession of the property and returning the deposit, putting landlords in an unprotected and weak position.

If you wish to discuss the steps to be taken before entering into any AST, please contact [Laura St-Gallay](#) who can advise and ensure you enter into a fully compliant AST, or alternatively, if you need advice on how to recover possession of your property, Laura can also assist.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

