

my|deposits Scotland

Conditions of Deposit Disputes

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Introduction

These Conditions of Deposit Disputes are an addendum to the **my|deposits Scotland** Terms and Conditions and set out the process and practice that will occur when a Deposit Dispute is raised with the Scheme. The definitions from the Terms and Conditions follow to these Conditions of Deposit Disputes

These Conditions of Deposit Disputes set out the legislative requirements related to the raising of a Deposit Dispute, the responsibilities of a User and Tenant when the Deposit Dispute is raised, and how the Scheme will deal with the Deposit Dispute including its resolution.

The Tenant will be required to agree to comply and abide by these Conditions of Deposit Disputes when raising a Deposit Dispute with the Scheme.

The Scheme offers a free Alternative Dispute Resolution (ADR) mechanism, which is an alternative method to the Tenant and User resolving the Deposit Dispute through the Court.

The Scheme actively encourages the use of ADR as a method of Deposit Dispute resolution.

By the Tenant accepting to use the Scheme's ADR mechanism (and having the Deposit Dispute accepted by the Scheme) the parties will be given the opportunity to present their case and evidence to a fully trained and qualified Adjudicator. The Adjudicator will analyse the evidence submitted and make a binding decision as to how the Deposit should be distributed.

Section A: Best Practice at Actual End Date of Tenancy

A1 At the end of the tenancy the Tenant should ensure that:

- A1.1 They have paid all rent up to date;
- A1.2 The Scheme is provided with their correct contact details and informed the User of their alternative contact details;
- A1.3 They have tried to contact the User to discuss and if necessary attempt to negotiate the return of the Deposit;
- A1.4 They check to see if the User has made a release request;
- A1.5 If necessary, make a release request and then wait for the User's response.
- A1.6 Only when the above has occurred can the Tenant inform us that there is a Deposit Dispute.

A2 At the end of the tenancy, the User should:

- A2.1 Arrange for a check out of the Residential Property to be carried out;
- A2.2 Ensure they obtain the forwarding contact details for the Tenant and update the online account at the release request stage;
- A2.3 If necessary, inform the Tenant of any proposed deductions within a reasonable period of time;
- A2.4 Where possible negotiate over any disputed deductions from the Deposit with the Tenant before making a release request;
- A2.5 If the Tenant makes a release request then respond within the 30 Working Days.

A3 If a User is unable to contact the Tenant at the end of the Tenancy then we recommend that the User:

- A3.1 Arranges a check out of the Residential Property as usual and makes a note of any deductions that should be made from the Deposit;
- A3.2 Using any contact details the User holds for the Tenant, attempts to contact them to inform them of the proposed deductions;
- A3.3 Keep a record of all actions taken in relation to the Deposit.
- A3.4 Make a release request as per the findings of the check out.

Section B: Deposit Dispute Acceptance Criteria

B1 To raise a Deposit Dispute the Tenant must have:

- B1.1 Vacated the Residential Property;
- B1.2 Paid all rent owing under the Tenancy Agreement;
- B1.3 If in contact with the User, has reasonably attempted to negotiate the return of the Deposit with the User, and be able to provide proof, if asked;
- B1.4 Initiated the release of the deposit or responded to the User's release request, informed us that there is a Deposit Dispute and agreed to use the Scheme's ADR mechanism.

If any of the above has not occurred and/or the Tenant cannot provide us with evidence to clarify any of the above points as reasonably requested, the Scheme is likely to reject the Deposit Dispute.

B2 The Scheme may not accept a Deposit Dispute, when after investigation the Scheme discovers the matters are outside its remit because:

- B2.1 The Tenant has not complied with B1.
- B2.2 The Deposit Dispute relates to matters other than the return of the Protected Deposit;
- B2.3 First-Tier Tribunal proceedings have been issued regarding any matter related to the Tenancy Agreement in question (unless they have been withdrawn or are stayed for mediation purposes or the court has subsequently directed that the matter be dealt with by the Scheme's ADR);
- B2.4 There are allegations of fraud, police involvement, criminal activities, duress or harassment by either party to the Deposit Dispute;
- B2.5 The Deposit Dispute being raised is vexatious, frivolous or being raised unreasonably by the Tenant.
- B2.6 It would be more appropriate for the Deposit Dispute to be dealt with through the Courts. The Scheme would rely on this clause if the Deposit Dispute included matters that could not reasonably be decided by an Adjudicator using paper based evidence or the Deposit Dispute contains complex matters of law.

B3 If the Scheme is not satisfied that the Deposit Dispute is within its remit in accordance with B2 then the Scheme will contact both parties and provide the reasons and state how the Deposit will be released.

B4 The Scheme will investigate the background to the Deposit Dispute and if at any stage, further information regarding a Deposit Dispute comes to the Scheme's attention that affects the reasons why a Deposit Dispute was either accepted or rejected, the Scheme reserves the right to change the initial decision and will provide full written reasons why the position has changed. The Scheme's decision on accepting or rejecting a Deposit Dispute is always final.

B5 If the Deposit Dispute is not considered valid by the Scheme, the parties will be informed as soon as is reasonably practicable.

Joint Tenants

B6 If the Deposit Dispute relates to a Joint Tenancy Agreement then only one Tenant, who must be named on the DPC, may raise the Deposit Dispute. This Tenant does not need to be the Lead Tenant but must confirm the following to the Scheme:

- [a] They will personally conduct all aspects of the Deposit Dispute pursuant to [b] to [e] inclusive;
- [b] They have authority to act for all the Joint Tenants;

- [c] They agree to fairly distribute the money which may be returned to him to the other Joint Tenants;
- [d] They agree to indemnify the Scheme against any claims or loss by the other Joint Tenants; and
- [e] They will notify all the Joint Tenants that the Scheme cannot resolve any disputes between the Joint Tenants.

Authorised Parties

- B7** At our discretion we may allow a Deposit Dispute to be raised and handled on behalf of a Tenant by an Interested Party as already advised to us or someone acting as an 'authorised representative' of the Tenant.
- B8** To act on their behalf, the Tenant and/or the authorised party must inform us in writing and provide reasons and evidence, which may, but not exclusively, include the:
 - Tenant's difficulty with language or understanding the issues;
 - Tenant's disability or sickness or absence from the UK.
- B9** Our decision to accept or acknowledge a third party to take responsibility for the Deposit Dispute is final and we may require submission of identification or other evidence and documentation including any 'enduring power of attorney', 'lasting power of attorney' or other agency agreement.
- B10** If we accept the authorised representative then these Conditions will be interpreted so that the definition of 'Tenant' will extend to the authorised representative.
- B11** If a solicitor or any other professional representative is instructed by a party then the costs must be paid by the instructing party. The Scheme will not make any award for the costs related to the representation.
- B12** We may allow a Deposit Dispute to be handled on behalf of a Private Landlord User by an authorised representative. The User and/or the authorised representative must inform us in writing and provide reasons and evidence, which may, but not exclusively include:
 - User's difficulty with language or understanding the issues;
 - User's disability or sickness.
- B13** We will not allow a Company Landlord or Agent User to grant authority for another party to act on their behalf in regards to a Deposit Dispute.

Miscellaneous Provisions in Relation to Deposit Disputes

- B14** The ADR mechanism will not resolve any Deposit Dispute in excess of the amount of the held with the Scheme
- B15** Each party is responsible for any costs and/or expenses incurred as a result of the ADR mechanism. The Scheme cannot make any award of costs related to the preparation of a Deposit Dispute.
- B16** The parties are able and encouraged to settle the Deposit Dispute before the Adjudicator makes a decision. Both parties must provide proof of their agreement to us by way of a written and signed instruction. We may independently check the authenticity of the signed agreement.
- B17** The User is responsible for clarifying whether and why it has been agreed for any amount of the Deposit to be returned to the Tenant. If it is not clear what the agreed sum relates to then the Adjudicator will either make a request for further information, or using the evidence provided, make a decision as to why any amount has been returned to the Tenant, based on a balance of probabilities.

Section C: Dispute Process and Timescales

Tenant Raising Dispute

- C1** To raise a Deposit Dispute with the Scheme the Tenant is required to:
- C1.1 Reject the User's release request and submit a Deposit Dispute with the Scheme;
 - C1.2 Inform the Scheme whether they wish for the Deposit Dispute to be resolved using the Scheme's ADR mechanism or through the Courts.
- C2** The Deposit Dispute will not have been submitted with the Scheme until the Tenant receives confirmation of a unique reference number (URN) given to the Deposit Dispute.
- C3** Should the Tenant wish to raise a Deposit Dispute using the Scheme's paper 'Tenant – Response to Landlord/Agents Application' form, the Deposit Dispute will not be considered as submitted by the Scheme until the form has been fully completed, returned and uploaded by us on to the Scheme's ADR electronic system and the Tenant is informed that the Deposit Dispute has been given a URN.

User's Response to a Deposit Dispute

- C4** On notification of a Deposit Dispute, the Scheme will notify the User.
- C5** The User will have 14 Calendar Days to provide the reasons for any deductions to the Deposit and their supporting evidence to the Scheme.

Tenant's Response to User's Claim to Deposit

- C6** The Tenant has 14 Calendar Days to provide their response to the User's claim and any supporting evidence.

User's Final Comments

- C7** The User has a further 7 Calendar Days to provide comments on the Tenant's claim and evidence.
- C8** The Deposit Dispute will continue to proceed to Adjudication even if the User or Tenant has failed to submit their position and/or evidence within the required timeframe. Late evidence may only be accepted at the discretion of the Scheme.

Tenant Using First-Tier Tribunal

- C9** Tenants have the option to choose to use the First-Tier Tribunal to resolve the Deposit Dispute.
- C10** If the Tenant wishes to use the First-Tier Tribunal then the Scheme must be informed when the Tenant responds to the User's Release Request and submits the Deposit Dispute. Once confirmation has been received that the Tenant chooses the First-Tier Tribunal as their preferred method of resolution, the Scheme will release the deposit monies in accordance to the User's release request. It is then the Tenants responsibility to initiate court proceeding against the User (or Landlord if the User is an Agent). The Scheme will have no involvement in a Deposit Dispute where the Tenant has chosen for resolution through the First-Tier Tribunal.

Section D: Deposit Dispute Evidence

- D1** The Deposit remains the property of the Tenant unless the User proves entitlement; the onus is on the User to demonstrate and prove that they are entitled to any amount they are claiming. The User is required to provide the reasons and evidence to support any deductions to the Deposit. The Tenant can then rebut any of the User's assertions and provide reasons and evidence as to why they are entitled to the return of the Deposit in accordance with their release request.
- D2** Both parties to the Deposit Dispute are responsible for setting out their position clearly. This includes pointing the Adjudicator to relevant evidence to support their position.
- D3** By the Tenant agreeing to use the Scheme's ADR mechanism both parties accept that the Adjudicator acts as an impartial party, and will have total discretion to assess the evidence as such. Whilst the User will be provided with sufficient information in which to rebut the Tenant's claim, neither party will be entitled to cross examine or be involved in the Adjudication once the initial submissions have been made, unless specifically requested by the Adjudicator.
- D4** All evidence submitted must be relevant and proportional to the issues in dispute. The online ADR system can only upload single files up to a maximum of 20mb in size. The parties can contact the Scheme by telephone or email to discuss how to submit larger files. The Scheme accepts no responsibility for the failure of the system to upload any documents or for the quality of the information. The parties can view their submissions on line and the onus is on them to ensure they are complete and of sufficient quality to support their case. We will seek to remedy any issue informed to us before the relevant deadlines set by the Scheme, however if these deadlines are exceeded we cannot extend these but in exceptional circumstances.
- D5** Tenants are reminded that if the issues are particularly complicated or involve issues unrelated or exceeding the amount of the Deposit, or where there is a large or complex amount of evidence, then they may obtain a better result if the matter is resolved at Court.
- D6** Neither the Scheme nor an Adjudicator will be liable for any error or omission in an Adjudication if the error or omission arose because the claim or rebuttal or supporting evidence was incomplete, illegible, confusing, contradictory or misleading, as long as the Adjudicator has taken reasonable care with regards to the consideration of the position and evidence particularly when a large amount of evidence has been supplied by a party.
- D7** The Scheme recommends that all Tenants, Users and Landlord Clients of Agent Users read the relevant ADR guide (Tenant, Landlord or Agent), the Deposits, Disputes and Damages guide released in association with all the tenancy deposit schemes, and the other specific guidance and case studies available on the Scheme website to learn more about how to set out their claim or rebuttal and how evidence will be considered by an Adjudicator. The guides and case studies can also be posted if a request is made through our call centre or by letter.
- D8** The most important documents in a Deposit Dispute are the tenancy agreement, signed and dated check in and check out reports (including inventory and statement of condition) and also dated photographic/video evidence. Any costs incurred by the User should be supported by valid invoices, receipts or estimates.
- D9** The guides provided by the Scheme give detailed information on how the evidence is considered by an Adjudicator but as a summary:
- D9.1** The check in/out report will be given more evidential weight by an Adjudicator if it has either been signed by the Tenant or conducted by an independent third party inventory clerk. If there is a doubt as to the independence of the report the party relying on it should set out why they believe it to be independent. If the report has not been signed by the Tenant the User should explain why not and provide evidence that the Tenant was given the opportunity to do so.

- D9.2 With photographic and video evidence this should be used to support the party's position as set out in the claim or rebuttal. If the photographic or video evidence is not date stamped then the Adjudicator cannot be sure when it was taken. If a party intends to rely on the electronic properties of a photographic or video file the Scheme recommends the files are emailed rather than uploaded.

Returning Evidence

- D10** The Scheme will not return any evidence unless we are informed on submission that the party requires it back. If we have not received any instruction at this time in relation to the evidence, we reserve the right to destroy it. Physical evidence will only be held by the Scheme for two weeks from receipt and will be destroyed or shredded.
- D11** The Scheme cannot be held liable for any loss suffered as a result of us not returning the evidence when we were not informed on submission that it is required back.
- D12** We reserve the right only to return original documentation to you at your written request, and upon prior payment of postage by you.

Section E: The Adjudication

- E1** When the Scheme has received all of the parties evidence the Scheme will forward the following Dispute Papers to the Adjudicator:
- E1.1 The User's claim and evidence and final comments;
 - E1.2 The Tenant's rebuttal and evidence;
 - E1.3 Any other information the Scheme believes is relevant to the Deposit Dispute that has been communicated to us.
- E2** The Adjudicator has 28 Calendar Days to make a decision from the date of receiving the Dispute Papers from us.
- E3** On receipt of the Adjudication decision we will:
- E3.1 Inform the parties and provide a copy of the decision;
 - E3.2 Make payment to the parties in accordance with the decision within 5 Working Days.
- E4** The Adjudicator may ask for further information from either party should they be unable to reach a decision based upon the evidence initially provided, further clarification is required or they have reason to believe a further piece of evidence exists. However, as the Adjudicator is required to work under tight government monitored timescales, if the Adjudicator can make a decision based on the evidence provided at that point there is no requirement on the Adjudicator to request further evidence.
- E5** If a User makes submissions which are not supported by evidence, the Adjudicator may have no option but to disregard them and will have to award the amount back to the Tenant as the User has not persuaded the Adjudicator that they were entitled to make the deduction from the deposit.
- E6** The Adjudicator has to take fair wear and tear of the Residential Property and its contents into account and cannot make an award which would result in the User receiving new for old, also known as 'betterment'.
- E7** The Scheme's 'Fair Wear and Tear' guide provides further information on how an Adjudicator calculates fair wear and tear but they will take the following into account:
- E7.1 The age of the item (or when decoration last occurred);
 - E7.2 The quality and condition of the item at the start of the tenancy;
 - E7.3 The length of the tenancy;
 - E7.4 The permitted number of occupants (and to a lesser extent the type of occupants).
- E8** Any financial award made by an Adjudicator to the User is for a breach of the tenancy agreement by the Tenant. This will generally be a breach which has resulted in the Residential Property not being returned in the condition it was in at the beginning of the tenancy (taking fair wear and tear into account).
- E9** All of the Scheme's Adjudicators are independent from the running of the Scheme, experienced, are legally trained and/or hold membership of the Chartered Institute of Arbitration and have the training and ability to deliver Adjudication decisions in accordance with legislative requirements governing the Scheme.

E10

The Scheme's Adjudicators are trained to follow a consistent approach to regularly occurring issues. This does not however mean that an Adjudicator (or Adjudicators) will find in exactly the same way in different cases. Although cases may seem the same to a User or Tenant, every case is different and the evidence provided will be slightly different depending on the specific circumstances of that case. Adjudicators have discretion to decide what they believe to be fair in the circumstances. If one Adjudicator considers a certain course of action to be fair in a case, a different Adjudicator may consider a slightly different course to also be fair. Like a Judge in the Courts the Adjudicator has discretion to make a decision based on the evidence submitted. As long as the Adjudicator has followed the correct approach and explained the reason(s) for coming to a decision, then that decision will be correct even if a party is not happy with the decision.

Section F: Review of Adjudication

- F1** Either the User or the Tenant may apply to the Scheme within 10 Working Days of notification of an Adjudicator's Decision from the Scheme for a Review, but may only do so on the grounds that the Adjudicator has erred in fact or in law (or both).
- F2** If a review request has been received by the 10th Working Day:
- F2.1** The Scheme will invite written representations from the other party to the Deposit Dispute to enable the Scheme to consider whether the Adjudicator may have erred in fact or in law;
 - F2.2** The written representations must be returned by the other party within 3 Working Days of being requested;
 - F2.3** On receipt of the written representations the Scheme will decide whether to accept or reject the application.
- F3** Where an application is rejected by the Scheme:
- F3.1** The requesting party may not make a further application for Review of the Adjudicator's Decision.
 - F3.2** The Scheme will release the Deposit as soon as is reasonably practicable in accordance with the original Adjudication Decision, but not before the expiry of time in accordance with F1.
- F4** If the Scheme decides that there is a reasonable ground for believing that the Adjudicator may have erred in fact or in law, the Scheme will accept the application and refer the Adjudication Decision for Review by an Adjudicator who was not involved in deciding the original Adjudication Decision ("Review Adjudicator").
- F5** The Review Adjudicator will:
- F5.1** Affirm the Adjudication Decision; or
 - F5.2** Substitute the Adjudication Decision with a different decision ("Review Decision");
- F6** The Review Adjudicator's decision will set out:
- F6.1** The facts on which the decision is based;
 - F6.2** The reasons for the decision; and
 - F6.3** The amounts of Deposit to be released by the Scheme to the parties.
- F7** The Review Adjudicator will make the decision in accordance with F6 within 10 Working Days of receipt of instructions from the Scheme in F4.
- F8** The decision of the Review Adjudicator is final.
- F9** The parties will receive the Review Adjudicator's decision from the Scheme within 5 Working Days of the Review Adjudicator making his decision.
- F10** The Scheme will repay the Deposit in accordance with the Review Adjudicator's decision within 5 Working Days of sending notification of the decision.

Section G: Miscellaneous Provisions

- G1** Like the Terms and Conditions these Conditions of Deposit Disputes may need to be updated from time to time. Notices of any changes will be posted on our website, in newsletters and by email where the User has provided us with an email address, or direct mail if not.
- G2** If the Scheme makes an incorrect payment to any party to a Deposit Dispute as a result of an administrative error then that party is required to immediately return the amount upon request by the Scheme. Failure to return the amount in accordance with a request is likely to result in legal proceeding being instigated to retrieve the outstanding amount.
- G3** The Scheme's complaints procedure cannot be used to complain against or appeal an Adjudication decision as any party agreeing to use the Scheme's ADR mechanism to resolve a Deposit Dispute means agreeing to be bound by the decision of the Adjudicator.
- G4** The Scheme is not regulated by the Financial Conduct Authority (FCA). The Scottish Ministers have responsibility for monitoring all the Tenancy Deposit Protection Schemes but do not have a role in individual cases or complaints.

my|deposits
Scotland.co.uk

my|deposits Scotland

Premiere House

1st Floor

Elstree Way

Borehamwood

WD6 1JH

Tel: 0333 321 9402

www.mydepositsscotland.co.uk

my|deposits
Scotland.co.uk

