
DRAFT STATUTORY RULES OF NORTHERN IRELAND

2012 No.

**The Tenancy Deposit Schemes
Regulations (Northern Ireland) 2012**

PART 5

Procedures for safeguarding and repaying tenancy deposits

Requirement on landlord to supply information

11. A scheme administrator must accept any tenancy deposit offered to him under a scheme by a landlord who has received the deposit in connection with a tenancy.

12. Where a landlord safeguards a tenancy deposit in a scheme, he must:—

- (a) within 14 days of receipt of the deposit furnish the information specified in paragraph 1 of Schedule 1, to the scheme administrator; and
- (b) within 28 days of receipt of the deposit furnish the information specified in paragraph 3 of Schedule 1 to the tenant.

Protection of deposits in a scheme

13. On acceptance of a tenancy deposit under regulation 11 and receipt of the information furnished under regulation 12, the scheme administrator must:

- (a) safeguard the tenancy deposit into a tenancy deposit scheme;
- (b) issue written confirmation to the landlord confirming the amount of the deposit received and that it has been safeguarded with a scheme; and
- (c) provide to the landlord the information specified in paragraph 2 of Schedule 1 and the information leaflet specified in regulation 37.

Landlord application to transfer a deposit

14.—(1) A landlord may apply for repayment of a tenancy deposit from a scheme for the purpose of transferring it to another scheme.

(2) On receipt of such an application, the scheme administrator must:—

- (a) if so requested, pay the tenancy deposit to the other scheme on the landlord's behalf; or
- (b) in any other case, repay the tenancy deposit to the landlord.

(3) The scheme administrator must notify the tenant in writing of the date on which the deposit was paid to the other scheme or repaid to the landlord.

Application for repayment of a deposit – custodial schemes

15.—(1) A landlord must apply to the scheme administrator for repayment of any tenancy deposit paid to a scheme on, or as soon as is reasonably practicable after the end of the tenancy.

(2) The landlord's application must specify the date on which the tenancy ended and the amount of the tenancy deposit which in the view of the landlord, should be:—

- (a) repaid to the tenant; and
- (b) repaid to the landlord.

(3) The tenant may apply for repayment of a tenancy deposit to the scheme administrator and must specify the date on which the tenancy ended and the amount of the tenancy deposit which in the view of the tenant, shall be:—

- (a) repaid to the tenant; and
- (b) repaid to the landlord.

(4) If an application for repayment has been made by the landlord in accordance with paragraph (1), or is made within 30 working days of the tenant's application, the scheme administrator must not progress the tenant's application.

16.—(1) On receipt of an application from a landlord under regulation 15(1), the scheme administrator must write to the tenant to:—

- (a) notify the tenant of that application, including details of the amounts specified under regulation 15(2);
- (b) require the tenant to contact the scheme administrator to confirm either that the tenant agrees to repayment as applied for by the landlord or that the tenant disputes the amounts specified;
- (c) require that the tenant notify the scheme administrator of the amount of the tenancy deposit which the tenant considers should be repaid to the tenant (the "disputed amount"), if different from the amount specified;
- (d) explain the effect of regulation 18; and
- (e) inform the tenant of the availability of the dispute resolution mechanism and of the procedures for requesting a referral as described in Part 6.

(2) Where an application is accepted from a tenant under regulation 15(3), the scheme administrator must write to the landlord to:—

- (a) notify the landlord of that application, including details of the amounts specified under regulation 15(3);
- (b) require the landlord to contact the scheme administrator to confirm either that the landlord agrees to repayment as applied for by the tenant or to submit an alternative application in accordance with regulation 15(2); and
- (c) explain the effect of regulation 19.

Repayment by the scheme administrator where there is no disputed amount

17.—(1) Paragraph (2) applies where the scheme administrator receives confirmation as mentioned in regulation 16(1)(b) or 16(2)(b) that repayment of the tenancy deposit as applied for is agreed.

(2) The scheme administrator must, within 5 working days of receipt of confirmation that repayment of the tenancy deposit as applied for is agreed, repay the tenancy deposit in accordance with the amounts specified in the application.

18.—(1) Paragraph (2) applies where the scheme administrator does not receive confirmation that repayment of the tenancy deposit as applied for is agreed, and notification from the tenant as required by regulation 16(1)(b) and (c) within 30 working days of writing to the tenant in accordance with regulation 16(1) is not received.

(2) The scheme administrator must:—

- (a) if the amount specified under regulation 15(2)(a) is more than zero, hold that amount in a designated account (in case it is applied for by the tenant at a later date); and
- (b) repay to the landlord the amount specified under regulation 15(2)(b) within 5 working days of the expiry of the 30 working day period.

19.—(1) Paragraph (2) applies where the scheme administrator does not receive confirmation that repayment of the tenancy deposit as applied for is agreed, and application from the landlord as required by regulation 16(2)(b) within 30 working days of writing to the landlord in accordance with regulation 16(2) is not received.

(2) The scheme administrator must repay the full amount of the tenancy deposit to the tenant within 5 working days of the expiry of the 30 working day period.

Repayment by the scheme administrator where there is a disputed amount

20.—(1) Where the scheme administrator receives notification from the tenant of a disputed amount as mentioned in regulation 16(1)(c), the scheme administrator shall hold that amount in a designated account until the dispute is resolved.

(2) If any proportion of the tenancy deposit is undisputed, the scheme administrator must repay that amount as soon as is reasonably practicable.

(3) The scheme administrator shall manage the disputed amount of tenancy deposit in accordance with regulations 21 to 23.

21. If the scheme administrator receives notification that the dispute has been resolved by agreement between the landlord and tenant, the scheme administrator must repay the tenancy deposit in accordance with that agreement within 5 working days.

22.—(1) Paragraphs (2) and (3) apply where, following receipt of the notification referred to in regulation 20(1), the administrator does not receive from the tenant a request for, or consent to, use of the dispute resolution mechanism made available by the scheme administrator and the tenant does not otherwise agree with the landlord the amounts to be repaid.

(2) On the 15th working day after receipt of the notification referred to in regulation 20(1), the scheme administrator must write to the tenant to explain the effect of paragraph (3).

(3) On the 30th working day after receipt of the notification referred to in regulation 20(1), the scheme administrator must:—

- (a) advise the tenant that the tenancy deposit is to be repaid in accordance with the amounts specified in the landlord's application; and
- (b) within the next 5 working days, repay the tenancy deposit in accordance with that application.

23.—(1) Paragraphs (2) and (3) apply where the landlord and tenant agree to use the dispute resolution mechanism made available by the scheme administrator.

(2) If the scheme administrator is notified that the dispute has been abandoned before a decision has been made by the adjudicator, the scheme administrator must, within 5 working days of that notification, repay the tenancy deposit:—

- (a) where the parties have reached an agreement, in accordance with that agreement; or
- (b) in any other case, in accordance with the amounts specified in the landlord's application.

(3) On receipt of an adjudicator's decision under Part 6, the scheme administrator must allow 10 working days for receipt of any request for review of that decision and, unless such request is

received in that period, shall then repay the tenancy deposit in accordance with that decision within the following 5 working days.

Application for repayment of a deposit – insurance schemes

24.—(1) An insurance scheme must provide that, where:—

- (a) a tenancy deposit has been protected by the landlord under the scheme, and
- (b) the tenancy has ended, and
- (c) there is no dispute,

the landlord must repay to the tenant the full amount of the deposit as requested by the tenant within 5 working days beginning with the date on which the request was made.

(2) Paragraphs (4) to (9) apply where the tenant notifies the scheme administrator that:—

- (a) the tenant has requested the landlord to repay the whole or any part of the deposit; and
- (b) the amount in question (“the outstanding amount”) has not been repaid to the tenant within the period of 5 working days beginning with the date on which the request was made.

(3) Where a tenant gives notice under paragraph (2) the tenant must also indicate whether he consents to a dispute as to the amount to be repaid being resolved through the use of the dispute resolution mechanism.

(4) On receiving a notification in accordance with paragraph (2), the scheme administrator must direct the landlord:—

- (a) to pay an amount equal to the outstanding amount into a designated account held by the scheme administrator; and
- (b) to do so within the period of 5 working days beginning with the date on which the direction is received by the landlord.

(5) The following paragraphs apply where the tenant or the landlord subsequently notifies the scheme administrator:—

- (a) that the tenant and landlord have agreed that such an amount is to be paid either wholly to one of them or partly to the one and partly to the other; or
- (b) that a person acting as an adjudicator under Part 6 has made a decision that the outstanding amount is payable either wholly to one of them or partly to one and partly to the other.

(6) If the scheme administrator is satisfied as to the matters mentioned in paragraph (5) (a) or (b) as the case may be, the scheme administrator must:—

- (a) pay to the tenant any amount due to him in accordance with the adjudicator’s decision or an agreement between the tenant and the landlord and, to the extent possible, pay that amount out of any amount held by the scheme administrator by virtue of paragraph (4); and
- (b) comply with paragraph (7) or (8), as the case may be.

(7) Where any amount held by the scheme administrator by virtue of paragraph (4) is more than any amount due to the tenant in accordance with the adjudicator’s decision or agreement, the scheme administrator must pay the balance to the landlord.

(8) Where any amount so held by the scheme administrator is less than any amount so due to the tenant, the scheme administrator shall direct the landlord to pay him the difference within the period of 5 working days beginning with the date on which the direction given by the scheme administrator is received by the landlord.

(9) The scheme administrator must pay any amounts required to be paid to the tenant or the landlord as mentioned in paragraph (6)(a) or (7) within 5 working days beginning with the date on which the notification is received by the scheme administrator.

(10) The landlord must comply with any direction given in accordance with paragraphs (4) or (8).

25.—(1) This paragraph applies where the scheme administrator gives a direction under regulation 24(4) to a landlord.

(2) The scheme administrator must also send to the landlord a notice:—

(a) asking the landlord to indicate:—

(i) whether the landlord accepts that the tenant should be repaid the whole or part of the outstanding amount; or

(ii) if the landlord accepts that part of it should be repaid, the amount the landlord accepts should be repaid and his proposals to do so;

(b) warning that if the landlord does not accept that the tenant should be repaid the whole or part of the outstanding amount and fails to respond within the relevant period to the question mentioned in paragraph (2)(a), the dispute will be resolved through the use of the dispute resolution mechanism.

(3) If the scheme administrator does not, within 5 working days receive a response from the landlord indicating whether the landlord accepts that the whole or part of the outstanding amount should be repaid to the tenant the scheme administrator must:—

(a) treat the lack of a response as an indication that the landlord does not accept that the tenant should be repaid any of the outstanding amount;

(b) determine forthwith whether the notice was received by the landlord;

(c) if satisfied that the notice was received by the landlord, that the dispute will be resolved through the use of the dispute resolution mechanism;

(d) inform the tenant and the landlord that the dispute will be resolved in this way; and

(e) inform the tenant and the landlord the date on which all papers referring to the dispute have been forwarded to the dispute resolution mechanism.

(4) If within the relevant period the scheme administrator receives a response to the notice under paragraph (2) to the effect that the landlord does not accept that the tenant should be repaid the whole or part of the outstanding amount, the dispute will be resolved through the dispute resolution mechanism:—

(a) the scheme administrator must inform the tenant and the landlord that the dispute will be resolved in this way; and

(b) the date on which all papers referring to the dispute have been forwarded for dispute resolution.

(5) In this paragraph:—

the “outstanding amount” has the same meaning as in regulation 24(2)(b);

the “relevant period” means the period of 10 working days beginning with the day after that on which the notice referred to in paragraph (2) is sent.

26.—(1) The scheme administrator shall ensure that the designated account must not contain anything other than amounts paid into it as mentioned in regulation 10 and 24(4) and any interest accruing on such amounts.

(2) Subject to paragraph (3), the scheme administrator shall retain any interest accruing on such amounts in respect of the period during which the relevant amount remains in the designated account.

(3) With the exception of any interest retained in accordance with paragraph (2), nothing contained in the designated account may be used to fund the administration of the scheme.

27.—(1) The scheme must make provision for preventing double recovery by a tenant in respect of the whole or part of the deposit, and must in that connection make provision:

- (a) for excluding or modifying any requirement imposed by the scheme in accordance with regulation 24; and
- (b) for requiring the repayment of amounts paid to the tenant by the scheme administrator.

(2) In this regulation “double recovery”, in relation to an amount of a tenancy deposit, means recovering that amount both from the scheme administrator and from the landlord.

Requirements when deposit ceases to be protected under an insurance scheme

28.—(1) A deposit must cease to be protected under an insurance scheme as and from the date that the landlord’s membership of the insurance scheme is terminated by the scheme administrator.

(2) Where the scheme administrator proposes to terminate the landlord’s membership of an insurance scheme, the scheme administrator shall send a written notification to the landlord which must:—

- (a) state that the scheme administrator proposes to terminate the landlord’s membership and the reason why;
- (b) identify the tenancy deposit or in the event of multiple tenancies, all of the tenancy deposits in question;
- (c) state the date when the deposit may cease to be protected under the scheme and give a general explanation of the effect of the proposed termination on any tenancy deposit protected by the landlord under the scheme and that any such deposit held by the landlord will no longer be protected by the scheme; and
- (d) inform the landlord if the scheme administrator does not receive a response to the notification within 14 days beginning with the day on which the notification is received by the landlord, the scheme administrator must make a decision on the question of membership based on the facts at hand.

(3) Where the scheme administrator does not receive a response within the 14 days as mentioned in paragraph (2)(d), he shall:—

- (a) decide whether the landlord should remain a member of the scheme and if the membership is to continue he must notify the landlord in writing of that decision;
- (b) decide whether to terminate the landlord’s membership and, if so, the date on which the membership is to terminate;
- (c) if the decision is that the membership should be terminated, send a notification to the landlord and to the tenant where the deposit retained in respect of a tenancy is affected by the decision, informing the recipients of the date on which the membership ceases; and
- (d) advise both the landlord and the tenant of the effect the termination of the landlord’s membership will have on any tenancy deposits protected by the landlord under the scheme and that any such deposits will no longer be protected by the scheme from the date of termination.

(4) The actual date to be used as the date of termination of the landlord’s membership must not be within the 3 month period beginning with the day on which the original notification as mentioned in paragraph (2) was received by the landlord.

Notification to tenants – all scheme models

29.—(1) Every custodial or insurance scheme must provide for the scheme administrator to respond as soon as is reasonably practicable from receipt of a request under paragraph (2).

(2) A request is within this regulation if it is a request by the tenant to receive confirmation that a deposit paid in connection with the tenancy is being held in accordance with the scheme.