
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

The Tenancy Deposit Schemes (Scotland) Regulations 2011

PART 5

Procedures for payment, holding and repayment of deposits

Payment of tenancy deposits to a tenancy deposit scheme

20. A scheme administrator must accept any tenancy deposit paid to an approved scheme by or on behalf of a landlord who has received the deposit in connection with a relevant tenancy, whether it was paid in compliance with regulation 3(1)(a) or at a later date.

21. A tenancy deposit paid to an approved scheme must be accompanied by sufficient information to enable the scheme administrator, both on receipt and at the end of the tenancy, to—

- (a) identify and contact the landlord and tenant; and
- (b) identify the tenancy and the property in connection with which the tenancy deposit was paid to the landlord.

22.—(1) On receipt of a tenancy deposit and the required accompanying information, the scheme administrator must—

- (a) pay the tenancy deposit into a designated account; and
- (b) issue written confirmation to the landlord and tenant that the tenancy deposit has been received and paid into a designated account.

(2) The scheme administrator must also advise the landlord and tenant of—

- (a) the amount of the deposit;
- (b) the date on which the deposit was received by the scheme administrator;
- (c) the address of the property to which the tenancy deposit relates;
- (d) the name and contact details of the landlord; and
- (e) details of how to contact the scheme administrator to notify any inaccuracies in the information in sub-paragraphs (a) to (d).

Landlord application to transfer a tenancy deposit

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

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

- (a) if so requested, pay the tenancy deposit to the other approved 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 approved scheme or repaid to the landlord.

Application for repayment of a tenancy deposit

24.—(1) A landlord must apply to the scheme administrator for repayment of any tenancy deposit paid to an approved 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 the tenancy deposit, but if an application for repayment has been made by the landlord in accordance with paragraph (1), or is made within working 30 days of the tenant's application, the scheme administrator must not progress the application.

(4) The tenant's application must be made to the scheme administrator and specify the date on which the tenancy ended and the amount of the tenancy deposit which, in the view of the tenant, should be—

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

25.—(1) On receipt of an application from a landlord under regulation 24(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 24(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 27, and
- (e) inform the tenant of the availability of the dispute resolution mechanism made available under Part 6 and of the procedures for requesting a referral to that mechanism.

(2) Where an application is accepted from a tenant under regulation 24(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 24(4);
- (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 24(2); and
- (c) explain the effect of regulation 28.

Repayment by the scheme administrator where there is no disputed amount

26.—(1) Paragraph (2) applies where the scheme administrator receives confirmation as mentioned in regulation 25(1)(b) or (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 that confirmation, repay the tenancy deposit in accordance with the amounts specified in the application.

27.—(1) Paragraph (2) applies where the scheme administrator does not receive the confirmation and notification from the tenant as required by regulation 25(1)(b) and (c) within 30 working days of writing to the tenant in accordance with regulation 25(1).

(2) The scheme administrator must—

- (a) if the amount specified under regulation 24(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 24(2)(b) within 5 working days of the expiry of the 30 working day period.

28.—(1) Paragraph (2) applies where the scheme administrator does not receive the confirmation or application from the landlord as required by regulation 25(2)(b) within 30 working days of writing to the landlord in accordance with regulation 25(2).

(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

29.—(1) Where the scheme administrator receives notification from the tenant of a disputed amount as mentioned in regulation 25(1)(c), the scheme administrator must 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 practicable.

(3) The scheme administrator must repay the disputed amount of tenancy deposit in accordance with the procedures set out in regulations 30 to 32.

30. 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.

31.—(1) Paragraphs (2) and (3) apply where, following receipt of the notification referred to in regulation 29(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 the scheme administrator must write to the tenant—

- (a) to remind the tenant of the procedure for requesting a referral to the dispute resolution mechanism made available by the scheme administrator; and
- (b) to explain the effect of paragraph (3).

(3) On the 30th working day after receipt of the notification, 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.

32.—(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 resolution process 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, the scheme administrator must allow 10 working days for receipt of any request for review of that decision (in terms of regulation 37) and, unless such request is received in that period, must then repay the tenancy deposit in accordance with that decision within the following 5 working days.