



Tenancy deposits

The Office of the Deputy Prime Minister (ODPM) has commissioned PKF Accountants and Business Advisors to design a scheme that will enable the market to tender for the responsibility of operating tenancy deposit schemes as set out in the Housing Act 2004.

It is intended that there will be two schemes, one custodial – where the deposit is passed to a third party, and the second where the deposit is held by the landlord under a guarantee or insurance facility. NFRL representatives are well aware that the vast majority of landlords will wish to retain deposits and therefore would prefer the “insured” option.

In order that the consultants are able to judge the market, NFRL, amongst other landlords' representatives, attended a meeting in London on 5th April 2005, at which the interests of NFRL members were put forward.

The introduction of the regulation of deposits is likely to be in July 2006. This will affect almost every landlord in England. The providers of the scheme will be required to have a dispute resolution service attached to it. This means that not only will any provider be responsible for guaranteeing the deposit of any landlord who fails to give back the deposit to a tenant when ordered to do so, but they will also have the responsibility for providing deposit resolution. That is not to say, of course, that any company offering the service will itself deal with the resolution of deposit disputes, but simply that they will have to have the facility in place as part of their scheme.

This situation is very different from that which ODPM had originally led to believe had been passed in the Housing Act 2004. In that Act, the NFRL were told that there would be regulation of deposits but that dispute resolution would still be through the County Courts. The introduction of tribunals, etc as part of the scheme run by the organisations that guarantee the deposits is a change that was never discussed with landlords' organisations. All landlords will, of course, have the right to take any case to the County Court in the event of their not agreeing with a tribunal decision. However, it is unlikely that any County Court will overrule a properly constructed tribunal's decision.

NFRL has always been of the opinion that Government regulation of all deposits, in order to deal with a small number of bad landlords, is over-regulation. NFRL has always been of the view that there should be easily accessible deposit resolution and regulation against those landlords who unreasonably withhold deposits. NFRL believes this could be done simply by regulation when disputes occur – and not by regulation of all deposits.

Government has taken a political view, and although it is obvious that the cost of implementation will be far higher than any loss incurred, Government still persists in introducing this legislation, which is contrary to the comments made by the Chancellor of the Exchequer when he assured us all that Government will not regulate where the cost of the regulation is greater than the benefits to be obtained from it. It may also be that such over the top regulation is contrary to Human Rights legislation.

Nevertheless, under the present situation, NFRL may well be in a position to put forward its own scheme for the benefit of its member associations and backed by an insurance guarantee. This will no doubt have some administrative impact and also be a cost to NFRL, which will have to be recovered from the member associations proportionate to their membership. NFRL representatives consider that working together to provide a

scheme for our members could well bring substantial financial savings and act as a significant recruitment tool.

Until Government further publishes its proposals on this matter, we cannot go further than provide the above summary.

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