

# Letting Legally

## A guide to the law for landlords and property agents



The Tenant Fees Act 2019 is applicable to all assured shorthold tenancies, tenancies of student accommodation and licenses to occupy housing regardless of when they were entered into.





# Who are Trading Standards?

This leaflet is produced by North East Trading Standards Association (NETSA) in association with the National Trading Standards Estate and Letting Agency team (NTSELAT). It summarises some of the legal duties and responsibilities of letting a property however it should not be taken as a complete statement of the legislation, nor as advice about your individual circumstances.

## National Trading Standards Estate and Letting Agency team

The National Trading Standards Estate and Letting Agency Team is the lead enforcement authority for estate agency work in the UK, pursuant to the Estate Agents Act 1979 and the lead enforcement authority in England in respect of the Tenant Fees Act 2019 and associated letting agency legislation.

### What we do:

- oversee the operation of relevant estate and lettings agency legislation, such as monitoring complaints, carrying out surveys and working with trade and consumer organisations
- issue prohibition and formal warning orders to businesses who we find as unfit to engage in estate agency work in the UK
- approve and oversee the UK's consumer redress schemes, Ombudsmen, and Alternative Dispute Resolution organisations in the estate agency sector
- assist enforcement authorities on estate agency work in the UK and lettings agency work in England
- and work with partner agencies such as Citizens' Advice to make sure they're giving the right information to consumers.

## Local authority Trading Standards Officers

Local authority Trading Standards and Environmental Health and Housing departments have wide ranging powers to investigate complaints about letting agents and landlords. Many sanctions can be imposed for non-compliance, including monetary penalties, prosecution and imposition of banning orders.

It is your responsibility to ensure that you are operating in a lawful manner. If you are unsure about your legal obligations, your local authority may offer business advice – possibly for a fee. Trade associations, redress schemes and the business companion website will also provide useful information.

General guidance on property sales and lettings is available online, scan the QR code to find out more.



You can report a landlord / letting agent to trading standards if they are not complying with their legal obligations or their practices appear unfair. Contact your local authority via the Citizens Advice consumer helpline on 0808 223 11 33 or Online Chat.



## Permitted Payments

It is illegal to charge certain fees to tenants, unless they are classed as 'permitted payments'.

**These are the ONLY payments you are permitted to charge:**

- ✓ Rent
- ✓ Holding deposit (capped at 1 weeks rent)
- ✓ Tenancy deposit (capped to 5 weeks rent)
- ✓ Utility bills and council tax
- ✓ Default fees – including key loss and rent arrears (reasonable charges)
- ✓ Changes to a tenancy at the tenant's request - £50 / reasonable costs
- ✓ Fees for leaving a tenancy early, known as termination charges (to cover actual loss suffered by the landlord)

To work out the weekly rent, multiply the monthly rent by 12 then divide this sum by 52.

It is safer to receive payments in a traceable manner, but if you are paid in cash, always provide a receipt.



## Prohibited Payments

You can 'no' longer charge the following:

- X Administration fees
- X Contract negotiation fees
- X Application fees
- X Inventory charges
- X Set up fees
- X Referencing fees
- X Check-in and check-out fees unless by mutual agreement, e.g. for an out of office hours checkout
- X Credit check fees
- X Renewal fees
- X Guarantor fees
- X End of tenancy fees
- X Permitted occupier fees
- X Default professional cleaning fee
- X Right to Rent fees

This list is not exhaustive and if the payment is not permitted within the Tenant Fees Act 2019 then it will be deemed prohibited. You should no longer make reference to these fees in your tenancy agreement or property adverts - they cannot be charged.



# Explanation of permitted payments

## Rent

- Charge equal instalments (usually monthly)
- Charging less 'rent' to hold a vacant property over holiday periods conflicts with the purpose of a tenancy agreement & would be prohibited

## Holding deposit (capped to one weeks' rent equivalent per tenancy)

- To reserve a property before signing tenancy agreement
- Specific rules apply to how it is to be treated, when it must be returned to the tenant and when you can keep it
- Advise tenant to only pay a holding deposit if they are serious about renting that property

## Tenancy deposit (capped to 5 weeks' rent equivalent, per tenancy, if rent is less than £50,000 per year)

- Paid as security in case the tenant does not meet their obligations in connection with the tenancy
- Must be protected in an approved scheme & information provided to the tenants within 30 days of payment

## Utility bills and council tax

- You must be clear in the tenancy agreement about what the tenant is liable to pay, and how
- If you collect all inclusive rent, you cannot charge an administration fee or collection fee in respect of the bill payments

## Default fees (loss of key and unpaid rent)

### - Lost key or other security device

- Tenant can be liable for costs reasonably incurred by you if they are supported by written evidence (i.e. receipt) and the tenancy agreement required the payment to be made. Flat rate charges will not be considered permitted payments

### - Unpaid rent

- It is permitted to charge interest at 3% above the Bank of England base rate. The tenancy agreement must state such payment will be required in the failure to pay the rent in full and has been outstanding for more than 14 days

## Changes to a tenancy at the tenant's request

- If a tenant requests a change, you can charge for the cost of the variation, which is permitted up to £50 or reasonable costs incurred if higher. You must give evidence of these costs before requesting payment

## Early termination (tenant's request)

- If the tenant decides to leave the tenancy early within the fixed term, or without giving the correct notice period, they can be required to cover the remaining rent during the void period until you find a new tenant
- You may agree that a tenant can end their tenancy early and any arrangements to surrender a tenancy should be made in writing, with all parties given a copy



## What else do I need to know?

**Landlords should check that the agent they use is a member of the necessary industry schemes before entering into a management contract with them.**

**Agents must ensure they are members of the following schemes and maintain their membership.**

### **Redress Scheme**

Letting and managing agents must belong to one of two redress schemes below, either:

- The Property Ombudsman (TPO)
- The Property Redress Scheme (PRS)

You can check if your agent is a member online:

[www.tpos.co.uk/find-a-member](http://www.tpos.co.uk/find-a-member)

[www.theprs.co.uk/consumer/members/](http://www.theprs.co.uk/consumer/members/)

### **Deposit schemes**

When your tenant pays a deposit, this must be protected in one of three schemes and you must give the tenant prescribed information within 30 days of it being paid:

- Deposit Protection Service
- MyDeposits
- Tenancy Deposit Scheme

### **Client money protection (CMP) schemes**

Letting and management agents who handle client money must be a member of a client money protection scheme. There are 6 schemes:

- Client Money Protect
- Money Shield
- Propertymark
- RICS
- Safeagent (previously NALS)
- UKALA Client Money Protection

# What applies to me?

If you rent and manage your own property with no third party involvement not all aspects of this leaflet will apply to you. However, if you use a third party like an agent or have your own company which is set up to deal with your rentals and this is different to the ownership of the property, they will have to comply with the agency requirements.

	Landlord managing own property	Letting and / or managing agent
<b>Redress scheme membership</b>	No, but you may choose to join a scheme voluntarily. You must still act in a lawful manner and treat your tenants fairly.	Yes. You must maintain continuous membership, comply with the scheme requirements and check you have the correct membership type.
<b>Client Money Protection (CMP) scheme membership &amp; transparency requirements</b>	No. However, you should keep good accountancy records and provide receipts for any cash payments made to you.	Yes, if you handle client money you must belong to a scheme and comply with their requirements such as displaying the certificate & notifying your tenants and landlords of any changes.
<b>Publication of fees (including CMP and redress)</b>	No. However, your tenancy agreements and property adverts must be clear and transparent with the lawful costs a tenant must pay.	Yes, you must clearly display the lawful fees that you charge landlords and tenants, as well as display your redress and CMP membership details. This applies in branch and online, including third party websites.
<b>Deposit protection requirements and provision of information.</b>	Yes, and you must ensure that the deposit is protected and prescribed information given to the tenant within 30 days of receiving it.	Yes, and you must ensure that the deposit is protected and prescribed information given to the tenant within 30 days of receiving it.
<b>Tenant Fees Act 2019 – prohibited payments</b>	Yes, if a payment is not described as permitted, then it will be deemed prohibited.	Yes, if a payment is not described as permitted, then it will be deemed prohibited.

**If you do not comply with your legal obligations then your local authority and / or NTSELAT can impose serious sanctions upon you, including monetary penalties and prosecution, some of which are detailed below:**

	<b>Consequence of failing to comply</b>
<b>Failure to belong to a redress scheme</b>	Monetary penalty Up to £5000 for letting / managing agency work Up to £1000 for residential sales
<b>Failing to belong to a client money protection scheme and / or transparency requirements</b>	Monetary penalty Up to £30,000 for failure to belong to a scheme Up to £5000 for transparency breaches
<b>Failing to publicise fees (including CMP and redress)</b>	Monetary penalty Up to £5000
<b>Failing to comply with deposit protection requirements and provision of information</b>	Could result in prosecution under Consumer Protection from Unfair Trading Regulations 2008 (CPR's)  Tenant can take own action for compensation, which is a monetary award of the deposit amount, plus up to three times the amount of the deposit
<b>Charging a prohibited payment under TFA or failing to comply with holding deposit requirements</b>	Monetary penalty First offence up to £5000 Second / subsequent offence up to £30,000 or prosecution  If prosecuted, there is discretion to apply for a banning order



# Other requirements

**There are many aspects of housing related legislation that you must comply with, some examples are below and you should seek further independent advice if you have further questions:-**

## Paperwork

At the start of a tenancy, certain paperwork must be issued to a tenant. This is a legal requirement and can prevent you from being able to lawfully evict a tenant if you do not comply.

## Eviction Processes

The Protection from Eviction Act 1977 sets out the minimum standards of protection afforded to occupiers of residential occupation. Occupiers of rented property have specific rights if you wish to evict them. You must follow the correct process, issue the correct paperwork and adhere to specific timescales. You cannot harass or intimidate your tenant to make them leave early.

## Property licensing

Housing Act 2004 requires specific properties to be licensed. All HMO's with 5 or more people require a licence, but additional and selective licensing schemes include other types of property.

## Planning and building control

Use of the property as a HMO in certain areas may require planning permission. In most cases, any HMO with 7 or more occupiers will require planning permission and building regulations approval for change of use.

## Repairs / property condition

The Landlord and Tenant Act 1985 sets out your repairing obligations which includes the structure, exterior and installations. The property must be fit for human habitation at the start of the tenancy. You cannot contract out of these obligations or impose a penalty upon the tenant for relying upon these statutory requirements.

## Unfair Terms

If you include unfair terms in your tenancy agreement, you cannot enforce them just because the tenant has signed it. A model tenancy agreement can be downloaded from the GOV.uk website.

## Consumer Protection Law

Your acts or omissions may breach The Consumer Protection from Unfair Trading Regulations 2008 (CPRs), for example if you provide misleading information or act aggressively. Landlords / agents have been prosecuted under the CPRs for failing to protect tenancy deposits because it contravenes the requirements of professional diligence and is likely to materially distort the economic behaviour of the tenant. This is known as an unfair commercial practice and can be applied to many aspects of your trading practices.

## Devolved Nations

This guide has been written for landlords and agents who have property in England. If you rent out property elsewhere, please seek specific advice and guidance accordingly.

### Where can I find more information?



Further guidance on the Tenant Fees Act can be found here.