Tenant Fees Act: Guidance for landlords and agents

Contents

OVERVIEW

Who does the ban apply to?

The ban applies to all assured shorthold tenancies, tenancies of student accommodation and licences to occupy housing in the private rented sector in England.

The majority of tenancies in the private rented sector are by default assured shorthold tenancies. In this guidance 'tenant' includes licensees and any persons acting on behalf of a tenant or licensee or guaranteeing the rent.

What is an assured shorthold tenancy?

A tenancy is likely to be an assured shorthold tenancy if all the following apply:

- the property is rented privately
- the tenancy started on or after 28 February 1997
- the property is the person's main accommodation
- the landlord doesn't live in the property

What is a licence to occupy?

A licence is personal permission for someone to occupy accommodation. A licence can be fixed term or periodic.

The main instances where you might have a licence rather than a tenancy agreement are where:

- there is no intention to enter into a legal relationship
- there is no right to exclusive occupation
- the arrangement is a service occupancy (in tied accommodation)

What fees can I ask a tenant to pay?

You cannot require a tenant (or anyone acting on their behalf or guaranteeing their rent) to make certain payments in connection with a tenancy. You cannot require you them to enter a contract with a third party or make a loan in connection with a tenancy.

The only payments you can charge in connection with a tenancy are:

- the rent;
- a refundable tenancy deposit (reserved for any damages or defaults on the part of the tenant) capped at no more than six weeks' rent
- a refundable holding deposit (to reserve a property) capped at no more than one week's rent
- payments to change the tenancy when requested by the tenant capped at £50, or reasonable costs incurred if higher
- payments associated with early termination of the tenancy, when requested by the tenant
- payments in respect of utilities, communication services and council tax and
- default fees required under a tenancy agreement (such as for replacing a lost key or late rent payment fine), limited to the landlord or agent's reasonable costs which must be evidenced in writing

If the fee you are charging is not on this list, it is a prohibited payment and you should not charge it. A prohibited payment is a payment outlawed under the ban. If you are still uncertain as to whether a charge is permitted, you can contact your local trading standards authority for advice. A prohibited payment is a payment outlawed under the ban.

You cannot evict a tenant using the section 21 eviction procedure until you have repaid any unlawfully charged fees or returned an unlawfully retained holding deposit.

In the legislation "in connection with a tenancy" is defined as requirements:

- in consideration of, or in consideration of arranging for, the grant, renewal, continuance, variation, assignment, novation or termination of a tenancy
- on entry into a tenancy agreement, or an agreement relating to a tenancy with a letting agent, containing provisions requiring the tenant to do any of those things
- pursuant to a provision of a tenancy agreement, or pursuant to an agreement relating to a tenancy with a letting agent, which requires or purports to require the person to do any of those things in the event of an act or default of the person or if the tenancy is varied, assigned, novated or terminated; and

- as a result of an act or default related to the tenancy unless pursuant to, or for breach of, a tenancy agreement, or an agreement relating to a tenancy with a letting agent; and
- in consideration of providing a reference for a former tenant

You are permitted to ask a tenant to pay:

- **the rent** – you should agree the amount of rent to be paid with the tenant when agreeing to let the property. The rent should be paid at regular, specified intervals. The amount charged will usually be equally split across the tenancy. In the first year of the tenancy, you must not charge more at the start of the tenancy compared to a later period. For example, you cannot require a tenant to pay £800 in month one and £500 in month two onwards – the additional excess of £300 in month one will be a prohibited payment. But, if appropriate, you may decrease the rent without penalty during the first year if agreed by the tenant once the tenancy has started or under a rent review clause that enables both rent increases and decreases.

- **a tenancy deposit** – this is a refundable payment that you may ask a tenant to pay in case of any damage or unpaid rent or bills at the end of the tenancy. You are not legally required to take a deposit. You must not ask you for a deposit which is more than 6 weeks of the total rent. Any amount above 6 weeks' rent will be a prohibited payment.

  Any deposit you request must be protected in one of the three Government backed tenancy deposit schemes within 30 days of taking the payment. You must provide the tenant with information as to where and how their deposit is protected. The deposit is the tenant's money and you will need to provide evidence substantiate any deductions from the deposit at the end of the tenancy.

- **a holding deposit** – this is a refundable payment you may ask a tenant to pay to demonstrate a commitment to rent the property whilst referencing checks take place. You cannot ask a tenant for a holding deposit which is more than one week of the total of rent for the property. Any amount above 1 week's rent will be a prohibited payment.

  You must refund the holding deposit where a tenant later enters into a tenancy agreement before the deadline for agreement, the landlord decides not to rent the property, or an agreement is not reached in time (and the tenant is not at fault). You can only retain a tenant's holding deposit if they provide false or misleading information which reasonably affects your decision to let the property to them (i.e. calls into question their suitability as a tenant), they fail a right to rent check, withdraw from the proposed agreement or fail to take all

reasonable steps to enter an agreement (i.e. responding to reasonable requests for information required to progress the agreement) when you and/or your landlord/agent have taken all reasonable steps.

- **default fees –** you can charge a tenant default fees under a term of the tenancy agreement if they fail to perform an obligation or discharge a liability under or in connection with their tenancy. The amount of payment required cannot exceed the reasonable costs incurred by the landlord or agent, which must be evidenced in writing to the person liable for the payment. You can only recover default fees where they have been written into the tenancy agreement, e.g. charges for late payment of rent or lost keys. (But the Act does not affect any entitlement to recover damages for breach of contract.)

- **changes to the tenancy –** if a tenant requests a change to the tenancy agreement, for example a change of sharer, you are entitled to charge up to £50 for the work and administration involved in amending the tenancy agreement or the amount of your reasonable costs if they are higher. Any charge above that amount is a prohibited payment. The general expectation is that the charge will not exceed £50. You should provide evidence to demonstrate the reasonable costs of carrying out the work if a charge is above £50. It is good practice for a landlord or agent to agree to any reasonable request to vary the tenancy agreement. Any costs that are not reasonable are a prohibited payment.

- **early termination** – if a tenant requests to leave before the end of their tenancy you are entitled to charge an early termination fee, which must not exceed the financial loss that the landlord has suffered in permitting, or reasonable costs that have been incurred by the agent in arranging for, the tenant to leave early. This means that usually a landlord must not charge any more than the rent they would have been received before the tenancy reaches its end. It is good practice to agree to any reasonable request to terminate the tenancy agreement early. If there are no missed rent payments, we encourage you to not charge any early termination fees unless you can demonstrate through evidence that specific costs have been incurred. Any payment that exceeds the landlord's financial loss or agent's reasonable costs in this circumstance will be a prohibited payment.

- **council tax, utility and communications services** – tenants are still responsible for paying bills in accordance with the tenancy agreement, which could include council tax, utility payments (gas, electricity, water), and communication services (broadband, TV, phone). There is associated consumer protection legislation which prohibits landlords from over-charging for these services.

When does the ban apply?

It depends on when a tenancy agreement was entered into. The ban is being introduced in two stages.

1. If you enter into a tenancy agreement or licence to occupy housing in the private rented sector from **DDMMYYYY** [Commencement date], any fees or other payments that are not included in the list above are banned and you will not be permitted to charge them to tenants.

   This means that you will be responsible for the costs associated with setting up a tenancy, for example, referencing, administration and renewal fees. You do not have to pay back any fees that you have charged to a tenant before **DDMMYYYY**.

   You will still be able to charge any tenants who entered into an agreement before **DDMMYYYY** fees until **DDMMYYYY** [date 12 months after commencement]. This includes charges associated with new fixed-term agreements where they have been written into an existing agreement. However, you should consider whether it is necessary to charge in such instances. Where fees are charged, businesses such as letting agents are prohibited from setting unfair terms or fees under existing consumer protection legislation.

2. After **DDMMYYY**, the ban on fees will apply to all tenancies. You will not be able to charge any fees after this date (apart from those fees which are excluded from the ban listed above).

What does this mean for existing tenancy agreements?

You can continue charging fees, such as check-out or renewal fees, where these are required in a tenancy agreement which was entered into before the ban came into force, until **DDMMYYYY**. But after that date the term requiring the payment will become null and void. Should you, in error, require this payment from a tenant, then you should return the payment within 28 days. If you do not do so, then you will be treated for the purposes of the Act as having required a tenant to make a prohibited payment.

ENFORCEMENT

Q: Who will carry out enforcement of the tenant fees ban?

Trading Standards authorities have a duty to enforce the ban but district councils that are not Trading Standards authorities will have power to enforce if they choose to do so.

Q: Who are Trading Standards?

Trading Standards enforce consumer rights and can therefore determine whether a tenant has been charged an unlawful or unfair fee by a landlord or their agent.

Q. Do tenants have any other enforcement options?

The Bill also makes provision for tenants and other relevant persons to be able to recover unlawfully charged fees through the First-tier Tribunal and prevents landlords from recovering possession of their property via the section 21 eviction 1988 procedure until they have repaid any unlawfully charged fees.

Q: What is a Lead Enforcement Authority?

The Secretary of State can arrange for a Lead Enforcement Authority whose duty it is to oversee the operation of the tenant fees ban and any other relevant letting agency legislation. The Secretary of State may himself act as Lead Enforcement Authority.

Q. What evidence will I need?

You should keep any evidence of payments that you have requested a tenant to make; this could be:

- tenancy or pre-tenancy agreements
- any other relevant paperwork
- receipts and invoices
- bank statements
- correspondence from the tenant – emails, letters, texts
- notes that you made at the time or shortly after any conversation with a tenant

Financial penalties and convictions

A breach of the legislation will usually be a civil offence with a financial penalty of up to £5,000, but if a breach is committed within 5 years of the imposition of a financial penalty or conviction for a previous breach will be a criminal offence. The penalty for the criminal offence, which is a banning order offence under the Housing and Planning Act 2016, is an unlimited fine.

Where the offence is committed, local authorities may impose a financial penalty of up to £30,000 as an alternative to prosecution. In such a case, local authorities will have discretion whether to prosecute or impose a financial penalty. Where a financial penalty is imposed this does not amount to a criminal conviction.

A breach of the requirement to repay the holding deposit is a civil offence and will be subject to a financial penalty of up to £5,000.

Q. What is considered to be a breach of the ban?

Each request you make for a prohibited payment is a breach. For example, the following would be considered multiple breaches:

- charging different tenants under different tenancy agreements prohibited fees
- charging one tenant multiple prohibited fees for different services at different times
- charging one tenant multiple prohibited fees for different services at the same time
- charging one tenant one total prohibited fee which is made up of different separate prohibited requirements to make a payment e.g. £200 requested for arranging the tenancy and doing a reference check= multiple breaches.

Where you are being fined for multiple breaches at once, and you have not previously been fined, the financial penalty for each of these breaches is limited to up to £5,000 each.

Q: When will enforcement authorities decide to impose a financial penalty as an alternative to prosecution?

Enforcement authorities are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty of up to £30,000 and should decide which option they wish to pursue, on a case-by-case basis, in line with that policy. Local authorities must have regard to statutory enforcement guidance issued by the Lead Enforcement Authority or Secretary of State.

Q. What factors will enforcement authorities take into account when deciding the appropriate level of financial penalty?

Enforcement authorities have discretion when determining the appropriate level of financial penalty sanction within the limitations set out by the Act.

Enforcement authorities are expected to develop and publish their own policy on determining the appropriate level of civil penalties to impose. Generally, we expect the enforcement authority to consider each breach on a case by case basis and for the maximum amount to be reserved for worst offenders.

The actual amount levied in any particular cases should be fair and proportionate reflecting the severity of the offence as well as taking in to account the landlord or agent's previous record of offending.

Q. Can a tenant receive compensation under the ban?

A tenant is entitled be repaid the sum of any unlawfully charged fees as well as any interest owed.

Q: Will I be able to appeal an enforcement authority's decision to impose a financial penalty for breach of the ban?

Yes. You will be able to appeal to the First-tier Tribunal if you have been issued with a financial penalty in relation to the ban. An appeal against a financial penalty must be brought within 28 days from the day after the final notice was served. You may appeal against the decision to impose a penalty or the amount of the penalty.

Q: If I receive a financial penalty for breaching the ban, will I be added to the database of rogue landlords and property agents?

If you receive two or more financial penalties within a 12 month period, at a time when you were a landlord or agent, a local housing authority has discretion to include you on the database of rogue landlords and property agents. An offence under the Tenant Fees Act 2018 is a banning order offence under the Housing and Planning Act 2016.

Q: If I'm convicted of an offence under the ban, will I be added to the database of rogue landlords and property agents?

If you are convicted of an offence under the ban, this will be a banning order offence under the Housing and Planning Act 2016. Local authorities have discretion to include convictions for banning order offences to the database. If you have been convicted of a banning order offence, the local housing authority can apply to the First-tier Tribunal for a banning order. Local authorities are under a duty to record details of banning orders on the database.

Q: If I breach the ban on fees, can the local housing authority apply to the First-tier Tribunal for a banning order?

If you are convicted of an offence under the ban, the local housing authority may wish to consider applying for a banning order against you. We have issued separate guidance for local housing authorities on banning orders. Banning orders will be reserved for the most serious offenders.

Where can I get more information about letting a property in England?

The Government's How to Let guide provides useful information on rights and responsibilities when letting out a property.

You should also consult the How to Rent a Safe Home guide for information about how to identify potential hazards and unsafe condition, and to understand a private landlord's legal obligations when letting a residential property.

ANNEX A – Q&A

Tenancy set-up fees

Q. Can I charge a tenant for setting up a new tenancy?

No. After the ban comes into force you cannot charge a tenant for this. A landlord chooses to contract an agent and therefore it is their responsibility to pay for this service and any costs associated with setting up a tenancy – such as preparing a tenancy agreement, referencing and credit checks.

However, if the tenancy was entered into before **DDMMYYYY** and the tenant agreed in their contract to pay certain renewal fees, then you can charge these fees for a new fixed-term agreement or statutory periodic agreement up until **DDMMYYYY**. You should consider whether it is necessary to charge in such instances. Traders are prohibited from setting unfair terms or fees under existing consumer protection legislation.

You may ask a tenant to provide information which supports you to carry out a reference check, such as:

- bank statements – to assess a tenant's income and ability to pay rent
- a reference from a previous landlord (you cannot ask a tenant to pay for this)
- proof of their address history (usually up to 3 years)
- details of current employer – an employer can verify a tenant's income and confirm whether they are trustworthy, reliable and honest

There are a number of third-party organisations, including agent and landlord associations, which will carry out professional referencing checks for you at a small cost – typically a full tenant reference check costs no more than £30.

You could also pay a small fee to check the Register of Judgments, Orders and Fines to see whether a tenant has received a County Court Judgement (CCJ) in the last six years. A CCJ is a judgement that a county court issues when someone has failed to pay money that they owe - a CCJ could indicate money problems or trouble paying bills. More information about how to do this is available here. You should not rely wholly on this information alone as tenants may be fully able to meet the terms of a tenancy even if they have a CCJ.

You can also search the bankruptcy and insolvency register for free – this will tell you whether a tenant has gone bankrupt or signed an agreement to deal with their debts in England and Wales.

Any information you request must be treated in accordance with relevant data protections legislation, including most recently, the General Data Protection Regulations which came into force in April 2018.

Q. Can I charge a tenant for an inventory?

No. A landlord or agent may choose to carry out an inventory check but cannot charge a tenant for this service. An inventory is a written record of the condition the property was in at the start of the tenancy, including details of anything that was already damaged or worn. This record should be agreed by you and the tenant. This is in the interest of both tenants and landlords, but the burden of proof will fall on the landlord to demonstrate that any claims for damages against a tenant's deposit at the end of your tenancy are justified.

It is best for an inventory to be carried out by an independent person and ideally should include photographic evidence. You can also take your own photographic evidence of the condition of the property. You would need to ensure that any such evidence is dated and you should share a copy with your tenant.

Tenancy check-out fees

Q. Can I charge a tenant to check-out at the end of a tenancy?

No. You cannot charge a tenant for any services connected with the termination or ending of a tenancy (unless this relates to early termination requested by the tenant). However, if the tenancy was entered into before **DDMMYYYY** and a tenant agreed in their contract to pay exit fees, such as check-out or inventory fees, then you can charge these fees up until **DDMMYYYY.**

You should consider whether it is necessary to charge in such instances. Where fees are charged, businesses are prohibited from setting unfair terms or fees under existing consumer protection legislation. You cannot require a tenant to pay any fees not set out in their tenancy agreement.

Q. Can I charge a tenant for a professional clean at the end of a tenancy?

No. You cannot require a tenant to pay for a professional clean when they check-out. However, if the tenancy was entered into before **DDMMYYYY** and a tenant agreed in their contract to pay such fees then you can charge these fees up until **DDMMYYYY.**

You may request that a property is cleaned to a professional standard. Tenants are responsible for ensuring that the property is returned in the condition that they found it, aside from any fair wear and tear. Fair wear and tear is considered to be ‘reasonable use of the premises by the tenant and the ordinary operation of natural forces’.

You cannot require a tenant to use a particular company to clean the property. If the property is not left in a fit condition, you can recover costs associated with returning the property to its original condition and/or carrying out necessary repairs by claiming against the tenancy deposit. You should justify your costs by providing suitable evidence (such as an independently produced inventory, receipts and invoices).

You are not able to claim deductions from a tenant’s deposit for any change in the condition of the property which is due to fair wear and tear or if a tenant returns the property in the same condition as it was found.

Q. Can I charge a tenant for checking-out on a Saturday?

No. You cannot impose an additional charge when a tenant leaves the property, or checks out, on a Saturday, or at any time over the weekend.

However, if the tenancy was entered into before **DDMMYYYY** and a tenant agreed in their contract to pay such fees then you can charge these fees up until **DDMMYYYY.**

Q. Can a tenant's previous landlord or agent charge to provide for a reference?

Yes. After **DDMMYYYY**, a tenant's previous landlord or agent would be allowed to charge for this. You will be responsible for negotiating and paying any costs associated with obtaining a reference required from a previous landlord or agent.

Third party fees

Q. Can I charge a tenant fees through a third party?

No. Under the ban, you cannot require a tenant to pay for the services of a third party. However, if a tenant opts to employ the services of a third party, for example, by purchasing their own reference check or inventory service, they will be responsible for any associated costs.

Q: Can I ask a tenant to obtain a reference?

No. You cannot require a tenant obtain a reference through a third-party reference service, but a tenant could opt to obtain such a reference voluntarily, and you may ask a tenant to supply a reference from a former landlord or agent. The previous landlord cannot charge the tenant to provide a reference. If the tenant's previous landlord or agent wants to charge to provide a reference for them, you will have to negotiate and pay these costs.

Q: Can I charge a tenant to undertake a credit check through a third party (such as Experian)?

No. You can ask a credit referencing agency to carry out a check on a tenant, and you can ask the tenant to provide the necessary details to complete the check. However, you cannot make the tenant pay for this.

Q. Can I refuse to let to a tenant if they do not have a reference check provided by a third party?

No. You cannot require a tenant to meet any conditions that could only be met by paying a fee for a third-party service. This means that you cannot require a tenant to pay a fee through a third party where there is an alternative option which does not require a fee but imposes an excessive or unrealistic requirement on the tenant. For example, you cannot ask a tenant to pay a fee to a third party for referencing checks where the alternative requires them to provide 5 years' bank statements to carry out that check.

You can ask a tenant to provide any information you reasonably require in order to undertake referencing or credit checks through a third party. If a tenant does not provide this when requested and they have been given reasonable notice, you could be entitled to retain their holding deposit.

Q. Can I charge a tenant for a rent guarantor?

No. You can ask a tenant to provide a suitable rent guarantor as a condition of granting the tenancy; however, you cannot ask the tenant or their guarantor to pay any fees associated with meeting this condition. For example, referencing or administration costs.

Q. Can a tenant opt to pay for a third-party service?

A tenant can use the services of a third party if they choose to do so. For example, a reference checking company, a deposit replacement product or an inventory service. However, a tenant cannot be required to do so by a landlord or agent in connection with a tenancy.

You cannot require a tenant to meet any conditions that could only be met by paying a fee for a third-party service. For example, requiring a professional clean at the end of the tenancy. You may ask a tenant to do something as an alternative to complying with a different requirement. For example, you may give the tenant the option to replace a lost key at their own cost and time through a third party, instead of requiring them to pay a default fee. You may give a tenant the option of using a deposit replacement product instead of paying a tenancy deposit. Where possible, we encourage landlords and agents to be flexible.

Q. Can a tenant opt to use an agent to act on their behalf?

If a tenant chooses to employ an agent to act on their behalf, for example, a relocation agent, to support in finding housing to rent in England whilst they are living overseas or outside of the area, the agent would be permitted to charge the tenant for such services provided that the agent does not work on behalf of the landlord.

PERMITTED FEES

What payments can I require a tenant to make?

Rent

Q. Can I ask a tenant to pay more rent in the first few months to cover the cost of banned fees?

No. Under the ban, you cannot require a tenant to enter into an agreement that 'front loads' the rent at the start of a tenancy i.e. by charging more for the first month(s) of the tenancy. The amount of rent charged should normally be equally split across the first year of the tenancy.

However, after the tenancy has begun, you can reduce a tenant's rent without breaching the fees ban if agreed with the tenant or under a rent review clause in the tenancy agreement (provided that the rent review clause would also have permitted a rent increase).

Q. Can I set a higher rent to cover my costs?

You are entitled to set a rent that takes into account your costs. The amount that you ask should be fair, in line with other similar properties in the area and clearly advertised to tenants.

Q. Can I increase the rent part way through the tenancy?

You can increase the rent if a tenant agrees to this or under a rent review clause in the tenancy agreement (provided that the rent review clause would also have permitted a rent decrease). If the tenancy is an assured shorthold periodic tenancy, you can also increase the rent annually by notice in accordance with section 13 of the Housing Act 1988.

If you seek to increase the rent by way of a section 13 notice the tenant may apply to the First-tier Tribunal for determination of the reasonable rent.

You may want to consider including a rent review clause in the tenancy agreement to enable you to discuss any changes in rent level with the tenant at an appropriate time.

Q. Can I ask a tenant to pay rent upfront if they don't have a suitable guarantor or reference checks?

Yes. You could ask a tenant to pay their rent in a lump sum but should consider if this is necessary and affordable for the tenant. You cannot charge any more in an up-front lump sum payment than would have been chargeable over the fixed-term of the tenancy. For example, if the rent is £500 a month and the tenancy is for a fixed-term of six months, you cannot ask a tenant to pay more than £3,000 up front.

A tenancy agreement must not ask a tenant to pay more rent in the first month compared to a later period (the rent instalments should be **split equally** across the first year of the tenancy). You could reasonably ask a tenant to pay more than one rent instalment at the start of the tenancy where the tenancy agreement does not require this as a single rent payment. For example, if the rent was £400 per month, you could ask a tenant to pay three months' rent upfront (3 x £400=£1200), but the tenancy agreement could not make a tenant liable to pay £1200 in the first month and then £400 every month after that.

Q. Can I increase the rent as an alternative to taking a tenancy deposit?

You are entitled to set a rent that takes into account your costs. The amount that you ask should be fair, in line with other similar properties in the area and clearly advertised to the tenant. You should be clear and up-front with tenants about what the rent covers (whether this includes certain utilities or council tax).

Tenancy deposits

A tenancy deposit is a refundable payment that a landlord or agent can ask a tenant, or a relevant person (i.e. someone acting on a tenant's behalf) to make. This provides a landlord with security if a tenant causes damage to a property, does not return it in its original condition, does not pay their rent or you break the terms of their tenancy agreement. You cannot ask for a tenancy deposit which is more than six weeks' rent (based on the total rent for the property).

You can calculate your weekly rent using one of the following formulae:

- (monthly rent) x 12 ÷ 52, or;
- annual rent ÷ 52

Joint vs. individual tenancy agreements

Where a property is let separately on a room-by-room basis, this is an individual tenancy. The tenant is only liable for the rent set out in their agreement.

Where there is a joint tenancy, liability for payments such as the tenancy deposit and rent is spread across named persons on the tenancy agreement. In this case, the cap on tenancy deposits relates to the total weekly rent for the property for which all tenants are jointly liable.

Q. How much tenancy deposit can I ask a tenant to pay?

Where a tenant has an individual tenancy, you cannot ask the tenant pay a tenancy deposit which is more than six weeks of the rent set out in their tenancy agreement.

Where there is a joint tenancy agreement, you cannot require each tenant individually to pay a tenancy deposit equivalent to six weeks of the total rent. This means that if the total weekly rent is £300 for a joint tenancy and three tenants are liable for this sum, you could ask for no more than £1800 (£300 x 6) as a tenancy deposit.

Six weeks' rent is the statutory maximum you can ask a tenant to pay as a tenancy deposit if you enter into a tenancy agreement on or after **DDMMYYYY**.

You are not obliged to take a tenancy deposit and you should consider on a case by case basis the appropriate level of deposit to take.

A deposit equivalent to six weeks' rent is the upper limit and we expect in most scenarios, the amount of deposit requested will be less. The average level of tenancy deposit taken is between 4-5 weeks' rent. You should discuss with the tenant the amount of deposit they need to pay.

For assured shorthold tenancies, any deposit that you request from a tenant must be protected with one of the three Government backed tenancy deposit protection schemes within 30 days of taking the payment. You must also provide the tenant with information about where and how their deposit is protected. The deposit is the tenant's money and you will need to provide evidence to substantiate any claims against the deposit at the end of the tenancy.

Q. Can I take a higher amount of tenancy deposit if a tenant has a pet?

No, there are no special provisions or exemptions if you have a pet. A landlord or agent can only take a tenancy deposit up to a maximum of six weeks' rent from you, regardless of your circumstances.

Q. Where a tenant paid a tenancy deposit above six weeks' rent before the ban comes into force, will I have to re-pay any amount of the deposit above six weeks' rent?

No. The cap on tenancy deposits does not apply retrospectively and only applies to tenancies which are entered into once the ban on fees comes into force. This applies even where a fixed-term agreement becomes a statutory periodic agreement.

However, where a tenant renews their tenancy by signing a new fixed term agreement, you must refund any amount of their existing deposit which exceeds six weeks' rent.

If you do not do this automatically once the new fixed-term agreement has started, you will be breaching the ban on fees and will be liable for enforcement action and/or a financial penalty. The tenant will be able to take action to recover the amount owed through Trading Standards, a redress scheme or the First-tier Tribunal.

Deposit options

Q. Can a tenant use a rent deposit scheme to help pay the tenancy deposit?

Yes. A third party may offer tenants a loan for the tenancy deposit as part of a rent deposit scheme. Usually, the scheme lends the tenant money in advance and they will be required to pay it back over a period of time. These schemes are often run by local authorities and housing associations, but also certain employers and charity providers. Where possible, you should support the tenants in accessing such schemes.

Q. Can a tenant use a rent guarantee or bond scheme to cover damages or unpaid rent?

Yes. A number of third parties offer rent guarantee or bond schemes. These providers will offer you a written agreement to guarantee a tenant's liability for rent payments, default fees or damages.

Q. Can a tenant use a deposit replacement product?

Yes – if you agree to this and the tenant has been given alternatives that would not incur costs. A tenant could pay a non-refundable fee up-front (sometimes equivalent to one week's rent), annual levy or a premium based on their credit worthiness and rent liability to a third party as an alternative to paying a cash deposit. In return, the scheme provider will agree to cover the cost of any damages up to a certain level and recover these costs from the tenant separately. You cannot require a tenant to use a deposit replacement product but may allow it as an option without contravening the fees ban. You should discuss with the tenant whether this would be the right option for them.

Holding deposits

A landlord or agent can take a holding deposit from a tenant to reserve a property whilst reference checks and preparation for a tenancy agreement are undertaken. You cannot ask a tenant for more than one week's rent as a holding deposit (this cap is based on the total agreed rent for the property)**.**

For example, if there are three tenants paying a total weekly rent for the property of £200, you cannot charge each tenant a £200 holding deposit.

It is best practice for a landlord or agent to stop advertising a property once a holding deposit has been paid. You should only accept one holding deposit at any one time.

The one week's rent limit on holding deposits is an upper limit and not a recommendation. You are not obliged to take a holding deposit. You should consider on a case by case basis whether it is appropriate to take a holding deposit and the appropriate level of deposit to take.

Key points to consider:

- ✓ You should provide tenants with clear information about why you are requesting a holding deposit, including the sum that is required and the circumstances where they may lose all or part of the deposit.
- ✓ You should be clear and up-front with tenants about your expectations and check that tenants meet the basic income and credit worthiness requirements before taking a holding deposit from them. If you consider that they will not be a suitable tenant, you should not take a holding deposit from them
- ✓ You should provide your tenant with a copy of the tenancy agreement before taking the holding deposit
- ✓ You should clearly define what you consider to be *credit worthiness* – tenants should have a clear understanding of what might count against them so that they can be invited to provide any relevant information. If this includes previous missed and late payments, you should make this clear to the tenant.
- ✓ You must not unlawfully discriminate against a tenant on the basis of their disability, sex, gender reassignment, pregnancy or maternity, race, religion or belief or sexual orientation.

Landlords will usually have two weeks to enter into a tenancy agreement with a tenant once a holding deposit has been paid. This is the 'deadline for agreement'. However, you may agree a different deadline for agreement with the tenant in writing.

You should provide tenants with clear information that sets out the amount of deposit they have paid, the agreed rent for the property and the specified date for reaching an agreement ('the deadline for agreement'). You will be able to use this as evidence should a tenant challenge your decision to retain a holding deposit.

You must refund a tenant's holding deposit in full within 7 days of:

- entering into a tenancy agreement with the tenant (before the deadline for agreement)
- you choosing the withdraw from the proposed agreement; or
- the deadline for agreement passing without a tenancy having been agreed

A holding deposit can only be retained where a tenant:

- provides false or misleading information which you can reasonably consider when deciding to let a property
- fails a right to rent check
- withdraws from a property
- fails to take all reasonable steps to enter into a tenancy agreement

Although you can retain a tenant's holding deposit in the above circumstances, it is best practice for you to consider whether you need to retain the full amount. You should make this decision on a case-by-case basis and may only need to cover specific costs which have been incurred (e.g. referencing checks). You should be able to provide evidence of your costs in order to demonstrate that they are reasonable.

Where you retain a holding deposit you should provide the tenant with an explanation as to why you have done so.

If you do not have legitimate grounds to retain a holding deposit, a tenant will be entitled to recover this via the local authority (usually Trading Standards) or First-tier Tribunal. Unlawfully retaining a holding deposit is a civil offence with a penalty of up to £5,000.

Q. Can I take more than one holding deposit?

The purpose of a holding deposit is to enable both the landlord and tenant to demonstrate their commitment to entering into a tenancy agreement whilst reference checks are undertaken. A holding deposit creates a binding conditional contract between tenant and landlord. Under this contract, the tenant agrees to provide honest representations as to their income, tenancy history and references, and to enter into the tenancy under the terms agreed with the landlord. The landlord agrees to enter into the tenancy as per the agreed terms subject to satisfactory fulfilment of all pre-tenancy checks.

As such, you should not accept more than one holding deposit at any one time. You would be legally bound to enter the tenancy if the tenant fulfils their part of the obligations. Where you do not proceed with the tenancy agreement before the deadline for the agreement, you must refund the holding deposit to the tenant within 7 days.

Q. Do I need to protect a holding deposit in one of the three tenancy deposit protection schemes?

No, the holding deposit does not need to be protected in a tenancy deposit protection scheme. However, you must take reasonable steps to ensure that the money is held safely and that you can refund this to the tenant when necessary. As required by law, from April 2019, agents must hold any client money in a separate client money account and it should be protected through membership of a client money protection scheme.

Note: if you subsequently enter into a tenancy agreement with the tenant, any amount of their holding deposit that they agree can to be used to offset a tenancy deposit payment that they are required to pay must be protected within a government approved tenancy deposit protection scheme within 30 days of the date of the tenancy agreement.

Q. Can I refund a tenant's holding deposit by putting it towards their first month's rent?

Yes. However, you can only do so if the tenant has given their consent. You can either refund the holding deposit directly to the tenant or put it towards their rent or tenancy deposit.

Q. Do I have to explain to a tenant why I have retained their holding deposit?

If you decide to retain all or part of your holding deposit you should be able to provide written evidence and explain the grounds for your decision. If you do not provide a reasonable explanation or supporting evidence, a tenant can challenge your decision through the local authority (usually Trading Standards), a redress scheme (if it concerns an agent) or via the First-tier Tribunal.

Case studies

The following list of case studies is illustrative and not exhaustive of the circumstances in which a landlord or agent may or may not retain a holding deposit.

False or misleading information

Q. Can I retain a tenant's holding deposit they provided false information for the reference check?

Yes. You may retain a holding deposit in this situation if a tenant provides false or misleading information and it is reasonable for you to take this, or the tenant's conduct, into account when deciding whether to grant the tenancy (i.e. the information is relevant to the tenant's suitability to rent the property or calls into question their credibility).

We encourage you to only retain as much of the holding deposit as needed to cover your costs. It may only be reasonable for you to retain a fee to cover the cost of any referencing checks which have been carried out. You should be able to provide evidence in the form of receipts or invoices to demonstrate the costs incurred.

Q. What qualifies as false or misleading information that I am reasonably entitled to take into account when deciding whether to let the property to a tenant?

You may, in some circumstances, retain a tenant's holding deposit if they provided false or misleading information. The holding deposit may be retained if the difference between the information a tenant has provided and the correct information, or their conduct in providing false or misleading information, materially affects your decision to grant the tenancy because it reasonably calls into question the tenant's suitability to rent the property.

This is likely to be the case only where the mistake casts doubt on a tenant's financial suitability or honesty, for example:

- the tenant's income declaration was significantly too high
- the tenant has provided information which is clearly inaccurate about their income or employment
- the tenant failed to disclose (when directly asked) any relevant information which later comes to your attention, such as valid County Court Judgements

You cannot retain a tenant's holding deposit if the false or misleading information they provided is not relevant to their suitability as a tenant, for example:

- where a tenant misspelled their name, the name of their employer or a previous address
- a tenant omitted to declare a previous address – and the omission had no bearing on their credit worthiness or other assessment of suitability

- the tenant slightly misstated their income

Q. What if a tenant provided false or misleading information unknowingly?

You can still retain a tenant's holding deposit in this situation if it materially affects your decision to grant the tenancy but should consider whether it is necessary to do so. You should consider whether there are reasonable and legitimate circumstances under which the information a tenant has provided may not be corroborated by a relevant third party. This could be where:

- an employer holds out-of-date salary information
- a tenant has multiple sources of income/employment and it is hard to verify their overall income
- a tenant is self-employed or has an irregular income

Where you consider that a tenant has unknowingly provided false or misleading information, we encourage you to give the tenant the chance to rectify the mistake or to only retain the costs of the reference check rather than the full amount of the holding deposit even if you are entitled to so.

Reasonable requests for information

Q. Can I retain a tenant's holding deposit if they do not provide all the necessary information to carry out referencing checks?

Yes. If you can demonstrate that a tenant failed to provide reasonable information that you requested in order to progress their tenancy application and you have given the tenant sufficient notice to provide this, you will be entitled to retain their holding deposit.

Landlords and tenants will usually have two weeks to enter into a tenancy agreement once a holding deposit has been paid. This is known as the 'deadline for agreement'. However, you may agree a different deadline for agreement with the tenant in writing.

During this period, you should take all reasonable steps, which may include written requests for any information you require from a tenant in order for the tenancy to progress. Similarly, the tenant must take all reasonable steps to respond in good time to any request for information which supports their tenancy application. This is likely to include:

- **proof of ID:** Passport or any other official form of ID
- **proof of residence:** Recent bank statements, utility bills or voter registration confirmation or council tax statements

- **credit check**: You can ask a tenant for any information required in order to carry out a credit check – you should explain the credit worthiness requirements and ask the tenant to disclose any relevant information
- **proof of income:** Recent bank statements, signed contract of employment or a letter from a tenant's employer

We would consider not providing the necessary information or documents to enable you to carry out a right to rent check as not taking all reasonable steps to enter into the tenancy.

Q. Can I retain a tenant's holding deposit if I do not properly explain the information required for referencing?

No. You can only retain the holding deposit if a tenant provided false or misleading information or failed to take all reasonable steps to enter into the tenancy agreement (when you have taken all reasonable steps).

You should clearly explain the criteria by which you judge suitability to rent the property (such as income and credit worthiness requirements). You should request relevant information that would enable you to determine that a tenant would not be suitable to rent before taking their holding deposit. When explaining the credit worthiness requirements, you should clearly define what you consider to be credit worthiness and the tenant should have a clear understanding of information they are required to disclose (e.g. whether this includes missed or late payments).

However, if a tenant provides accurate information in response to your enquiries, you do not have grounds to withhold the deposit, even if a tenant then fails a reference check

Failed reference check

Q. Can I retain a tenant's holding deposit if they provided correct information but I do not consider that their references are good enough?

No. If a tenant has provided factually correct information which you have requested, but you do not consider their references to be sufficient in order to let the property, the tenant is entitled to a full refund of their holding deposit.

You cannot withhold a tenant's holding deposit merely because you do not consider their references to be satisfactory. This also applies where you are not able to let the property for any other reason which is not the tenant's fault. Failing a reference check should not automatically disqualify a tenant from renting a property.

You should consider on a case-by-case basis whether an adverse credit history or bad references affect someone's suitability as a tenant. For example, a previous County Court Judgement (CCJ) should not automatically disqualify a tenant from renting a property where they have disclosed this. You may ask a tenant to justify information which calls into question their credibility. If a tenant has a poor credit history, you should consider whether additional financial assurances would be appropriate, for example, a rent guarantor.

Withdrawing from a property

Q. If a tenant decides that they no longer want to rent a property but has already put down a holding deposit, can I keep the holding deposit?

Yes. If a tenant changes their mind and decides to withdraw after paying a holding deposit, and they notify you of this before the deadline for agreement has passed, you are entitled to retain their holding deposit. Even if a tenant does not notify you of their decision to withdraw, you are still entitled to retain the holding deposit if they have not taken reasonable steps to enter into the tenancy before that date (i.e. providing reasonable information required to progress the tenancy) and you have taken all reasonable steps.

If a tenant has to withdraw from a property due to exceptional circumstances which are beyond their control, we would strongly encourage you to take this into account and consider returning the holding deposit in full. This could be where, for example, a tenant's employment circumstances have changed, they have suffered with a physical or mental health crisis or they have experienced domestic violence from a cohabitee.

Q. Can I retain a tenant's holding deposit if they withdraw from a property before I have incurred any costs?

Yes, you are entitled to retain a tenant's holding deposit in this situation. However, if a tenant pulls out of a proposed agreement before you have incurred any demonstrable costs, for example, for referencing checks, we would strongly encourage you to refund their holding deposit.

Right to rent checks

Q. If a tenant fails right to rent check, can I retain their holding deposit?

Yes. You have a legal obligation to check that a tenant has permission to stay in the UK. You cannot rent a property to someone who is unable to demonstrate that they have the right to rent. You must ask a tenant whether they have a legal right to reside in the UK and make clear that this is a condition of renting a property. If a

tenant fails a right to rent check or does not provide you with the evidence required to complete the check, you are entitled to retain their holding deposit.

If the Home Office has a tenant's original documents because of an ongoing immigration application or appeal, you can ask for a Home Office right to rent check. They will need the tenant's Home Office reference number and you should get a response within 2 days.

Q. If the Home Office tells me in error that a tenant does not have the right to rent, can I still retain their holding deposit?

No. If the Home Office told you that a tenant did not have the right to rent, but it is later revealed that the Home Office made an error, you must refund any amount of the holding deposit that you previously retained upon confirmation by the Home Office of the tenant's status. While you would not be liable for a financial penalty for unlawfully retaining a tenant's holding deposit in this circumstance, they still have the right seek repayment of their holding deposit through the local authority (usually Trading Standards) or First-tier Tribunal.

More guidance on right to rent checks is available here.

Landlord or agent withdraws

Q. If I decide to let the property to another tenant can I retain a tenant's holding deposit?

No. If you decide to withdraw from the proposed agreement or fail to take all reasonable steps to enter into the agreement, for example, by not undertaking the required referencing checks or failing to send a copy of the tenancy agreement, you must refund a tenant's holding deposit within 7 days of making that decision, or, in the latter case, of the deadline for agreement.

Q. Can I retain a tenant's holding deposit if the property is not ready in time?

If you fail to enter into the tenancy agreement before the deadline for agreement you must return the tenant's holding deposit. This would be the case unless the tenant has decided not to proceed, failed a right to rent check, provided false or misleading information or failed to take all reasonable steps to enter into the tenancy agreement and you have taken all reasonable steps to do so.

If at any time before the deadline for agreement a tenant were to notify you that they have decided not to enter into a tenancy agreement then, whatever the reason for that, you would be entitled to retain their holding deposit.

However, if a tenant has failed to enter into the tenancy agreement by the deadline for agreement because you have not taken all reasonable steps to enter into the

agreement (which might include not getting the property ready in time), then you would not be entitled to retain their holding deposit.

Default Fees

Q. What is a default fee?

A default fee is a payment that a tenant is required to make under a term of the tenancy agreement if they fail to perform an obligation or discharge a liability under or in connection with their tenancy.

Default fees allow a landlord or agent to recover costs that they incur because of a tenant's actions. However, you can only charge a default fee if this is required under the terms of a tenancy agreement.

If a tenancy agreement does not permit a landlord or agent to charge default fees, the landlord or agent may still be able to recover damages. Often, landlords and agents will seek to recover damages by claiming against the tenancy deposit at the end of the tenancy (but may do so at any time through negotiation with the tenant or legal proceedings).

The Tenant Fees Act does not affect the landlord's entitlement to recover damages for breach of the tenancy agreement by way of a deduction from the tenancy deposit or otherwise.

If the tenancy agreement makes provision for default fees it should clearly set out the circumstances under which a tenant will be liable for a default fee and how the landlord or agent will determine the level of charge.

If a landlord or agent wishes to charge a default fee, they must demonstrate that the fee is reasonable by providing suitable written evidence to the person who is liable for the payment (i.e. receipts, invoices). A tenant is not liable for a default fee until they have received such evidence.

Q. What is a default fee provision?

A default fee provision is a term included in a tenancy agreement which sets out a tenant's liability to pay a charge in a specified circumstance. This could include liability for a charge based on any reasonable costs incurred by the landlord or agent because of that specific default or how to decide a charge that a tenant will be liable to pay if they fail to meet an obligation in their tenancy agreement.

<u>Examples of default fee provisions:</u>

- Interest will be charged in line with the bank's rate if a rent payment is more than 14 days overdue.
- The tenant is responsible for ensuring that they look after the keys for the property throughout the tenancy. If they fail to do so, they will be responsible for covering the reasonable costs of replacement.

- The tenant is can only park in the space that has been allotted to the property. If they fail to do so, they will be liable for any financial penalty issued.

Q. What is the difference between a default fee and damages?

- A default fee is a payment that can be required by a landlord or agent under an express provision in the tenancy agreement and would therefore be permitted under the Tenant Fees Act.

- Damages are the general remedy available for breach of contract and cover any contract breach that are not expressly covered by a default provision in the tenancy agreement.

Q. Is there a cap on the amount of default fee that can be charged?

Yes. You must demonstrate that any fee charged is reasonable and does not exceed the costs that you have incurred. You do this by providing written evidence which demonstrates your costs, i.e. receipts or invoices. A tenant does not have to pay the charge until they have received this evidence. The amount of any payment which exceeds the landlord or agent's reasonable costs is a prohibited payment and it will not be binding on the tenant.

Q. How can a landlord or agent demonstrate that their costs are reasonable?

You are lawfully required to demonstrate that your costs are reasonable by providing written evidence to support the default fee. This could be an invoice or a receipt for any repair or replacement works carried out. Any evidence should be fully itemised with an accurate and clear breakdown of the costs being charged for any work undertaken. This will allow the tenant to determine the reasonableness of the fee(s).

It is best practice for you to demonstrate the steps you have taken to ensure that charges are reasonable. You should be able to provide evidence that you sought value for money for the tenant in consideration of the works undertaken or services required (e.g. obtaining several quotes rather than defaulting to a preferred supplier or contractor).

A tenant has the right to challenge a landlord or agent, via the relevant enforcement authority (usually Trading Standards), the First-tier Tribunal or the relevant letting agent redress scheme (if it concerns an agent), where they consider that they have been charged an unreasonable or excessive fee. Enforcement authorities will be able to impose a financial penalty of up to £5,000 when a landlord or agent has imposed an unreasonable default fee.

Q. What happens if a landlord or agent does not provide evidence to demonstrate that their costs are reasonable?

Tenants are not liable to pay the charge until they have been provided with suitable evidence to justify the fee. A landlord or agent who fails to provide written evidence of default fees is in breach of the Tenant Fees Act. A tenant can object to paying the fee or complain to the relevant enforcement authority (usually Trading Standards).

Q. Can a landlord or agent charge for their time in carrying out work where a tenant has defaulted?

Generally, we do not consider it reasonable for landlords or agents to charge for their time under a default fee. In exceptional cases, it may be appropriate, but the onus will be on the landlord or agent to demonstrate that they have incurred business costs as a result of the default. If it concerns an agent, the agent would be expected to demonstrate that they have provided a service which is exceptional to the day-to-day management responsibilities undertaken on behalf of the landlord.

Q. Can a landlord or agent recover costs for damages if they didn't write them into the tenancy agreement?

Yes. The Act does not affect the landlord's entitlement to recover damages for breach of the tenancy agreement by way of a deduction from the tenancy deposit or otherwise.

If a tenancy agreement does not permit you to charge default fees, you may still be able to recover damages for a breach of the tenancy agreement. In most cases, you will seek to recover damages by claiming against the deposit at the end of the tenancy (but you may do so at any time).

If you are claiming against the deposit and there is a disputed charge, you can use the independent dispute resolution service offered by the three tenancy deposit protection schemes.

Q. Is there any other relevant legislation?

The Consumer Rights Act 2015 prohibits agents and those landlords that are considered traders from including unfair terms in their agreements. A term is unfair if it creates a substantial imbalance in the rights and obligations between a 'trader' and a 'consumer', contrary to the requirements of good faith, to the detriment of the consumer[1].

An unfair term in a tenancy agreement is one that creates such an imbalance between a landlord and a tenant, to the tenant's detriment. This would prohibit such landlords from requiring a tenant who fails to fulfil their obligations under their

[1] https://www.gov.uk/government/publications/unfair-contract-terms-cma37

tenancy agreement to pay a disproportionately high sum in compensation. A term or notice that is unfair is not legally binding on consumers[2].

The terms of a tenancy agreement cannot unreasonably exceed anything needed to protect the legitimate interests of those landlords considered traders or their agents. A term such as the following is likely to be unfair:

- If the rent shall be 14 days in arrears, then the full amount to the end of the tenancy shall become due.

The provisions of the Consumer Rights Act may be enforced by Trading Standards or the Competition and Markets Authority.

Types of default fees and suggested amounts to be charged

Late payment of rent

Q. How much can I charge for a late rent payment?

You can only charge a default to cover reasonable costs that you have incurred as a result of a tenant's late payment.

The following default fees are not likely to be permitted payments because they would usually exceed the costs reasonably incurred because of the late payment:

- £25 fixed penalty charge for any late payment of rent which is 7 days or more overdue.
- Interest must be paid at 8% above the bank's interest rate on any payments overdue by 7 days or more.
- A charge of £3.50 per day plus VAT shall be levied and fall due each day the account is in arrears. This is calculated from the next working day after the date that the funds were to be received until all arrears have been settled.
- Should it be necessary to send a letter with regards to late payment of rent, these are chargeable to the tenant at a rate of £35 plus VAT. Personal visits are charged at £75 plus VAT.
- Any rent paid other than by standing order will incur a charge of £50 plus VAT per payment.

[2] https://www.gov.uk/guidance/unfair-terms-explained-for-businesses-full-guide

Q. What interest can I charge on overdue rent?

A landlord or agent can charge you interest on overdue rent if the late payment causes the landlord or agent to incur costs. Any interest charged must not exceed the costs incurred be reasonable in relation to the costs incurred. For example, if the bank's interest rate is 3%, you would be reasonably entitled to charge interest at no more than 3% for the number of days that the payment has been outstanding.

You must provide written evidence to demonstrate that your costs are reasonable and you should clearly breakdown any charges for interest so that the tenant can understand these.

We encourage landlords and agents to approach default fees on a case-by-case basis. For example, it would not be appropriate to charge a default fee where a tenant has provided a reasonable explanation for a late rent payment and given sufficient notice that the payment would be delayed.

This is especially the case where a tenant normally pays their rent on time or their rent is late for a circumstance outside of their control (e.g. banking systems are down, delayed Housing Benefit or Universal Credit payments).

Q. Can I pass on costs from a third party?

You can pass on any costs that they have reasonably incurred from a third party (such as a mortgage company) because of a tenant's late rent payment. You must provide evidence that a charge has been incurred from the mortgage provider as a result of the tenant's late payment.

Replacement key or other security device

Q. How much can I charge a tenant for a replacement key or security device?

You can charge a tenant a fee to cover the cost of replacing the lost key or security device. However, you can only recover the reasonable costs that you have incurred as a result of having to replace the key or security device.

Costs associated with replacing a lost key or security device vary depending on the key/device. It is possible to get a new standard door key for between £3-10, a specialist door key could cost between £5- £20 to replace and a specialist key fob could be up to £50.

You must charge the tenant no more than the reasonable cost of replacing the key and must provide written evidence in the form of receipts or invoices to demonstrate that your costs are reasonable. If you do not do this, the tenant is not liable to pay the charge. If a tenant considers the charge is unreasonable based on the evidence provided, they can object to paying the fee or challenge the fee through the local authority (usually trading standards) or First-tier Tribunal.

Where possible, we encourage landlord and agents to allow tenants to resolve issues independently. For example, you may give a tenant the option to replace a lost key or security device at their own cost instead of requiring them to pay a default fee. The following default fees are not likely to be permitted payments because they would usually exceed the costs reasonably incurred because of the loss of the key or device:

- A charge of £100 as well as the cost of replacement keys/fobs will be issued to the tenant for the replacement of lost keys or security devices during the course of the tenancy.

- A charge of £50 for a single front door key

Repairs and maintenance

Under the Landlord and Tenant Act 1985, it is the landlord's legal responsibility to immediately address hazards which present a risk to occupiers and to comply with any of their repairing obligations.

A landlord is always responsible for repairs to:

- the property's structure and exterior
- basins, sinks, baths and other sanitary fittings including pipes and drains
- heating and hot water
- gas appliances, pipes, flues and ventilation
- electrical wiring
- any damage they cause by attempting repairs

Landlords are also responsible for repairing and replacing any appliances that they supply, such as white goods or furniture.

However, if a tenant has caused damage to any of the above you may be entitled to recover damages or a default fee, if the tenancy agreement provides for one in those circumstances.

You may not charge a default fee that exceeds the costs reasonably incurred as a result of the default. The tenant will only be liable for the default fee if it is reasonable and you can demonstrate value for money in respect of the works undertaken or service provided. Landlords and agents must not charge tenants a premium on top of a contractor's costs. Tenants are responsible for ensuring that the property is returned in the condition they found it, aside from any fair wear and tear. Fair wear and tear is considered to be 'reasonable use of the premises by the tenant and the ordinary operation of natural forces'.

If the property is not left in a fit condition, you can ask a tenant to pay the costs associated with returning the property to its original condition and/or carrying out necessary repairs by deducting from their tenancy deposit. You should justify that your costs are reasonable by providing suitable evidence such as an independently produced inventory, receipts and invoices.

You may not be entitled to damages just because a tenant has broken a term in their agreement. For example, if a tenant has a pet and there is a no pet clause in the tenancy agreement, you are only entitled to recover any demonstrable costs associated with that breach, i.e. costs of replacing damaged furniture or fittings. This may not always be the case.

You are not able to claim deductions from a tenant's deposit for any change in the condition of the property which is due to fair wear and tear or if they return the property in the same condition as it was found.

Emergency call out charges

Q. If a tenant locks themselves out, can I charge for a call out?

If this happens during normal office hours (typically Monday-Friday 9-5), you could reasonably charge a small fee. A landlord or agent must justify any fee charged by providing suitable written evidence. Where possible, we encourage landlords and agents to allow tenants to resolve issues independently. For example, the tenant could go to your office and offer to cut any replacement keys without causing any inconvenience.

If this occurs outside normal office hours, it may be appropriate for you to charge more. Again, the tenant could also offer to meet you to reduce the burden.

The following default fee is not likely to be a permitted payment because it would usually exceed the costs reasonably incurred in providing access to the property outside normal office hours:

- In the event that the landlord or agent has to attend the property to provide a tenant access to the property outside of normal office hours, the tenant will be required to pay £200 as well as any costs to rectify the issue raised.

Q. If a tenant requires an emergency call out for repairs and maintenance, can I charge for this?

You are responsible for ensuring that properties are safe and free from health hazards. If a property is unsafe or poses a risk to the health and safety to a tenant or other occupant, you must take immediate action.

However, if a tenant has caused damage to any of the above, you may be entitled to recover damages or a default fee, if the tenancy agreement provides for one in those circumstances. You may not charge a default fee that exceeds the costs reasonably incurred as a result of the default.

Where you (or a contractor) have to attend the property to deal with an emergency caused by a tenant's actions, you may be entitled to recover damages or a default fee if the tenancy agreement provides for one in those circumstances. You may not charge a default fee that exceeds the costs reasonably incurred as a result of the default. However, emergency attendance, particularly out of hours, may well result in a landlord or agent reasonably incurring higher costs.

If you contract a third party to carry out the necessary emergency action, you can only pass on only reasonable costs incurred from the third party, and no additional premiums. You must provide written evidence to the tenant demonstrate that your costs are reasonable, for example receipts or invoices from a contractor.

The following default fee would not be a permitted payment because it would exceed the costs reasonably incurred in dealing with an emergency call out:

- A fixed penalty charge of £50 per hour plus any actual costs incurred.

Missed appointments

Q. Can I charge a tenant where they refuse a contractor appointment or ask for it to be rearranged?

Tenants must be given reasonable notice (at least 24 hours) that a contractor will require access to the property to carry out a repair or to undertake an inspection. In most cases, you should be able to provide a key in order for the relevant person(s) to gain access, provided that this has been agreed by the tenant in advance.

However, where this is not possible, or the tenant does not agree to this happening, a suitable time for a contractor to attend should be agreed with the tenant. Tenants should not be penalised for missing an initial appointment if this has been arranged at late notice, and they should be able to re-arrange an appointment prior to it taking place without penalty if they have provided sufficient notice.

Q. If a tenant misses an appointment with a contractor or other relevant person, can I charge for this?

You should be able to demonstrate that you have given the tenant sufficient written notice of the appointment. You may only charge a default fee for a missed appointment if this is required under the tenancy agreement and the missed appointment causes you to incur reasonable costs, for example (charges or penalties from the contractor which can be evidenced).

The following default fee may not be a permitted payment if it exceeds the costs reasonably incurred because of the missed appointment:

- The tenant must pay £30 for any missed appointment with a person sent on behalf of the landlord or agent.

Changes to a tenancy

Q. What do you mean by a change to a tenancy?

A change to a tenancy is any reasonable request to alter a tenancy agreement. This could be making changes to the tenancy agreement to enable:

- pets to be kept in the property
- a change of sharer in a joint tenancy
- permission to sub-let
- a business to be run from the property
- or any other amendment which alters the obligations of the agreement

Where possible, you should make every effort to accommodate any reasonable changes requested by the tenant.

Q. Can I charge a tenant for a change of sharer?

Yes. Where a tenant requests a change of sharer on a joint tenancy, you are entitled to charge them for any costs incurred for amending the tenancy agreement up to £50 (inc VAT), or for any reasonable costs incurred if these are higher than £50.

The general expectation is that this charge will not exceed £50. In exceptional circumstances, it may be appropriate for this to be higher. In any case, you should be able to demonstrate that any fee above £50 is reasonable and provide evidence of the costs you have incurred in the form of receipts or invoices. Any costs that are not reasonable are a prohibited payment.

Note: You cannot charge a tenant for changes to an agreement before it is entered into (e.g. requests to remove specific clauses or provisions from a tenancy agreement before it is signed).

Q. Can I charge a fee for each change to a tenancy agreement?

Yes, but you should be able to justify the costs you have incurred as a result of each change. Not all changes to a tenancy agreement will incur the same cost, for example, including a pet clause within an existing tenancy agreement is unlikely to incur the same cost as a change of sharer.

The general expectation is that charges should not exceed £50. If you seek to charge more than £50, it is best practice to provide written evidence in the form of receipts or invoices to demonstrate that the amount charged does not exceed reasonable costs.

Early termination fees

Q. Can I charge a tenant if they want to leave a property before the end of their agreement?

Yes. You can require a tenant to make payments in connection with the early termination of the tenancy if a tenant has requested this. If the landlord agrees to terminate a tenancy early, they should make sure that this is clearly set out in writing. It is good practice for you to agree to a reasonable request to end the tenancy early.

You cannot require a tenant to pay any charges in this circumstance if they are exercising a break clause in their tenancy agreements which permits them to leave before the end of your fixed-term (provided that they have given sufficient notice as required by the terms of the agreement).

Q. What payments may be required on early termination?

You may agree to early termination on the condition that replacement tenants are found. In this circumstance, you could reasonably ask the tenant to pay the costs associated with re-advertising the property or referencing new tenants, but you should be able provide evidence to demonstrate these costs. If a suitable replacement tenant is found, you are only permitted to charge you rent until the new tenancy has started.

More generally, the costs charged must not exceed the loss incurred by the landlord (if the payment is required by the landlord), or reasonable costs (if the payment is required by the agent). This means that you are not able to charge more than the rent you would have received before the end of the tenancy. If you re-let the property during that period, this means the rent the tenant would have paid over the period that the property is un-tenanted.

Landlords are only entitled to recover the sum of any rental payments which would not be met by the start of a new tenancy. An agent may only charge an early termination fee that does not exceed its reasonable costs.

Q. Can a tenant sub-let a property as an alternative to terminating their agreement early?

Permission to sub-let should be agreed in writing by the landlord. Where this is not appropriate, we would encourage you to let a tenant leave the agreement early provided that a suitable replacement is found.

Other payments

Q. Are there other payments that a tenant can be required to make?

Yes, tenants are responsible for bills if these are not included within their rent. Payments for utilities, broadband, TV, phone and council tax are all excluded from the ban.

However, landlords must not over-charge tenants where they pay utilities separate from the rent.

Q. Are utility payments (gas, electricity, water) excluded from the ban?

Yes. Tenants are still required to pay for any utility services, such as gas, electricity or water that they consume – where they are responsible for these payments in the tenancy agreement. However, there is legislation which prevents landlords from over-charging tenants for provision of these services.

Q. What can I charge tenants for gas and electricity?

Landlords who resell energy to their tenants for domestic use are governed by Maximum Resale Price (MPR) provisions set by Ofgem. This means that landlords can only resell energy at the price they have paid to a licensed energy supplier. Tenants are entitled to receive a breakdown of the costs paid by a landlord upon request and can take a landlord court to recover any amount which has been overcharged. Guidance on these provisions is available here.

Citizens Advice and Ofgem offer advice on landlord's obligations and tenant's rights in respect of utilities payments.

Q. What can I charge tenants for water?

Similar provisions exist for the resale of water. Landlords are prohibited from over-charging tenants for the resale of water under the Maximum Resale Price provisions set out in the Water Resale Order 2006. The Maximum Resale Price ensures that landlords who resell water or sewerage services must charge no more to tenants than the amount they are charged by the water company.

Landlords are also allowed to charge a reasonable administration fee. The administration charge is set to cover administration costs and the maintenance of meters. Generally, landlords can recover around £5 each year in administration for a property without a meter and £10 for a property with a meter.

Q. Do tenants have the right to change the gas and electricity provider?

If tenants are directly responsible for paying the gas or electricity bill, they have the right to choose the supplier. You are not allowed to prevent them from doing this.

Q. Can a tenant ask for a pre-payment meter to be removed?

If a tenant is responsible for paying the gas and electricity bill they have the right to change the type of meter installed in the property, this includes the removal of an existing prepayment meter.

Q. What happens if tenants have a debt on their account?

The Debt Assignment Protocol enables prepayment meter customers with a debt up to £500 per fuel to switch to another supplier's cheaper prepayment tariff. This is designed to help tenants pay off your debt quicker and save money on their energy use.

Q. Are loans under the Green Deal (or any subsequent energy efficiency scheme) excluded from the ban?

Yes. Tenants are still liable to make any payments that they are responsible for under a Green Deal loan.

Q. Are broadband, TV or phone payments excluded from the ban?

Yes. Tenants are still liable to pay for services, such as broadband, TV or phone, they are required to pay under the terms of their agreement or that they may choose to contract. Landlords are prohibited from over-charging for communications services under the ban.

Q. Are council tax payments excluded from the ban?

Yes. Tenants are still liable to pay for any council tax payments associated with the property, unless a valid exemption applies, for example, they are enrolled in a full-time higher education course.