Tenant Fees Act: Guidance for tenants

Contents

OVERVIEW

Does the ban apply to me?

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.

You can use this tenancy checker to find out which tenancy you have.

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 your main accommodation
- your landlord doesn't live in the property

What is a licence to occupy housing?

A licence is personal permission for someone to occupy accommodation. A licence can be fixed term or periodic. A tenancy agreement usually provides more protection from eviction than a licence.

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, for example with a friend you've invited to house sit while you're on holiday
- there is no right to exclusive occupation, for example as a lodger
- the arrangement is a service occupancy (in tied accommodation)

What fees can I be asked to pay?

A landlord or agent cannot require you (or anyone acting on your behalf or guaranteeing your rent) to make certain payments in connection with a tenancy in England. They cannot require you to enter a contract with a third party or make a loan in connection with a tenancy.

The only payments in connection with a tenancy that you can be charged 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, TV licence 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 a landlord or agent is charging is not on this list, it is not lawful, and they should not charge it. If you continue to have concerns about a fee being charged, you can contact your local trading standards authority. If they are unable to answer your question, you should contact the Lead Enforcement Authority.

A landlord cannot evict you using the section 21 eviction procedure until they have repaid any unlawfully charged fees or returned an unlawfully retained holding deposit.

When does the ban apply?

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

1. If you enter into a tenancy agreement or licence to occupy 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 a landlord or agent will not be permitted to charge you them.

   This means that a landlord or agent will be responsible for the costs associated with setting up a tenancy, for example, referencing, administration and renewal fees. A landlord or agent does not have to pay back any fees that they have charged you before **DDMMYYYY**.

   If you entered your tenancy before **DDMMYYYY** then you are still liable for any charges written into your existing agreement 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. Nonetheless, businesses such as letting agents are prohibited from setting unfair terms or fees under existing consumer protection legislation. You should discuss the level of fees being charged with your landlord or agent if you believe they are unfair.

2. After **DDMMYYYY**, the ban on fees will apply to <u>all</u> tenancies. Landlords and agents will not be able to charge any fees after this date (apart from those fees which are excluded from the ban – see above).

I've already entered into a tenancy, what does this mean for me?

If a landlord or agent requires you to make a payment under a term within a tenancy which was entered into before the ban came into force, such as check-out or renewal fees, they can continue charging those fees until **DDMMYYYY**. But after that date the term requiring that payment will become null and void. Should you, in error, make such a payment then a landlord or agent should return the payment within 28 days. If they do not return the payment then they will be treated for the purposes of the Act as having required you to make a prohibited payment (a payment that is outlawed under the ban).

ENFORCEMENT

Q. Who will carry out enforcement of the ban?

Trading Standards authorities have a duty to enforce the ban but district councils that are not Trading Standards authorities may enforce if they choose to do so. You can find your local Trading Standards authority here.

Q. Who are Trading Standards?

Trading Standards are based within local authorities and enforce consumer rights. They can determine whether a tenant has been charged an unlawful or unfair fee by a landlord or agent.

Q. Are there any other enforcement options?

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

Your local authority can assist you with claims to the First-tier Tribunal, and it may be useful to speak with Citizens Advice or a lawyer before you apply. If necessary, the local authority will also be able to support you with an application to the County Court to enforce an order of the First-tier Tribunal. If the issue is regarding a letting agent, you can apply to the relevant redress scheme.

Q. Will I be charged for making a claim to the local authority, First-tier Tribunal or redress scheme?

You will not be charged by the local authority, redress scheme or Citizens Advice for their service. If you wish to apply to the First-tier Tribunal directly, you may have to pay a fee. You can apply for help paying the fee if you're on certain benefits or a low income. The local authority can also assist you with claims to the First-tier Tribunal.

Q. What evidence will I need to support my claim?

You should keep any evidence that a landlord or agent has requested a payment or any evidence that you have paid an unlawful charge; this could be:

- tenancy or pre-tenancy agreements
- any other relevant paperwork
- receipts and invoices
- bank statements
- correspondence from the landlord or agent – emails, letters, text messages
- notes that you made during or shortly after any conversation with a landlord or agent

If your landlord or agent asks you to pay a prohibited fee, you should refuse. If your landlord or agent insists on the payment, you should get evidence of this in writing.

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 themselves act as Lead Enforcement Authority. The Lead Enforcement Authority will be a local Trading Standards authority.

Q. Why am I not entitled to compensation under the ban?

You are entitled to be repaid the sum of any unlawfully charged fees as well as any interest owed. A landlord or agent will be liable for financial penalty of up to £5,000 for an initial breach of the ban. If they breach the ban again, they will be liable for a financial penalty of up to £30,000 or prosecution – the enforcement authority can then retain this money future housing enforcement.

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

The Government's How to Rent guide provides useful information on rights and responsibilities for tenants.

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

What should I do if I think that a landlord or agent has retained my holding deposit unlawfully?

1. Use the **draft letter in Annex B** to ask your landlord or agent to return your holding deposit within 7 days if you think they have retained it unlawfully.

2. Contact your **local authority** if your landlord or agent still does not return your holding deposit.

   Local authorities (usually Trading Standards) are responsible enforcing the ban. They can take formal enforcement action against the landlord or agent and determine whether they have retained your holding deposit unlawfully. The local authority will not charge you for this service.

3. If a **letting agent** is refusing to return your holding deposit, you could complain to the relevant **redress scheme.**

   All letting agents must belong to a Government-approved redress scheme. You should ask your letting agent which redress scheme they belong to. This information should be clearly available on the agent's website. Redress schemes offer an independent dispute resolution service between tenants and agents. The redress scheme will not charge for this service.

4. You could recover your holding deposit directly via the **First-tier Tribunal.**

   The First-tier Tribunal is easy to access for tenants. The First-tier Tribunal can order a landlord or agent to repay your holding deposit. The local authority may be able to assist with this process. You may have to pay a fee to make a claim to the First-tier Tribunal. You will not be eligible for legal aid but may be eligible for other financial support to help pay Tribunal fees.

What do I need to know?

- A holding deposit is a refundable payment which demonstrates your commitment to rent a property whilst referencing checks take place.

- A landlord or agent cannot ask you for a holding deposit which is more than one week of the total rent for the property.

- A landlord or agent should provide clear information about the holding deposit and the circumstances under which you may lose the deposit.

- A landlord or agent should make you aware of the *suitability requirements* before taking a holding deposit from you **(i.e. basic income and credit worthiness requirements for the property).**

- Once you have paid a holding deposit, landlords and agents will usually have two weeks to enter into an agreement with you, this is the **"deadline for agreement",** unless agreed otherwise with you writing.

- If a landlord retains your holding deposit, they should be able to explain the grounds for their decision.

- Where applicable, landlords and agents should consider on a case-by-case basis whether they need to retain your holding deposit and the appropriate amount to retain.

You should keep any evidence that demonstrates:

- you were asked to pay a holding deposit (i.e. emails or letters from the landlord or agent/notes from verbal conversations)

- you paid a holding deposit (i.e. written confirmation from the landlord or agent, receipts, invoices, bank statements)

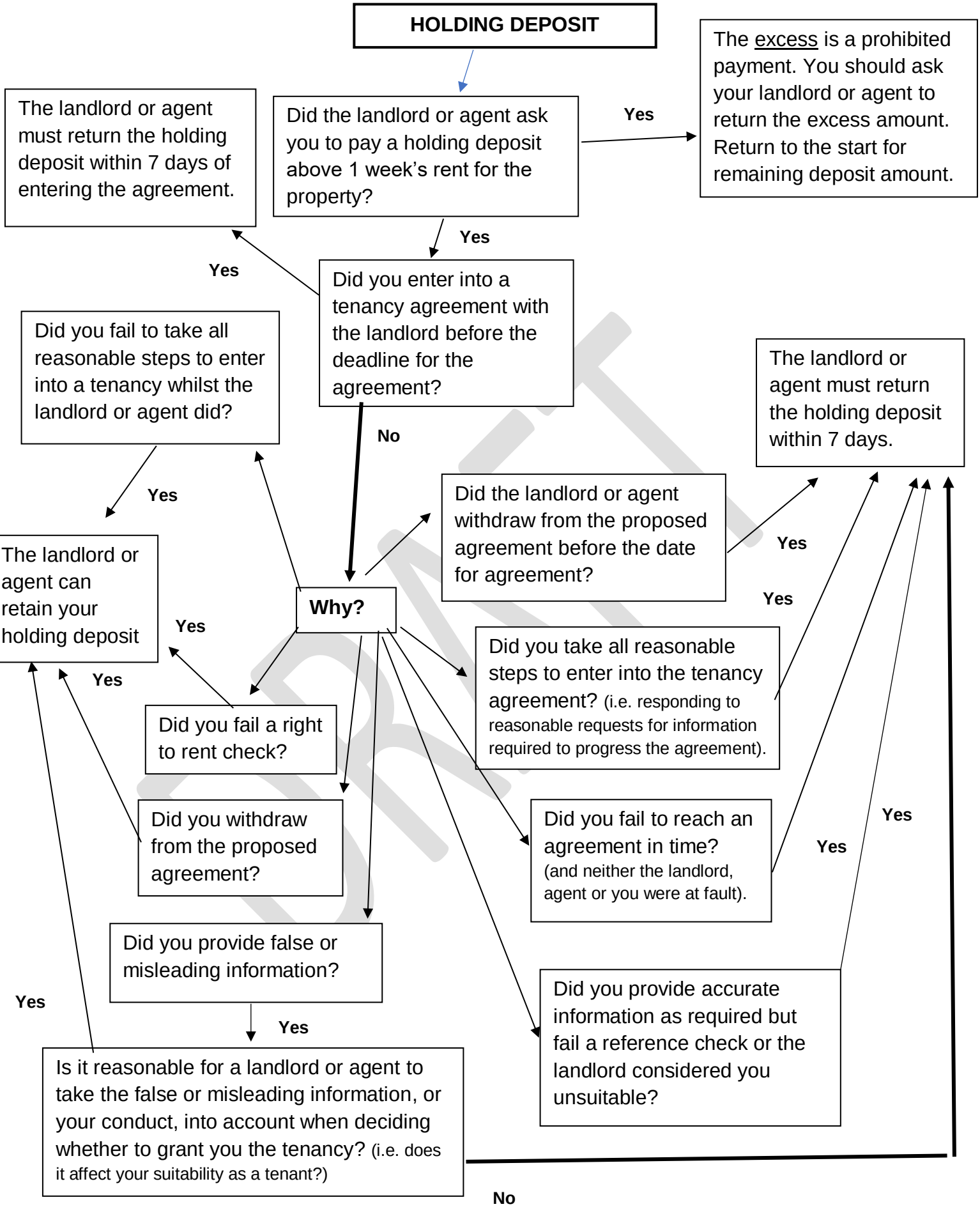
- you responded to reasonable requests for information from the landlord or agent in respect of your tenancy application (i.e. contact details for a former landlord, employer details)

- you asked a landlord or agent to return your holding deposit or to provide appropriate evidence to justify retaining your deposit (i.e. emails or letters to the landlord/agent)

Need help?

- You can seek advice and support through your local authority (usually Trading Standards), the Lead Enforcement Authority or Citizens Advice.

- Follow the flowchart below for step-by-step assistance in recovering your holding deposit.


HOLDING DEPOSIT
Did the landlord or agent ask you to pay a holding deposit above 1 week's rent for the property?
Yes
The excess is a prohibited payment. You should ask your landlord or agent to return the excess amount. Return to the start for remaining deposit amount.
Yes
The landlord or agent must return the holding deposit within 7 days of entering the agreement.
Yes
Did you enter into a tenancy agreement with the landlord before the deadline for the agreement?
No
Did you fail to take all reasonable steps to enter into a tenancy whilst the landlord or agent did?
Yes
The landlord or agent must return the holding deposit within 7 days.
Did the landlord or agent withdraw from the proposed agreement before the date for agreement?
Yes
Yes
The landlord or agent can retain your holding deposit
Yes
Why?
Yes
Did you take all reasonable steps to enter into the tenancy agreement? (i.e. responding to reasonable requests for information required to progress the agreement).
Did you fail a right to rent check?
Did you withdraw from the proposed agreement?
Did you fail to reach an agreement in time? (and neither the landlord, agent or you were at fault).
Yes
Yes
Did you provide false or misleading information?
Yes
Did you provide accurate information as required but fail a reference check or the landlord considered you unsuitable?
Yes
Is it reasonable for a landlord or agent to take the false or misleading information, or your conduct, into account when deciding whether to grant you the tenancy? (i.e. does it affect your suitability as a tenant?)
No

What should I do if a landlord or agent has charged a default fee unlawfully?

1. Use this **draft letter in Annex B** to ask your landlord or agent to provide evidence to demonstrate the costs that they have incurred are reasonable or to return the default fee.

2. Where a landlord or agent does not provide this evidence or return the fee as appropriate, you can contact your **local authority**.

   Local authorities (usually Trading Standards) are responsible enforcing the ban. They can take formal enforcement action against the landlord or agent and can determine the reasonableness of the default fee charged. They can also help you to recover fees through the county court if necessary. The local authority will not charge you for this service.

3. If a **letting agent** is refusing to provide evidence that their costs are reasonable or you remain unsatisfied with the fee being charged, you could complain to the relevant **redress scheme.**

   All letting agents must belong to a Government-approved redress scheme. You should ask your letting agent which redress scheme they belong to. This information should be clearly available on the agent's website. Redress schemes offer an independent dispute resolution service between tenants and agents. The redress scheme will not charge for this service.

4. You could challenge or recover the default fee directly via the **First-tier Tribunal.**

   The First-tier Tribunal is easy to access for tenants. The Tribunal can order a landlord or agent to repay the default fee. The local authority may be able to assist with this process. You may have to pay a fee to make a claim to the First-tier Tribunal. You will not be eligible for legal aid but may be eligible for other financial support to help pay Tribunal fees.

What do I need to know?

- A default is a failure by the tenant to perform an obligation or discharge a liability arising under or in connection with the tenancy.
- Default fees allow a landlord or agent to recover costs that they have incurred because of your default.

- A landlord or agent can only charge default fees if there is a term within your tenancy agreement which permits them to do so.
- Landlords and agents must provide evidence in writing to demonstrate that costs have been incurred as a result of your actions and that these costs are reasonable.
- You do not have to pay a default fee until you have received this evidence.
- If your tenancy agreement does not permit a landlord to charge default fees, they may still be able to recover damages for a breach of contract. Often they will seek to recover damages from your deposit at the end of the tenancy (but they may do so at any time).

You should keep any evidence that demonstrates:

- your liability to pay a default fee (i.e. a relevant provision in your tenancy agreement);
- you have been asked to pay a default fee (i.e. emails or letters from the landlord or agent/notes from verbal conversations);
- you have paid a default fee (i.e. written confirmation from the landlord or agent, receipts, invoices, bank statements);
- you have asked a landlord or agent to provide evidence that their costs area reasonable (i.e. emails or letters to the landlord/agent);
- any evidence provided by the landlord or agent to demonstrate that a default fee is reasonable (i.e. receipts, invoices).

Examples of default fee provisions:

- *If a rent payment is more than 14 days overdue, we will seek to recover any bank costs incurred because of the late payment.*
- *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.*

Need help?

- You can seek advice and support through your local authority (usually Trading Standards), the Lead Enforcement Authority or Citizens Advice.
- Follow the flowchart below for step-by-step assistance in challenging or recovering a default fee.

DEFAULT FEES

Does your tenancy agreement permit the landlord or agent to charge default fees?

No → The landlord or agent cannot require you to pay a default fee but the landlord may be entitled to recover damages for breach of the tenancy agreement. Often they will seek to recover damages from your deposit at the end of the tenancy (but they may do so at any time).

Yes → Did the landlord or agent provide written evidence to demonstrate that the costs they have incurred are reasonable?

No → Request evidence of the charge and keep a written record of this. Do not pay the default fee until you have received this evidence.

Yes → Is the evidence sufficient to justify the fee being charged?

Yes → Pay the charge and keep a record of the payment.

No → Challenge the fee with your landlord or agent.

What is reasonableness?
Reasonableness is common legal test. Generally, it means that default charges imposed by agents and landlords should not exceed the reasonable commercial or market value of goods and services.

What if I already paid a default fee?
You are only liable to pay a default fee in circumstances where this is required by the tenancy agreement and the landlord or agent has provided written evidence that their costs are reasonable.
If this is not the case, you can challenge or recover an unlawful fee through the relevant enforcement authority (usually Trading Standards).

If you are still not satisfied, you should make a complaint to:

- The local authority – local authorities (usually Trading Standards) are responsible for enforcing the ban.
- A redress scheme – where an agent is concerned, you can ask the relevant redress scheme to investigate the dispute.
- The First-tier Tribunal - you can apply directly to the First-tier Tribunal for a judgement.

These bodies will be able to determine whether are charge is unlawful or unreasonable based on the evidence provided, and can require the agent or landlord to repay all or part of the fee.

ANNEX A – Q&A

Tenancy set-up fees

Q. Can a landlord or agent ask me to pay when they are setting up a new tenancy?

No. After the ban comes into force a landlord or agent cannot charge you 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 you agreed in your contract to pay fees to renew your tenancy then a landlord or agent can charge these fees for a new fixed-term agreement or statutory periodic agreement up until **DDMMYYYY**. If you believe the level of fees being charged is unfair, you should discuss this with your landlord or agent.

A landlord or agent may ask you to provide information which supports them to carry out a reference check, such as:

- bank statements – to assess your income and ability to pay your rent
- a reference from a previous landlord (you cannot be asked to pay for this)
- proof of your address history (usually up to 3 years)
- details of current/previous landlords – to verify whether you have paid your rent on time, whether they would let to you again and if you left a property in good condition
- details of current employer – an employer can verify your income and confirm whether you are trustworthy, reliable and honest

Q. Can a landlord or agent ask me to pay for an inventory?

No. A landlord may choose to carry out an inventory check, but they cannot charge you 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 landlord. This is in the interest of both tenants and landlords, but your landlord will need to demonstrate that any claims for damages against your 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 landlord or agent.

Tenancy check-out fees

Q. Can a landlord or agent ask me to pay a check-out fee at the end of a tenancy?

No. A landlord or agent cannot charge you for any services connected with the termination or ending of a tenancy. However, if the tenancy was entered into before **DDMMYYYY** and you agreed in your contract to pay exit fees, such as check-out or inventory fees, then a landlord or agent can charge these fees up until **DDMMYYYY.** You should check your tenancy agreement to understand what fees you have agreed to pay. Your landlord or agent cannot require you to pay any fees not set out in your tenancy agreement. If you believe the level of fees being charged is unfair, you should discuss this with your landlord or agent.

Q. Can a landlord or agent ask me to pay for a professional clean at the end of a tenancy?

No. A landlord or agent cannot require you to pay for a professional clean when you check-out.

However, if the tenancy was entered into before **DDMMYYYY** and you agreed in your contract to pay such fees then a landlord or agent can charge these fees up until **DDMMYYYY.** If you believe the level of fees being charged is unfair, you should discuss this with your landlord or agent.

A landlord or agent may request that the property is cleaned to a professional standard. You are responsible for ensuring that the property is returned in the condition you 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 be required to use a particular company to clean the property. If the property is not left in a fit condition, landlords and agents can recover costs associated with returning the property to its original condition and/or carrying out necessary repairs by claiming against your tenancy deposit. You should ask your landlord or agent to justify their costs by providing suitable evidence (such as an independently produced inventory, receipts and invoices).

A landlord or agent is not able to claim deductions from your deposit for any change in the condition of the property which is due to fair wear and tear or if you return the property in the same condition as it was found.

Q. Can a landlord or agent ask me to pay for checking-out on a Saturday?

No. A landlord or agent cannot impose an additional charge when you leave the property, or check out, on a Saturday, or at any time over the weekend.

However, if the tenancy was entered into before **DDMMYYYY** and you agreed in your contract to pay such fees then a landlord or agent can charge these fees up until **DDMMYYYY.** If you believe the level of fees being charged is unfair, you should discuss this with your landlord or agent.

Q. Can a landlord or agent ask me or my future landlord to pay for a reference?

No. After **DDMMYYYY** a landlord or agent cannot charge you for providing a reference in relation to privately rented housing in England. If your previous landlord or agent wants to charge to provide a reference for you, your new landlord or agent will have to negotiate and pay these costs.

Third party fees

Q. Can a landlord or agent ask me to pay fees through a third party?

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

Q. Can a landlord or agent ask me to obtain a reference?

A landlord or agent cannot require you to obtain a reference through a third-party reference service, but you can choose to obtain such a reference for yourself, and a landlord or agent may ask you to supply a reference from a former landlord. Your previous landlord cannot charge you to provide a reference. If your previous landlord or agent wants to charge to provide a reference for you, your new landlord or agent will have to negotiate and pay these costs.

Q. Can a landlord or agent ask me to undertake a credit check through a third party (such as Experian)?

Yes. A landlord or agent can ask a credit referencing agency to carry out a check on you, and they can ask you to provide the necessary details to complete the check. However, they cannot make you pay for this. If you do not provide the information reasonably required by the third party to carry out a check, a landlord or agent may be able to retain your holding deposit.

Q. Can a landlord or agent refuse to let to me if I do not have a reference check provided by a third party?

No. A landlord or agent cannot require you to meet any conditions that could only be met by paying a fee for a third-party service. This means that you cannot be required 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 you. For example, a landlord or agent cannot ask you to pay a fee to a third party for referencing where the alternative requires you to provide 5 years' bank statements to carry out a credit check.

A landlord or agent can ask you to provide any information they reasonably require in order to undertake referencing or credit checks through a third party. If you do not provide this when requested and you have been given reasonable notice, you may be unable to let the property and the landlord or agent will be entitled to retain your holding deposit.

Can a landlord or agent ask me to pay for an inventory through a third party?

No. You may wish to employ your own inventory service to provide an accurate written record of the property at the beginning of your tenancy, but a landlord or agent cannot require you to do this. If you choose to employ your own service, you will be responsible for paying the associated costs.

Q. Can a landlord ask me to pay for a rent guarantor?

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

Q. What if I choose to pay for my own third-party service?

You can use the services of a third party if you choose to do so. For example, a reference checking company, deposit replacement product or inventory service. If you do this, you cannot charge these back to the landlord/agent.

A landlord or agent cannot require you 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.

However, a landlord or agent may ask you to do something as an alternative to complying with a different requirement. For example, your landlord or agent may give you the option to replace a lost key at your own cost and time through a third party, instead of requiring you to pay a default fee. Or your landlord or agent may give you 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. What if I choose to employ an agent to act on my behalf?

If you choose to employ an agent to act on your behalf, for example, a relocation agent, to support you in finding housing to rent in England whilst you are living overseas or outside of the area, the agent would be permitted to charge you for such services (provided that the agent is not also working on behalf of the landlord, i.e. to set up a tenancy).

PERMITTED FEES

What payments can a landlord or agent ask me to make?

Rent

Q. A landlord or agent has told me that I will have to pay more rent in the first few months to cover the cost of banned fees, can they do this?

No. Under the ban a landlord or agent cannot require you 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 (although in some circumstances a landlord may expect payment of rent upfront). The amount of rent charged should normally be equally split across the first year of the tenancy.

However, after the tenancy has begun, a landlord can reduce your rent without breaching the fees ban if you agree to this 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 a landlord or agent set a higher rent to cover their costs?

A landlord or agent is entitled to set a rent that takes into account their costs. The amount that they ask should be fair, in line with other similar properties in the area and clearly advertised to you.

Q. Can a landlord or agent increase my rent part way through the tenancy?

A landlord or agent can increase your rent if you agree 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 your tenancy is an assured shorthold periodic tenancy your landlord may also increase your rent annually by notice in accordance with section 13 of the Housing Act 1988.

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

A landlord or agent may want to consider including a rent review clause in the tenancy agreement to enable them to discuss any changes in rent level with you at an appropriate time.

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

Yes. Your landlord or agent could ask you to pay your rent in a lump sum. They cannot however charge any more in this lump sum payment than would have been chargeable over the fixed term of the tenancy. For example, if your rent is £500 a month and the tenancy is for a fixed term of six months, your landlord or agent could ask you to pay £3,000 up front. They cannot ask you to pay more than this and if this is not affordable for you, you should discuss your circumstances with your landlord or agent.

A tenancy agreement must not ask you 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). A landlord or agent could reasonably ask you 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, a landlord or agent could ask you to pay three months' rent upfront (3 x £400=£1200) but your tenancy agreement could not make you liable to pay £1200 in the first month and then £400 every month after that.

Q. Can a landlord or agent increase the rent as an alternative to taking a tenancy deposit?

A landlord is entitled to set a rent that takes into account their costs. The amount that they ask should be fair, in line with other similar properties in the area and clearly advertised to you. You should ask your landlord or agent to be clear what the rent covers (for example certain utilities or council tax) and choose a property based on rent that you can afford. You can you this calculator to help you determine what is affordable.

Tenancy deposits

A tenancy deposit is a refundable payment that a landlord or agent can ask you, or a relevant person (i.e. someone acting on your behalf) to make. This provides a landlord with security if you cause damage to a property, do not return it in its original condition, do not pay your rent or break the terms of your tenancy agreement. They cannot ask you 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:

- (your monthly rent x 12) ÷ 52
- your annual rent ÷ 52

If you are still unsure over the level of tenancy deposit you can be required to pay, you should contact Citizens Advice or your local authority.

Q. How much rent or deposit am I liable to pay under a joint tenancy agreement?

There are two main types of tenancy agreement:

- 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 you have signed a tenancy agreement with more than one person, you are likely to have a joint tenancy. This means that liability for payments such as the tenancy deposit and rent is spread across all 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.

It is important to check what type of tenancy you are signing before you agree to move into a property.

Q. How much tenancy deposit can I be asked to pay?

Where you have individual tenancy, you cannot be asked to pay a tenancy deposit that is more than six weeks of the rent set out in your tenancy agreement.

Where you have a joint tenancy agreement, a landlord 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 3 tenants are liable for this sum, the landlord could ask for no more than £1800 (£300 x 6) as a tenancy deposit.

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

A landlord or agent is not obliged to take a tenancy deposit and it is best practice for landlords and agents to 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 your landlord or agent the amount of deposit you need to pay.

For assured shorthold tenancies, any deposit that a landlord or agent requests from you must be protected with one of the three Government backed tenancy deposit protection schemes within 30 days of them taking the payment. Your landlord or agent must also provide you with information about where and how your deposit is protected. The deposit is your money and a landlord or agent will need to provide evidence to substantiate any claims against your deposit at the end of the tenancy.

Q. Can a landlord or their agent take a higher amount of tenancy deposit from me if I have 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. If I pay a tenancy deposit which exceeds the six-week cap before it comes into force, can I ask the landlord or agent to re-pay the amount of the deposit above six weeks of my 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 (usually the case where a tenancy agreement is on a rolling month-to-month basis). However, where you sign a new fixed term agreement, your landlord or agent must refund any amount of your existing deposit which exceeds six weeks of rent. In most cases this will not be necessary as the average tenancy deposit is between 4-5 weeks' rent.

If the landlord or agent does not do this automatically once your new fixed-term agreement has started, you should ask them to return the payment. If they do not do this, they will be breaching the ban on fees and will be liable for enforcement action and/or financial penalty. You will be able to take action to recover your deposit through Trading Standards, a redress scheme or the First-tier Tribunal.

Deposit options

Q. Can I access a rent deposit scheme to help me pay a tenancy deposit?

A third party may offer loans to be used as deposits as part of a rent deposit scheme. Usually, the scheme lends you the money in advance and you will be required to pay it back over a period of time from your income, i.e. wages or benefits. These schemes are often run by local authorities and housing associations, but also certain employers and charity providers.

You should talk to your local authority or Citizens Advice about schemes which may be available and whether this is the right option for you.

Q. Can I access a rent guarantee or bond scheme to cover damages or unpaid rent?

A number of third parties offer rent guarantee or bond schemes. These providers will offer a written agreement which guarantees to cover outstanding rent payments, default fees or damages associated with a tenancy agreement.

There is more information about how rent deposit schemes, rent guarantee and bond schemes work available here.

Q. If I do not pay a tenancy deposit, can I use a deposit replacement product?

Yes – if the landlord or agent agrees to this. You may be required to pay a non-refundable fee up-front (sometimes equivalent to one week's rent), an annual levy or a premium based on your credit worthiness and your rent liability. This usually removes the need for you to provide an upfront cash deposit to the landlord or agent. A landlord or agent cannot require you to use a deposit replacement product but may allow it as an option without contravening the fees ban.

However, it is worth noting:

- A deposit replacement provider is still likely to require you to undertake referencing checks to determine your suitability and credit worthiness.
- Any fee paid to a deposit replacement provider is non-refundable (unlike a traditional deposit paid to a landlord).
- There are several different products available on the market. In most cases, you will still be responsible for the costs of any damages incurred at the end of the tenancy or may be required to pay an excess on any claim for damages or unpaid rent.

You should be clear what you will be expected to pay and understand how the scheme operates with the provider. You should consider if this is the right option for

you and should not feel forced to accept this option. Discuss with your landlord or agent what the alternatives are and work out which works for you financially. A deposit replacement product may not be cost-effective.

Holding deposits

A landlord or agent can take a holding deposit from you to reserve a property whilst reference checks and preparation for a tenancy agreement are undertaken. A landlord or their agent cannot ask you 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, the landlord or agent 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. Landlords and agents should only accept one holding deposit at any one time.

The cap of one week's rent on holding deposits is an upper limit and not a recommendation. A landlord or agent is not obliged to take a holding deposit. Landlords and agents 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.

Important points to consider:

- ✓ A landlord or their agent should provide you with clear information about why they are requesting a holding deposit, including the sum that is required and the circumstances where you may lose all or part of the deposit.
- ✓ A landlord or their agent should be clear with you about their expectations and check that you meet the basic income and credit worthiness requirements before taking a holding deposit from you. If they consider that you will not be a suitable tenant, they should not take a holding deposit from you.
- ✓ A landlord or agent should provide you with a copy of the tenancy agreement before taking the holding deposit.
- ✓ A landlord or agent should clearly define what they consider to be *credit worthiness* – you should have a clear understanding of what might count against you so that you can be invited to provide any relevant information. If this includes previous missed and late payments, a landlord or agent should make this clear to you.
- ✓ A landlord or agent must not unlawfully discriminate against you on the basis of your 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 you once a holding deposit has been paid. This is the 'deadline for agreement'. However, you may agree a different deadline for agreement with them in writing.

If you are asked to pay a holding deposit, you should always obtain confirmation in writing from the landlord or agent that sets out the amount of deposit you 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 you need to challenge a landlord or agent's decision to retain your holding deposit. Before paying a holding deposit, you should ensure that you clearly understand the landlord or agent's requirements and the circumstances in which you may lose your holding deposit.

Landlords and agents must refund the holding deposit in full within 7 days of:

- you and the landlord entering into a tenancy agreement (before the deadline for agreement)
- the landlord choosing to 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 you:

- provide false or misleading information which the landlord or agent can reasonably take into account when deciding to let a property
- fail a right to rent check
- withdraw from a property
- fail to take all reasonable steps to enter into a tenancy agreement

Although a landlord or agent can retain your holding deposit in the above circumstances, it is best practice for them to consider whether they need to retain the full amount. They should make this decision on a case-by-case basis and may only need to cover specific costs which have been incurred (for example, referencing checks). Landlords or agents should be able to provide evidence of their costs in order to demonstrate that they are reasonable.

Where landlords and agents retain a holding deposit, they should be able to provide you with an explanation as to why they have done so.

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

Q. Can the landlord or agent accept multiple holding deposits?

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, landlords and agents should not accept more than one holding deposit. They would be legally bound to enter the tenancy if you fulfil your part of the obligations and you would be able to take action through the courts should this not happen. Where a landlord or agent does not proceed with the tenancy agreement before the deadline for the agreement, they must refund the holding deposit to the tenant within 7 days.

Q. Can I put down more than one holding deposit on different properties?

You can register your interest in more than one property but should consider carefully before doing so. A holding deposit creates a binding conditional contract between tenant and landlord. Under this contract, you are agreeing to provide honest representations as to your income, tenancy history and references, and to enter into the tenancy under the terms agreed with the landlord. If you withdraw from the agreement, you will not be entitled to have your holding deposit refunded. If you therefore choose to put down more than one holding deposit, you should expect to lose any holding deposits on tenancies that do not progress.

Q. Does a landlord or agent need to protect my 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. A landlord or agent must take reasonable steps to ensure that the money is held safely and that they can refund it to you when necessary. As required by law, agents should hold any client money in a separate client money account and, from 1 April 2019, it should be protected through membership of a client money protection scheme.

Note: if you subsequently enter into a tenancy agreement with the landlord, any amount of your holding deposit that you agree is to be used to offset a tenancy deposit payment that you 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 a landlord or agent refund my holding deposit by putting it towards my first month's rent?

Yes. However, they can only do so if you have given your consent. They can either refund the holding deposit directly to you or put it towards your rent or tenancy deposit.

Q. Does a landlord or agent have to explain to me why they have retained a holding deposit?

If a landlord or agent decides to retain all or part of your holding deposit they should be able to provide written evidence and explain the grounds for their decision. If they do not provide a reasonable explanation or supporting evidence, you can challenge the decision through your local authority (usually Trading Standards), 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.

Incorrect or misleading information

Q. Can a landlord or agent retain my holding deposit if I provided incorrect information for the reference check?

Yes. A landlord or agent may retain your holding deposit in this situation if you provide incorrect or misleading information and the mistake is such that it is reasonable for them to take it, or your conduct, into account when deciding whether to grant you the tenancy.

You should take care to ensure that all the information that you provide is accurate. For example, you may previously have been in debt and received a County Court Judgement. You need to let your landlord or agent know about this. If you are unsure you can search for details of any judgements against you on the register of judgements. You will have to pay a small fee - each search costs between £4 and £10.

Having a County Court Judgement should not necessarily affect your suitability to rent a property but failing to disclose this information may mean that your landlord or agent is entitled to retain your holding deposit and could lead to you not securing the tenancy.

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

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

A landlord or agent may, in some circumstances, retain your holding deposit if you provided false or misleading information. The holding deposit may be retained if the difference between the information you have provided and the correct information, or your conduct in providing false or misleading information, materially affects the landlord's decision to grant you the tenancy because it reasonably calls into question your suitability to rent the property.

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

- your income declaration was significantly too high because of a typo
- you have provided information which is clearly inaccurate about your income or employment – even if the landlord would have been satisfied with the correct information
- you have failed to disclose (when directly asked by the landlord or agent) any relevant information which later comes to the landlord or agent's attention, such as valid County Court Judgements you may hold

A landlord or agent cannot retain your holding deposit if the false or misleading information you have provided is not relevant to your suitability as a tenant, for example:

- where you have misspelled your name, the name of your employer or a previous address
- you omitted to declare a previous address – and the omission had no bearing on your credit worthiness or other assessment of suitability
- you have slightly misstated your income

Q. What if I provided false or misleading information unknowingly?

Your landlord or agent can still retain your holding deposit in this situation if it materially affects the landlord's decision to grant you the tenancy. You should take care to ensure all the information you provide is accurate.

Where a landlord or agent considers that you have unknowingly provided false or misleading information, we encourage them to only retain the costs of the reference check rather than the full amount of your holding deposit even if they are entitled to do so.

Reasonable requests for information

Q. Can a landlord or agent retain my holding deposit if I do not provide all the necessary information to carry out referencing checks?

Yes. If a landlord or agent can demonstrate that you failed to provide reasonable information that they have requested in order to progress your tenancy application, and they have given you enough notice to provide this, they will be entitled to retain your 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 your landlord or agent in writing.

During this period, a landlord or agent should take all reasonable steps, which may include written requests for any information they require from you for the tenancy to progress. Similarly, you must also take reasonable steps to respond in good time to any request for information which supports the referencing process. 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 (a landlord or agent may require proof of 3 years of address history)
- **credit check**: a landlord or agent can ask for any information required in order to carry out a credit check – they should explain the credit worthiness requirements and ask you to disclose any relevant information
- **proof of income:** recent bank statements, signed contract of employment or a letter from your employer

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

Q. Can a landlord or agent retain my holding deposit if they fail to properly explain the information required for referencing?

No. A landlord or agent can only retain the holding deposit if you provide false or misleading information or fail to take all reasonable steps to enter into the tenancy agreement (when the landlord and/or letting agent are doing so).

Your landlord or agent should clearly explain to you the criteria by which they judge suitability to rent the property (such as income and credit worthiness requirements) and request relevant information that would enable them to determine before taking

your holding deposit that you would not be suitable to rent. When explaining the credit worthiness requirements, a landlord or agent should clearly define what they consider to be credit worthiness and you should have a clear understanding of what information you are required to disclose (e.g. whether this includes missed or late payments).

However, if you provide accurate information in response to their enquiries, they do not have grounds to withhold the deposit even if you then fail a reference check.

Failed reference check

Q. Can a landlord or agent retain my holding deposit if I provided correct information, but my references are not good enough?

No. If you have provided factually correct information which a landlord or agent has requested, but they do not consider your references to be sufficient in order to let the property, then you are entitled to a full refund of your holding deposit.

A landlord or agent cannot withhold a holding deposit merely because they do not consider your references to be satisfactory. This also applies where a landlord is unable to let the property for any other reason which is not your fault. Failing a reference check should not automatically disqualify you from renting a property.

Landlords and agents should consider on a case-by-case basis whether an adverse credit history or bad references affect your suitability as a tenant. They may ask you to justify information which calls into question your credibility. For example, a previous County Court Judgement should not automatically disqualify you from renting a property.

Q. If I have a County Court Judgement against me, does this mean that I cannot rent a property?

No. However, you must disclose this information to the landlord or agent if they request it. Landlords and agents should consider on a case-by-case basis whether a previous Country Court Judgement affects your suitability to rent the property. If you have a poor credit history, a landlord or agent may request additional financial assurances from you (e.g. a rent guarantor).

Withdrawing from a property

Q. If I decide that I no longer want to rent a property, but I have already put down a holding deposit, can a landlord or agent keep my holding deposit?

Yes. If you change your mind and decide to withdraw from a property after paying a holding deposit, and you notify the landlord or agent of this before the deadline for agreement has passed, they are entitled to retain your holding deposit. Even if you do not notify them of your decision, they are still entitled to retain the holding deposit if you don't take reasonable steps to enter into the tenancy before that date.

If you have to withdraw from a property due to exceptional circumstances which are beyond your control, we would encourage a landlord or agent to take this into account and consider returning your full holding deposit. This could be where for example your employment circumstances have changed, you have suffered with a physical or mental health crisis or you have experienced domestic violence from a cohabitee. You should discuss this with your landlord or agent at the earliest opportunity.

Q. Can a landlord or agent retain my holding deposit if I withdraw from a property before any costs have been incurred?

Yes, a landlord or agent is entitled to retain your holding deposit in this situation. However, if you pull out of a property before a landlord or agent has incurred any demonstrable costs, for example costs for referencing checks, we would strongly encourage them to refund your holding deposit.

Right to rent checks

Q: If I fail a right to rent check, can a landlord or agent retain my holding deposit?

Yes. A landlord has a legal obligation to check that you have permission to stay in the UK - this is known as a 'right to rent' check. They cannot rent a property to someone who is unable to demonstrate that they have the right to rent. A landlord or agent should ask you whether you have a legal right to reside in the UK and make clear that this is a condition of renting a property. If you fail a right to rent check or do not provide a landlord or agent with the evidence they require to complete the check, they are entitled to retain your holding deposit.

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

Q: If the Home Office tells a landlord or agent in error that I do not have the right to rent, can they still retain my holding deposit?

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

More guidance on right to rent checks is available here.

Landlord or agent withdraws

Q. If a landlord or agent decides to let the property to another tenant can they retain my holding deposit?

No. If a landlord or agent decides to withdraw from the proposed agreement or fails to take all reasonable steps to enter into the agreement, for example by not undertaking referencing checks or failing to send you a copy of the tenancy agreement, they must refund your holding deposit within 7 days of making that decision or, in the latter case, of the deadline for agreement.

Q. Can a landlord or agent retain my holding deposit if the property is not ready in time?

If a landlord or agent fails to enter into the tenancy agreement before the deadline for agreement then they must return your holding deposit. This would be the case, unless you have decided not to proceed, failed a right to rent check or you have failed to take all reasonable steps to enter into the tenancy agreement and the landlord or agent has taken all reasonable steps to do so.

If at any time before the deadline for agreement you were to notify the landlord or letting agent that you have decided not to enter into a tenancy agreement then, whatever the reason for that, the landlord or agent would be entitled to withhold your holding deposit.

However, if you have failed to enter into the tenancy agreement by the deadline for agreement because the landlord and/or agent has not taken all reasonable steps to do so (which might include not getting the property ready in time), then they must return your holding deposit.

Default Fees

Q. What is a default fee?

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

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

If your tenancy agreement does not permit a landlord or agent to charge default fees, they may still be able to recover damages. Often, they 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 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 you 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 they will determine 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 may 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 which 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 contractual breach which is not expressly covered by a default provision in the tenancy agreement.

If your tenancy agreement does not permit a landlord or agent to charge default fees, they may still be able to recover damages. Often they will seek to recover damages from your deposit at the end of the tenancy (but they may do so at any time).

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.

Q. How do I know whether a landlord or agent can charge a default fee?

A landlord or agent may only charge a default fee where this is required under the tenancy agreement. You should always enter into a signed tenancy agreement with a landlord or agent. It is important that you read the terms of your tenancy agreement carefully before you enter into it and that you are aware of any liability to pay default fees. Landlords and agents should highlight relevant default provisions within the agreement. You should keep and file safely any original documents given to you by the landlord or agent.

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

Yes. Landlords or agents must demonstrate that any fee charged is reasonable and does not exceed the costs that they have incurred. They must do this by providing written evidence to you which demonstrates their costs, i.e. receipts or invoices. You do not have to pay the charge until you 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?

Landlord or agents are required to demonstrate that their costs are reasonable by providing written evidence to support any default fees charged. 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 you to determine the reasonableness of the fee(s).

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

You have the right to question a landlord or agent where you consider you have been charged an unreasonable or excessive fee via the relevant enforcement authority (usually Trading Standards), the First-tier Tribunal or the relevant letting agent redress scheme (if it concerns an agent). 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 should I do if a landlord or agent does not provide evidence to demonstrate that their costs are reasonable?

You should inform them that under the Tenant Fees Act any default fees charged must be accompanied by evidence which demonstrates the reasonableness of the fee. This must be provided in writing to the person who is liable for the payment.

You are not liable to pay the charge until evidence is provided. If you have been asked to pay a default fee or you have requested evidence of the reasonable costs incurred by a landlord or agent because of your actions, you should keep a clear record of this.

A landlord or agent who fails to provide written evidence of default fees is in breach of the Tenant Fees Act. You 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 any work in the event that I have 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 damages for breach of the tenancy agreement even 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 your tenancy agreement does not permit a landlord or agent to charge default fees, they may still be able to recover damages for a breach of the tenancy agreement. In most cases, a landlord or agent will seek to recover damages by claiming against the deposit at the end of the tenancy (but they may do so at any time).

If a landlord or agent is claiming against your tenancy 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 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.

A landlord or agent can only require you to pay rent as set out in your tenancy agreement.

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

[1] https://www.gov.uk/government/publications/unfair-contract-terms-cma37
[2] https://www.gov.uk/guidance/unfair-terms-explained-for-businesses-full-guide

Types of default fees and suggested amounts to be charged

Late payment of rent

Q. How much can a landlord or agent charge me for a late rent payment?

A landlord or agent can only charge a default fee to cover reasonable costs that they have incurred as a result of your 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.

Q. How much interest can a landlord or agent charge me 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, for example, if the bank's interest rate is 3%, a landlord or agent would be reasonably entitled to charge interest at no more than 3% for the number of days that the payment has been outstanding.

Your landlord or agent must provide written evidence that their costs are reasonable and they should clearly breakdown any charges for interest.

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 sufficient notice that the payment would be delayed. This is especially the case if you normally pay your rent on time or your rent is late for a circumstance outside of your control (e.g. banking systems are down, delayed Housing Benefit or Universal Credit

payments). You should notify your landlord or agent as soon as possible if you think there is going to be any delay in paying your rent.

Q. Can a landlord or agent pass on costs from a third party?

A landlord or agent can pass on any costs that they have reasonably incurred from a third party (such as a mortgage company) because of your late rent payment. A landlord or agent must provide you with evidence that they have incurred a charge from their mortgage provider as a result of your late payment.

Replacement key or other security device

Q. How much can a landlord or agent charge me for a replacement key or security device?

A landlord or agent may charge you a fee to cover the cost of replacing the lost key or security device. However, they can only charge you for the reasonable costs that they 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 and £10, a specialist door key could cost between £5 and £20 to replace and a key fob could be up to £50.

Landlords and agents must charge 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 their costs are reasonable. If they do not do this, you are not liable to pay the charge. If you consider that a charge imposed by the landlord or agent is unreasonable based on the evidence that they have provided, you can object to paying the fee or complain to the relevant enforcement authority (usually trading standards).

Where possible, we encourage a landlord or agent to allow you to resolve issues independently. For example, your landlord or agent may give you the option to replace a lost key or security device at your own cost instead of requiring you to pay a default fee. If this is not offered, you can ask your landlord or agent if this would be possible.

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:

- 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 standard front door key

Repairs and maintenance

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

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 you have caused damage to any of the above your landlord may be entitled to recover damages or a default fee, if the tenancy agreement provides for one in those circumstances. The landlord or agent may not charge a default fee that exceeds the costs reasonably incurred as a result of the default. You will only be liable for the default fee if it is reasonable and a landlord or agent can demonstrate value for money in respect of the works undertaken or service provided. Landlords and agents must not charge a premium on top of a contractor's costs.

You are responsible for ensuring that the property is returned in the condition you 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, landlords and agents can ask you to pay costs associated with returning the property to its original condition and/or carrying out necessary repairs by deducting from your tenancy deposit. Landlords and agents must justify that their costs are reasonable by providing suitable evidence such as an independently produced inventory, receipts and invoices.

A landlord or agent cannot claim deductions from your deposit for any change in the condition of the property which is due to fair wear and tear or if you return the property in the same condition as it was found.

Emergency call out charges

Q. If I have locked myself out, what can a landlord or agent charge me for a call out?

If this happens during normal office hours (typically Monday-Friday 9-5), you may reasonably incur a small charge. 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, you could go to your landlord or agent's office and offer to cut any replacement keys.

If you lock yourself out outside of office hours, the costs reasonably incurred may be higher. Landlords and agents are required to provide you with written evidence in the form of receipts or invoices to demonstrate that their costs are reasonable. Again, you could also offer to meet your agent or landlord to reduce the burden on them.

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 I call a landlord or agent out in an emergency, what can they charge for this?

A landlord or agent is 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 you or any other occupant, they must take immediate action. However, if you have caused damage to any of the above your landlord may be entitled to recover damages or a default fee, if the tenancy agreement provides for one in those circumstances. The landlord or agent may not charge a default fee that exceeds the costs reasonably incurred as a result of the default.

Where the landlord or agent (or their contractor) must attend the property to deal with an emergency caused by your actions then they may be entitled to recover damages or a default fee if the tenancy provides for one in those circumstances. The landlord or agent 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 a landlord or agent contracts a third party to carry out the necessary emergency action, they can only charge you the costs incurred where reasonable, and no additional premiums. Landlords and agents must provide you with written evidence to demonstrate that their costs are reasonable (e.g. 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 be charged if I refuse a contractor appointment or ask for it to be rearranged?

You 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, the landlord or agent should be able to provide a key in order for the relevant person(s) to gain access, provided that this has been agreed by you in advance.

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

Q. If I miss an appointment with a contractor or other relevant person sent on behalf of the landlord or agent, can they charge me for this?

A landlord or agent should be able to demonstrate that they have given you suitable written notice of the appointment. They may only charge you a default fee for a missed appointment if this is required under the tenancy agreement and the missed appointment causes them to reasonably incurred 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, a landlord or agent should make every effort to accommodate any reasonable changes you have requested.

Q. Can a landlord or agent charge me a fee for a change of sharer?

Yes. Where you request a change of sharer, a landlord or agent is entitled to charge you 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. This could be where a replacement tenant fails a reference check. In any case, a landlord or agent should be able to demonstrate to you that any fee charged above £50 is reasonable and provide evidence of their costs. You should ask your landlord or agent to provide evidence in the form of receipts or invoices. Any costs that are not reasonable are a prohibited payment.

Note: A landlord or agent cannot charge you for any 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 a landlord or agent charge a fee for each change to a tenancy agreement?

Yes. However, a landlord or agent should be able to justify the costs that they 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 this charge should not exceed £50. If a landlord or agent seeks to charge you more than £50, you should ask your landlord or agent to provide written evidence in the form of receipts or invoices to demonstrate that the

amount charged does not exceed reasonable costs. Any costs that are not reasonable are a prohibited payment.

Early termination fees

Q. Can a landlord or agent charge me if I want to leave a property before the end of my fixed-term?

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

A landlord or agent should not require you to pay any charges in this circumstance if you are exercising a break clause in your contract which permits you to leave before the end of your fixed-term provided that you have given sufficient notice as required by the terms of your agreement.

Q. What payments may be required on early termination?

A landlord or agent may agree to early termination on the condition that replacement tenants are found. In this circumstance, a landlord or agent could reasonably ask you to pay the costs associated with re-advertising the property or referencing new tenants, but they should be able to provide evidence to demonstrate these costs. If a suitable replacement tenant is found, the landlord or agent can only 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 a landlord is not able to charge more than the rent they would have received before the end of the tenancy. If a landlord re-lets the property during that period, this means the rent you 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 I sub-let a property as an alternative to terminating my fixed-term agreement early?

You should not sub-let a property unless your tenancy agreement allows this, and this has been agreed in writing by the landlord.

If it is not appropriate for you to sub-let the property, we would encourage a landlord or agent to let you leave the tenancy agreement early provided that a suitable replacement is found.

Other payments

Q. Are there any other payments that I can be required to make?

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

However, landlords must not overcharge tenants if they pay utilities separately from the rent.

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

Yes. You can still be required to pay for any utility services, such as gas, electricity or water that you consume. However, there is legislation which prevents landlords from over-charging tenants for provision of these services.

Q. What can my landlord charge for gas and electricity?

Landlords who resell energy to their tenants for domestic use are governed by Maximum Resale Price provisions set by Ofgem. This means that landlords can only resell energy to you at the price they have paid to a licensed energy supplier. You are entitled to receive a breakdown of the costs paid by a landlord upon request, and you can take your landlord to 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.

If you pay a flat rate for accommodation which includes utilities, you should consider whether this rate is affordable and reasonable for the property concerned.

Q. What can my landlord charge 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 I have the right to change my gas and electricity provider?

If you are directly responsible for paying the gas or electricity bill, you have the right to choose the supplier. Landlords or agents are not allowed to prevent you from doing this.

Ofgem has published guidance on its website to explain tenants' energy rights to choose their energy supplier.

Q. If I have a pre-payment meter installed, can I have this removed?

If you are responsible for paying the gas and electricity bill you 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 I've got a prepayment meter and have a debt on my account, can I still switch provider?

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 you pay off your debt quicker and save money on your energy use.

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

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

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

Yes. You are still liable to pay for any services, such as broadband, TV or phone, that are a condition of the tenancy, or that you 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. You are still liable to pay for any council tax payments associated with the property that you are responsible for, unless a valid exemption applies, for example you are enrolled in a full-time higher education course.

ANNEX B – DRAFT LETTERS

You can use these draft templates to ask your landlord or agent to return your fees or your holding deposit, or to ask a landlord or agent to provide evidence to support fees that have been charged.

TENANT FEES

Re: Return of banned fees under the Tenant Fees Act

I am writing to request the return of the **[£X]** I was charged in relation to my **[proposed]** tenancy agreement at **[insert property address],** which is unlawful under the Tenant Fees Act.

The Tenant Fees Act prohibits a landlord or agent of privately rented housing in England from requiring a tenant or any persons acting on their behalf or guaranteeing the rent, to make certain payments in connection with a tenancy.

The fee charged does not amount to a permitted payment under the Act.

Please return this fee within **[XX]** days from this date, or I will pursue this matter via the relevant enforcement authority or First-tier Tribunal.

I look forward to hearing from you soon.

Yours sincerely,

HOLDING DEPOSITS

Re: Return of holding deposit under the Tenant Fees Act

I am writing to request the return of the **[£X]** paid as a holding deposit in relation to **[insert property address],** which I believe has been unlawfully retained under the provisions of the Tenant Fees Act.

The Tenant Fees Act sets out the circumstances under which a landlord or agent is entitled to retain a holding deposit in relation to privately rented property in England.

A holding deposit can only be retained if I:

- provide false or misleading information which it is reasonable for you to take it into account (or my conduct in providing it) , when deciding whether to grant the tenancy;
- fail a Right to Rent check;
- withdraw from a property;
- fail to take all reasonable steps to enter into a tenancy agreement when you have done so.

If you consider that you have legitimate grounds to retain my holding deposit, please provide appropriate evidence to support your claim by giving reference to the above criteria.

Where this is not the case the holding deposit is required to be returned to me within 7 days of the:

a) date the tenancy agreement was signed;

b) the date the landlord decided not to enter the agreement; or

c) the deadline of the agreement.

If you fail to return my holding deposit or provide appropriate evidence to explain why you are withholding my deposit, or I will pursue this matter via the relevant enforcement authority or First-tier Tribunal.

I look forward to hearing from you soon.

Yours sincerely,

DEFAULT FEES

Re: Default fees under the Tenant Fees Act

I am writing to **[request the return of the £X I was charged as a default fee] [challenge the default fee I have been charged]** **[delete as appropriate]** in relation to my tenancy agreement at **[insert property address].**

Under the Tenant Fees Act you are prohibited from requiring me to make certain payments in connection with a tenancy.

Whilst you are permitted to charge me a fee in the event of my default, the payment must be required under the tenancy agreement, the amount charged cannot exceed your reasonably incurred costs and these costs must be evidenced in writing.

[delete as appropriate]

[I do not believe that my tenancy agreement allows for such fees to be charged].

[Under the requirements of the Act, please could you provide evidence to justify that the costs incurred were reasonable.]

Please could you **[provide appropriate written evidence to support the charge] [return the charge within XX days from this date]** **[delete as appropriate]**, or I will pursue this matter via the relevant enforcement authority or First-tier Tribunal.

I look forward to hearing from you soon.

Yours sincerely,