

## Tenancy Deposit Schemes: Deposits by instalment

*Held: "The statutory scheme was implemented to prevent unscrupulous landlords retaining deposits for their own purposes and/or refusing to return the money. This was not the situation here. The scheme was complied with once at the outset and did not need to be complied with on each occasion when an instalment of the deposit was received."*

### BACKGROUND

*Sections 212-215 of the Housing Act 2004 require that deposits taken under assured shorthold tenancies must be held in accordance with an "authorised scheme" and that landlords must comply with the "initial requirements" of such schemes: within 14 days of receipt, the deposit must be placed in escrow or insured and the landlord must send to tenants certain prescribed information concerning the deposit and their rights.*

*Sanctions for non-compliance are severe: notices served under section 21 of the Housing Act 1988 are deemed invalid and the courts must order the landlord to repay three times the deposit by way of penalty.*

*The relative infancy of Tenancy Deposit Schemes means there is no authority from the Senior Courts as to the interpretation of the Act. A great deal of uncertainty exists which is being eroded only by the slow progression of cases through the county courts.*

### RECENT CASE LAW

*Against this background of legislative uncertainty, the case of the Trustees of the Ash Tree Trust v Taylor & Taylor was heard at Hastings County Court on 27 October 2009.*

#### *The facts*

*The Claimant leased a cottage to the Defendants under an assured shorthold tenancy for a fixed period of six months. A deposit was due at the outset but, in breach of covenant, only half was paid. The requirements of the 2004 Act were complied with. After the expiration of the tenancy, a statutory periodic tenancy arose and a third party paid the balance of the deposit. The funds received were deposited with an authorised scheme (The Dispute Service) but the initial requirements of the scheme were not complied with. A section 21 notice was served but it was argued to be invalid due to the Claimant's alleged breach of Chapter 4 of the 2004 Act in respect of the second half of the deposit. The Defendant counterclaimed for three times the whole of the deposit.*

### *The arguments*

*Thomas Evans, instructed by Adams & Remers for the Claimant, argued that the Act did not apply to the second half of the deposit as it was paid after the expiry of the assured shorthold tenancy. It was therefore paid in respect of the statutory periodic tenancy and not "in relation to a shorthold tenancy" (section 212(8)).*

*Alternatively, if the 2004 Act did apply then it was complied with once at the outset of the tenancy and did not need to be complied with on receipt of each deposit instalment. This would be wasteful and of no benefit (for example, the prescribed information sent on each occasion would be the same). Further, the statutory scheme does not consider the possibility of a deposit being paid by instalment - it refers to deposits in the singular and to initial requirements. Section 215 does not state whether the penalty for non-compliance should be an award of three times the full deposit or only three times the relevant instalment.*

*The Defendant contended that the 2004 Act applies both to statutory periodic tenancies and to assured shorthold tenancies. Further, it must be complied with on all occasions when part of a deposit is received otherwise an unscrupulous landlord could circumvent the scheme.*

### *Judgment for the Claimant*

*The statutory scheme was implemented to prevent unscrupulous landlords retaining deposits for their own purposes and/or refusing to return the money. This was not the situation here. The scheme was complied with once at the outset and did not need to be complied with on each occasion when an instalment of the deposit was received. The Claimant was awarded vacant possession and the Defendant was granted permission to appeal (which has not been exercised).*

*Thomas Evans*

*T 020 7583 9020*

*E [tevans@hendersonchambers.co.uk](mailto:tevans@hendersonchambers.co.uk)*

*Henderson Chambers*

*2 Harcourt Buildings, Temple*

*London EC4Y 9DB*

*T 020 7583 9020 F 020 7583 2686*

*E [clerks@hendersonchambers.co.uk](mailto:clerks@hendersonchambers.co.uk)*

*DX 1039 Chancery Lane*

*[www.hendersonchambers.co.uk](http://www.hendersonchambers.co.uk)*