

DISPUTE RESOLUTION
MECHANISMS
in relation to deposit retention

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Preface

In 1999, the Minister for Housing and Urban Renewal established the Commission on the Private Rented Residential Sector. The Commission Report was published in 2000 and one of the key recommendations was the establishment of a Private Residential Tenancies Board (PRTB).

The PRTB was established as an independent body on a statutory basis on 1 September 2004 following the enactment of the Residential Tenancies Act 2004 (RTA). It has 3 main areas of activity: the operation of a national registration system for all private residential tenancies; the operation of a dispute resolution service; and the provision of information, the carrying out of research and the provision of policy advice regarding the private rented sector.

Under the RTA the PRTB is empowered to establish committees to assist and advise it on matters relating to any of its functions. Following its appointment in 2005, the Research Committee of the Board identified two areas of concern in relation to the applications for dispute resolution. One was the very high proportion of applications coming before the Board concerning deposit retention, and the relatively high cost of processing these applications. The second was the possible ambiguity surrounding the concept of ‘anti-social behaviour’, which can be the subject of a complaint to the Board under the Act in certain circumstances. In relation to both topics, the Board sought information on how other jurisdictions with a private rented housing sector of a similar scale managed these issues. Invitations to tender for these comparative studies were invited. This was managed by the Centre for Housing Research on behalf of the Board. Candy Murphy and Associates were successful in being awarded the contract for both projects. The views expressed in the reports are therefore the views of the consultants and not the PRTB. We believe that these comparative overviews offer a diversity of options that need to be explored further, in particular their potential applicability to Ireland, and we commend the consultants for providing us with such a comprehensive overview.

The PRTB now seeks submissions from interested parties in relation to both of these topics. This report deals with the issue of Deposit Retention and another separate report deals with the topic of Third Party Complaints Regarding Anti-Social Behaviour. We hope that by publishing these comparative overviews, we can both initiate and inform a constructive debate that can allow a consensus to emerge on how best to move forward on these issues.

Dr. Eoin O’Sullivan, Chairperson,
Research Committee of the Private Residential Tenancies Board.



Literature review

**Rent deposit retention initiatives
in selected countries**

Introduction

This review examines initiatives in the area of rent deposit and rent deposit disputes.

Such initiatives were found in the following countries:

- England and Wales
- Norway
- Australia
- New Zealand
- Canada

Scotland and British Columbia are also considering introducing such schemes. The arguments being put forward for such arrangements in these countries are described in the Appendices at the end of the report.

No evidence of similar initiatives was found in the other countries that were examined on the advice of the Private Residential Tenancies Board (PRTB). Central European countries, such as Greece and Spain, were found to continue to rely on the courts to resolve rent deposit disputes. A number of such countries are in the process of moving away from controlled rental arrangements to a more market-orientated system. Further initiatives may follow but have not occurred as yet.

Interestingly a number of countries with such initiatives, e.g. Norway, undertook the changes at the time that rent controls were being removed. Landlords in those countries were therefore encouraged to engage with third party deposit retention arrangements at a time when they were being freed to operate market rents. These findings highlight the importance of placing international practices within the historical context in which they arise.

All the countries found to have introduced Alternative Dispute Resolution procedures in the private rented sector had also introduced some form of third party deposit retention arrangements. Both these issues are therefore examined in the international review.

A summary of the findings is shown in Table 1.

Table 1. International Comparison of Rent Deposit Arrangements

COUNTRY	REGISTRATION OF LANDLORDS	RENT DEPOSIT RETENTION BOARD	TYPE OF RENT DEPOSIT SCHEME	SCHEME ADMINISTRATOR	AVERAGE LEVEL OF RENT DEPOSIT	DISPUTE RESOLUTION BOARD
Ireland	Yes	No	None		1 month's rent	PRTB
England/Wales	No	Tenancy deposit schemes will become compulsory by 6 April 2007	Custodial or insurance-based schemes	The Independent Housing Ombudsman	1,000 euro (£695)	All tenancy deposit schemes will be required to provide facilities for disputes to be resolved through an Alternative Dispute Resolution (ADR) service, involving Mediation The option of going to court will remain but this will be at the cost of the party bringing the claim
Norway	No	No	Pilot deposit retention and dispute resolution scheme set up in Oslo and Askerhus in consultation with landlords and tenants groups. To be expanded to rest of country on a local basis. Deposit held in bank account, administered by the bank. Landlords open the account but it is in the tenant's name and can be used for other purposes by the tenant	Designated Bank	3 months' rent is average. 6 months' is maximum allowed	Rent Disputes Tribunal
Australia: NSW	No	The Rental Bond Board	Custodial scheme which invests bond monies	Office of Fair Trading, Renting Services	4 weeks' rent – unfurnished 6 weeks' rent – furnished below 250 dollars; above 250 dollars per week no maximum	Consumer, Trader and Tenancy Tribunal

Table 1 contd. International Comparison of Rent Deposit Arrangements

COUNTRY	REGISTRATION OF LANDLORDS	RENT DEPOSIT RETENTION BOARD	TYPE OF RENT DEPOSIT SCHEME	SCHEME ADMINISTRATOR	AVERAGE LEVEL OF RENT DEPOSIT	DISPUTE RESOLUTION BOARD
New Zealand	No	Tenancy Services Centre	Custodial scheme	Department of Building and Housing	4 weeks' rent maximum	Tenancy Tribunal
Canada: Alberta, Manitoba, the Northern Territories, Nova Scotia and Nunavut	No	Tenancy Tribunal	Deposits held in bank, treasury branch, credit union or trust company by the landlord and returned with interest		Varies by province but none more than 1 month	Tenancy Tribunal
New Brunswick	No	Office of the Rentalsman	Custodial scheme	Office of the Rentalsman	Varies by province but none more than 1 month	Office of the Rentalsman
Newfoundland/ Labrador	No	Residential Tenancies Section	Custodial scheme	Residential Tenancies Section	Varies by province but none more than 1 month	Residential Tenancies Section
Netherlands	Private landlords are registered with the Chamber. Small private dwellings are not registered	None	None		One to 3 months' rent	

* No information could be obtained on Finland or Austria



Dispute resolution mechanisms in relation to deposit retention
Initiatives in selected countries

ENGLAND AND WALES

THE PRIVATE RENTED SECTOR

The private rented sector currently accounts for about 11 per cent of households in England, totalling around 2.3 million tenancies and 9 per cent in Wales, totalling 115,000 tenancies (DETR, 2005). The Housing Act 1988 brought about the deregulation of tenancies and the ability for landlords to let on a shorter-term basis via the assured short-hold tenancy. This gave tenants less security of tenure and landlords greater control over their properties. The Housing Act 1996 made the assured short-hold tenancy the default private sector tenancy. This resulted in short-term lets of only six months becoming commonplace. With assured short-hold tenancies making up 63 per cent of all private sector tenancies, turnover is therefore very high, currently standing at around 40 per cent per annum (DETR, 2005).

England and Wales are in the process of making major changes in the way the private rented sector operates under the Housing Act 2004. These are described below.

BACKGROUND TO CURRENT RENT DEPOSIT LEGISLATION

Traditionally a rent deposit was not a legislative requirement in the UK. Prior to the provisions within the Housing Act 2004 the word 'deposit' in relation to a rented property did not feature in any Act of Parliament. It is in fact a practice

that has developed purely through frequent use by landlords. The Survey of English Housing 2001-02 (DETR, 2003) recorded that around 70 per cent of private rented sector tenants are required to pay some form of monetary deposit at the start of their tenancy. This can amount to a significant sum of money for tenants to pay 'up front' prior to moving into a property. The average deposit is around £477, and is likely to rise in line with rents (ODPM, 2005).

The 2003-2004 Survey of English Housing provides the most consistent, reliable and large-scale picture of the private rented sector (DETR, 2005). This survey revealed that of those who had paid a deposit, 70 per cent had their deposit returned in full, 19 per cent had their deposit returned in part and 11 per cent did not have their deposit returned at all. Of those tenants who did not have their deposit returned in full, 21 per cent said the landlord was justified in withholding as much of the deposit as he/she did, 21 per cent said the landlord was justified in withholding some of the deposit, and 58 per cent said the landlord should not have withheld any of the deposit.

The most common reasons for the non-return of all or some of the deposit was to cover the cleaning of the property after the tenant had moved out or to cover damages caused to the property by the tenant. According to the Survey of English Housing 2003-04 (DETR, 2005), of those who were given a reason, 35 per cent were told it was for cleaning, 26 per cent for damages, 7 per cent for unpaid rent, 5 per cent to cover other bills left unpaid by the tenant, and 25 per cent were told it was for various other reasons. However, 16 per cent were given no reason by their landlord or letting agent as to why they did not get their deposit back in full.

Currently, if a tenant considers that his/her deposit has been unfairly withheld, his/her only redress is to seek to recover it through the small claims court. However, this is often a long and cumbersome process. The average length of time taken to hear a small claim in 2004 was 25 weeks (DCA, 2004). The tenant was also required to pay a fee. For the average deposit amount of £477 this would be £50. Potentially the tenant would pay a further £50 to have the claim enforced with a warrant of execution. Anecdotal evidence suggests that these factors have been off-putting to tenants and can often lead to them failing to pursue what they believe is a genuine claim on the deposit (ODPM, 2005).

Landlords also report that the issue of rent deposits can be problematic for them. As part of their evaluation of the pilot tenancy deposit scheme, York University asked around 200 landlords not participating in the pilot how often they encountered difficulties with deposits. One third (33 per cent) of landlords reported encountering problems sometimes or all the time (DETR, 2002). The most recent data on landlords is the Private Landlords Survey 2001, carried out as part of the English House Conditions Survey (ODPM, 2001). This asked around 600 private landlords how often they had to make some form of deduction from the deposit at the end of the tenancy; 16 per cent reported that they had to make deductions 'frequently', 'often' or 'always' and around a third reported they had to make deductions 'sometimes'.

CURRENT RENT DEPOSIT LEGISLATION

In 2002 the UK Government issued the consultation paper *Tenancy Money: Probity and Protection*, which considered a range of both statutory and non-statutory options to safeguard tenancy deposits (DTLR, 2002).

The responses to the consultation paper showed that the majority of respondents recognised that deposits were necessary for landlords to guarantee good behaviour on the part of their tenants. However, they were in favour of some form of tenancy deposit protection. There was some division on the form this protection should take. Most landlords and agents favoured a voluntary approach, whereas tenants and their representative bodies felt strongly about the need for Government to intervene.

PILOT TENANCY DEPOSIT SCHEME

A pilot scheme to safeguard tenants' deposits and provide independent adjudication in cases of disputes was launched as the Tenancy Deposit Scheme (TDS) in March 2000. This was administered by the Independent Housing Ombudsman. It was a voluntary scheme, established to offer landlords the opportunity for a self-regulatory approach to deposit protection, as opposed to it being prescribed by Government in legislation.

In February 2002, the then Housing Minister Lord Falconer noted the slow take-up of the pilot scheme and suggested that there was a 'strong case for legislation on tenancy deposits'. He stated: 'Landlords are very strongly advised to lend their support to the pilot now, so that in advance of legislation there is a proven alternative to regulating the use of tenancy deposits' (13 February 2002 in response to a parliamentary question from Lord Best).

An independent evaluation of the Tenancy Deposit Scheme concluded that a national voluntary scheme would have little impact within the private rented sector, as take-up of the pilot had been disappointing, and a voluntary scheme would attract only operators with existing good deposit management systems.

The evaluation noted that tenants tended to anticipate difficulties with deposits, particularly as many had previously experienced the non-return of a deposit. By contrast, landlords and agents viewed the management of deposits as unproblematic (DETR, 2002).

THE HOUSING ACT 2004

The responses to the 2002 consultation paper and the poor take-up of the pilot scheme led the UK Government to conclude that legislation would need to be introduced to protect tenancy deposits, and such provisions were introduced through the Housing Act 2004.

The Housing Act 2004 does not require a landlord to take a deposit when renting out a property. However, as landlords usually do take deposits and are likely to continue to do so, the Act is aimed at ensuring that where a landlord chooses to take a deposit, that deposit is safeguarded.

The tenancy deposit provisions in the Housing Act 2004 aim to give protection to tenancy deposits for the majority of private sector tenancies. These provisions are aimed at removing the risk of misappropriation of tenants' deposits by landlords and letting agents.

Section 212(1) of the Housing Act 2004 places the UK Government under a duty to make arrangements for securing that one or more tenancy deposit schemes

are made available to safeguard all new deposits paid in connection with assured short-hold tenancies. Tenancy deposit schemes will be compulsory by 6 April 2007 (ODPM, 2005).

TENANCY DEPOSIT SCHEMES

Section 212(2) of the Housing Act 2004 sets out two main purposes of tenancy deposit schemes. These are:

- To safeguard tenancy deposits paid in connection with assured short-hold tenancies
- To facilitate the resolution of disputes arising in connection with such deposits.

Schedule 10 of the Act allows for two different types of tenancy deposit schemes – a custodial scheme and an insurance-based scheme. In a custodial scheme deposits are paid into and held in a separate account operated by the scheme administrator. In an insurance-based scheme the landlord retains the deposit (unless required by the scheme administrator to pay a disputed amount into the scheme's designated account) and any failure on the landlord's part to repay it to the tenant is covered by the scheme's insurance arrangements. It is intended that there will be one custodial-type scheme and one or more insurance-based type scheme(s) available (ODPM, 2005).

Custodial Scheme

Under a custodial deposit scheme, the deposit is held by a third party rather than by the landlord. The scheme will be run and managed by a private organisation, known as the 'scheme administrator', which will contract with the Government to run the scheme.

The custodial scheme will be available to all landlords and there will be no fee payable for its use. Under the custodial scheme, all deposits will be held in a single designated bank account, which is managed by the scheme administrator.

At the start of the tenancy, the tenant will still pay his/her deposit to his/her landlord as happens now. However, instead of the landlord retaining the money, he/she will be required to pay it into the designated bank account. The deposit money will then remain in that account until it is dealt with in accordance with the scheme at the end of the tenancy. The Act provides that the interest generated by the deposits in the designated account may be retained by the scheme administrator. However, it also provides that the arrangements for the scheme may allow for interest to be paid to the tenant on the amount being repaid to him/her, at a rate specified by the Government.

At the end of the tenancy, both the tenant and landlord can notify the scheme administrator that they have agreed on how the deposit is to be split between them. If the scheme administrator is satisfied that such an agreement has been reached, the scheme will pay out in line with this.

The agreement may have been reached through discussions held between landlord and tenant as a result of the parties having used the Alternative Dispute Resolution (ADR) service which the scheme offers (ODPM, 2005).

Landlords will register with the scheme provider but information regarding the registration cannot be passed on to a third party.

Insurance-Based Scheme(s)

While in the custodial scheme the money is held by a third party, under an insurance-based scheme the landlord continues to hold the deposit. However, he/she must pay a premium to one of the scheme providers to cover any potential insurance claim. The amount of this is not yet agreed. Landlords who wish to use the insurance-based scheme will be assessed by the insurance providers. If they are considered a potential risk they may not be allowed to participate in the insurance-based scheme.

If at the end of the tenancy there is no dispute, the landlord returns the agreed amount of deposit to the tenant. However, if there is a dispute at the end of the tenancy, the landlord is required to transfer to the administrator the part of the deposit amount that is under dispute. That may be the whole deposit amount or could just be part of the deposit.

The landlord must transfer the disputed amount within 10 days of being directed to do so by the scheme administrator. Once the disputed amount has been transferred to the scheme, it will then operate in much the same manner as the custodial scheme, with the administrator holding on to the disputed amount until the dispute is settled. The landlord and tenant also have the same options available to resolve the dispute as when the deposit is protected by a custodial scheme. Either they can try to reach agreement between themselves or through the Alternative Dispute Resolution service which the scheme offers, or one party can seek a court order to resolve the dispute (ODPM, 2005).

Alternative Dispute Resolution (ADR) Service

All tenancy deposit schemes will be required to provide facilities for disputes to be resolved through an Alternative Dispute Resolution (ADR) service. The aim is for such a service to provide a cheaper, speedier and more user-friendly way in which tenants and landlords can resolve disputes over deposits, without needing to resort to the courts. This involves each scheme providing free, voluntary mediation services to tenants and landlords who are in dispute about rent deposits.

However, if the landlord and tenant cannot reach agreement over the deposit, and cannot or will not use ADR, either party will need to obtain a court order to get the deposit paid to them. In this instance, the scheme administrator will retain the deposit until either the tenant or landlord obtains a final court order specifying the proportion of the deposit to which each is entitled (ODPM, 2005).

ESTIMATED COSTS OF TENANCY DEPOSIT PROTECTION IN THE UK

A Partial Regulatory Impact Assessment (RIA) of the proposed tenancy deposit protection scheme in the UK estimated the following in terms of financial costs:

- (1) Administration and fund management costs. These costs would be met by the scheme administrator, by using interest gained on the deposits in the case of the custodial scheme and by charging membership fees to landlords or letting agents in the case of insurance-based schemes
- (2) Publicity costs. These would be met by the Government.

There would be no direct costs to tenants.

Administration and Fund Management Costs

The largest cost component of tenancy deposit schemes is that of administration and fund management. For the custodial scheme, this relates to the cost of signing deposits in and out and managing the funds. For insurance-based schemes, it relates to the cost of registering deposit details and covering the insurance premium. It is unclear how much this will cost although it is expected to be between 1 per cent and 3 per cent of the value of the deposit, i.e. between approx. £5 and £14 per deposit per year.

There are likely to be differences between the costs of the two types of scheme. Because a custodial scheme may entail more administration, it is likely to be more expensive. In addition, the spread of deposits protected between the two types of scheme will be an important factor. The RIA, published alongside the provisions in the then Housing Bill in September 2004, assumed that 80 per cent of deposits would be protected by a custodial scheme and that 20 per cent would be protected by insurance-based schemes.

Table 2 shows a range of possible costs of safeguarding the £768m of tenants' deposits with tenancy deposit schemes. It assumes that 80 per cent of deposits are in the custodial scheme and that 20 per cent are in the insurance-based schemes. The overall cost of the scheme is also set out (ODPM, 2005).

Table 2

ASSUMPTIONS		COST		
Insurance/ Trade Cost as % of Deposit	Custodial Cost as % of Deposit	Insurance Cost per Year	Custodial Cost per Year	Total Cost per Year
3%	3%	£4,607,820	£18,431,280	£23,039,100
2%	3%	£3,071,880	£18,431,280	£21,503,160
2%	2%	£3,071,880	£12,287,520	£15,359,400
1%	3%	£1,535,940	£18,431,280	£19,967,220
1%	2%	£1,535,940	£12,287,520	£13,823,460
1%	1%	£1,535,940	£6,143,760	£7,679,700

Publicity Costs

The tenancy deposit protection arrangements in the proposed UK scheme are designed to be enforced by tenants. To ensure this system works, the public will need to be informed about the introduction of the scheme. Publicity surrounding the introduction of the scheme will be expected to cost the Government at least £345,000, arbitrarily assuming a cost of £0.15 per tenancy. It is estimated that it will take a number of years for all deposit-paying tenants to become members of the tenancy deposit scheme and that therefore costs will be higher in the first few years than in subsequent years (ODPM, 2005).

Benefits of Tenancy Deposit Protection

The Office of the Deputy Prime Minister (2005) has outlined the overall benefits of tenancy deposit protection as follows:

- (1) **Return of deposits** This will be a direct benefit to those tenants whose deposits are currently withheld
- (2) **Small claims court savings** This will be of benefit to tenants who currently have to pay a fee to gain an unfairly withheld deposit
- (3) **Warrant of execution savings** This will be of benefit to tenants in a situation where a warrant is required to obtain a deposit from a landlord who does not comply with any court order made in the tenant's favour regarding the deposit
- (4) **Additional interest earned on deposits** This will be of benefit to tenants whose deposit is safeguarded by a custodial scheme; currently they do not receive any interest on their deposits. This may also be of benefit to some landlords who have the deposit returned to them at the end of the tenancy, as they may earn a higher rate of interest than they would have otherwise received.

MONITORING

The new arrangements will be monitored by the Department of Housing and amended if required after three years. Issues such as changes in the level of deposits required will be closely monitored.



Dispute resolution mechanisms in relation to deposit retention
Initiatives in selected countries

NORWAY

THE PRIVATE RENTED MARKET

The private rented market is relatively small in Norway as most homes are owner-occupied. In Oslo just under 30 per cent of dwellings are private rented, compared to 23 per cent throughout Norway. Almost 50 per cent of landlords in Oslo are described as 'Private persons'. Such landlords are not required to register. Until relatively recently rental price regulation was in operation in Norway. This was removed in tandem with the establishment of the Rent Dispute Tribunal, described below.

RENT DEPOSITS

In Norway the landlord will usually require the tenant to provide a deposit (*Kaution*), although this is not compulsory. Where a deposit is taken it must be placed in a deposit account, administered by the bank and returned when the tenant ends the rental agreement. The account is held in the name of the tenant who is renting and is 'closed' by the tenant. Nobody, therefore, can touch the account without the agreement of both parties or with a legal order. The tenant can however use the account for other purposes both during and after the tenancy agreement is concluded.

The deposit is calculated from net rent plus utility cost plus 10 per cent, multiplied by between three and five. The landlord has a legal right to ask for

six months' rent as a deposit, but this is the maximum amount covered by the law. The average deposit is three months' rent which correlates with the average length of time it takes to settle disputes.

When tenants are renting from an agency, a commission of three months' rent is required for the service. It is calculated from net rent plus monthly utility costs multiplied by three, plus 20 per cent tax. Tenants do not receive back this commission and are still required to make a deposit.

THE RENT DISPUTES TRIBUNAL

The Rent Disputes Tribunal (*Husleie Tvist Utvalget – HTU*) was established by the Ministry of Local Government and Regional Development in 2001.

The Rent Disputes Tribunal (HTU) is an alternative to the Conciliation Court and the courts for the purpose of resolving disputes between landlords and tenants of residential property. Unlike the Conciliation Court, the HTU employs conflict-solvers, with legal training and special knowledge of rent law. Conflict-solvers also have special training and experience in conflict resolution.

Functions of the Rent Disputes Tribunal

The HTU deals with disputes between landlords and tenants of residential accommodation, and can both mediate and take decisions in disputes. However, disputes over the lease of commercial premises and holiday homes fall outside the scheme.

Procedure

Both landlords and tenants can bring cases before the HTU via a complaint that describes the issue in dispute. The HTU will send the complaint to the other party, who will be given a short deadline for comment. After this, both parties are called into a mediation meeting before the HTU. Attendance is voluntary. A case officer will attempt to help the parties reach agreement on a solution. If they do, a conciliation settlement is made.

If mediation is refused or is unsuccessful, the case officer, together with two other tribunal members appointed by the respective Norwegian landlords' and tenants' associations (*Huseiernes Landsforbund* and *Norges Leieboerforbund*), will make a ruling on the case. The dispute is then adjudicated on a legal basis. The HTU estimates that 60 per cent of disputes are settled at mediation and the remaining 40 per cent at the tribunal.

Conciliation decisions have the same legal effect as an enforceable judgement, unless the case is brought before the District Court (*Tingrett*) within one month.

Speed of dispute resolution

The HTU aims to offer mediation within one month of the case being brought.

Form of the Complaint

To be heard, the complaint or petition must include:

- The names and addresses of the parties
- The address of the rented accommodation involved in the dispute
- A short description of the case
- A description of the results the parties desire (statement of claim)
- The signature of the complainant
- A receipt for the fee paid to the HTU
- Copies of any documents in the case that illuminate the dispute
- A copy of any contract of lease.

Cost

The party requesting the dispute resolution must pay a fee of 860 Norwegian Kroner (1 x 'R') in advance to the Rent Disputes Tribunal. The court fee ('R') is fixed by the *Storting*, the Norwegian parliament, once a year.

A representative from the Norwegian housing sector believes that the current procedures and structures in relation to the Rent Disputes Tribunal are cost effective: 'The new tribunal is low cost and the fee is kept to a minimum also, so poor tenants have a possibility to be heard, and [it is] also [suitable] for disputes that are of a low value. The disputes are won 75 per cent in favour of the landlords and 25 per cent in favour of the tenants; both parties are very happy with the system.'

LEVEL OF DISPUTES

The Norwegian expert believes the amount of disputes coming before the Rent Disputes Tribunal in the area of rent deposit retention is increasing. However, he feels this is due to improved access to the system by tenants and landlords rather than to an actual increase in disputes. He noted that state-funded tenants seem to be more involved in such disputes than others.

PERSPECTIVE OF LANDLORDS AND TENANTS

Both landlords and tenants are satisfied with the current system in relation to rent deposits, according to the Norwegian expert. The current system is working well because, 'It is fast, easy and the tribunals have knowledge of the problems and [of the] law.'

The Norwegian expert believes that the operation of the dispute mechanism and the third party holding of rent deposits through the banks are intrinsically linked and that neither would work as effectively on their own.

He believes that landlords would like to have the right to charge tenants for the administration fees involved. This issue is currently under consideration in Norway.



Dispute resolution mechanisms in relation to deposit retention
Initiatives in selected countries

AUSTRALIA

RENT DEPOSIT SCHEMES IN AUSTRALIA

A statutory custodial deposit scheme was first introduced in the Australian state of New South Wales in 1977. This model has now been successfully implemented regionally in the states of Queensland and Victoria. The model has attracted minimal criticism and the government reports that the schemes have widespread acceptance within the residential rental industry and have not acted as a disincentive to private renting.

In New South Wales (NSW), tenants pay a bond as a security at the start of a tenancy, in case they do not follow the terms and conditions of the residential tenancy agreement. For unfurnished premises the maximum bond is four weeks' rent. For furnished premises where the rent is less than \$250 per week, the maximum bond is six weeks' rent. For furnished premises where rent is \$250 or more per week, there is no maximum bond.

The landlord/agent provides the tenant with a 'Bond Lodgement' form which contains details about how much bond he/she has paid. This form is signed by the tenant and the landlord/agent. The landlord/agent must then lodge this form and the bond with the Renting Services section of the Office of Fair Trading. Renting Services sends the tenant an advice slip and a rental bond number. It is an offence not to lodge a bond, for which a landlord/agent can be fined up to \$2,200.

RENTAL BOND BOARD

The Rental Bond Board in New South Wales operates the independent custodial function of accepting and investing bond monies paid by tenants, and refunds them at the end of a tenancy. The lodgement/refund service is provided by the Office of Fair Trading. Rental bonds are invested primarily in fixed interest securities, with a proportion in cash. The Board has discretion on investment management and it out-sources this function to the NSW Treasury Corporation (TCorp), where the majority of funds are directly managed in a fixed interest portfolio (The Rental Bond Board Facility). The balance is held in TCorp's Cash Facility.

Interest accrued on bonds is paid to the tenant when the money is returned. Interest is credited to the bond amount each month, based on the minimum balance held during the month. The interest is compounded each June and December and the rate of interest is equivalent to the amount payable to the Commonwealth Bank of Australia on a Streamline Account balance of \$1,000.

Key indicators used by the Rental Bond Board include:

- **Prompt refunds**, which is an important aspect of quality customer service (The target rate of rental bonds refunded within published service standards is 98 per cent)
- **Prompt banking**, which affects the interest earned, impacting both customers and funds management (The target rate of rental bond lodgements receipted and banked on the day received is 95 per cent)
- **Return on investment and the achievement of unqualified financial statements** (NSW Office of Fair Trading, 2005).

Getting a Bond Back

In New South Wales, tenants can get their bond back at the end of the tenancy by filling in a 'Claim for Refund of Bond Money' form. If the tenant and landlord agree about the return of the bond money, the tenant can get his/her money back through the tenant and landlord signing a completed form.

If both parties sign the form, the tenant can get the bond back through:

- Going directly to Renting Services and receiving a cheque over the counter
- Posting the completed form to Renting Services which then electronically transfers the bond to a nominated bank account within two working days, or send a cheque within a week
- Transferring the bond money to the tenant's new tenancy. In this case, tenants need to complete a transfer of bond form and make sure it is signed by any other tenants (in whose name the Rental Bond Board is holding the bond) and the old landlord. Transfer of bond can only be made for the same tenants moving from one tenancy to another.

If landlords disagree about the bond refund, they must give the tenants details of any claims, together with receipts, quotes or accounts. If tenants cannot come

to an agreement with landlords, they may claim their bond by filling in a 'Claim for Refund of Bond Money' form, with the amount they believe they should be refunded from the bond, and sending it to Renting Services.

A tenant can sign the form, agreeing to the amount the landlord wants, and later claim the rest through the tribunal. The tenant will then have to explain to the tribunal why he/she signed the form. Some tenants do this because they need the money for their next tenancy and cannot afford to wait for a tribunal hearing.

Tenants can make a claim for the return of bond money up to six years after vacating a residence.

Renting Services writes to the landlord, informing the landlord that the tenant has made a claim. If the landlord/agent disagrees, he/she has to make an application to the Consumer, Trader and Tenancy Tribunal within 14 days of receiving the notice, or the bond will be returned to the tenant. The landlord/agent must inform Renting Services in writing that this has been done.

If the Landlord Makes a Claim First

If the landlord has already lodged a claim for the bond with Renting Services, the tenant must make an application to the tribunal to pay all or part of the bond to the tenant. In addition, the tenant must inform Renting Services of his/her application so that the bond can be frozen until a decision is made by the tribunal. Tenants are also advised to write to the landlord asking for an itemised statement of their claim and copies of quotes, invoices and receipts, and to keep a copy of the letter.

Since its introduction in 1977, the New South Wales scheme has proved highly successful and has been adopted by other Australian states. The scheme has achieved a high level of compliance and has not proved to be a disincentive for landlords.

The speed of refunds is impressive. Where there is no dispute the Department of Fair Trading, which administers the legislation, undertakes to repay the bond directly into a bank account within two days of the office receiving a claim, or by cheque through the post within four days. The high level of satisfaction with the scheme is demonstrated by the small number of cases that go to tribunal for resolution: only 2 per cent of bonds are subject to tribunal orders.

The following are key features of the New South Wales scheme:

- All bonds (deposits) taken on private residential properties have to be lodged with the Board within seven days of the start of the tenancy. Non-compliance is punishable by fines
- The Board is self-financing from the interest on the bonds held. The interest generated is also sufficient to pay interest on the individual bonds held and to help finance the dispute resolution mechanism
- At the end of the tenancy, either or both parties can apply to the Board for the return of the deposit. Where there is agreement by both parties as to how the deposit should be returned, the Board pays out accordingly. Where only one party applies, the Board gives the other party 14 days to state that they wish to dispute the claim, before paying out. Where the parties disagree, the matter is referred to a tribunal, with a hearing usually within two to three weeks. When the tribunal has reached a decision, the Board automatically pays out in accordance with that decision.

Interest on bond money

Bonds held by the Rental Bond Board in New South Wales earn interest. Tenants receive interest on the bond money when they receive it back at the end of the tenancy.

Change of shared tenancy

If tenants are living in shared accommodation and the household members change, names must be changed on the bond form held at Renting Services. The 'Change of Shared Tenancy Arrangement' form must be signed by the person(s) leaving, the person(s) moving in, and the landlord/agent.

Tenants cannot fill in this form if the Department of Housing has assisted them or any other tenant(s) in the house in making a contribution towards the rental bond. Also, use of this form is allowed only when at least one original household member is still living in the premises.

COST-EFFECTIVE INTERNET AND ELECTRONIC SYSTEMS

The NSW Rental Bond Board reports a preference for electronic service delivery in terms of rental bond refunds, with a decline in face-to-face and postal services. Many bond refund claims from real estate agents, landlords and tenants are received by fax. Their Rental Bond Internet Service (RBIS), which can be used by property managers, has become increasingly popular, with an increase in usage of 18 per cent in 2004-2005.

RBIS is suited to busy landlords as it provides direct access to detailed information, and provides refund and reporting facilities on rental bonds 24 hours a day, seven days a week. It is a highly secure system where property managers can only access records on their own tenancies. The NSW Office of Fair Trading reports the system as being a 'cost-effective delivery channel' which has enabled them to manage increasing transaction volumes within their staffing levels (NSW Office of Fair Trading, 2005).

Tips to avoid losing your bond

The Tenancy Advice and Advocacy Service recommends the following actions to tenants to avoid losing their bond:

- Check the premises before you move in and note any faults or repairs needed on the condition report. If you can, take photographs of the damage
- Fill in the condition report at the start and the end of your tenancy. Make an appointment to inspect the property with the landlord just after you have moved out. If the landlord won't do this, fill out the condition report yourself and get it witnessed by someone. Consider taking photos
- Keep up to date with your rent and keep all your receipts

- Give the correct notice in writing when you leave
- Don't sign a blank or incomplete bond claim form. It's illegal for the landlord to ask you to do this (Tenants Advice and Advocacy Service, Tenants Rights Fact Sheet 3: Bond).

The Tenants Union of New South Wales recommends the following actions to tenants to avoid losing their bond:

- Fill out the condition report carefully, noting any faults or repairs. Note any disagreements with the comments. The condition report should be completed and signed by both you and the landlord at the start and the end of the tenancy
- If the landlord can't or won't attend the inspection, get a friend to act as a witness and sign the report
- Take photographs of any faults or repairs needed if you think there might be a problem getting your bond back
- Look after the premises and leave them in a similar condition to when you moved in
- If you disagree about the amount of bond returned, tell your landlord you will take the bond dispute to the Residential Tenancies Tribunal if necessary.

HOW DISPUTE PROCEDURES WORK

In New South Wales, landlords and tenants apply to the Consumer, Trader and Tenancy Tribunal (CTTT) if there is a dispute in relation to the return of a deposit from the Rental Bond Board. The CTTT is a specialist, independent, accessible tribunal for the fair and timely resolution of disputes according to law. The CTTT resolves disputes at hearing or by alternative dispute resolution, generally through conciliation.

Conciliation is a confidential, private process that allows both parties to:

- Look at each other's evidence before a hearing, e.g. witnesses' statements, photographs, receipts, quotes, reports
- Consider the strengths and weaknesses in each party's case
- Talk to each other
- Understand the other person's case
- Search for options to achieve agreement they can live with.

Conciliation results in a negotiated, mutually acceptable agreement, resulting in the following:

- Parties control the result of the dispute
- There is a speedy and certain solution on the day

- A tribunal determination, after what might be a more lengthy tribunal hearing, is avoided.

The hearing is facilitated by a tribunal member or by a conciliator, who is an impartial third party. This person:

- Is trained in helping parties to achieve agreement
- Checks all necessary legal documents
- Asks questions to identify and clarify the issues that need to be resolved
- Assists parties in generating options and possible solutions in keeping with the law
- Helps write down any agreement reached by the parties
- Is not an adviser and does not make decisions for parties.

If agreement is reached by both parties they write down and sign the agreement. If this is with a conciliator the conciliator helps write the agreement and prepare a draft formal tribunal order. If no conciliator is present the written agreement is taken before the tribunal for the member to approve it in the hearing room and make a formal tribunal order.

If agreement is not reached, nothing said in conciliation can be repeated in the hearing unless the parties consent. If possible the tribunal will hold a hearing on the same day. If this is not possible the application will be decided on another day (www.fairtrading.nsw.gov.au).

GOOD PRACTICE IN DISPUTE PROCEDURES IN NEW SOUTH WALES

Good practice is seen to involve:

- Clear time-scales for listing hearings, as speed is of the essence for landlords and tenants. In New South Wales hearings are usually listed within two to three weeks
- Accessible venues within easy reach of local communities
- User-friendly procedures
- A commitment to treat all people fairly and equally, with particular attention to those with special needs
- Full information, in plain language and widely distributed, on how to use the procedure
- A clear system for complaints and redress
- Consultation with representatives of both tenants and landlords as to the appropriate body they would like to see resolving disputes.



Dispute resolution mechanisms in relation to deposit retention
Initiatives in selected countries

NEW ZEALAND

DEPOSIT OR 'BOND'

In New Zealand deposit or 'bond' money can be any amount up to a maximum of four weeks' rent. Some landlords may ask for less. The law requires that a landlord who takes a bond must lodge it with the Tenancy Services Centre within 23 working days of receiving it (Department of Building and Housing, 2004).

CHANGE OF TENANT OR LANDLORD

When there is a change of tenant, the new tenant's details must be sent to the Tenancy Services Centre. Tenants must send a completed Change of Tenant form if at least one of the old tenants remains. If all old tenants move out they must send a Bond Refund form. When there is a change of landlord, the new landlord's details must be sent to the Tenancy Services Centre, by sending a completed Change of Landlord form (Department of Building and Housing, 2004).

TRANSFERRING A BOND TO A NEW PROPERTY

When tenants move out of a property, the bond money can be transferred to a new tenancy, if the landlord agrees to release the bond. Tenants and landlord must complete a Bond Transfer form which is sent to the Tenancy Services Centre (Department of Building and Housing, 2004).

BOND REFUNDS

The Bond Refund form must be signed by both tenants and landlord for it to be returned. Tenants and landlord must state on the form the amount they agree to be refunded to each party (Department of Building and Housing, 2004).

ADVICE ON BOND REFUNDS

The Department of Building and Housing in New Zealand gives the following advice with regard to bond refunds:

- (a) Keep contact details up to date
- To avoid unnecessary delay at this stage, it is important to keep the Department of Building and Housing informed of any changes to the original people who signed the bond lodgement form
 - When the bond refund form is sent to the Department of Building and Housing, the Department checks the signatures against those held on the bond lodgement form
 - It is important to update the signature held if there is a change to either the landlord or tenant. Without this update, bond refunds will be delayed while checks are made
 - If there is a change among the tenants (with one of the original tenants being replaced by someone else) a change of tenant form needs to be completed
 - The Department of Building and Housing must also be informed of any change in the other details of landlords or tenants as supplied on the bond lodgement form (www.dbh.govt.nz).
- (b) Agree the refund amount
- Ideally both the tenant and landlord should go through the house or flat, using the property inspection report again, and check that nothing is damaged or broken. (Remember that the tenant is not responsible for normal wear and tear to the house or flat or any possessions let with it, but is responsible for any intentional or careless damage.)
 - Some or all of the bond can be claimed for anything left undone by the tenant in relation to the tenancy, such as unpaid rent, damage to the property, items missing, cleaning or gardening
 - *No claim (full refund)* – If the inspection shows everything is in order, complete the bond refund form and send it to the Department of Building and Housing for the refund of the bond money to the tenant
 - *Agreed claim (part refund)* – If there is some damage or other claim that the tenant agrees to have taken out of the bond, fill out the bond refund form to reflect this. The bond is divided, giving the landlord the cost of the repair or other claim, and the tenant the balance. For instance, if a bond is \$400 and the cost of window repairs is \$150, the bond refund form would say ‘pay tenant \$250 and pay landlord \$150’ (www.dbh.govt.nz).

RESOLVING DISPUTES

The Department of Building and Housing gives the following advice with regard to resolving disputes between tenants and landlords:

- Find out your rights and obligations under the law
- Make sure you do things at every stage of the tenancy to avoid problems, whether you are a landlord or a tenant
- If you have a problem with your landlord/tenant, the first thing you should do is talk to the person about it. The sooner you talk to your tenant or landlord about what's wrong, the easier it can be to sort it out. Be clear about what your concerns are. Say what you think a good solution might be. Sometimes writing down what the problem is can help explain it to the other person. Describe the problem carefully and give a reasonable amount of time for it to be put right
- If this doesn't work, Tenancy Services staff are available to talk it over. The staff can help with advice and information so that people can decide what to do next. Sometimes people decide to talk to each other again, or to send a letter about the problem
- If you cannot resolve the matter, trained mediators will try and help you to settle the dispute. Most cases are settled by mediation
- If the dispute is not resolved by mediation, then you can have the matter referred to the Tenancy Tribunal. If the mediator or tribunal makes an order that the other party does not meet, there are steps to take to enforce an order (www.dbh.govt.nz).

MEDIATION

Many disputes between tenants and landlords in New Zealand are resolved at the mediation stage. Mediation is a process organised by the Tenancy Services Centre to help landlords and tenants talk about and solve their problems. A mediator helps tenants and landlords discuss the problem, identify the issues, and reach a workable solution.

Mediators

Mediators are experts in the area of tenancy issues, but they do not make decisions for either party. This is different to a Tenancy Tribunal hearing where the adjudicator makes a decision and there is an outcome. A mediator does not and cannot (even if asked) choose the answer for the people concerned. Mediators are not lawyers, judges or counsellors, and are independent and unbiased.

Cost

An application fee of \$20 has to be paid for all applications for mediation.

Mediation versus tribunal

A mediation appointment can be set up more quickly than a tribunal hearing. Mediation is less formal than going to court. Mediated agreements are made with both tenant and landlord being fully informed of all their rights and responsibilities, and there is a clear understanding of what the agreement means. Tribunal hearings are conducted by the Ministry of Justice and are more formal than mediation with Tenancy Services.

Tenants and landlords reach a decision themselves. It is acknowledged that when people themselves contribute to the decision, they are likely to be more committed to making it work than to a decision imposed by someone else. Mediation is completely confidential. The results reached in mediation are legally binding and enforceable through the court system if necessary (Department of Building and Housing, 2006a).

The process of mediation

Either the landlord or the tenant can make an application for mediation through completing a Tenancy Tribunal application form, and sending it to Tenancy Services. Once an application is lodged, Tenancy Services will set up a mediation time with both tenant and landlord. This may be a phone conversation or a face-to-face meeting.

The mediator helps tenants and landlords talk with, and listen to, each other, answer any questions about renting law, and help them reach an agreement that both parties think is fair.

The mediator:

- Asks the tenant and landlord to explain their view of the situation and then helps both parties work out ways to end the dispute
- Provides information and advice where appropriate, e.g. about parts of the law if that will help the discussion
- Ensures that both parties have their say and that their behaviour is reasonable.

Once an agreement has been reached, the mediator checks that each party fully understands what he/she is agreeing to. The agreement is then usually written down as a 'mediated order' which the mediator signs. Usually the landlord and the tenant sign the order as well. Each party is given a copy of the mediated order.

A mediated order is binding and will usually state what happens if it is broken. If either party does not live up to what was agreed, the mediated order can be enforced as if it was an order of the tribunal (Department of Building and Housing, 2006a).

If agreement is not reached

If agreement is not reached, the next step is to go to the Tenancy Tribunal for a court hearing. However, depending on the circumstances of the dispute, the Tenancy Tribunal may order parties to go back to mediation and may also order them to pay costs.

THE TENANCY TRIBUNAL

The Tribunal is part of the Ministry of Justice. It uses the Residential Tenancies Act to reach decisions on problems that tenants and landlords cannot reach on their own, or through mediation (Department of Building and Housing, 2006a).

Cost

A landlord or a tenant wishing to make an application to the Tenancy Tribunal is charged a fee of \$20.

Tribunal process

A tenancy adjudicator listens to each party, hears any witnesses, examines any evidence the landlord or tenant brings, and then makes a final decision. Parties normally represent themselves and it is unusual for parties to be represented by lawyers.

There are some special cases where a lawyer would be allowed, e.g where:

- The dispute is for more than \$3,000
- A solicitor has been managing a person's affairs because of absence, age or disability
- The other side agrees or the Tribunal allows it. If one party has a lawyer representing them, the Tribunal will usually agree to the other side having one as well. In some cases, a representative can appear for a party.

A tenancy adjudicator listens to each person, hears any witnesses and evidence either side wants considered, and then makes a decision according to the Residential Tenancies Act. The adjudicator writes down the decision as a tribunal order. The landlord and the tenant are each given a copy. The adjudicator's decision is a court order that both sides have to obey.

In most cases, if the decision is simple and straightforward, the parties can get a decision immediately after the hearing. Otherwise, the decision has to be written up by an adjudicator and posted out at a later date.

Tribunal hearings are open to the public (Department of Building and Housing, 2006a).

Orders made at the tenancy tribunal

The Tenancy Tribunal can award compensation, or order that work be done up to a value of \$12,000. Claims for more than this can be filed through the District Court.

There are a variety of orders that can be made, but the most common are possession orders, monetary orders and work orders. Any order the Tenancy Tribunal can make can also be made in mediation.

Possession order

This involves the termination of the tenancy. If the tenant does not fulfil his/her legal obligations and the situation is serious enough, the landlord can apply to have the tenant evicted from the property. This can happen if the tenant is:

- More than 21 days behind in the rent
- Substantially damaging the property or threatening to do so
- Assaulting the landlord or the landlord's family or agent, other tenants or neighbours; or threatening assault
- Breaking the tenancy agreement, when the landlord has given at least 10 working days' notice to put matters right and the tenant has not.

If a landlord has given a tenant a 10-working-day letter to get rent paid up to date, and by the time the case is heard in mediation or by the Tenancy Tribunal the rent is 21 days or more in arrears, the matter will be treated as a serious breach.

Monetary order

This is an order that a landlord or tenant must pay money to the other party. For example:

- Payment of rent arrears or refund of overpaid rent
- Payment for damage, cleaning, gardening or rubbish removal
- Reimbursement of costs, such as urgent repairs
- Payment of exemplary damages (this is something like a fine) for legal breaches such as not paying the bond to tenancy services, seizing a tenant's goods or denying legal access
- Payment of compensation for loss of goods or loss of use through poor repair.

Work order

Orders may be agreed to, or made by, the Tenancy Tribunal, that a person must do work to remedy damage, lack of repair or maintenance. If the work order is not complied with, the person may be ordered to pay money instead.

Alternative orders

An agreement or order can say what will happen if the order is not complied with. For example, an order for the return of goods can require monetary payment if the goods are not returned.



Dispute resolution mechanisms in relation to deposit retention
Initiatives in selected countries

CANADA

PRIVATE RENTAL MARKET

In some areas of Canada, such as Vancouver, North Vancouver District and City, and New Westminster, over 50 per cent of residents rent their accommodation; and half a million, or one-third of all households in British Columbia, rent. Rents are very high in Canada, with British Columbia paying the highest rents, and tenants spending at least 30 per cent of their gross annual income on housing (TRAC, 1998).

RENT DEPOSITS

Rent deposits in Canada vary from state to state. In most jurisdictions, landlords can ask for a security deposit, which is usually equal to one month's rent.

Alberta

The landlord must deposit all security deposits in an interest-bearing trust account, in a bank, treasury branch, credit union or trust company within two business days of collecting them. Interest must be paid to the tenant annually at the end of each tenancy year. Alternatively, it may be compounded annually and paid to the tenant at the end of the tenancy if both the landlord and tenant agree in writing.

Manitoba

The security deposit is held by the landlord. Landlords are required to forward security deposits or rent overpayments to the province if they are unable to return them directly to the tenant. Tenants may then apply to the province for their money.

New Brunswick

Deposits are paid to the Office of the Rentalsman. The Rentalsman holds security deposits collected by landlords in the province and ensures their return, if applicable. Landlords have seven days after the tenant moves out to make a claim to the Rentalsman to access security deposit funds for damage, cleaning or rent owing. If no claim is made, the money is returned to the tenant from the Office of the Rentalsman.

Newfoundland and Labrador

Landlords must deposit rent deposits in a trust account within two days of receipt. The security deposit must be refunded to the tenant within 15 days of moving out or the landlord may apply to the Residential Tenancies Section to keep some or all of the deposit. If there is a dispute over the deposit refund, either the landlord or the tenant may apply to the Residential Tenancies Section for the security deposit. The interest rate on the security deposit is calculated as simple, not compound, interest.

Nova Scotia

Landlords must hold security deposits in a trust account. The landlord has to return the deposit with 1 per cent per year interest at the end of the tenancy. If landlords want to keep some or all of the deposit, they must apply to Residential Tenancies for permission.

Ontario

In Ontario landlords can collect a rent deposit but they cannot use the money to cover damages to the rental premises.

Quebec

In Quebec the landlord cannot ask for a deposit.

INTEREST

All tenants in Canada are entitled to the return of their rent deposit with interest when they move out. If the deposit is used to pay the last month's rent, then no money is refunded. However, if a provincial authority holds the deposit or the tenant pays the last month's rent, the tenant will receive a refund. It is common for the accumulated interest to equal the difference between the monthly rent at the beginning and end of the tenancy. Calculation of interests varies from state to state (CMHC, 2005).

GETTING RENT DEPOSITS BACK

Landlords in Canada cannot keep a tenant's deposit or charge for additional repairs to the rental premises. They must negotiate payment with the tenant. If the tenant disagrees, the landlord must formally apply to the local rental authority to keep a deposit, or to charge the tenant for damages costing more than the deposit and interest (CMHC, 2005).

DISADVANTAGES OF THE CANADIAN MODEL

- It is virtually impossible to monitor compliance since the money is held in thousands of separate trust accounts
- In most schemes the onus falls on tenants to take the initiative to enforce the return of their bond and, even where action is successful, they may face difficulties in locating the landlord or in getting the landlord to comply with the judgment
- The potential to generate larger amounts of interest by centralising the bond-holding function is lost. Banks would be the main beneficiaries from the proliferation of trust accounts. In contrast, bond bank schemes use the interest generated to be self-financing, to help finance the dispute resolution function, to provide loans for deposits for tenants who could not afford them, as well as to pay interest to the tenants who had paid the bonds.

KEY FINDINGS FROM INTERNATIONAL REVIEW

The international review of approaches to dealing with rent deposit disputes has revealed a number of key findings:

- All countries reviewed experience a significant number of rent deposit disputes and many have developed or are developing new ways of dealing with such disputes (Alternative Dispute Resolution – ADR)
- A number of countries, particularly in Northern Europe, UK, Canada, Australia and New Zealand, have introduced ADR procedures for dealing with rent deposit disputes
- Central and Southern European countries tend to continue to rely on the traditional methods of dispute resolution which are handled by the courts
- Other countries such as Scotland and British Columbia are considering introducing ADR in the private rental sector
- In countries where such ADR procedures are in place they generally follow the lines being used in Ireland. They offer voluntary mediation or conciliation followed by access to independent tribunals
- The system currently being introduced in the UK offers free voluntary mediation. If that is not taken up or does not resolve the dispute the parties must go to the courts
- All the countries kept the costs of accessing such procedures at a relatively low level to ensure that all tenants can access them
- A number of countries have set targets in terms of the time it will take them to process disputes referred to them
- In all cases where ADR was found, it had been introduced in tandem with changes in the way rental deposits are held, involving the holding of such deposits by third parties. The costs of such schemes are generally covered by the interest raised
- Third party deposit retention is carried out through a custodial scheme, an insurance-based scheme or the holding of deposits in separate bank accounts opened by the landlord with the agreement of the tenant
- None of the countries studied had accompanied the introduction of such schemes with compulsory registration of all landlords and with the passing on of information on such registrations to a third party
- In many cases the introduction of the new initiatives was accompanied by wider changes in the rental market, including the ending of controlled rents. These situations offered a major inducement to landlords to become involved in the new arrangements
- In the countries studied the new arrangements were first piloted and then amended before their full introduction, in consultation with interested parties. In Norway, for instance, a pilot scheme was introduced only in two cities initially and when extended nationally will involve locally based arrangements

- The use of ADR in private residential tenancy disputes is relatively new or, as in the case of the UK, only now being introduced. It is therefore not possible to objectively assess the effectiveness of such mechanisms in reducing disputes or in dealing with them in a more cost-effective manner. However, anecdotal evidence from contacts with international experts in countries studied suggests that landlords and tenants are generally happy with the new arrangements
- In all cases the central tenet of the new arrangements is acceptance by all that the landlord does not own the deposit and that the deposit remains the property of the tenant
- Levels of deposits required under the new schemes varied. In Norway three months' rent is the average, with a maximum allowed of six months' rent. In Australia, Canada and New Zealand rent deposits appear to have remained at a month on average. The new scheme in England and Wales will be monitored to see if it leads to any increase in the amount of rent deposit required to be paid by tenants
- Along with third party deposit retention and ADR, most countries that have introduced initiatives in this area have put considerable effort into developing new and improved landlord/tenant relationships aimed at minimising formal disputes. These include guidelines on the introduction of standard contracts and on inspection arrangements at the beginning and end of tenancies, agreement on inventories and arrangements whereby landlords and tenants document areas of disagreement before they approach the formal dispute-resolution procedures
- There has been a strong focus on advice and mediation in several of the countries studied, with referral to tribunals seen as very much a last resort
- Confidence of the landlord and tenant in the new systems was seen as vital to success in all the countries studied.

IMPLICATIONS FOR IRELAND

As far as the study can ascertain, Ireland is in a unique situation of linking registration and inspection of landlords with new rent deposit dispute arrangements and also in introducing ADR but not third party holding of rent deposits. It is therefore very difficult to use international experience to pinpoint how Ireland can improve the cost-effectiveness of current arrangements in operation here.

This is particularly the case as the international experts consulted were all of the view that it is only through the simultaneous introduction of third party rent deposit retention schemes, a strong focus on the development of procedures and practices for preventing disputes, and the introduction of alternative dispute resolution procedures, that such changes can be effective.

However, due to the recent introduction of such changes in Europe there is as yet little hard evidence of improvements. In fact it was generally felt that an increased awareness of the new arrangements may initially increase the number of cases coming forward.

OPTIONS FOR IRELAND

Drawing on international experience, a number of options exist in the Irish situation:

- The Private Residential Tenancies Board (PRTB) can continue with the current arrangements but with additional resources allocated to the Board to deal with the backlog of disputes aimed at ensuring that landlords and tenants develop confidence in the new arrangements
- The registration and the dispute resolution procedures could be separated, with registration becoming the responsibility of the local authorities
- Either of the above options could be accompanied by a greater focus on preventative measures in cooperation with the different stakeholders. Such preventative measures could include an independent advisory service, preferably locally based, availability of standard contracts and inventory lists and availability of guidelines for minimising disputes
- The PRTB could allocate additional resources to promoting the mediation option, drawing on international experience, and thereby, hopefully, increasing take-up of this option
- The PRTB could consider the introduction of a voluntary scheme for third party deposit retention in a limited number of areas, with full monitoring and evaluation of take-up and cost effectiveness, involving all stakeholders
- The PRTB could explore the willingness of the banks and insurance companies serving the Irish market to become involved in operating special rent deposit accounts
- The PRTB could agree to formally monitor the progress and the success of the custodial and insurance schemes about to be introduced in England and Wales, particularly in relation to their cost effectiveness
- The PRTB could carry out a consultation process with interested parties on the findings of this study.

Whatever options are chosen it would seem imperative to process the current backlog of cases in the PRTB. This must be done if the Board is to have credibility if and when it seeks to extend its role and remit in any of the ways outlined above. It is also important that promotion material should emphasise that the deposit at all times remains the property of the tenant and can only be acquired by the landlord with the agreement of the tenant concerned or based on an agreed mediated decision or a decision of an arbitrator or tribunal.

A THIRD PARTY RENT DEPOSIT RETENTION SCHEME IN IRELAND

The benefits of such schemes as seen by those who advocate them are as follows:

- Safeguard tenancy deposits
- Facilitate the resolution of disputes arising in connection with deposits
- Minimise the anxiety caused to tenants by such disputes
- Set a baseline for good practice for landlords and letting agents
- Lead to an increase in confidence in the private rented sector and improve the image of private rented housing, making it more attractive as a housing option
- Ensure that tenants get their money back fairly without having to resort to court proceedings
- Reduce government costs
- Reduce the proportion of disputes that have to be resolved in the tribunals
- Lead to improved and more transparent procedures for dealing with deposits
- Help to clarify misunderstandings between tenants and landlords and to build positive relationships between them
- Make tenants less likely to default on their final month's rent
- Help prevent homelessness and housing crises faced by tenants on low incomes who have their deposits unreasonably withheld
- Generate interest which can be used to self-finance the rent deposit retention scheme or can be returned to the tenant.

TYPES OF RENT DEPOSIT SCHEME

Custodial scheme:

- Managed by a private organisation
- Available to all landlords
- No fee
- Offers dispute resolution
- Generates interest which can be retained to finance scheme or pay interest to tenants.

Insurance-based schemes:

- Landlord holds the deposit
- Administrator only holds deposit if there is a dispute
- Offers dispute resolution.

Bank deposit schemes:

- No third party management and administration required
- Tenant encouraged to use bank facilities
- Joint action by landlord and tenant encouraged
- Offers dispute resolution.

FACTORS TO BE TAKEN INTO ACCOUNT

If the Board decides to pursue the possibility of some type of third party rent deposit retention scheme it would need to take account of the following factors:

- The importance of providing reassurances about the impact of such a scheme on rent deposit amounts required by landlords, or on action that can be taken if the introduction of such a scheme results in the substitution of deposits with large amounts of rent being required in advance
- The potential dangers of introducing too many schemes in a small rental market
- The likelihood of banks and insurance companies in Ireland being willing to participate in such a scheme, the costs involved and the distribution of such costs across the different stakeholders
- The importance of educating all concerned on the potential benefits of the new arrangements and to ensure buy-in from the key stakeholders.

Appendix 1

Current situation in Scotland in relation to rent deposit disputes and the case made for a rent deposit retention scheme in Scotland

PRIVATE RENTED SECTOR

The 2001 Scottish census found that of a total of 2,192,246 households, 147,251 (6.7 per cent) were living in private rented accommodation (Scotland's Census Results, 2001). The 2002 Housing Conditions Survey found that there are 173,000 households living in private rented accommodation, representing 6 per cent of all households in Scotland.

RENT DEPOSITS

The average weekly rent for new private rents in 1996 was £107 per week (The Scottish Office, 1999). This would indicate that the average deposit is £535. Citizen's Advice Scotland (CAS) (2005) state that landlords and letting agents in Scotland could be holding anything between £52 and £75 million in tenants' money. According to Scottish law there is no upper limit on the amount of rental deposit charged to a tenant. Currently there are no regulations in place to safeguard what is done with this money at the end of a tenancy agreement.

RENT DEPOSIT DISPUTES

There are no Scottish figures available for the number of disputes in relation to rent deposit retention. However, figures from the Mediation Service available in Edinburgh Sheriff Court indicate that 20 per cent of cases related to landlord-tenant disputes. Research carried out by Shelter and the Citizen's Advice Bureau in England (1998) shows that 48 per cent of clients had a deposit unreasonably withheld in the previous five years. Client evidence from Scotland's bureaux found that the most common reason for withholding all or part of a deposit is for cleaning, damage, or deterioration to furniture and fittings. Disagreements frequently occur about the state of the property, with tenants disputing whether the damage is anything more than reasonable wear and tear.

In many cases referred to it is believed that landlords are inflating the costs of repair or cleaning and providing the tenants with no proof that the money has been spent as claimed. According to CAS, the lack of regulation in this area leaves landlords and agencies completely unaccountable over what they do with other people's money (CAS, 2005).

GETTING RENT DEPOSITS BACK

Currently, the only means of redress for tenants is the small claims court. However, people are often deterred from taking legal action by the complexities and costs involved (Shelter, 2005). Also, such redress is not suited to all tenants such as those returning abroad or moving far away (CAS, 2005). Court fees to bring proceedings to claim an average deposit of up to £750 costs £39, and a summons is a further £26. If a landlord disputes a claim then a hearing is required. For many people this can be a difficult or daunting experience. For example, people who are most vulnerable or socially excluded, such as people with disabilities or those whose first language is not English, are least likely to take action to resolve their legal problems (Genn, 1999).

Where a hearing is required it can take many months to receive a judgment, and if a claimant wishes to appeal a decision it costs a further £32 (The Sheriff Court Fees Amendment Order, 2002). Even with a favourable judgment there is no guarantee that the money will be recovered and Sheriff Officers may charge up to 10 per cent to recover any outstanding debt (Shelter, 2005).

Shelter (2005) believes that even if a deposit is recovered after court proceedings, the damage is already done to the tenant, often preventing the person from moving between rented accommodation, causing hardship, debt and in some cases homelessness when the tenant is unable to raise a new deposit for the next letting.

THE CASE FOR A RENT DEPOSIT SCHEME FOR SCOTLAND

CAS (2005) believes that there is a strong case for the introduction of a rent deposit scheme in the private rented sector. CAS (1998) previously called for the piloting of a rent deposit initiative, with a view to subsequently rolling it out as a compulsory scheme across Scotland. England and Wales are in the process of introducing regulations for deposits in the private rented sector, and CAS would like to see the Scottish Executive take the opportunity afforded by the Housing (Scotland) Bill to introduce similar legislation. Drawing from the outcome of the pilot rent deposit scheme launched in England in 2000, CAS (2005) believes that in order for a rent deposit scheme to work effectively, it must have a statutory basis.

CAS (2005:16) outlines what it believes the main elements of the scheme would need to be for it to function successfully:

- A scheme where all deposits are held by an independent third party
- An independent alternative dispute resolution service, to which disputes would be referred
- A clear definition of the amount a landlord can reasonably claim as a cost for wear and tear and details of the supporting evidence required to make a deduction from a deposit
- The requirement for written tenancy agreements and detailed inventories to be provided at the beginning of a tenancy. Where the landlord or agency fails to provide these, it would reflect negatively on any attempt to withhold all or part of the deposit

- For the scheme to work there would also need to be some form of sanction for landlords who charge deposits but fail to pay them into the scheme.

Shelter (2005:4) also argues the case for the introduction of a Rental Deposit Protection Scheme, stating it would 'simplify the return of rental deposits to the benefit of landlords and tenants'. The organisation believes that the Housing (Scotland) Bill 'provides a long-awaited opportunity to improve the operation of the private rented sector and the inclusion of a Rent Deposit Protection Service would play a major part in creating a smoother running sector' (Shelter, 2005: 8). Similar to CAS (2005), Shelter believes the best model would be a legislative one.

Shelter (2005) outlines how it perceives a Rental Deposit Protection Service for Scotland could work:

- A single scheme would be most practical and cost effective, rather than a range of alternative or insurance-based schemes
- A rental deposit would not be mandatory, but where a deposit is asked for, legislation should set out the purposes for which a deposit can be used and how it should be administered
- The landlord or agent would agree a condition/inspection report with the tenant at the point the tenant moves in
- The landlord or agent would have seven days to send the deposit to the Rental Deposit Protection Service (RDPS), with a lodgement form, after the money is paid by the tenant
- Once lodged the RDPS would advise the tenant and send him/her a reference number
- If no reference number is received, the tenant would inform the RDPS who would contact the landlord. If the landlord failed to lodge a deposit with the Service the landlord would be prohibited from using the notice-only procedure for possession
- During the tenancy the RDPS would hold the deposit and retain its accumulated interest
- At the end of the tenancy, following a final inspection, the landlord and tenant would complete a form to claim a refund or deposit money from the RDPS
- If the landlord/letting agent agrees how the deposit money should be repaid and both parties sign the form, the money would be repaid by the RDPS within seven days
- If agreement could not be reached, either party would send a rent deposit repayment form without the signature of the other party. The deposit would not be paid out immediately
- A letter would be sent to the other party advising them of the claim and giving them 14 days to apply to the RDPS tribunal. If no reply was received in 14 days the deposit would be paid to whoever claimed it

- The dispute resolution tribunal would consider the inspection reports and give an opportunity to both the landlord and the tenant to support their claim
- Whether the landlord or the tenant applies to the tribunal to resolve a dispute, it would always be up to the landlord to prove any claim since the deposit remains the tenant's money throughout.

Shelter (2005:6) outlines what it sees as important features of a Rent Deposit Protection Service model for Scotland. It should:

- Be a compulsory scheme for holding deposits
- Ensure rapid payment of deposit money at the end of a tenancy
- Provide a dispute resolution service as an alternative to the courts
- Offer a set of clear guidelines outlining what is reasonable for landlords to claim for a tenant's deposit, e.g. damage to property rather than wear and tear
- Be self-financing through investing deposit money.

Appendix 2

British Columbia – the case for a security deposit trust fund

In British Columbia the landlord holds the deposit. However, according to a report carried out in the 1990s, British Columbia's Tenants Rights Action Coalition (TRAC) believed that British Columbia needed a security deposit trust fund. According to TRAC (1998), one of the principal problems British Columbian tenants faced was difficulty getting their security deposits returned after a tenancy had ended. More than \$170 million belonging to British Columbia's half million tenant households was then in the hands and bank accounts of landlords in the form of security deposits (TRAC, 1998).

A 1992 assessment of the Tenants' Rights Action Coalition (TRAC) Provincial Information Project revealed security deposit return as one of the three most important issues for tenants. TRAC (1998) believed this issue continued to be one of the most pressing and frustrating issues for tenants. Disputes related to security deposits were the basis for more than one-third of the almost 10,000 annual calls to the Tenant Hotline and one-third of the 25,000 yearly arbitrations through the Residential Tenancy Office (RTO) (TRAC, 1998).

TRAC has previously called for the abolition of security deposits in keeping with policy in Canada's two largest provinces. In Quebec, landlords are not allowed to charge a security deposit of any kind, and in Ontario, landlords are only able to apply the deposit to the final month's rent. Even in British Columbia the province's largest landlord, British Columbia Housing, does not collect security deposits.

After researching security deposit systems in other jurisdictions, TRAC (1998) believed there was a better way to address the problem of security deposits not being returned to tenants. TRAC proposed a security deposit trust fund to pool all residential deposits under the administration of an independent third party. In its opinion, this approach would solve many of the problems with the current system, facilitate better landlord-tenant relationships, and potentially support affordable housing and tenancy initiatives.

TRAC (1998) believed that a security deposit trust fund would create a system that was fair and effective for all parties. It considered that it would reduce government costs, by preventing unnecessary arbitrations over deposits, and by establishing a system that would be financially self-sufficient. It estimated that in 1996, a British Columbian fund would have earned over \$8 million. TRAC also believed that it could potentially save the province over \$6 million annually in the Ministries of Attorney General and Human Resources which could be used to benefit tenants and the affordable rental housing sector (TRAC, 1998).

TRAC (1998) advocated for a security deposit trust system that is guided by the following principles:

- Recognition that a security deposit belongs to the tenant, unless proven otherwise
- Removal of the deposit from the landlord's control in order to remove the potential for abuse
- A fair and efficient system, allowing for claims and return of the deposit in the most timely, easy to understand, and least bureaucratic fashion

- A communication link to tenants and landlords for the purposes of educating them about their rights and obligations, providing appropriate plain language guides and practical forms for use in the tenancy.

RECOMMENDATIONS FOR A PROPOSED SECURITY DEPOSIT TRUST FUND

British Columbia’s Tenants Rights Action Coalition (TRAC) (1998) made the following recommendations for a proposed British Columbia security deposit trust fund:

- 1 That a security deposit trust fund be established under provincial government auspices, centrally pooling all residential security deposits relating to private and public sector residential tenancies. The third party holding the deposits must have a proven track record for efficient administration practices
- 2 That security deposits in residential tenancies continue to be limited to one-half of one month’s rent. Security deposits in British Columbia have been legislated at a limit of one-half month’s rent since 1974. Given that British Columbian tenants pay the highest rents and face the worst affordability problems in Canada, increasing the deposit would prove a serious hardship for most tenants
- 3 That landlords be required to turn over existing security deposits to the trust fund within a short transition period after its inception
- 4 That the allocation of trust fund income be used to ensure the fund is financially self-sufficient and that it support tenant advocacy, further work on affordable housing issues, educate tenants and landlords about the RTA, and/or provide tenants with interest on their deposit. (All of the jurisdictions in which security deposits are centrally pooled utilise trust fund income to finance administration of the fund. In addition, in the majority of these places, a portion of the income is allocated to community-based tenant advocacy services. If enough income was derived from the fund, it could also be used to continue to provide tenants with nominal interest on their deposits. These represent use of trust fund income, which benefit those who provide the fund’s capital – tenants.)
- 5 That compliance with this system be enforced through the RTA, with the potential for landlords to lose the right to make a claim against the security deposit if they refuse to co-operate with the system. (Enforcement of the trust is required to ensure tenants benefit from the protection of the trust, and that the financial viability is maximised, by bringing in deposits as early as possible. Some jurisdictions rely on tenant complaints to trigger enforcement mechanisms. In others, enforcement begins with a letter asking the landlord to turn over the deposit(s), backed by the possibility of prosecution. A third alternative sees tenants pay their deposit directly to the party administering the trust, thus negating the need for enforcement.)
- 6 That a mandatory checklist form be required to be filed with the security deposit within two weeks of the tenant’s move into the premises. A mandatory move-out checklist, signed by both the landlord and the tenant, would be filed when either party makes a claim. (A checklist system documenting the condition of the premises at the beginning and end of the tenancy would work to reduce the number of disputes over security deposits).

Appendix 3

Current situation in Greece in relation to rent deposit disputes

HOW RENT DEPOSITS ARE HELD

In Greece, rent deposits consist of one or two months' rent. They are held by landlords during the rental period, and are supposed to be returned to the tenants after the end of lease, vacation of premises and payment of all pending bills, rents and utilities. However, in most cases the tenants do not respect this agreement, and stop paying rent 1-2 months before their departure, saying that they are counter-balancing the deposit. Therefore, there is usually no deposit to be returned and no real problem with rent deposit retention. It is not unusual that tenants leave with unpaid rents.

RENT DEPOSIT DISPUTES

There are legal procedures in place to deal with rent deposit disputes between landlords and tenants in Greece. There are no plans in place to change these arrangements, and disputes in this area remain the same.

PERSPECTIVE OF LANDLORDS

Landlords would like to see a legal way to make tenants pay their obligations until the last day of their stay.

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