Dealing with deposits

Q&A James Davies and Robert Highmore explain landlords' duty to protect deposits

IS NOTICE VALID?

QUESTION
I have rented the same house under an assured shorthold tenancy for nine years. Originally, the house was let for a fixed period of one year from 1 May 2006. At the start of the tenancy, I paid a deposit equal to one month's rent. Following the expiry of the fixed term, I carried on living at the house and paid rent on a monthly basis. In July this year, my landlord served me with a notice under section 21 of the Housing Act 1988 ("the 1988 Act"). I do not want to leave the house. Does my landlord's failure to protect my deposit have an impact on his ability to force me to leave?

ANSWER
The failure to protect the deposit means that your landlord is unable to serve an effective notice pursuant to section 21 of the 1988 Act. Therefore, he will be unable to rely on the notice that was served in July 2015. In order to serve a valid notice under section 21, your landlord may need to return your deposit to you in full.

EXPLANATION

After the expiry of the fixed one-year term, your tenancy would have become what is known as a statutory periodic tenancy under section 5 of the 1988 Act.

At the time you paid your deposit, your landlord was under no obligation to safeguard it. However, from 6 April 2007, sections 212 to 215 of the Housing Act 2004 ("the 2004 Act") came into force, requiring landlords to take various steps to protect a deposit received under an assured shorthold tenancy. These steps include dealing with the deposit in accordance with an authorised scheme and providing the tenant with certain information about the protection of the deposit (known as the "prescribed information").

Authorised schemes come in two forms: custodial schemes where money is paid to the scheme administrator; and insurance schemes, where the landlord retains the deposit but pays a premium to the scheme administrator.

Until earlier this year, there was some uncertainty about the steps a landlord who had received a deposit prior to 6 April 2007 was required to take. Section 215A of the 2004 Act (which was added by the Deregulation Act 2015 and came into force on 26 March 2015) clarified the position and provided landlords with a grace period to comply with the tenancy deposit requirements.

Section 215A applies to landlords where:
1. They had received a deposit before 6 April 2007 in connection with a fixed-term tenancy;
2. On or after that date, a periodic shorthold tenancy had arisen on the coming to an end of the fixed term;
3. On the coming to the end of the fixed term, all or part of the deposit was retained; and
4. The landlord had not protected the deposit and given the tenant the prescribed information.

Under the terms of section 215A, your landlord was required to protect your deposit in accordance with an authorised scheme and provide you with the prescribed information by 23 June 2015 at the latest.

RE-PROTECT ON RENEWAL?

QUESTION
I am a landlord of a buy-to-let flat. I let the flat for a two-year period from 10 February 2013. At the start of the tenancy, under the terms of the written agreement, I took a deposit equivalent to two months' rent. I protected the deposit in an authorised scheme and gave the tenant the prescribed information relating to the deposit within 30 days of receiving the deposit. At the end of the initial two-year period, I entered into an agreement to let the flat to the same tenant for a further period of one year. Should I have re-protected the deposit and served the prescribed information again?

ANSWER
No.

EXPLANATION

Section 213(3) of the Housing Act 2004 ("the 2004 Act") requires a landlord to comply with the initial requirements of an authorised scheme within 30 days, starting on the day on which the deposit was received. Furthermore, by virtue of subsections 213(5) and (6), the landlord is required to serve the prescribed information on the tenant and any relevant person within the same period. The term "relevant person" means any person who, in accordance with arrangements made by the tenant, paid the deposit on behalf of the tenant.

The Court of Appeal decision in *Superstrike Ltd* v *Rodrigues* [2013] EWCA Civ 669; [2013] 2 EGLR 91 gave rise to considerable uncertainty about a landlord's obligations where there had been successive tenancies and the landlord had simply retained the deposit. In that case, the court decided that where a fixed term tenancy comes to an end and is replaced by a statutory periodic tenancy, even if nothing is said or done by the parties in respect of the deposit, the tenant is to be treated as having paid the amount of the deposit to the landlord in respect of the new tenancy. The same analysis would apply where the initial fixed-term contractual tenancy is replaced by a further fixed-term contractual tenancy. Therefore, was the landlord under an obligation to comply afresh with the requirements of subsections 213(3), (5) and (6) of the 2004 Act each time a new tenancy arose?

The uncertainty has now been resolved by section 215B (inserted by the Deregulation Act 2015). That section applies where there has been a series of tenancies of the same premises and between the same parties replacing the original tenancy (whether directly or indirectly) and the landlord has retained the deposit. If the landlord complies with the requirements of subsections 213(3), (5) and (6) in respect of the original tenancy and the deposit continues to be held in the same authorised scheme, the landlord will be treated as having complied with subsections 213(3), (5) and (6) in relation to the new tenancy.

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