

The Tenant Fees Act 2019 (TFA 2019) comes into force on **1 June 2019** and introduces important changes to residential tenancies that both landlords and tenants should be alive to.

The purpose of the TFA 2019 is to introduce protections for most residential tenants in the private sector in England. With this in mind, the TFA 2019 prescribes the circumstances in which landlords, letting agents and licensors may charge fees to tenants, and introduces restrictions on the amount of fees and when they may be required to be paid or refunded.

The TFA 2019 will apply immediately to the grant of new assured shorthold tenancies (other than social housing or long lease tenancies), student tenancies, and licences to occupy housing. Landlords, licensors, letting agents, any persons who propose to be landlords or licensors, and any persons who cease to be landlords or licensors must ensure they comply with the TFA 2019 to avoid facing enforcement action.

Importantly, any fees payable under any existing tenancy agreements (i.e. tenancy agreements entered into before 1 June 2019) can still be charged until 31 May 2020.

Prohibited and Permitted Payments

The following payments are permitted under the TFA 2019:

- Rent
- A refundable tenancy deposit
- A refundable holding deposit
- Payments to change a tenancy
- Payments associated with early termination of a tenancy
- Payments in respect of utilities, communication services, TV licence and council tax
- Default fees

Any payments required by a landlord, letting agent or licensor, other than those listed above, will constitute a prohibited payment under the TFA 2019. These include:

- Viewing fees
- Fees for professional cleaning services
- Credit-check fees
- Tenancy set-up fees
- Requiring prohibited payments to be paid to a third party
- Requiring the entering into a contract of insurance or for a provision of services with a third party
- Requiring the making of a loan to any person in connection with a tenancy agreement

The TFA 2019 also sets controls on the amount and timing of permitted payments and rules governing refunds of payments to tenants. For example, a refundable tenancy deposit is capped at five weeks' rent where the annual rent is less than £50,000 and must be refunded to the tenant unless the landlord can provide the tenant with evidence to substantiate any deductions (made in accordance with the government-backed tenancy deposit schemes).

Similarly, a refundable holding deposit is capped at one week's rent and must be refunded to the tenant unless the circumstances for withholding a refundable holding deposit, as set out in the TFA 2019, are met, such as the tenant failing a right to rent check or providing false or misleading information. If any of these circumstances arise, the landlord, letting agent or licensor must inform the tenant of the reason for retaining the refundable holding deposit within seven days of deciding not to enter the agreement.

The TFA 2019 also prevents a landlord from proceeding with the eviction of a tenant on "no-fault" grounds, using section 21 of the Housing Act 1988, until all unlawfully charged fees or retained holding deposits have been repaid to the tenant.

Enforcement

A term of the tenancy agreement that breaches the TFA 2019 will not terminate or otherwise invalidate the tenancy agreement; however, the specific term will not bind a tenant, but the remainder of the agreement will still apply so far as is practicable.

There are a range of potential sanctions for non-compliance with the TFA 2019. An enforcement authority (either the local authority Trading Standards or any district council that is not a local authority Trading Standards) has powers, under the TFA 2019, to impose financial penalties on anyone breaching the TFA 2019. Repeated breaches may also result in the offender being convicted of a "banning order offence", which is a criminal offence, and the enforcement authority can apply to the First-tier Tribunal for a "banning order" to be made.

Moving Forwards

It is critical that by 1 June 2019, landlords, letting agents and licensors must be aware of what fees they can require a tenant to pay and any restrictions on those fees under the TFA 2019.

Tenants should also be aware of what fees they should be expected to pay, what fees are prohibited, and when they should expect to receive any refunds.

Whilst the TFA 2019 seeks to rectify a long-standing imbalance against residential tenants, it may be argued that the legislation does not go far enough. Loopholes are already appearing, such as rent increases, to counteract the implications of the prohibited fees and additional costs landlords face under the TFA 2019, such as the tenancy set-up fees. It remains to be seen whether the new rules will result in greater protection for residential tenants, but in the meantime, it is important that the changes introduced are properly implemented without delay.

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