STATUTORY RULES OF NORTHERN IRELAND

2012 No. 373

LANDLORD AND TENANT

The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012

Laid before the Assembly in draft

Made - - - - 3rd October 2012

Coming into operation 1st November 2012

The Department for Social Development, makes the following Regulations in exercise of the powers conferred on it by Article 5A(1) and (3) and Article 5B(5) and (6) and Article 73(1) of the Private Tenancies (Northern Ireland) Order 2006(**1**).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Tenancy Deposit Schemes Regulations (Northern Ireland) 2012 and shall come into operation on 1 November 2012.

Interpretation

2. In these Regulations:—

"approved tenancy deposit scheme" means a scheme which has been approved by the Department for the purposes of safeguarding deposits paid in connection with private tenancies;

"designated account" means an account which cannot contain any sums other than:—

(a) the whole or any part of tenancy deposits paid into it;

(b) such sums of money belonging to the scheme administrator as may be necessary for the purpose of opening the account;

(c) such sums of money as may be necessary to replace any sum which by error has been withdrawn from the account; and

(**1**) S.I. 2006/1459 (N.I. 10) as amended by 2011 c.22 (N.I.)

(d) interest;

"dispute resolution mechanism" means the mechanism for resolving disputes specified in regulation 30;

"the Order" means the Private Tenancies (Northern Ireland) Order 2006 (N.I. 10);

"working day" means a day that is not a Saturday, Sunday or a public holiday.

PART 2

Appointment of Scheme Administrator

Appointment of Scheme Administrator

3.—(1) The Department may appoint a person who has applied to the Department to establish and maintain a tenancy deposit scheme of a description prescribed in Part 3 where the Department has approved that application under the Regulations.

(2) The Department must not approve an application where the applicant:—

(a) has been convicted of any offence involving fraud or dishonesty;

(b) is a bankrupt; or

(c) is disqualified from being a director of a company.

Coming into force of a scheme and amendments

4. Upon application by a person approved under regulation 3 neither a tenancy deposit scheme nor any amendment to that scheme shall come into force unless approved by the Department.

Approval of a tenancy deposit scheme

5. The Department shall not approve a tenancy deposit scheme where:—

(a) the scheme is not of a description prescribed in Part 3 (description of schemes);

(b) the scheme administrator and the scheme do not satisfy the requirements of Part 4 (financing and accountability requirements);

(c) the scheme administrator does not satisfy the requirements of Part 6 (dispute resolution);

(d) the scheme does not include a customer service facility which is available to users of tenancy deposit schemes for the purposes of, in particular:—

(i) handling enquiries in relation to the tenancy deposit scheme whether made by telephone, letter, or electronic means; and

(ii) dealing with complaints about the tenancy deposit scheme, including complaints about the service provided by the scheme administrator;

(e) the tenancy deposit scheme is not available to all landlords, including those living outside of the Northern Ireland jurisdiction but operating in Northern Ireland, and their tenants.

PART 3

Description of Schemes

Types of schemes

6. A tenancy deposit scheme shall be either:—

(a) a custodial scheme, as specified in regulation 7; or

(b) an insurance scheme, as specified in regulation 8.

Custodial scheme

7. A custodial scheme is a scheme under which:—

(a) no fee is payable by the landlord to the scheme administrator in respect of participation in, or otherwise in connection with, the scheme;

(b) the tenancy deposit is paid by the landlord to the scheme administrator;

(c) the scheme administrator pays the tenancy deposit into an account, known as a designated account, which is maintained for the purpose of holding accounts; and

(d) the tenancy deposit is held in a designated account until it falls to be repaid in accordance with these Regulations.

Insurance scheme

8. An insurance scheme is a scheme under which:—

(a) the tenancy deposit is retained by the landlord and a fee and any contribution towards insurance is payable by the landlord to the scheme administrator in respect of participation in the scheme on the basis that, at the end of the tenancy:—

(i) such amount in respect of the deposit as may be agreed between the tenant and the landlord shall be repaid by the landlord to the tenant; and

(ii) any disputed amount which is not so repaid shall, in accordance with directions given by the scheme administrator, be paid by the landlord into a designated account held by the scheme administrator;

(b) amounts paid into a designated account under regulation 8(a)(ii) are kept by the scheme administrator in the account until such time as, in accordance with the scheme, it falls to be paid (wholly or in part) to the landlord or tenant;

(c) the landlord undertakes to reimburse the scheme administrator, in accordance with directions given to the landlord by the scheme administrator, such amounts of the deposit paid to the tenant by the scheme administrator, other than amounts paid to the tenant as mentioned in paragraph 8(a)(ii); and

(d) insurance is maintained by the scheme administrator in respect of failure by a landlord to comply with directions under regulation 8(a)(ii).

PART 4

Financing and Accountability Requirements

Operational arrangements

9.—(1) A scheme administrator of a custodial tenancy deposit scheme must:—

(a) ensure that the scheme is capable of covering the cost of its operations using only its own finances, including interest;

(b) have access to sufficient working capital to fund the establishment and operation of the tenancy deposit scheme from the date of approval until the date on which the tenancy deposit scheme becomes self-financing;

(c) have appropriate strategies in place in relation to the investment of tenancy deposits and accrued interest to support the sustainability of the tenancy deposit scheme;

(d) have contingency measures and procedures in place to safeguard, and ensure the repayment in accordance with these Regulations of, tenancy deposits held in designated accounts in the event that the tenancy deposit scheme fails or otherwise ceases to be operational; and

(e) have appropriate procedures in place to identify if the scheme is likely to fail or otherwise cease to be operational, and will give notice to:—

(i) all landlords and tenants whose deposits are held by the scheme; and

(ii) the Department.

(2) A scheme administrator of an insurance based tenancy deposit scheme must:—

(a) make provision as to the requirements that are to be complied with by the landlord where:—

(i) a landlord wishes to retain a tenancy deposit under the scheme; or

(ii) a landlord retaining a tenancy deposit under the scheme (in relation to a tenancy that has not terminated) gives notice to the scheme administrator that he no longer wishes to retain the deposit under the scheme;

(b) provide that any landlord by whom a tenancy deposit is retained under the scheme shall give the scheme administrator an undertaking that, if the scheme administrator directs the landlord to pay to the scheme administrator any amount in respect of the deposit in accordance with regulation 24(4) to (8), the landlord will comply with such a direction;

(c) maintain in force adequate insurance in respect of failures by a landlord by whom a tenancy deposit is retained under the scheme to comply with such directions;

(d) make provision enabling the scheme administrator to determine that, by virtue of a landlord's failure to comply with a relevant obligation, a tenancy deposit which has previously been retained by the landlord under the scheme (and which relates to a tenancy which has not ended) is to cease to be retained under the scheme in accordance with regulation 28;

(e) before making a determination, give a notice to the landlord stating that the scheme administrator proposes to make such a determination and the reasons for the proposal;

(f) ensure that, where the scheme provides for landlords participating in the scheme to be members of the scheme, the scheme may provide for a landlord's membership to be terminated by the scheme administrator in the event of any such failure on the part of the landlord to comply with a relevant obligation;

(g) before determining that the landlord's membership be terminated, give a notice to the landlord in accordance with regulation 28, stating that the scheme administrator proposes to make such a determination and the reasons for the proposal;

(h) on the termination of a landlord's membership, ensure that:—

(i) any tenancy deposit previously protected by the landlord under the scheme in relation to tenancies which had not ended before the termination, cease to be protected under the scheme; but

(ii) the scheme continues to apply to a tenancy deposit retained by the landlord under the scheme in relation to a tenancy which ended before the termination of the landlord's membership;

(i) ensure that the landlord on termination of membership of a scheme pays to the scheme administrator any balance still owing in respect of:—

(i) fees charged by the scheme; and

(ii) contributions in respect of the cost of the insurance referred to in sub-paragraph (c).

Designated accounts

10.—(1) A scheme administrator shall hold one or more designated accounts for the purposes of regulation 9.

(2) A scheme administrator must ensure that:—

(a) tenancy deposits received by the scheme administrator are paid without delay into the relevant designated account;

(b) the sum at the credit of the designated account, or where there are more such accounts than one, the total of the sums at the credit of those accounts, is not at any time less than the total of the amounts of tenancy deposits held by the tenancy deposit scheme; and

(c) each tenancy deposit held in a designated account is at all times attributable to the landlord on whose behalf it was paid into the account, as well as to the tenant to whom it relates.

(3) A scheme administrator may only withdraw sums from a designated account for the following purposes:—

(a) repayment of tenancy deposits in accordance with these Regulations; or

(b) meeting the costs of the scheme, where this is a custodial scheme, from interest accrued.

PART 5

Procedures for safeguarding and repaying tenancy deposits

Requirement on landlord to supply information

11. A scheme administrator must accept any tenancy deposit offered to him under a scheme by a landlord who has received the deposit in connection with a tenancy.

12. Where a landlord safeguards a tenancy deposit in a scheme, he must:—

(a) within 14 days of receipt of the deposit furnish the information specified in paragraph 1 of Schedule 1, to the scheme administrator; and

(b) within 28 days of receipt of the deposit furnish the information specified in paragraph 3 of Schedule 1 to the tenant.