



eBOOK – Tenant fees ban



The introduction of the Tenant Fees Act is the most significant change to the private rental sector in recent years.

This is also an opportunity to demonstrate knowledge and expertise to your Landlords and ensure you are invaluable to them in a tricky time.

The risk to your Landlord if they don't follow the laws is high, as in all areas of current lettings legislation... so there is even more reason to justify your fees to your Landlords and give them good reason to use your Full management service.

Letting agents can also prove their worth to consumers, by providing a comprehensive, knowledgeable and high quality service at a time of huge industry change, when people will need reassurance and expert advice to keep in line with change.

Agencies offering a range of expert services will be more able to justify their (higher?) fees.

England and Wales are separate jurisdictions for this purpose. They are both passing their own versions of the legislation.

On 12 February 2019, the Tenant Fees Act was passed into law and was introduced to Parliament in May 2018 as the Tenant Fees Bill.

The Welsh legislation is set to come into force for assured shorthold tenancies in September 2019.

From 1 June 2019

The ban on letting fees applies to all new tenancies signed on or after this date. It will apply to renewals of **tenancies**, excluding statutory and contractual periodic tenancies, that arise after the Tenant Fees Act comes into force.

From 1 June 2020

The ban will attach to pre-existing tenancies and clauses that charge fees in them will become ineffective.



The key facts of the Act are:

- The fee ban applies to both agents and Landlords
- **Deposits** will be limited to 5 weeks rent as a maximum amount for tenancies where the annual rent is below £50,000. Deposits for tenancies where the annual rent is £50,000 or more are limited to the equivalent of 6 weeks rent
- **Holding Deposits** Will be limited to a maximum of 1 week's rent

The Landlord has 15 days to make a decision once a holding deposit is taken.

If the tenancy does not go ahead, then the money must be repaid in full within 7 days of the deadline being reached, or the Landlord backing out. Repayment does not need to be in full if the tenant backs out of the tenancy agreement themselves, fails right to rent checks, has provided false or misleading information, or where the landlord tries their best to get the information needed, but the tenant fails to provide it within the 15 days. If the tenancy does go ahead, the holding deposit must be returned within 7 days of agreement, unless it is converted into part payment of the actual deposit, or used towards the initial rent payment.

The Consumer Rights Act 2015 is amended to specify that the letting agent transparency requirements should apply to third-party websites

Banned fees would be:

- Charging for a guarantor form
- Credit checks
- Inventories
- Cleaning services
- Referencing
- Professional cleaning
- Having the property de-fleated as a condition of allowing pets in the property
- Admin charges
- Requirements to have specific insurance providers
- Gardening services

A Landlord can require the tenant to use a specific utility or communications provider. Agents are not allowed to require this however.

- Charges for defaulting are permitted subject to conditions:
 - Where the tenant has breached their tenancy agreement and caused damage as a result, then Landlords may still seek compensation via deductions from the deposit or court action.
 - Clauses in their contract stating that the Landlord may seek their costs for damages still apply.



- However it is not possible to set a fixed (default) fee for the damages incurred

Valid Fees

- It is permitted for a tenant to be asked to pay a higher rent than you would normally charge for the property as long as it is agreed to be the rent throughout the term. However, it is not permitted to set rent at a higher level for the first portion of the tenancy and then drop it down afterwards i.e. actually charging fees that are hidden in the rent.

Change in tenancy – A £50 maximum charge can be made where tenants have requested a change in the tenancy, such as swapping tenants. If the fee charged exceeds the £50, the Landlord must be able to evidence in writing any costs incurred, however this situation is expected to be rare – £50 is considered the right fee.

Early Surrender – Where the tenants have requested early surrender of the tenancy, the Landlord or agent may charge fees equivalent to the loss incurred. This won't be costs associated with referencing, tenancy drafting, etc as these fees are now banned in ALL situations.

However Landlords and agents will be able to charge the equivalent of the rent lost due to the void period.

Default payments – Landlords are allowed to charge for two types of default payments

- loss of keys – Landlords are allowed to charge the reasonable cost that they can evidence in writing with receipts
- late payment of rent – Landlords and agents may only charge 3% above the Bank of England base rate in interest on the late payment of rent from the date the payment is

This may be tricky, as the length of the void may be unknown when agreeing coverage of the void period – depending on how long the relet takes.

Zero deposit scheme – Tenants may pay a fee to use a zero deposit scheme and this would be a permitted payment.

What happens if you don't comply?

Where a banned fee or payment is taken, tenants will be able to get any money wrongly paid back via the county court.

The Landlord or agent may be charged interest on this from the day that the prohibited payment was taken. If a Landlord or agent takes a



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prohibited payment they will have 28 days to return it or be considered in breach of this legislation.

The National Trading Standards Estate & Letting Agency team has been given greater powers under this legislation. Local trading standards will be required to enforce this legislation and will issue a fine of up to £5,000 for a first offence.

Subsequent breaches are criminal offences. The Landlord can be fined up to £30,000 as a civil penalty and be subject to a banning order.