

STATES OF JERSEY



RENTAL DEPOSIT SCHEME TO PROTECT TENANTS' DEPOSITS

**Lodged au Greffe on 29th August 2008
by Deputy G.P. Sourthern of St. Helier**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to request the Minister for Housing to bring forward for approval, by the end of 2009 if possible, legislation to establish a rental deposit scheme to protect deposits paid by tenants and to resolve disputes arising from the operation of the scheme.

DEPUTY G.P. SOUTHERN OF ST. HELIER

REPORT

The Draft Residential Tenancy (Jersey) Law 200- has been out to consultation as a “White Paper” since 29th April 2008. As part of the consultation, Article 23(1) contains the capacity to bring general regulations for the setting up of a scheme for the safe-keeping or investment of deposits paid in respect of residential tenancies.

In his examination of tenants’ deposits the Minister states the following concerning an amendment to the then Housing Committee’s Policy Report (P.2/2002) –

“vi) Recovery of tenants’ deposits:

Subsequent to the Working Party’s Report Senator Corrie Stein lodged a proposition in the States^[1] in which she asked the States *“to charge the Housing Committee to bring forward for States’ approval a scheme to safeguard the rental deposits paid by tenants to landlords or agents in the private sector, and deposits paid by lodgers to lodging house owners and to ensure the prompt return of monies at the end of the period of occupation.”*

Since that time questions have been put to the States asking when a deposit scheme to protect tenants’ and lodgers’ deposits will be introduced.

The proposal was researched and considered by the former Housing Committee and has been reviewed again as part of the final work done in connection with the proposed RTL.

It has been decided **not** to put forward proposals for a Tenants’ Deposit Scheme as part of the RTL **at this time.”**

As justification the white paper puts forward the following –

“The true extent of any problem is unknown as there is inadequate documented evidence regarding the current situation. That is not to deny that problems do exist but there are only limited records kept by the Citizen’s Advice Bureau and the Petty Debts Court to assist with an analysis of the problem. Further information is required as to the nature of the problem, the number of people affected and the amount of deposits currently paid.”

Further on, the consultation document lists further reasons for not acting at this stage –

“Overall, it is therefore concluded that no legally binding Tenancy Deposit Scheme should be introduced **at present** in the Island for the following reasons:

- a) the real extent of the problem is not known;
- b) any scheme established in law will create bureaucracy and Government is committed to reducing “red tape” where possible;
- c) setting up and administering a scheme is likely to have a cost. If government were to be involved in any way it would require resources which would entail additional government expenditure;
- d) there is already provision available in the Petty Debts Court for applicants to have their cases dealt with privately using mediation processes and additional means of accessing mediation are available;^[2]
- e) there are several new provisions in the RTL which seek to clarify the rights and obligations of tenants and landlords with regards financial transactions which take place between them, including the payment and repayment of deposit monies. It is hoped that these provisions will

help manage any issues arising over the return of deposits;

- f) as described above, the RTL at present only extends to those qualified to rent property. Thus, any scheme established under the RTL would not afford protection to those falling outside its remit, including lodgers;

<u>It is proposed that:</u>	
i)	the current mediation process in the Petty Debts Court be promoted for resolution of deposit disputes;
ii)	further research be done on the value of deposits and cases where there is a dispute concerning the return of a rental deposit;
iii)	once further evidence has been acquired a review of the need for a Tenancy Deposit Scheme takes place within the next 2 years.”

I believe that this do-nothing attitude for at least 2 years is completely unacceptable.

To start with, the basic tenet of this argument, that the true extent of the problem is not known, is untrue. The Jersey Citizens Advice Bureau (the Bureau) believes that the Residential Tenancy (Jersey) Law provides the best opportunity to end the problems of rental deposits being unreasonably withheld by landlords and agents. In its response to the white paper, from which much of this report is taken, the Bureau produces a great deal of evidence to support its case for action now.

Over the last decade, disputes over the partial or non-return of rental deposits has consistently been amongst the most common issues of concern brought to the Bureau by Jersey residents renting in the qualified or non-qualified sector. Problems include –

- disputes over cleaning costs and whether the employment of “professional cleaners” was really necessary;
- disputes over whether any deterioration of fixtures and fittings is more than reasonable wear and tear;
- cases where the landlord simply says he has not got the money available or where the agent is having difficulty contacting a landlord who lives abroad;
- rental deposits used by landlord to replace carpets at the end of a short tenancy;
- cases where the landlord denies ever receiving a rental deposit;
- disputes over what notice period should have been given by a tenant, where there is no written agreement, resulting in deductions from rental deposit;
- rental deposit not passed on to new owner when property is sold;
- unreasonable delays in returning rental deposits following inspection of accommodation.

A selection of case studies illustrating these problems and the size of the sums involved are given in the Appendix.

The Bureau points out that a key objective of housing policy over the last 15 years has been to encourage the

provision of private rental accommodation. The number of private rental accommodation households in the last Census was 7857, which represents 22% of the total number of households. Non-qualified accommodation, in private houses or registered lodging houses, consisted of a further 2808 households, representing 8% of the total number of households. (Census 2001)

In addition, there has been considerable expansion of Housing Trust rental accommodation over the last 7 years and it is reasonable to estimate that the total number of rented units, both qualified and unqualified, now exceeds 11,000. In nearly all tenancies or lodgings a rental deposit, equivalent to one month's rent, is held by the landlord or his/her agent. The average rent for all types of private lettings is currently £209 per week (Income Support Housing Component – May 2008) which equates to an average rental deposit of £905. It follows, therefore, that the total amount of rental deposits held by landlords or their agents can be estimated at around £10 million.

A deposit of the order of £905 is a large sum of money for those tenants who are on low incomes to find. This leads to major problems for tenants raising the deposit in the first place and regaining it quickly at the end of a tenancy, so that it can be available for the next tenancy. There is currently no regulation over the size of deposits which can be charged; over how the landlord should hold and account for the money; over how quickly deposits should be returned or over who should benefit from the interest on the money held. The Bureau describes such a system as an invitation for misunderstanding on both sides and for landlord abuse.

If the landlord fails to return the deposit, the onus is on the tenant to take action, ultimately through the Petty Debts Court, to try to establish a claim to the money. Increasingly the problem is becoming a concern for landlords as well, since tenants who have lost their deposit once may decide not to pay the last month's rent rather than risk being out of pocket again. Such action leaves landlords without any security to cover loss or damage to their property.

The Bureau has raised this problem and pressed for reform since 1996. The Consultation Paper on the Residential Tenancy (Jersey) Law 200- proposes that "*further research be done on the value of deposits and cases where there is a dispute concerning the return of a rental deposit*" in order that "*a review of the need for a Tenancy Deposit Scheme takes place within the next 2 years*". The Bureau believes that there is already an overwhelming case for the enactment of legislation to ensure that a custodial rental deposit scheme is set up in Jersey without further delay and prevarication.

The scale of the problem

The Bureau keeps statistics on the number of enquiries received in respect of Housing Costs. Within this category they include issues concerning rental deposits.

A detailed analysis of the Housing Costs category for 2007 reveal that out of a total of 236 issues, 212 [90%] related to rental deposits.

The following statistics cover the 5 year period from January 2003 to December 2007 –

Housing Costs –

Year	2003	2004	2005	2006	2007	
Cases	306	305	241	278	236	total = 1336

90 % of this figure is 1,229 giving an average of 245 rental deposit issues per annum.

Furthermore, in 1998 the Bureau carried out a survey of its clients for a 2 week period, 26th January to 6th February, which involved asking every client who was or had been a private tenant in the last 5 years whether they had ever been charged a rental deposit; if so they were asked to complete a short questionnaire with the help of an adviser. The survey was therefore not confined to people who had come to the Bureau with a rental deposit

problem or indeed any problem relating to a private tenancy. This resulted in 58 questionnaires being completed by clients.

Key findings were that –

- 31% of the respondents who took part in the survey said that they had had a deposit unreasonably withheld in the last 5 years.
- Only 5 out of the 18 respondents who said that they had had a deposit unreasonably withheld were successful in getting their money back. In two cases it took over 3 months for the rental deposit to be eventually returned.
- 75% of the respondents, who had had a rental deposit unreasonably withheld, agreed with the proposal that a Custodial Scheme to safeguard deposits should be set up.

It is of course likely that, in some of the cases where the tenant felt the deposit had been unreasonably withheld, an independent arbiter might have found differently. Indeed the Bureau provides advice to landlords as well as tenants, and it is clear that there are occasions where the deposit provides a crucial safeguard for the landlord.

Summary

- It is clear from the case studies contained in the Appendix that the current system is open to abuse; that the scale of the problem is significant and that for many tenants and lodgers the rental deposit system is unsafe.
- When the landlord or agent refuses to return a deposit the tenant only has the option of instigating legal action through the Petty Debts Court. Clients of the CAB, however, have commented that they do not think it was worth the hassle of taking court action.
- Legal Aid is not usually available for small claims under £1000 and it is unrealistic to expect lay people to put forward argued legal case at a hearing, especially if the landlord is legally represented and particularly if English is not their first language.
- Speed is of the utmost concern to the outgoing tenant who will require a fast return of the rental deposit, within days rather than weeks, in order that it may be used for the next tenancy.
- In order to use the Petty Debts Court the plaintiff is required to pay court fees. Thus a claim for the return of an average deposit of £1,000 would cost £30. This presents an additional barrier to tenants who may have already faced the problem of having to find a further deposit.
- The most serious weakness of the Petty Debts Court procedure to recover a rental deposit is the potential difficulty of enforcing the judgment as the onus remains with the plaintiff to initiate enforcement, through the Viscount's Department, by means of a wage arrest or arrest on assets.

Conclusions

The Bureau believes that the case for reform of the system for holding rental deposits is overwhelming. The Residential Tenancy Law focuses on raising standards in the private rented sector and therefore is the appropriate place to tackle this issue.

Any reform must meet the reasonable requirements of both landlords and tenant for a secure, easy to use and non-bureaucratic system for holding deposits and ensuring their prompt return to the appropriate party at the end of the tenancy.

The custodial model used in England and Wales, called The Deposit Protection Service (DPS), supported by an

independent Alternative Dispute Resolution (ADR) service, meets these requirements.

In order to gain the trust and support of all parties the selected scheme administrator would need to demonstrate its independence and its ability to deliver a fast and efficient service with user friendly procedures and a clear system for complaints and redress.

A statutory, custodial rental deposit protection scheme would do much to improve the image of the private rented sector – a sector which it is current States policy to promote, given the difficulties young people have in accessing affordable housing to buy in the island.

In the face of this serious and significant issue, the Housing Minister proposes to prevaricate until possibly the end of 2010 or beyond. He cites six reasons (page 2 above) for delay, none of which stand up to scrutiny.

The Minister's call for further research into the scale of the problem is redundant. The work has already been very adequately carried out by CAB and shows clearly that the problem is significant and needs to be addressed.

The Minister dismissal of such schemes as “bureaucratic red tape” does not bear up in the face of the evidence already gathered. Surely protection of tenants (and landlords) is a legitimate and justified action. As to cost, as the CAB report points out with some £10 million in total held in deposits, there should not be any problem in making the running costs self-funding. Further, given that there is a U.K. model (DPS) as reference, devising a suitable scheme, perhaps involving a body such as the Community Savings and Credit organisation, should not prove arduous.

As the CAB report confirms, the Petty Debts system does not adequately address the problem, yet the Minister remains reliant on it.

Finally, in proposing his RTL, whilst failing to address the issue of tenants' deposits, the Minister is surely failing in his duty to a significant proportion of the population, especially since the proposed law already contains the articles required enable a scheme to be put in place. To suggest that the RTL only applies to qualified tenants is merely an excuse for doing nothing.

Manpower and Resource Implications

Given the massive resource dedicated to achieving the effective change from the rent rebate/abatement schemes to Income Support which took place over the past year, it would seem probable that sufficient officer time and resource could be found from the current departmental resource to deliver such a scheme in the timescale proposed.

THE NATURE OF THE PROBLEM

The following case studies case studies illustrate the nature of the problem of non-return or partial return of rental deposits. The case studies are taken from CAB records for 2007.

1. Disputes over cleaning costs

- (A) Client advised that relationship with his landlord became difficult as she disapproved of his girlfriend living with him. When the lease expired his landlady retained £350 out of his rental deposit of £1000 for professional cleaning.
- (B) Client was informed by his landlord, at the end of the tenancy, that he would not be returning the rental deposit as he would have cleaning expenses. Client was willing to pay the cleaning bill, on receipt of proof of the cost of cleaning, but landlord refused to do this.
- (C) Client stated that she left her property “spotless” at the end of the tenancy and no complaint was made by the landlord at the inspection when the keys were returned.

Landlord has now told her that he won't be returning the deposit as he had to use professional cleaners and plumbing expenses were also incurred.

- (D) Client had been in lodgings for 6 weeks but decided to leave because of the damp conditions. Landlord wants to deduct the cost of professional cleaners from her deposit of £450.
- (E) Client had been living in “unqualified” accommodation for 2 years. Client felt he left the property in better condition than when they moved in. Landlady said she used a “professional cleaning team” and there was no refund due from his rental deposit.
- (F) Client's lease expired and the landlady agreed, at the inspection, that the only deduction from his deposit would be occupier's rates. He was subsequently informed that £96 would be deducted for cleaning the flat.

2. Disputes over whether any deterioration of fixtures and fittings is more than reasonable wear and tear

- (A) Client has carpets professionally cleaned when he moved into “unqualified” accommodation due to poor condition and stains. The landlord “at the time” informed him that he would put in new carpets but this never happened. When client vacated the property the “new” landlord told him he would be deducting the cost of new carpets from his rental deposit.
- (B) Client was informed by landlord, at the end of a 5 years tenancy, that his deposit of £500 would be retained to pay for new carpets. Client stated that the carpets were not new when he moved in.
- (C) Client moved out of accommodation and was informed by his landlord that his deposit would be used for redecoration of the flat. Client disputed that the deterioration was anything more than normal wear and tear.
- (D) Client's landlord refused to return his deposit as “a piece of the bath tap had been damaged”.
- (E) Clients vacated property after 6 years. They believed flat was in better condition than when they moved in. Landlord refused to return their rental deposit of £700 as in his opinion “money had to be spent to put things right”.

- (F) Clients leased flat for 5 years. They were informed that the lease would not be renewed on expiry, by the agents for the landlord, because it was going to be sold. A week before expiry of the lease they were asked if they would be willing to move out earlier to allow redecoration to commence. They agreed to this but the agents subsequently refused to return the deposit as, according to a letter received from the landlord, the flat required redecoration of walls and doors, cleaning of blinds, curtains and oven.
- (G) Client was evicted from her flat due to a breach of one of the terms of her lease. She had recently redecorated the flat and left it in a clean condition. Landlord's agents failed to agree an inspection date and then told her that the deposit would not be refunded as they would have to clean and decorate before a new tenant could move in.
- (H) Client's rental deposit of £600 was retained by the landlord for cleaning and redecoration of the flat. He was then sent a bill for a further £300. Client was advised to obtain proof of the landlord's expenditure as, in his opinion, only the lounge needed redecoration.
- (I) Landlord deducted £150 from rental deposit "for marks on the wallpaper". The client states that the flat and garden were in a "diabolical" condition when she took on the lease and that the marks on the wallpaper were only wear and tear after 3 years.
- (J) Client has been warned that his rental deposit of £700 may be withheld as there is a minor crack in the washbasin caused by a dropped perfume bottle. The tenant thinks the landlord intends to use his deposit to replace the whole bathroom suite.
- (K) Client took on the tenancy of a flat. The carpets were in such a bad condition that he stayed in a hotel whilst they were being professionally cleaned. When he moved out the landlord refused to repay his rental deposit of £600 because of the state of the carpets.
- (L) Client lived in the same rented property for 19 years. Landlord refused to return his rental deposit of £1000 "as the cost of redecoration was going to cost more than he anticipated". The lease did not require the tenant to decorate at the end of the tenancy.
- (M) Client's son and a friend rented a non-qualified flat in St. Helier and paid a rental deposit of £1200. At the end of the 3 months tenancy the landlady stated that a dent in the bedroom wall, previously hidden by a headboard, would have to be repaired and the cost taken out of their deposit.
- (N) Client vacated her flat at the end of a 3 year lease. She was sent a cheque for £380 as the landlord retained £620 for redecoration and cleaning of carpets and cooker. Client felt that this was very unfair as there was no discussion on these matters at the final inspection.

3. Cases where the landlord simply says he has not got the money available or where the agent is having difficulty contacting a landlord who lives abroad

- (A) Client moved out of rented accommodation in March 2007 and by December 2007 the rental deposit of £800 had still not been returned. The managing agents had stated that it was up to the landlord to return the deposit and they would not supply their client's name and address.
- (B) Client received back half of his rental deposit of £1400 but did not know how to contact his landlady to dispute deduction. He used to pay his rent to the caretaker of the flats.

4. Rental deposits used by landlord to replace carpets at the end of a short tenancy

- (A) Client's rental deposit was retained for cleaning and replacement of carpets. Client doubted that new carpets were purchased and the landlady refused to provide proof of purchase.
- (B) Client had £1100 deducted from her rental deposit of £1500 for replacement of staircase carpet.

She disputed that it was ever necessary to replace this carpet. Six months later she had occasion to visit the same property and discovered that the staircase carpet had not been changed.

5. Cases where the landlord denies ever receiving a rental deposit

- (A) Client moved out of accommodation that he had lived in for 15 years. He claimed back his rental deposit of £800 but the landlord stated that he was not sure that such a deposit was ever paid. Client had a receipt for the deposit and was advised to sue.
- (B) Client paid her rental deposit of £800 with a cheque for £600 and £200 cash. At the end of the tenancy the landlord said he could not remember receiving the £200. Client had a receipt. Subsequently the landlord stated that he had returned £540 to her flatmate but client was adamant that this was untrue and was advised to sue.

6. Disputes over what notice period should have been given by tenant, where there is no written agreement, resulting in deductions from rental deposits

- (A) Client had been living in an attic flat with shared electricity. When she received the first bill it equated to £8 per day. The flat was always cold so she went to see the landlady and they mutually agreed that she could leave. When she went to collect her rental deposit of £500 the landlady said it was being retained as she should have given one month's notice.
- (B) Client gave 2 weeks notice to vacate unqualified accommodation. A new lodger replaced him immediately. Landlord refused to return his deposit of £250 as he claimed insufficient notice was given.
- (C) Client's rented flat had serious damp problems which were pointed out to the landlord. Promises to carry out remedial work to address the problem never came to fruition and the tenant finally decided to break the lease. He gave notice on the 6th of February and moved out on the 1st March. Landlord refused to return his rental deposit as he had not given a full month's notice.
- (D) Client paid a rental deposit of £388. He was not given a lease but paid his rent monthly. He gave one month's notice to leave but the landlord said he had to give 3 months' notice and retained his deposit. Client was advised to sue.

7. Rental deposit not passed on to new owner when property is sold

- (A) Client's landlord denied any knowledge of a rental deposit having been paid. Flat was sold with our client as a sitting tenant. The seller had left the island.

8. Unreasonable delays in returning rental deposits following inspection of accommodation

- (A) Client moved out of rented accommodation in February. The rental deposit was not returned until late April.
- (B) Client had been waiting over 4 weeks for return of her rental deposit.
- (C) Client has been waiting over one month for return of rental deposit of £2060. Client desperately needs the money for new accommodation.
- (D) Client left accommodation in April and in July was still awaiting return of his rental deposit.
- (E) Client left flat in February. He was told by the agents that he would have to wait for repayment of his rental deposit of £1000 until the end of March, as the owner was on holiday in South Africa.

- (F) Client left the property he rented in January. Eight months later he was still waiting for return of his rental deposit of £300.
- (G) Clients vacated flat at end of lease. Three months later they are still waiting for return of their deposit of £1500.
- (H) Rented non-qualified apartment for 3 months. Vacated in July and was still awaiting return of rental deposit of £500 in September.
- (I) Client returned to South Africa when her visa expired. Her Uncle has been trying to get her rental deposit of £600 back, on her behalf, for over 3 months.

[1] Housing Committee Strategic Policy Report 2002-2006 (P2/2002): Amendment Lodged au Greffe 23rd April 2002

[2] http://www.jerseylegalinfo.je/Mediation/Accredited_Mediators/Accredited_Mediators.aspx