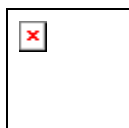


TENANTS AND LODGERS: RETURN OF DEPOSITS (P.46/2001) - REPORT

**Presented to the States on 8th January 2002
by the Housing Committee**



STATES OF JERSEY

STATES GREFFE

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REPORT ON TENANCY DEPOSIT SCHEMES AND SUGGESTED OPTIONS FOR JERSEY

Introduction

On 20th March 2001 Senator Stein lodged a proposition requesting the Housing Committee to investigate the feasibility of a scheme to safeguard rental deposits paid by both tenants and lodgers in the private sector (see attached Appendix). It was stated in the report accompanying the Proposition that the non-return of rental deposits is a common problem and, if they were returned, that there were unreasonable delays or difficulties encountered in obtaining their return.

Background

It is not known how many people are renting private sector property or rooms in the Island, either as tenants with residential qualifications or as unqualified lodgers, but the 2001 census will go some way to providing this information.

Other important data which can only be estimated is the amount of the average deposit and the length of the average stay in a particular rented unit. The Citizens Advice Bureau has provided an analysis concerning the number and value of rental deposits involved in disputes, which were brought to them throughout the period 1st January 2000 to 31st August 2001. These are as follows -

	<i>Year 2000 numbers</i>	<i>Year 2001 numbers</i>
Up to £100	2	3
£101 to £500	36	40
£501 to £1,000	29	29
£1,001 to £1,500	3	5
£1,501 to £2,000	4	1
£2,001 to £2,500	-	1
Over £2,500	<u>2</u>	<u>2</u>
Total	<u>76</u>	<u>81</u>

The Bureau is satisfied that in virtually all these cases the rent was fully paid. There is however no way of knowing -

- What percentage the above figures are of the total deposits turned over in the Island in the period.
- Whether any of the above were wholly or partly withheld for good cause.
- How many deposits were unfairly retained of which we have no knowledge because the tenant/lodger did not complain.

The latter point is important because there is a body of anecdotal evidence which suggests that deposits are being retained unfairly. If this is the case then it affects many of the people who are worst placed financially because they are either renting or lodging in the private sector where the rents are highest, and if they are unqualified they are not eligible for financial assistance in the form of rent rebate. Furthermore it reflects badly on the Island. But precisely because this information is anecdotal and because of the lack of information on the rented sector in the Island as a whole, it is difficult to quantify the problem in terms of numbers affected or financial loss experienced.

The Citizen's Advice Bureau points out that while any tenant who feels that his deposit has been unfairly retained has access to the Petty Debts Court, they often do not do so because -

- many are on low incomes and intimidated by Court procedures;
- they are afraid that the landlord will use a lawyer, and if the tenant loses the case legal costs are added to the lost deposit;
- there is no legal aid in Jersey for civil cases under £500;
- the original transaction is of a casual nature. i.e. with no schedules of condition at the outset of the agreement and schedules of dilapidations at its close, a case can be difficult to prove in court;
- in instances where the Court has found for the tenant, the judgment can be difficult or impossible to enforce because the landlord no longer has the deposit and has no cash;

- some of the tenants are leaving the Island and require a quick resolution.

In an attempt to gain more information on the rented sector, four major landlords/agents were approached. All replied, three were interviewed, and the fourth sent a helpful and constructive letter. The three who were interviewed had between them a total of almost 2,400 properties under their administration.

The interviews were helpful, open and frank. They were also remarkably consistent -

- None of the major landlords or agents said that they had significant problems with retained deposits. One stated that only once in the past six years had a disagreement arisen over a deposit which was not settled amicably, and that case had involved a tenant with rental problems.
- The others said that they were on occasion left with properties in such bad condition that the deposit was not material to the cost of repairing the damage.
- On occasions when they tried to retain the deposit to cover damage, the ex-tenants advised that they would approach the Citizens Advice Bureau, politicians and lawyers. One agent wrote "Because we simply do not have the staff to fight a lengthy battle we capitulate".
- Two agents were of the opinion that if a Tenants' Deposit Scheme was to come into operation there would be more disputes than at present, with one writing that "Given an independent scheme I think that we would end up referring virtually every flat at the end of the tenancy to the arbitrator".
- One of the people interviewed said properties turned over on average every three years, although there were instances of properties turning over two or three times in one year. Another had an annual turnover of around seven per cent of the total properties in their portfolio.
- Three of the people contacted said that they would probably not join a scheme if it was voluntary. The fourth said they would not wish to join until they could see advantages in doing so. There was a concern about the bureaucracy and administration which such a scheme might put upon them, especially as they considered that they were not part of the problem.
- All felt that the problem of deposits retained unfairly lay not with the professional, managed sector, but with small landlords who did not use agents, and also with the unregulated lodging house sector.

On behalf of lodging house owners, Mrs. Sarah Maxey, the President of the Lodging House Association gave the view of the Lodging House Association on a Tenant's Deposit Scheme -

Mrs. Maxey wrote that there was general agreement that, as an Association, the members were not experiencing problems with deposits. Their code of practice states clearly that when a deposit is taken it is returnable. If it is not returned in full it is because of damage caused to the premises, or rent not fully paid to the leaving date, and the outgoing licensee understands that this is fair as they have signed a copy of the agreement stating clearly under what circumstances the deposit will not be returned. The sums involved are normally in the region of one month's rent, so if £100 is retained it is done in an atmosphere of understanding. In the majority of cases deposits are repaid on the day of leaving, either by cash or cheque.

Mrs. Maxey continued -

"If any advice was to be given it is definitely that there should be some form of control on the private sector (people renting out garages and spare rooms). Educating people to realise the importance of a written receipt for their deposit and a form of contract stating when and how they will receive it back on leaving the accommodation. At the same time telling them of the importance of a written inventory and condition of the premises."

To conclude, it appears from interviews with landlords, agents and the President of the Lodging House Association, that problems with retained deposits are coming mainly from private landlords who do not use the services of professional agents, and also from the unregistered lodging house sector.

Francis Le Gresley, Manager of the local Citizens Advice Bureau, concurs with this opinion and believes that any Tenancy Deposit Scheme would fail if it did not reach this sector.

Rental Deposit Schemes

Queensland

A successful Rental Deposit Scheme operates in Queensland, Australia, where people who rent are covered by a Residential Tenancies Act. This Act covers the whole spectrum of the relationship between landlord and tenant, of which the rental bond is only one part. The Residential Tenancies Act in Queensland does not apply to holiday lettings, boarders and lodgers, *except for the section on rental bonds*. So lodgers in Queensland have their deposits protected in the same way as tenants.

Under this scheme, which is centrally administered by the Residential Tenancies Authority (RTA), an Entry and an Exit Condition report must be completed and signed by both landlord and tenant.

At the beginning of the tenancy the landlord must give a receipt for the deposit (which is called a Bond) and remit the full value to the RTA within ten days. Failure to do so can result in a fine. The RTA then issue a numbered receipt to the tenant. At the end of the tenancy, if the bond is to be fully refunded, both landlord and tenant sign a form for refund of the rental bond and it can either be taken to the RTA or, significantly, to the local Post Office, where all the forms required by the scheme are also available. The Post Office fax the RTA for clearance, which will be given within half an hour, and the Post Office then pays cash over to the tenant. If the value of the bond is to be split between lessee and lessor, then provided there is agreement between them both, and they have both signed the form, the Post Office can still process the bond, the only difference being that if one party to the receipt is not in attendance the Post Office will refund that party by cheque. Since the Post Office make no charge to either tenant or landlord for this service, they must be reimbursed by the RTA.

Where there is a dispute and one or both parties will not sign for the release of the bond, then either party can apply to the RTA for dispute resolution which is speedy and enforceable.

United Kingdom

In 1999 the United Kingdom Government funded a pilot Tenancy Deposit Scheme with approximately half a million pounds. This scheme, administered by the office of The Housing Ombudsman, was to be piloted over five areas in the United Kingdom and was intended to last for two years. The intention was that if, at the end of this period, it was seen to be both necessary and successful, it would be rolled out across the country and made compulsory by law, the ongoing costs to be covered by the interest on the tenants' deposits. The United Kingdom scheme only covers full tenancies.

At the moment the scheme is voluntary, and therefore only a small percentage of landlords have signed up to it, although with time, and significant promotional effort by of the Office of the Housing Ombudsman during the last two years, the response from agents and landlords is becoming more positive. In particular agents are signing up and therefore bringing in the landlords they represent, because agents can be in the middle of disputes between the landlords they represent and their tenants. Having a formal dispute resolution service is an advantage for an agent. In the United Kingdom there are also several formal bodies of landlords' associations who are being encouraged to join as a block, bringing in all their member landlords. However, Colin Ivermee of the Office of the Housing Ombudsman said that it was still difficult to get landlords to join, and that on the whole, the landlords who did join were the good landlords. This may account for the fact that to date only a very low number of the deposits retained have gone to adjudication.

By October 2001, when the scheme had been operation for 18 months, there had only been 37 disputes, 27 of which had been what were termed technical disputes. i.e. cases where the tenant had disappeared and the landlord had to apply to the Ombudsman to have the deposit released. The other ten had gone for adjudication. The average amount in dispute is £900 ranging from £55 to £3,500 and the average cost of an adjudication is in the region of £500.

Operation of the Scheme in the United Kingdom

The United Kingdom scheme offers two options, a custodial option and an insured option.

Custodial Option

The landlord or his agent must place the deposit at the start of the tenancy into a ring-fenced account which, for the moment, is operated by the Nationwide Building Society (NBS). The NBS operate a single account for each landlord/agent, which can in turn be divided into sub accounts. A receipt confirming the deposit is sent to the tenant by the NBS within five days of receipt. The landlord/agent receives the bank statements.

At the end of the tenancy the full refund of the deposit can be authorized on the sole signature of the landlord/agent on a

standard form and will be paid within three working days.

If part or all of the deposit is retained by the landlord, but there is no dispute, the refund will be made to the parties on the signatures of both landlord and tenant on the same timescales as before.

If there is a dispute the case is referred to the Housing Ombudsman with all documentation and inventories, along with a statement of the rent account. If these documents cannot be provided, the Ombudsman will seek them from the other party, and if they are still unavailable he will take this into account in his adjudication.

The Ombudsman adjudicates within ten working days of receiving the paperwork. He is assisted by expert adjudicators who were specially trained for this scheme.

No interest accrues on the deposits for the benefit of either landlord or tenant. The interest, which is very low, reflecting the level of administration undertaken by the NBS, is the property of the Tenancy Deposit Scheme and is used to help cover the costs of the scheme.

Insured Option

The landlord/agent must hold the deposit during the tenancy. They must take out an insurance policy with an accredited insurance company which, for the purposes of the pilot in the United Kingdom, has been the Norwich Union. The interest on the deposit is the property of the landlord.

Landlords/agents must agree to pay an insurance premium unless they are members of a trade or professional body whose insurance arrangements provide the cover.

Landlords/agents are liable for a post-award insurance premium if the insurer has to repay any of the deposit on their behalf.

At the end of the tenancy, if there is no dispute, the deposit is either returned to the tenant by the landlord, or partially or wholly retained as agreed between both parties.

Where there is a dispute it is referred to the Housing Ombudsman as above. If he finds partly or wholly in favour of the tenant he will instruct the Insurer to pay the tenant the sum due to them. The Insurer will then collect this sum from the landlord/agent together with the post insurance award premium within ten working days.

If the landlord/agent fails to repay the Insurer there are further steps which can be taken by both the Insurer and the Housing Ombudsman to enforce the claim.

The experience of the pilot scheme to date has shown that the Insured Option is by far the most popular. 84 landlords, four landlord associations and 74 agents have been recruited to this scheme, representing £4.62 million of deposits covered, as opposed to 18 landlords and £655,600 deposits covered by the Custodial Option.

The Committee considered that there were four options -

1. Do nothing.
2. Accept that there is a problem but try to find other ways of addressing it short of a Tenancy Deposit Scheme.
3. Pilot a voluntary Tenancy Deposit Scheme.
4. Pass legislation for a compulsory Tenancy Deposit Scheme.

1. Do nothing

It is difficult to assess the number and value of deposits retained unfairly in the Island in any one year, or to know whether these represent a significant proportion of the total deposits turned over.

Of the people who complain that their deposit has been retained, it is not known in what condition they left their property as opposed to the condition in which they received it.

The relationship between landlord and tenant is a civil one which is already covered by law. Tenants losing their deposits unfairly have recourse to the court, and if their income is low and the sum is over £500 they can apply for legal aid, while the landlord usually has to pay his own costs. Is it the role of Government to interfere in such relationships?

2. Accept that there is a problem but try to find other ways of addressing it short of a Tenancy Deposit Scheme.

If, as it appears, the majority of the problem is coming from non-professional landlords who do not use agents, and the unregistered lodging house sector, it may be because some of these landlords do not understand the reason for the deposit, and their rights and responsibilities arising from it.

Tenants do not help themselves at the outset of the agreement, as the United Kingdom Housing Ombudsman reported to his Board in October 2001.

“The overall response of tenants, especially in areas of low supply, remains that they just want to rent a suitable property. They do not feel in a position to press a reluctant landlord to protect their deposit; or even if they do, it is not something they want to concern themselves with at the outset. It is very difficult to target tenants, even through representative groups.”

Jersey is certainly an area of low supply, and small landlords with only one or two properties do not need to use agents because of this.

It may be possible to implement an education/information campaign targeting both landlords and tenants. This could include -

- public information broadcasts aimed at both parties on the correct use of, and management of, rental deposits;
- public information booklets available in the Library, Post Offices, both the Harbour and Airport as points of entry to the Island, Tourism, public buildings and the Citizens Advice Bureau;
- a poster campaign at points of entry into the Island, Tourism, Post Offices etc. advising prospective tenants to obtain an information booklet on rental deposits before seeking accommodation;
- the issue of pro-forma Schedules of Entry Condition and Exit Condition of property, with guidelines for their use available free from the same outlets as the Information booklets (these will be useful if a dispute has to go to Court).

A public information system such as the one suggested would require an ongoing financial budget, together with some small amount of staff resource.

It should be possible to make small amendments to Clauses (a) and (b) of Part 1 of the Standard Tenancy Agreement (Standard Form of Written Contract for Exemption from Rent Control) which would be specific about the responsibilities of both parties for the deposit.

- Clause (a) states that a deposit shall not exceed one period's rent and that a receipt shall be given. However there are apparently cases where the landlord does not have the deposit to return. To counteract these situations Clause (a) could be expanded to include the instruction that the deposit be held in a separate account.
- Clause (b) already states that the deposit will be repaid net of any rent arrears. This clause could be expanded to state that any rent arrears will lead to the whole of the deposit being forfeited. This may deter tenants from stopping rent payments a month prior to leaving the property ensuring that no deposit remains from which the landlord can recover damages. This clause could also include an outline of situations where the deposit is likely to be forfeited.
- The requirement for an inventory could be expanded to include a Schedule of Condition on Entry, which must be signed by both the landlord and tenant. A requirement for a written Schedule of Dilapidations on Exit could also be included.

The Standard Agreement for Landlords and Lodgers which is used by members of the Lodging House Association has clauses in its standard terms and conditions which effectively cover deposits, receipting deposits, opening inventories and the return of deposits.

The Lodging House Association is currently working on a website to disseminate information to be available to more unqualified people in the renting sector. It is hoped that this will benefit both lodgers and tenants.

3. Pilot a voluntary Tenancy Deposit Scheme

It is likely that the shortage of property to rent in Jersey would mean that none of the landlords likely to cause problems would join the scheme.

Good landlords and agents might be persuaded, with considerable effort, to join the scheme but realistically they are not the ones causing the disputes.

It would incur costs for administration and set-up while not producing the benefit of curing the problem.

4. Pass legislation for a compulsory Tenancy Deposit Scheme

To be effective such legislation would have to include the whole lodging house sector, and a way would have to be found legally to do this without either creating a tenancy, or involving the bona fide tourist sector. Also any scheme which is made law would also require some level of 'policing'.

It is not known at the moment how many units such a scheme would encompass, but if it included every bedroom rented in private houses to lodgers, as well as registered lodging house units and proper tenancies, but excluded Public Sector rented accommodation, it is estimated that there would be in the region of 9,000 units.

4.1 *Administration of a Compulsory Tenancy Deposit Scheme*

There are two types of schemes available in the United Kingdom, the Custodial Option and the Insured Option.

However it is administered, landlords will be required to register their rented unit and its associated deposit with a registering authority. If that registering authority is then required to accept, bank, receipt and account for the deposit through the course of its life, this will require substantial administrative resources which must be funded in some way.

4.1.1 *Custodial Option*

The custodial option requires much more administration but has the advantage that the deposits can be made available to generate interest. In the United Kingdom this option uses the Nationwide Building Society which itself carries out much of the administration of the landlords' accounts, however it pays a very low rate of interest to the Ombudsman. Another option would be to maximise the interest by investing the whole deposit but have the administration done elsewhere. It is a trade-off between service provided and interest received.

A very simple costing suggests that if there were 9,000 units, deposits should be at least £3 million, which a current rates may generate £120,000 per year, but interest rates are falling currently. The amount of administrative work which has to be done depends not only on the number of units, but on how often they turn over their occupants. If one body was to be responsible for the registration and management of all the accounts, expenditure could be calculated using, say three clerical staff at Grade 5. This may seem excessive, but the administration of the ownership and split of the total deposit alone will require substantial administration. It is this latter part of the work which in the United Kingdom is managed by the bank, at the cost of reduced interest. Other expenditure is estimated in this example using the proportions from the October 2001 accounts of the Housing Ombudsman which show that staff accounted for approximately 55 per cent of the total expenditure. It should also be noted that these figures take into account the start-up costs of the scheme which include training and recruitment, but Jersey would also have these. These figures make no allowance for adjudication which is a contract expense estimated to cost £500 per adjudication.

	£	£
Income from deposits		120,000
Expenditure	71,000	
Staff (three clerks)	58,000	
Other expenses*		<u>129,000</u>
Deficit for year before adjudication expenses		(9,000)

* Note- Other expenses include travel, promotion, training, rent, and office expenses.

The likely number of adjudications is completely unknown. The experience of the United Kingdom to date is not typical of the situation which would occur in a compulsory TDS scheme, because by their own admission they are only attracting good landlords. It is possible that landlords who at present do not contest disputes over deposits because it is too onerous, may in fact contest a substantial number if it becomes a free service. This is in addition to disputes raised by tenants. It can be seen from the above figures that using the custodial option, it is likely that bank interest will barely cover the administration costs of the scheme, and that the total cost of adjudication will have to be funded by other means.

The experience in the United Kingdom is that the technical disputes which occur when a tenant has disappeared can be handled in house by the administrative staff. Of the disputes which go to adjudication the average value of the dispute is £900 and the average cost of adjudication £500.

The Housing Ombudsman has trained adjudicators for the purpose of the scheme, selecting people with a special knowledge of property, e.g. rent officers and surveyors, They also use lawyers on occasions when legal opinion is required. Adjudicators are contracted and used as required.

The Housing Ombudsman has suggested that he may be able to offer an adjudication service to the Island. Since not every adjudication requires a visit if the condition schedules are sufficient, it is an offer worth considering.

If the Custodial Option was to be considered, it may be possible to outsource the administration of the scheme, and contract adjudication services as required. One organization which might consider taking on the scheme is the Community Charitable Trust (C.C.T.) which is a non-profit making financial institution similar to a credit union. The C.C.T. should become operational in Jersey in January 2002 and has been set up with the aim of eliminating financial exclusion in the Island. It will -

- be open to small-income groups;
- encourage small-scale savings;
- provide low-cost loans primarily geared to personal finance.

Thus there is a symbiosis between the C.C.T. and the majority of the people in rented accommodation who are most at risk from losing their deposits.

The banking expertise of the C.C.T. should make it an excellent financial vehicle for managing the deposits of a TDS, and its low-cost base should make the administration more cost-effective. In addition, the total deposit capital of £3 million may be very attractive to the C.C.T., however this option will require a legislative framework to guarantee a significant level of deposits.

4.1.2 *Insured Option*

This is the preferred option in the United Kingdom. Its advantage is that it requires little administration, although the adjudication costs will be the same. The disadvantage is that, as the landlord retains the deposit, there is no capital to generate any interest towards the administration of the scheme. Also landlords with deposits in excess of £500,000 are excluded from this option.

Because there are still some costs incurred with the Insured Option, one reasonable way to recover them would be to make a registration charge to landlords every time a tenancy/agreement was registered. It is difficult to know how much this charge should be. If it is too high landlords will complain about a tax upon them, too little and it will not cover likely adjudication costs. One way of doing it in the longer term may be to penalize, with higher registration charges, landlords whose behaviour causes heavy use on the adjudication service with findings regularly going against them.

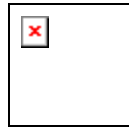
A compulsory scheme will require legislation, which will be expensive, and these costs have not been considered here. Also the law drafting process would mean that it may be several years before it becomes law. In the United Kingdom the current pilot scheme is being extended country-wide in April 2002 and the Housing Ombudsman hopes that it will be law before the next election.

Conclusion

The Committee, having considered the various options available, agreed that, as most of the information received in relation to the scale of the problem was anecdotal, there was insufficient evidence to justify the introduction of new legislation for a compulsory scheme. Furthermore, it felt that a voluntary scheme would not have any effect on the landlords who appeared to be at the core of the problem. The Committee favoured the education and information approach outlined as Option 2 above but recognized that there were no resources available at present to implement such an approach.

TENANTS AND LODGERS: RETURN OF DEPOSITS

**Lodged au Greffe on 20th March 2001
by Senator C. Stein**



STATES OF JERSEY

STATES GREFFE

PROPOSITION

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

to request the Housing Committee to investigate the feasibility of 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 or their agents, to ensure the prompt return of the monies due at the end of the period of occupation, and to report back to the States within three months.

SENATOR C. STEIN

Report

The non-return of rental deposits is a common problem. Often tenants and lodgers face delays of weeks and in many cases the deposit is withheld altogether, with little or no reason given.

The Citizens Advice Bureau (C.A.B.) have many examples of this practice and, having been approached myself, I have uncovered much evidence with very little effort and, indeed, continue to receive complaints.

The only legal remedy open to the tenant or lodger seeking to recover her/his money is to initiate action through the Petty Debts Court. This takes a minimum of two weeks. In most cases people give up, either because they are returning to the United Kingdom or they feel disadvantaged as they are not used to a courtroom scenario, or because of the perceived or real threat of the landlord using a lawyer, and various other quite understandable reasons. Other Commonwealth countries have found solutions which work both for the landlord and tenant or lodger. These solutions are secure, self-financing and need little manpower. In Australia for example only two per cent of cases go to a local tribunal.

In the United Kingdom the National Audit Office has found that almost half of the respondents who obtained judgement in their favour in the small claims court had to take enforcement action, and of those, only about one third succeeded in recovering all or part of their claims. With the evidence the C.A.B., the Jersey Consumer Council and I have, it shows that we are little different than the United Kingdom and we have to accept that we have a problem, in particular where the pressure on the housing market is so much greater.

Where agents hold tenants' deposits in separate clients accounts, they still have to obtain the landlord's consent, which could be withheld even if the agent has agreed that there is no claim to be made on the deposit.

At present the absence of regulations leave the system wide open to abuse. It does not work in the interest of the landlord either, as it tarnishes the image of the private rented sector, and in case of a dispute the landlord will have the advantage of a third party adjudicating.

The proposition will have no financial or manpower implications for the States as the scheme can be self-financing and can be outsourced.