

Tenant Fees Act 2019: Guidance for landlords and agents

Contents

ABOUT THE BAN.....	4
What fees can I ask a tenant to pay?	4
When does the ban apply?	8
What does this mean for existing tenancy agreements?	8
Who does the ban apply to?	9
ENFORCEMENT	10
Q. Who will carry out enforcement of the Tenant Fees Act?.....	10
Q. Who are Trading Standards?	10
Q. Do tenants have any other enforcement options?	10
Q. What is a Lead Enforcement Authority?	10
Q. What evidence will I need?	10
FINANCIAL PENALTIES AND CONVICTIONS.....	11
Q. What is considered to be a breach of the ban?	11
Q. When will enforcement authorities decide to impose a financial penalty as an alternative to prosecution?	11
Q. What factors will enforcement authorities take into account when deciding the appropriate level of financial penalty?	12
Q. Can a tenant receive compensation under the ban?.....	12
Q. Will I be able to appeal an enforcement authority's decision to impose a financial penalty for breach of the ban?	12
Q. If I receive a financial penalty for breaching the ban, will I be added to the database of rogue landlords and property agents?	12
Q. If I'm convicted of an offence under the ban, will I be added to the database of rogue landlords and property agents?.....	12
Q. If I breach the ban on fees, can the local housing authority apply to the First-tier Tribunal for a banning order?	13
Where can I get more information about letting a property in England?	13
ANNEX A – TENANT FEES BILL Q&A.....	14
Which types of tenancy does the ban apply to?.....	18
PROHIBITED PAYMENTS	19
VIEWING FEES.....	19
TENANCY SET-UP FEES.....	19
TENANCY CHECK-OUT FEES.....	21

THIRD PARTY FEES	23
PERMITTED PAYMENTS	26
RENT	26
TENANCY DEPOSITS	28
DEPOSIT OPTIONS.....	32
HOLDING DEPOSITS	33
DEFAULT FEES AND DAMAGES PAYMENTS.....	45
CHANGES TO A TENANCY	54
EARLY TERMINATION FEES	56
OTHER PAYMENTS	58

ABOUT THE BAN

Please note: this guidance applies to England only.

What fees can I ask a tenant to pay?

You cannot require a tenant (or anyone acting on their behalf or guaranteeing their rent) to make certain payments in connection with a tenancy. You cannot require them to enter a contract with a third party or make a loan in connection with a tenancy.

The only payments you can charge in connection with a tenancy are:

- a) [the rent](#)
- b) [a refundable tenancy deposit](#) capped at no more than five weeks' rent where the annual rent is less than £50,000, or six weeks' rent where the total annual rent is £50,000 or above
- c) [a refundable holding deposit](#) (to reserve a property) capped at no more than one week's rent
- d) [payments to change the tenancy](#) when requested by the tenant, capped at £50, or reasonable costs incurred if higher
- e) [payments associated with early termination of the tenancy](#), when requested by the tenant
- f) [payments in respect of utilities, communication services, TV licence and council tax](#); and
- g) [A default fee for late payment of rent and replacement of a lost key/security device, where required under a tenancy agreement](#)

If the fee you are charging is not on this list, it is a **prohibited payment** and you should not charge it. A **prohibited payment** is a payment outlawed under the ban.

If you are uncertain as to whether a charge is permitted, you should consider contacting Citizens Advice or obtaining legal advice. You could contact your [local trading standards authority](#) or the lead enforcement authority.

You cannot evict a tenant using the [section 21 eviction procedure](#) until you have repaid any unlawfully charged fees or returned an unlawfully retained holding deposit. All other rules around the application of the section 21 evictions procedure will continue to apply.

In the Act “in connection with a tenancy” is defined as requirements:

- by a landlord or letting agent in consideration of, or in consideration of arranging for, the grant, renewal, continuance, variation, assignment, novation or termination of a tenancy

- on entry into a tenancy agreement, or an agreement relating to a tenancy with a letting agent, containing provisions requiring the tenant to do any of those things
- pursuant to a provision of a tenancy agreement, or pursuant to an agreement relating to a tenancy with a letting agent, which requires or purports to require the person to do any of those things in the event of an act or default of the person or if the tenancy is varied, assigned, novated or terminated; and
- as a result of an act or default related to the tenancy unless pursuant to, or for breach of, a tenancy agreement, or an agreement relating to a tenancy with a letting agent; and
- in consideration of providing a reference for a former tenant

You are permitted to ask a tenant to pay:

a) the rent

You should agree the amount of rent to be paid with the tenant when agreeing to let the property. The rent should be paid at regular, specified intervals. The amount charged will usually be equally split across the tenancy. In the first year of the tenancy, you must not charge more at the start of the tenancy compared to a later period.

For example, you cannot require a tenant to pay £800 in month one and £500 in month two onwards – the additional excess of £300 in month one will be a [prohibited payment](#). But, if appropriate, you may decrease the rent (without penalty) during the first year if agreed by the tenant once the tenancy has started or under a rent review clause that enables both rent increases and decreases.

b) a refundable tenancy deposit (capped at no more than five weeks' rent where the total annual rent is below £50,000, or six weeks' rent where the total annual rent is £50,000 or above)

You may ask a tenant to pay a tenancy deposit as security for the performance of any obligations, or the discharge of any liability arising under or in connection with the tenancy for example in case of any damage or unpaid rent or bills at the end of the tenancy. You are not legally required to take a deposit. In any case, you must not ask for a deposit which is more than five weeks' rent where the annual rent is less than £50,000. If the annual rent is £50,000 or greater the tenancy deposit is capped six weeks' rent. Any amount above this will be a [prohibited payment](#).

Any deposit you request must usually be protected in one of the three Government backed [tenancy deposit schemes](#) within 30 days of taking the payment. You must provide the tenant with information as to where and how their deposit is protected. The deposit is the tenant's money and you will need

to provide evidence to substantiate any deductions from the deposit at the end of the tenancy if challenged.

c) **a refundable holding deposit (capped at no more than one week's rent)**

You may ask a tenant to pay to demonstrate a commitment to rent the property whilst referencing checks take place. You cannot ask a tenant for a holding deposit which is more than one week of the total rent for that property. If you ask for a holding deposit which is above one week's rent, this will be a prohibited payment.

You may only accept one holding deposit for one property at any one time. If you accept more than one, this will be a prohibited payment. You should stop advertising a property once a holding deposit has been agreed to be paid.

You must refund the holding deposit where a tenant later enters into a tenancy agreement, the landlord decides not to rent the property, an agreement is not reached before the **'deadline for agreement'** (and the tenant is not at fault), or if you impose a requirement that breaches the ban and/or act in such a way that it would be unreasonable to expect a tenant to enter into a tenancy agreement with you (i.e. including unfair terms in a tenancy agreement or harassment etc.)

The **'deadline for agreement' for both parties** is usually 15 days after a holding deposit has been received by a landlord or agent (unless otherwise agreed in writing).

You can only retain a tenant's holding deposit if they provide false or misleading information which reasonably affects your decision to let the property to them (i.e. calls into question their suitability as a tenant, this can include their behaviour in providing the false or misleading information), they fail a right to rent check, withdraw from the proposed agreement (decide not to let) or fail to take all reasonable steps to enter an agreement (i.e. responding to reasonable requests for information required to progress the agreement) when the landlord and/or agent has done so. Where you wish to retain the holding deposit, you must set out in writing the reason for this within 7 days of deciding not to enter the agreement or the **'deadline for agreement'**.

d) **default fees (for late payment of rent and replacement of a lost key/security device, where required under a tenancy agreement)**

You can only charge a tenant a default fee where this has been written into the tenancy agreement and this is for a late payment of rent (which is more than 14 days overdue) or a lost key/security device giving access to the housing.

The fee will be a [prohibited payment](#) where this exceeds interest at more than 3% above the Bank of England's annual percentage rate for each day that the payment is outstanding (for a late rent payment) or the reasonable costs incurred by the landlord or agent (for a replacement key/security device). The Act does not affect any entitlement to recover damages for breach of contract.

e) [**changes to the tenancy \(capped at £50 or reasonable costs if higher\)**](#)

Where a tenant requests a change to the tenancy agreement (e.g. a change of sharer or permission to keep pets on the property) you are entitled to charge up to £50 for the work involved in amending the tenancy agreement or the amount of your reasonable costs if they are higher. It is good practice for a landlord or agent to agree to reasonable requests to vary the tenancy agreement. The general expectation is that the charge will not exceed £50. You should provide evidence to demonstrate the reasonable costs of carrying out the work if you wish to charge above £50. Any charge that exceeds the reasonable costs you have incurred will be a [prohibited payment](#).

Please note: the provisions on a change to the tenancy does not apply to a renewal or to the length of the tenancy. From **1 June 2019**, agents and landlords will not be able to charge for a renewal of a tenancy under the Act. However, if the tenancy was entered into before **1 June 2019** and it was agreed in their contract to pay certain renewal fees, then a landlord or agent can charge these fees for a new fixed-term agreement or statutory periodic agreement up until **31 May 2020**.

f) [**early termination \(capped at the landlord's loss or agent's reasonable incurred costs\)**](#)

If a tenant requests to leave before the end of their tenancy you are entitled to charge an early termination fee. This must not exceed the financial loss that a landlord has suffered in permitting, or reasonable costs that have been incurred by the agent in arranging for, the tenant to leave early.

This usually means that a landlord must not charge any more than the rent they would have received before the tenancy reaches its end. It is good practice to agree to any reasonable request to terminate the tenancy agreement early. If there are no missed rent payments, we encourage you to not charge any early termination fees unless you can demonstrate through evidence to the tenant that specific costs have been incurred (e.g. marketing and referencing costs). Any payment that exceeds the landlord's financial loss or an agent's reasonable costs will be a [prohibited payment](#).

g) [**council tax, utility and communications services**](#)

Tenants are still responsible for paying bills in accordance with the tenancy agreement, which could include council tax, utility payments (gas, electricity, water) and communication services (broadband, TV, phone). There is associated consumer protection legislation which prohibits landlords from over-charging for these services. The Office of Gas and Electricity Markets, 'OFGEM', fixes maximum resale prices under section 44 of the Electricity Act 1989, section 37 of the Gas Act 1986 and the Water Resale Order 2006 governs the maximum price for water.

When does the ban apply?

It depends on when a tenancy agreement was entered into. The ban is being introduced in two stages.

1. From **1 June 2019**, if you enter into a tenancy agreement, student let or licence to occupy housing in the private rented sector, you will be prohibited from charging any fees or other payments that are not included in the list of permitted payments [above](#).

Landlords will be responsible for the costs associated with setting up, renewing or ending a tenancy (i.e. referencing, administration, inventory, renewal and check-out fees). Agents and landlords do not have to pay back any fees that have been charged to a tenant before **1 June 2019**.

Where a tenancy agreement was entered into before **1 June 2019**, you will still be able to charge fees until **31 May 2020**, but only where these are required under an existing tenancy agreement. This might include, for example, fees to renew a fixed-term agreement where a tenant had already agreed to pay these. However, you should consider whether it is necessary to charge in such instances. Where fees are charged, businesses such as letting agents are prohibited from setting unfair terms or fees under existing consumer protection legislation.

2. From **1 June 2020**, the ban on fees will apply to all applicable tenancies and licences to occupy housing in the private rented sector. You will not be able to charge any fees after this date (apart from those fees which are expressly permitted under the ban – see above).

What does this mean for existing tenancy agreements?

If a tenancy agreement was entered before **1 June 2019**, you can continue to require a tenant to pay fees written into that agreement (e.g. check-out or renewal fees) until **31 May 2020**.

After **1 June 2020**, the term requiring that payment will no longer be binding. Should you, in error, ask a tenant to make such a payment, you should return the payment

immediately and must return this within 28 days. If you do not return the payment within 28 days, you will be treated for the purposes of the Act as having required the tenant to make a prohibited payment (a payment that is outlawed under the ban).

You do not need to return any amount of tenancy deposit that is over the cap for tenancy agreements that were entered into before the Tenant Fees Act came into force. For more information on this, please read the [Tenancy Deposit](#) section.

Who does the ban apply to?

The ban applies to all assured shorthold tenancies, tenancies of student accommodation and licences to occupy housing in the private rented sector in England. The majority of tenancies in the private rented sector are assured shorthold tenancies.

In this guidance 'tenant' includes licensees. **'Relevant persons'** are any persons acting on behalf of a tenant or licensee or guaranteeing the rent.

Please note: certain licences to occupy are excluded from the Tenant Fees Act 2019, such as those granted under Homeshare arrangements (provided that the necessary conditions apply).

Local housing authorities, the Greater London Authority or a person or organisation acting on their behalf are excluded from the definition of relevant person under the Act and can continue to make payments in connection with a tenancy when acting on behalf of a tenant or guaranteeing their rent.

ENFORCEMENT

Q. Who will carry out enforcement of the Tenant Fees Act?

[Trading Standards](#) authorities have a duty to enforce the ban but district councils that are not Trading Standards authorities will also have power to enforce if they choose to do so. You can find your local trading standards authority [here](#).

Q. Who are Trading Standards?

[Trading Standards](#) are based within local authorities and enforce consumer rights. They can determine whether a tenant or relevant person has been charged an unlawful or unfair fee by a landlord or agent and can issue a fine for breach of the ban, if this has been established.

Q. Do tenants have any other enforcement options?

The Act also makes provision for tenants or relevant persons to be able to recover unlawfully charged fees through the [First-tier Tribunal](#) and, importantly, prevents landlords from recovering possession of their property via the [section 21 eviction procedure](#) until they have repaid any unlawfully charged fees or unlawfully retained holding deposit. Tenants can also seek repayment through the relevant [redress scheme](#) (where this concerns an agent).

Q. What is a Lead Enforcement Authority?

The Secretary of State (i.e. the Government) can arrange for a Lead Enforcement Authority whose duty it is to oversee the operation of the tenant fees ban and any other relevant letting agency legislation. The Secretary of State may themselves act as Lead Enforcement Authority.

Q. What evidence will I need?

You should keep any evidence of payments that you have requested a tenant to make; this could be:

- tenancy or pre-tenancy agreements
- any other relevant paperwork
- receipts and invoices
- bank statements
- correspondence from the tenant – emails, letters, texts
- notes that you made at the time or shortly after any conversation with a tenant

FINANCIAL PENALTIES AND CONVICTIONS

Overview

A breach of the legislation will usually be a civil offence with a financial penalty of up to £5,000, but if a further breach is committed within 5 years of the imposition of a financial penalty or conviction for a previous breach this will be a criminal offence. The penalty for the criminal offence, which is a banning order offence under the Housing and Planning Act 2016, is an unlimited fine.

Where an offence is committed, local authorities may impose a financial penalty of up to £30,000 as an alternative to prosecution. In such a case, local authorities will have discretion whether to prosecute or impose a financial penalty. Where a financial penalty is imposed this does not amount to a criminal conviction.

A breach of the requirement to repay the holding deposit is a civil offence and will be subject to a financial penalty of up to £5,000.

Q. What is considered to be a breach of the ban?

Each request you make for a prohibited payment is a breach. For example, the following would be considered multiple breaches:

- charging different tenants under different tenancy agreements prohibited fees
- charging one tenant multiple prohibited fees for different services at different times
- charging one tenant multiple prohibited fees for different services at the same time
- charging one tenant one total prohibited fee which is made up of different separate prohibited requirements to make a payment e.g. £200 requested for arranging the tenancy and doing a reference check= multiple breaches.

Where you are being fined for multiple breaches at once, and you have not previously been served a financial penalty, the financial penalty for each of these breaches is limited to up to £5,000 each.

Q. When will enforcement authorities decide to impose a financial penalty as an alternative to prosecution?

Enforcement authorities are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty of up to £30,000 and should decide which option they wish to pursue, on a case-by-case basis, in line with that policy. Local authorities must have regard to statutory enforcement guidance issued by the Lead Enforcement Authority or Secretary of State.

Q. What factors will enforcement authorities take into account when deciding the appropriate level of financial penalty?

Enforcement authorities have discretion when determining the appropriate level of financial penalty within the limitations set out by the Act.

Enforcement authorities are expected to develop and publish their own policy on determining the appropriate level of civil penalties to impose. Generally, we expect the enforcement authority to consider each breach on a case by case basis and for the maximum amount to be reserved for worst offenders.

The actual amount levied in any particular case should be fair and proportionate reflecting the severity of the offence as well as taking in to account the landlord or agent's previous record of offending.

Q. Can a tenant receive compensation under the ban?

A tenant is entitled be repaid the sum of any unlawfully charged fees, an unlawfully retained holding deposit or amounts paid under a prohibited contract as well as any interest awarded by the enforcement authority (in line with the Act).

Q. Will I be able to appeal an enforcement authority's decision to impose a financial penalty for breach of the ban?

Yes. You will be able to appeal to the [First-tier Tribunal](#) if you have been issued with a financial penalty in relation to the ban. An appeal against a financial penalty must be brought within 28 days from the day after the final notice was served. You may appeal against the decision to impose a penalty or the amount of the penalty.

Q. If I receive a financial penalty for breaching the ban, will I be added to the database of rogue landlords and property agents?

If you receive two or more financial penalties within a 12 month period, at a time when you were a landlord or agent, a local housing authority has discretion to include you on the database of rogue landlords and property agents. An offence under the Tenant Fees Act 2019 is a banning order offence under the Housing and Planning Act 2016.

Q. If I'm convicted of an offence under the ban, will I be added to the database of rogue landlords and property agents?

If you are convicted of an offence under the ban, this will constitute a 'banning order offence' under the Housing and Planning Act 2016. Local housing authorities have discretion over whether to include convictions for banning order offences on the database. If you have been convicted of a banning order offence, the local housing authority can apply to the [First-tier Tribunal](#) for a 'banning order'. Local housing

authorities are under a duty to record details of banning orders on the database. The government has published [guidance on banning order offences and banning orders](#).

Q. If I breach the ban on fees, can the local housing authority apply to the First-tier Tribunal for a banning order?

If you are convicted of an offence under the ban, the local housing authority may wish to consider applying for a banning order against you. We have issued separate [guidance](#) for local housing authorities on banning orders. Banning orders will be reserved for the most serious offenders.

Where can I get more information about letting a property in England?

The Government's [How to Let guide](#) provides useful information on rights and responsibilities when letting out a property.

You should also consult the [How to Rent a Safe Home](#) guide for information about how to identify potential hazards and unsafe condition, and to understand a private landlord's legal obligations when letting a residential property.

ANNEX A – TENANT FEES BILL Q&A

Which types of tenancy does the ban apply to?	18
What is an assured shorthold tenancy?	18
What is a licence to occupy housing?	18
PROHIBITED PAYMENTS	19
VIEWING FEES	19
Q. Can I ask a tenant to pay a fee to view a property?	19
TENANCY SET-UP FEES	19
Q. Can I charge a tenant for setting up a new tenancy?	19
Q. Can I charge a tenant for an inventory?	20
TENANCY CHECK-OUT FEES	21
Q. Can I charge a tenant to check-out at the end of a tenancy?	21
Q. Can I charge a tenant for a professional clean at the end of a tenancy?	21
Q. Can I charge a tenant for checking-out on a Saturday?	22
Q. Can a tenant's previous landlord or agent charge me to provide a reference?	22
THIRD PARTY FEES	23
Q. Can I charge a tenant fees through a third party?	23
Q. Can I require a tenant to obtain a reference?	23
Q. Can I charge a tenant to undertake a credit check through a third party?	23
Q. Can I refuse to let to a tenant if they do not have a reference check provided by a third party?	23
Q. Can I ask a tenant to pay for gardening services?	23
Q. Can I ask a tenant to take out insurance through a third-party?	24
Q. Can I charge a tenant for a rent guarantor?	24
Q. Can a tenant opt to pay for a third-party service?	24
Q. Can a tenant opt to use an agent to act on their behalf?	24
Q. Can I ask a tenant to pay for chimney sweeping services?	25
PERMITTED PAYMENTS	26
RENT	26
Q. Can I ask a tenant to pay more rent in the first few months to cover the cost of banned fees?	26
Q. Can I increase the rent part way through the tenancy?	26

Q. Can I ask a tenant to pay rent upfront if they don't have a suitable guarantor or reference checks?	26
Q. If a tenant cannot afford to pay the tenancy deposit, can I increase the rent as an alternative to taking a tenancy deposit?.....	27
TENANCY DEPOSITS	28
Q. What is a tenancy deposit?.....	28
Joint vs. individual tenancy agreements	28
Q. How much tenancy deposit can I ask a tenant to pay?.....	28
Q. Do I have to take a tenancy deposit?.....	29
Q. When does the tenancy deposit cap apply?	29
Q. If a tenant paid a tenancy deposit which exceeds the cap before 1 June 2019, do I need to re-pay the amount of the deposit above the cap?.....	30
Q. What is the transition period? How will it apply to me?	30
Q. What happens after the transition period?	30
Q. Why is the tenancy deposit cap higher for properties with a total annual rent of £50,000 or more?	31
Q. Can I take a higher amount of tenancy deposit if a tenant has a pet?	31
DEPOSIT OPTIONS	32
Q. Can a tenant use a rent deposit scheme to help pay the tenancy deposit?.....	32
Q. Can a tenant use a rent guarantee or bond scheme to cover damages or unpaid rent?	32
Q. Can a tenant use a deposit replacement product?	32
HOLDING DEPOSITS	33
Q. What is a holding deposit?.....	33
Q. What are my responsibilities?.....	33
Q. What do you mean by a requirement which breaches the ban on fees? ...	35
Q. What do you mean by a landlord or agent behaving in such a way that it would be unreasonable to expect the tenant to enter into an agreement with them?	35
Q. Can I take more than one holding deposit?	36
Q. Can a tenant put down more than one holding deposit on different properties?	36
Q. Do I need to protect a holding deposit in one of the three tenancy deposit protection schemes?	36
Q. Can I refund a tenant's holding deposit by putting it towards their first month's rent or tenancy deposit?	37

Q. Do I have to explain to a tenant why I have retained their holding deposit?	37
Case studies	38
<i>False or misleading information</i>	38
<i>Reasonable requests for information</i>	40
<i>Failed reference check</i>	41
<i>Withdrawing from a property</i>	41
<i>Right to rent checks</i>	42
<i>Landlord or agent withdraws</i>	43
DEFAULT FEES AND DAMAGES PAYMENTS	45
Q. What is a default fee?	45
Q. What is the difference between a default fee and damages?	46
Q. What are contractual damages?	46
Q. What should I do if I wish to recover a payment for damages from a tenant during the tenancy?	47
Q. Shouldn't a landlord use the tenancy deposit to claim back damages?	47
Q. Can I still recover fees for late payment of rent or a lost key/security device through the tenancy deposit?	48
Q. Can a landlord and agent both charge a default fee for late payment of rent?	48
Q. Can a landlord or agent recover costs for damages for breach of the tenancy agreement if they didn't write them into the tenancy agreement?	48
Q. Can a tenancy agreement include a clause that says in the event that legal fees are incurred for evicting the tenant, the tenant will have to cover the legal fees?.....	49
Q. Is there any other relevant legislation?	49
Default fees permitted under the ban	50
Late payment of rent	50
Q. Can I charge for a late rent payment?	50
Q. How much interest can I charge for a late rent payment?.....	50
Q. How do I calculate the maximum amount of interest that can be charged on a late rent payment?.....	50
Q. Can I pass on costs from a third party owing to a tenant's late rent payment?.....	51
Replacement key or security device	52

Q. How much can I ask a tenant to pay for a replacement key or security device?	52
Q. Does a tenant have to pay the charge if I do not provide evidence to demonstrate that the costs incurred are reasonable?	52
Q. Can I charge for my time in replacing a key or security device?.....	53
Q. If a tenant requests more sets of keys (e.g. for family or cleaners) can they be charged for the cost of extra sets of keys?	53
CHANGES TO A TENANCY	54
Q. What do you mean by a change to a tenancy?.....	54
Q. Can I charge a tenant for a change of sharer?	54
Q. If a tenant has found a suitable replacement tenant, can I still charge more than £50 for a change of sharer fee?	54
Q. Can I charge a fee for each change to a tenancy agreement?	55
EARLY TERMINATION FEES	56
Q. Can I ask a tenant to pay a fee if they want to leave a tenancy before the end of their fixed-term or the end of their notice period?	56
Q. What can I charge if a replacement tenant has been found?.....	56
Q. Can I require a tenant to pay their outstanding rent in a lump sum?	57
Q. Can a tenant sub-let as an alternative to terminating their fixed-term agreement early?	57
OTHER PAYMENTS	58
Q. Are there other payments that a tenant can be required to make?	58
Q. Are utility payments (gas, electricity, water) excluded from the ban?	58
Q. What can I charge tenants for gas and electricity?	58
Q. What can I charge tenants for water?	58
Q. Do tenants have the right to change the gas and electricity provider?	59
Q. Can a tenant ask for a pre-payment meter to be removed?	59
Q. What happens if a tenant has a debt on their account?.....	59
Q. Are loans under the Green Deal (or any subsequent energy efficiency scheme) excluded from the ban?	59
Q. Are broadband, TV or phone payments excluded from the ban?	59
Q. Are council tax payments excluded from the ban?	59
Q. If a tenant owes a permitted fee which they don't pay, can interest at 3% above the Bank of England base rate be charged?.....	59

Which types of tenancy does the ban apply to?

The ban applies to [assured shorthold tenancies](#) (except social housing or long leases), tenancies of student accommodation and licences to occupy housing in the private rented sector in England. Most tenancies in the private rented sector are assured shorthold tenancies.

In this guidance 'tenant' includes licensees. **'Relevant persons'** are any persons acting on behalf of a tenant or licensee or guaranteeing the rent.

What is an assured shorthold tenancy?

A tenancy is likely to be an [assured shorthold tenancy](#) if all the following apply:

- the property is rented privately
- the tenancy started on or after 28 February 1997
- the property is the person's main accommodation
- the landlord doesn't live in the property

What is a licence to occupy housing?

A [licence](#) is personal permission for someone to occupy accommodation. A licence can be fixed term or periodic (usually rolling month-to-month).

The main instances where someone might have a [licence rather than a tenancy agreement](#) are where:

- there is no intention to enter into a legal relationship (e.g. a friend you invite to house sit while you're on holiday)
- there is no right to exclusive occupation (e.g. they are a lodger)
- the arrangement is a service occupancy (e.g. where an employee is required to occupy the accommodation under their contract as it is essential for performance of their duties).

PROHIBITED PAYMENTS

What payments are not permitted under the ban?

VIEWING FEES

Q. Can I ask a tenant to pay a fee to view a property?

No. You cannot charge for this as viewing a property is part of the process connected with granting a tenancy.

TENANCY SET-UP FEES

Q. Can I charge a tenant for setting up a new tenancy?

No. After the ban comes into force you cannot charge a tenant for any activity (except if it is listed in the permitted payments section above) or for your time in setting up a new tenancy. It is a landlord's responsibility to pay for services they contract, including any costs associated with setting up a tenancy. This includes fees for referencing and credit checks, guarantor fees and administration.

However, if the tenancy was entered into before **1 June 2019** and the tenant agreed in their contract to pay certain renewal fees, then you can charge these fees for a new fixed-term agreement or statutory periodic agreement up until **31 May 2020**.

From **1 June 2020**, the term requiring that payment will no longer be binding on the tenant. Until that time, you should consider whether it is necessary to charge in such instances. Where fees are charged, businesses such as letting agents are prohibited from setting unfair terms or fees under existing consumer protection legislation.

You may ask a tenant to provide information which supports you to carry out a reference check, such as:

- **bank statements** – to assess a tenant's income and ability to pay rent
- **a reference from a previous landlord** (you cannot ask a tenant to pay for this)
- **proof of address history** (usually up to 3 years)
- **details of current employer** – an employer can verify a tenant's income and confirm whether they are trustworthy, reliable and honest

There are several third-party organisations, including agent and landlord associations, which will carry out professional referencing checks for you at a small cost – typically a full tenant reference check should cost no more than £30.

You could also pay a small fee to check the [Register of Judgments, Orders and Fines](#) to see whether a tenant has received a County Court Judgement (CCJ) in the last six years. A CCJ is a judgement that a county court issues when someone has failed to pay money that they owe - a CCJ could indicate money problems or trouble paying bills. You should not rely wholly on this information alone as tenants may be fully able to meet the terms of a tenancy even if they have a CCJ.

You can also search the bankruptcy and insolvency register for free – this will tell you whether a tenant has gone bankrupt or signed an agreement to deal with their debts in England and Wales.

Any information you request must be treated in accordance with relevant data protection legislation, including most recently, the General Data Protection Regulations which came into force in April 2018.

Q. Can I charge a tenant for an inventory?

No. A landlord or agent may choose to carry out an inventory check but cannot charge a tenant for this service. An inventory is a written record of the condition the property was in at the start of the tenancy, including details of anything that was already damaged or worn. This record should be agreed by you and the tenant. Conducting an inventory check at the start of a tenancy is in the interest of both tenants and landlords, but the burden of proof will fall on the landlord to demonstrate that any claims for damages against a tenant's deposit at the end of your tenancy are justified. It is preferable for an independent person to undertake check in and check out reports (e.g. a specialist inventory clerk).

You can also take your own photographic evidence of the condition of the property. You would need to ensure that any such evidence is dated, and you should share a copy with your tenant. It is best for any photographic evidence of the property's condition to be accompanied by a schedule of condition.

TENANCY CHECK-OUT FEES

Q. Can I charge a tenant to check-out at the end of a tenancy?

No. You cannot charge a tenant for any services connected with the termination or ending of a tenancy (unless this relates to early termination requested by the tenant). However, if the tenancy was entered into before **1 June 2019** and a tenant agreed in their contract to pay exit fees, such as check-out or inventory fees, you can charge these fees up until **31 May 2020**. From **1 June 2020**, the term requiring that payment will no longer be binding on the tenant.

You should consider whether it is necessary to charge in such instances. Where fees are charged, businesses are prohibited from setting unfair terms or fees under existing consumer protection legislation. You cannot require a tenant to pay any fees not set out in their tenancy agreement or any agreement with an agent.

Q. Can I charge a tenant for a professional clean at the end of a tenancy?

No. You cannot require a tenant to pay for a professional clean when they check-out. However, if the tenancy was entered into before **1 June 2019** and a tenant agreed in their contract to pay such fees, you can charge these fees up until **31 May 2020**. From **1 June 2020**, the term requiring that payment will no longer be binding on the tenant.

You may request that a property is cleaned to a professional standard. Tenants are responsible for ensuring that the property is returned in the condition that they found it, aside from any fair wear and tear. Fair wear and tear is considered to be a defect which occur naturally or as part of the tenant's reasonable use of the premises.

You cannot require a tenant to use a particular company to clean the property. If the property is not left in a fit condition, you can recover costs associated with returning the property to its original condition and/or carrying out necessary repairs by claiming against the tenancy deposit. You should justify your costs by providing suitable evidence (e.g. an independently produced inventory, receipts and invoices).

You are not able to claim deductions from a tenant's deposit for any change in the condition of the property which is due to fair wear and tear or if a tenant returns the property in the same condition as it was found.

Q. Can I charge a tenant for checking-out on a Saturday?

No. You cannot require a tenant to pay a fee when they leave the property, or checks out, on a Saturday, or at any time over the weekend. If a tenant chooses to check-out on a Saturday, you may charge for this, but only where the tenant has been given a reasonable alternative that does not require a fee (e.g. a check out during office hours, if this required).

However, if the tenancy was entered into before **1 June 2019** and a tenant agreed in their contract to pay such fees then you can charge these fees up until **31 May 2020**. From **1 June 2020**, the term requiring that payment will no longer be binding on the tenant.

Q. Can a tenant's previous landlord or agent charge me to provide a reference?

Yes. If you request a reference directly from a tenant's previous landlord or agent, they can charge for this. You will be responsible for negotiating and paying any costs associated with obtaining a reference required from a previous landlord or agent.

THIRD PARTY FEES

Q. Can I charge a tenant fees through a third party?

No. Under the ban, you cannot require a tenant to pay for the services of a third party. However, if a tenant opts to employ the services of a third party, for example, by purchasing their own reference check or inventory service, they will be responsible for any associated costs.

Q. Can I require a tenant to obtain a reference?

No. You cannot require a tenant obtain a reference through a third-party reference service as a condition of granting a tenancy, but a tenant could opt to obtain such a reference voluntarily. You can ask a tenant to supply a reference from a former landlord or agent, but the previous landlord or agent cannot charge the tenant for this. If you request a reference directly from a tenant's previous landlord or agent, and they want to charge for doing this, you will have to negotiate this with the previous landlord or agent directly and pay any associated costs if required.

Q. Can I charge a tenant to undertake a credit check through a third party?

No. You can ask a credit referencing agency to carry out a check on a tenant, and you can ask the tenant to provide the necessary details to complete the check. However, you cannot make the tenant pay for this. If the tenant does not provide the information reasonably required by the third party to carry out a check and they have been given reasonable notice, you may be able to retain their holding deposit, if they paid one.

Q. Can I refuse to let to a tenant if they do not have a reference check provided by a third party?

No. You cannot require a tenant to meet any conditions that could only be met by paying a fee for a third-party service. This means that you cannot require a tenant to pay a fee through a third party where there is an alternative option which does not require a fee but imposes an excessive or unrealistic requirement on the tenant. For example, you cannot ask a tenant to pay a fee to a third party for a credit check where the alternative requires them to provide five years' bank statements.

You can ask a tenant to provide any information you reasonably require in order to undertake referencing or credit checks through a third party. If a tenant does not provide this when requested and they have been given reasonable notice, you could be entitled to retain their holding deposit, if they have paid one.

Q. Can I ask a tenant to pay for gardening services?

No. You cannot require a tenant to pay for gardening unless this has been included as part of the rent.

Q. Can I ask a tenant to take out insurance through a third-party?

No. You cannot require a tenant to do this, although they may choose to do this voluntarily.

Q. Can I charge a tenant for a rent guarantor?

No. You can ask a tenant to provide a suitable rent guarantor as a condition of granting the tenancy; however, you cannot ask the tenant or their guarantor to pay any fees associated with meeting this condition (e.g. referencing or administration costs).

Q. Can a tenant opt to pay for a third-party service?

A tenant can use the services of a third party if they choose to do so. For example, a tenant may use a reference checking company, a deposit replacement product or an inventory service. However, a tenant cannot be required to do so by a landlord or agent in connection with a tenancy.

You cannot require a tenant to meet any conditions that could only be met by paying a fee for a third-party service (e.g. requiring a professional clean at the end of the tenancy). However, you may ask a tenant or give them the option to do something as an alternative to complying with a different requirement which is permitted under the ban. For example, if the tenant is required to pay a default fee under a tenancy agreement to cover the reasonable costs of a replacement key, you could give them the option to replace the lost key at their own cost and time through a third-party. Alternatively, you may give a tenant the option of using a deposit replacement product instead of paying a tenancy deposit. Where possible, we encourage landlords and agents to be flexible.

Q. Can a tenant opt to use an agent to act on their behalf?

If a tenant chooses to employ an agent to act on their behalf, for example, a relocation agent, to support them in finding housing to rent in England whilst they are living overseas or outside of the area, the agent would be permitted to charge the tenant for such services (provided that the tenant rents housing from that agent and the agent does not work on behalf of the landlord).

Q: Can I ask a tenant to pay for chimney sweeping services?

No. Under the ban, landlords or letting agents cannot require tenants to pay for the services of a third party, including chimney sweeping services. If the tenants prefer to employ the services of a third party, they will be responsible for any associated costs.

Landlords have a duty to ensure the property is maintained safely and should consider the potential risks associated with chimneys. If the tenancy agreement prohibits tenants from using a fireplace or to have the chimney swept and the tenants failed to comply with the restriction or obligation and this constitutes a loss to the landlord i.e causes damage or additional expense, the landlord may seek to recoup this loss from the tenancy deposit.

Please note: you cannot evict a tenant using the [section 21 eviction procedure](#) until you have repaid any unlawfully charged fees or returned an unlawfully retained holding deposit. All other rules around the application of the section 21 evictions procedure will continue to apply.

PERMITTED PAYMENTS

What payments are permitted under the ban?

RENT

Q. Can I ask a tenant to pay more rent in the first few months to cover the cost of banned fees?

No. Under the ban, you cannot require a tenant to enter into an agreement that 'front loads' the rent at the start of a tenancy i.e. by charging more for the first month(s) of the tenancy. The amount of rent charged should normally be equally split across the first year of the tenancy.

However, after the tenancy has begun, you can reduce or increase a tenant's rent without breaching the Tenant Fees Act if agreed with the tenant or under a rent review clause in the tenancy agreement (provided that the rent review clause permits both a rent reduction or increase according to the circumstances).

Q. Can I increase the rent part way through the tenancy?

You can increase the rent if a tenant agrees to this or under a rent review clause in the tenancy agreement (in the first year of the tenancy, this is provided that the rent review clause would also have permitted a rent decrease). If the tenancy is an assured shorthold periodic tenancy, you can also increase the rent annually by notice in accordance with section 13 of the Housing Act 1988.

If you seek to increase the rent by way of a section 13 notice the tenant may apply to the [First-tier Tribunal](#) for determination of the reasonable rent.

You may want to consider including a rent review clause in the tenancy agreement to enable you to discuss any changes in rent level with the tenant at an appropriate time.

Q. Can I ask a tenant to pay rent upfront if they don't have a suitable guarantor or reference checks?

Yes. You could ask a tenant to pay their rent in a lump sum but should consider if this is necessary and affordable for the tenant. You cannot charge any more in an up-front lump sum payment than would have been chargeable over the fixed-term of the tenancy. For example, if the rent is £500 a month and the tenancy is for a fixed-term of six months, you cannot ask a tenant to pay more than £3,000 up front.

A tenancy agreement must not ask a tenant to pay more rent in the first month compared to a later period (the rent instalments should be **split equally** across the first year of the tenancy). You could reasonably ask a tenant to pay more than one rent instalment at the start of the tenancy but only where the tenancy agreement does not require this as a single rent payment. For example, if the rent was £400 per

month, you could ask a tenant to pay three months' rent upfront ($3 \times £400 = £1200$), but the tenancy agreement could not make a tenant liable (responsible) to pay £1200 in the first month and then £400 every month after that.

Q. If a tenant cannot afford to pay the tenancy deposit, can I increase the rent as an alternative to taking a tenancy deposit?

You should discuss with the tenant whether there is a suitable deposit alternative available to them. They may be able to access a loan from a third-party scheme or secure a guarantee to cover damages and/or unpaid rent.

You should make clear to the tenant that they will often still be responsible for the costs of any damages and/or unpaid rent at the end of the tenancy, even where they have paid an up-front fee to a third-party or they have used a deposit replacement product.

The amount that you ask for in rent should be fair, in line with other similar properties in the area and clearly advertised to the tenant. You should be clear and up-front with tenants about what the rent covers (whether this includes certain utilities or council tax). This will allow tenants to make an informed decision about whether they can afford a property.

TENANCY DEPOSITS

Q. What is a tenancy deposit?

A tenancy deposit is a refundable payment that a landlord or agent can ask a tenant, or a relevant person (i.e. someone acting on a tenant's behalf) to make. This provides a landlord with security if a tenant causes damage to a property, does not return it in its original condition, does not pay their rent or breaks the terms of their tenancy agreement.

The level of tenancy deposit you can ask a tenant to pay depends on the total annual rent for the property.

- If the total annual rent for the property is less than £50,000, the maximum tenancy deposit you can ask a tenant to pay is up to five weeks' rent.
- If the total annual rent for the property is £50,000 or above, the maximum tenancy deposit you can ask a tenant to pay is up to six weeks' rent.

You can calculate the total annual rent using one of the following formulae:

- total monthly rent x 12
- total weekly rent x 52

You can calculate the total weekly rent using one of the following formulae:

- (your monthly rent x 12) ÷ 52
- your annual rent ÷ 52

Joint vs. individual tenancy agreements

Where a property is let separately on a room-by-room basis, this is **an individual tenancy**. The tenant is only liable for the rent set out in their agreement.

Where there is a **joint tenancy**, liability (responsibility) for payments such as the tenancy deposit and rent is spread across named persons on the tenancy agreement. In this case, the cap on tenancy deposits relates to the total weekly rent for the property for which all tenants are jointly liable.

Q. How much tenancy deposit can I ask a tenant to pay?

Where a tenant has an **individual tenancy**, you cannot ask them to pay a tenancy deposit that is more than five weeks of the rent set out in their tenancy agreement (unless their annual rent is £50,000 or above per year).

Where there is a **joint tenancy agreement**, you cannot require each tenant individually to pay a tenancy deposit equivalent to five weeks' rent (where the total annual rent for the property is less than £50,000) or six weeks' rent (where the total annual rent is £50,000 or more).

For example, where there are three tenants who are jointly liable (responsible) for a total weekly rent of £240, you cannot ask each tenant to pay a tenancy deposit of up to five times the total weekly rent ($5 \times 240 = £1200$). The maximum this group of tenants could be asked to pay as a tenancy deposit between them would be £1200. They may then choose to split this equally so that each person would pay £400.

Tenants in a joint tenancy agreement are jointly and severally liable (i.e. all those named on the contract bear equal responsibility) for paying the rent – therefore the cap on tenancy deposits applies to the weekly rent liability which can be spread across the tenants.

*For properties where the total annual rent is less than £50,000, five weeks' rent is the statutory maximum you can ask a tenant to pay as a tenancy deposit if they enter into a tenancy agreement on or after **1 June 2019**.*

*For properties where the total annual rent is £50,000 or more, six weeks' rent is the statutory maximum you can ask a tenant to pay as a tenancy deposit if they enter into a tenancy agreement on or after **1 June 2019**.*

Q. Do I have to take a tenancy deposit?

You are not obliged to take a tenancy deposit and you should consider on a case by case basis whether to take a tenancy deposit and the appropriate level of deposit to take.

A deposit equivalent to five weeks' rent (where the total annual rent is under £50,000) or six weeks' rent (where the total annual rent is £50,000 or more) is the upper limit and in many scenarios the amount of deposit requested will be less. The average level of tenancy deposit taken is between four and five weeks' rent. You should discuss with the tenant an appropriate level of tenancy deposit they should pay.

For assured shorthold tenancies, any deposit that you request from a tenant must be protected with one of the three Government backed [tenancy deposit protection schemes](#) within 30 days of taking the payment. You must also provide the tenant with information about where and how their deposit is protected. The deposit is the tenant's money and you will need to provide evidence to substantiate any claims against the deposit at the end of the tenancy. If you do not protect the deposit, a tenant can seek up to three times the amount back from you by going through the courts. Citizens Advice provide more information on this [here](#).

Q. When does the tenancy deposit cap apply?

From 1 June 2019, the cap on tenancy deposits will apply to new applicable tenancies. This includes assured shorthold tenancies, tenancies of student accommodation and licences to occupy housing in the private rented sector in England.

From 1 June 2019, the cap applies to fixed term contracts which are renewed for another fixed term – even if this is at the same property – as they will be a new applicable tenancy. Landlords and letting agents will be required at this point to repay the amount of the deposit held which is over the five (or, where appropriate, six) week cap.

If the tenant's held deposit is protected in a Government approved scheme, this deposit should be returned within 10 days of the tenant and the landlord agreeing on the amount to be returned (minus any deductions for fair wear and tear for example) at the end of the tenancy. If the deposit is *not* protected (most likely the case if a tenant is a lodger, a student in university halls of residence or if they have an assured or protected tenancy), it should still be returned at the end of the tenancy (minus any agreed deductions). If a landlord does not do this, a tenant has the option to seek a refund through the courts.

Q. If a tenant paid a tenancy deposit which exceeds the cap before 1 June 2019, do I need to re-pay the amount of the deposit above the cap?

No. Landlords and letting agents are not obliged to immediately refund part of a tenancy deposit that is above the cap but was paid before 1 June 2019. If a tenant signed a tenancy agreement before 1 June 2019 (and that tenancy is continuing or is a statutory periodic agreement) then the tenant will be bound by the terms of that contract until it is either renewed or terminated.

Q. What is the transition period? How will it apply to me?

There is a 12 month transition period from 1 June 2019 to 31 May 2020. This is to allow time for landlords and letting agents to renegotiate their agreements.

From 1 June 2019, any provision which breaches the ban in a continuing tenancy agreement which was signed before this date continues to be legally binding on the tenant. This includes continuing assured shorthold tenancies, tenancies of student accommodation, licences to occupy housing and statutory periodic tenancies which arise during the transitional period from a fixed term which was signed before 1 June 2019. This means the tenant will continue to be liable for any payments agreed to in the tenancy which might occur within this transitional period.

Q. What happens after the transition period?

From 1 June 2020, any provision in continuing tenancies that breach the fee ban or deposit cap will no longer be legally binding. This includes continuing assured shorthold tenancies, tenancies of student accommodation, licences to occupy housing signed before 1 June 2019 and statutory periodic tenancy agreements arising during the transitional period from a fixed term signed before 1 June 2019.

A landlord or agent does not need to immediately return any part of the deposit which is in excess of the cap (as this payment was not made after the cap came into force). However, you will be required to refund the deposit at the end of the tenancy in the usual way and any new tenancy agreed after this will need to comply with the new tenancy deposit cap.

Q. Why is the tenancy deposit cap higher for properties with a total annual rent of £50,000 or more?

Certain high-end properties have higher costs associated with them in terms of more expensive fittings and furnishings. The costs of any damage and unpaid rent at the end of the tenancy is therefore greater in such properties.

Q. Can I take a higher amount of tenancy deposit if a tenant has a pet?

No, there are no special provisions or exemptions if you have a pet. A landlord or agent can only take a tenancy deposit up to a maximum of five weeks' rent (where the total annual rent is less than £50,000) or six weeks' rent (where the total annual rent is £50,000 or more). This provision applies universally, regardless of circumstance.

DEPOSIT OPTIONS

Q. Can a tenant use a rent deposit scheme to help pay the tenancy deposit?

Yes. A third party may offer tenants a loan for the tenancy deposit as part of a rent deposit scheme. Usually, the scheme lends the tenant money in advance and they will be required to pay it back over a period of time. These schemes are often run by local authorities and housing associations, but also certain employers and charity providers. Where possible, you should support the tenants in accessing such schemes.

Q. Can a tenant use a rent guarantee or bond scheme to cover damages or unpaid rent?

Yes. Several third parties offer rent guarantee or bond schemes, often to people on low incomes or at risk of homelessness. These providers will offer you a written agreement to guarantee a tenant's liability for rent payments, default fees or damages.

Q. Can a tenant use a deposit replacement product?

Yes – if you agree to this and the tenant has been given alternative option which is explicitly permitted under the ban (a tenancy deposit up to five weeks' rent (where the total annual rent is less than £50,000) or six weeks' rent (where the total annual rent is £50,000 or more)).

A tenant could be asked to pay a non-refundable fee up-front to a third-party as an alternative to paying a cash deposit. A deposit replacement product may require a fee (sometimes equivalent to one week's rent, a monthly payment for the duration of their tenancy, an annual levy or premium). In return, the scheme provider will agree to cover the cost of any damages up to a certain level and recover these costs from the tenant separately.

You cannot require a tenant to use a deposit replacement product but may allow it as an option without contravening the fees ban. You should discuss with the tenant whether this would be the right option for them.

HOLDING DEPOSITS

Q. What is a holding deposit?

A landlord or agent can take a holding deposit from a tenant to reserve a property whilst reference checks and preparation for a tenancy agreement are undertaken.

You cannot ask a tenant for **more than one week's rent as a holding deposit** (this cap is based on the total agreed rent for the property). For example, if there are three tenants who are jointly liable for the agreed total weekly rent of £240, you cannot charge each tenant a £240 holding deposit. The maximum this group of tenants could be asked to pay as a holding deposit between them would be £240. They may then choose to split this equally so that each person would pay £80.

You should stop advertising a property once a holding deposit has been paid. Landlords and agents can only accept one holding deposit for one property at any one time. You are not permitted to take multiple holding deposits for the same property.

The cap of one week's rent on holding deposits is an upper limit and not a recommendation. You are not obliged to take a holding deposit and should consider on a case by case basis whether it is appropriate to take a holding deposit and the appropriate level of deposit to take.

Q. What are my responsibilities?

- ✓ You should provide tenants with clear information about why you are requesting a holding deposit, including the sum that is required and the circumstances where they may lose all or part of the deposit (in accordance with the Tenant Fees Act 2019).
- ✓ You should not waste a tenant's time. You should be clear and up-front with tenants about your expectations and check that they meet the basic income and credit worthiness requirements before taking a holding deposit from them. If you consider that they will not be a suitable tenant, you should not take a holding deposit from them. You may do this by having an informal discussion with a tenant about the requirements to let the property (e.g. acceptable level of income).
- ✓ You should provide your tenant with a copy of the tenancy agreement before taking the holding deposit.
- ✓ You should clearly define what you consider to be *credit worthiness* – tenants should have a clear understanding of what might count against them so that they have the opportunity to provide any relevant information. If this includes previous missed and late payments, you should make this clear to the tenant.

- ✓ You must not unlawfully discriminate against a tenant on the basis of their disability, sex, gender reassignment, pregnancy or maternity, race, religion or belief or sexual orientation.

Landlords will usually have two weeks (14 days) to enter into a tenancy agreement with a tenant once a holding deposit has been received by the landlord or agent. This is before the **‘deadline for agreement’**, which is the 15th day after the holding deposit has been received. However, you may agree a different **‘deadline for agreement’** with the tenant in writing (which could be more or less than 14 days).

You should provide a tenant with clear information that sets out:

- the amount of deposit they have paid
- the agreed rent for the property
- the specified date for reaching an agreement (**‘the deadline for agreement’**)
- other material agreed terms you will be letting the property on

You will be able to use this as evidence should a tenant challenge your decision to retain a holding deposit.

You must refund a tenant’s holding deposit in full within 7 days of:

- entering into a tenancy agreement with the tenant
- you choosing to withdraw from the proposed agreement; or
- the **‘deadline for agreement’** passing without a tenancy having been entered

A holding deposit can only be retained where a tenant:

- provides false or misleading information which you can reasonably consider when deciding to let a property – this can include a tenant’s behaviour in providing false or misleading information
- fails a right to rent check
- withdraws from a property (unless a landlord or agent imposed a requirement that breached the ban or acted in such a way to the tenant or relevant person that it would be unreasonable to expect a tenant to enter into a tenancy agreement with them)
- fails to take all reasonable steps to enter into a tenancy agreement and the landlord or agent takes all reasonable steps to do so (unless a landlord or agent imposes a requirement that breaches the ban or acts in such a way to the tenant or relevant person that it would be unreasonable to expect a tenant to enter into a tenancy agreement with them).

You must return the holding deposit if you impose a requirement that breaches the ban or act in such a way towards a tenant or a relevant person that it would be

unreasonable to expect them to enter into a tenancy agreement with you (e.g. a landlord or agent asking a tenant to pay a fee for referencing, seeking to include an unfair term in the tenancy agreement or acting in an aggressive or harassing way).

You must set out in writing why you are retaining a tenant's (or a relevant person's) holding deposit within 7 days of deciding not to let to them if this is before the **'deadline for agreement'** or within 7 days of the **'deadline for agreement'** passing, otherwise you forfeit the right to retain their holding deposit and must return it to them.

Even where you are entitled to retain a tenant's holding deposit, you should consider whether it is necessary to do so. We encourage landlords and agents to decide on a case-by-case basis whether to retain part of the deposit and understand that they may only need to cover specific costs which have been incurred (for example, referencing checks). You should be able to provide evidence of your costs to demonstrate that they are reasonable.

A tenant will be able to recover their holding deposit via the local authority (usually [Trading Standards](#)) or [First-tier Tribunal](#) where:

- you do not have legitimate grounds to retain their holding deposit
- you retain their holding deposit but do not provide the tenant with notice setting out why you are retaining the deposit (within 7 days of deciding not to let to them or within 7 days of the **'deadline for agreement'** passing)

Unlawfully retaining a holding deposit is a civil offence with a penalty of up to £5,000.

Q. What do you mean by a requirement which breaches the ban on fees?

A tenant is entitled to a full refund of their holding deposit where a landlord or agent imposes a requirement that breaches the ban. For example, you must return a tenant's holding deposit if you have required a tenant to pay a fee to carry out referencing checks or to pay a tenancy deposit which is more than five weeks' rent (where the total annual rent is under £50,000).

Q. What do you mean by a landlord or agent behaving in such a way that it would be unreasonable to expect the tenant to enter into an agreement with them?

You are required to return a tenant's holding deposit if you behave in such a way that it would be unreasonable to expect the tenant enter into a tenancy agreement with you (e.g. pressuring a tenant to enter into a tenancy agreement which contains unfair terms or acting in aggressive or harassing manner).

Please note: an unfair term to a tenant is one that creates a disproportionate imbalance between a landlord and a tenant which is ultimately detrimental to the

tenant (e.g. requiring a tenant to pay a disproportionately high sum in compensation for not fulfilling an obligation in their tenancy agreement).

Q. Can I take more than one holding deposit?

No. A landlord or agent that accepts more than one holding deposit for the same housing will be in breach of the Tenant Fees Act. This means that any holding deposit taken where the landlord or agent is already in receipt of a holding deposit for the same housing will be a [prohibited payment](#).

The purpose of a holding deposit is to enable both the landlord and tenant to demonstrate their commitment to entering into a tenancy agreement on the terms agreed whilst reference checks are undertaken. A holding deposit creates a binding conditional contract between tenant and landlord. Under this contract, the tenant agrees to provide honest representations as to their income, tenancy history and references, and to enter into the tenancy under the terms agreed with the landlord. The landlord agrees to enter into the tenancy as per the agreed terms subject to satisfactory fulfilment of all pre-tenancy checks.

As such, you should not accept more than one holding deposit at any one time. You would be legally bound to enter the tenancy if the tenant fulfils their part of the obligations. Where you do not proceed with the tenancy agreement before the **‘deadline for agreement’**, you must refund the holding deposit to the tenant within 7 days. A landlord or agent cannot accept another holding deposit until the first has been repaid, unless you are entitled to retain a holding deposit in accordance with the Tenant Fees Act (e.g. where a previous potential tenant has provided false or misleading information which affects their suitability as a tenant).

Q. Can a tenant put down more than one holding deposit on different properties?

Tenants are not prevented from registering their interest in more than one property but should consider carefully before doing so. As a holding deposit creates a binding conditional contract between the tenant and landlord, by paying a holding deposit a tenant is agreeing to provide honest representations as to their income, tenancy history and references, and to enter into the tenancy under the terms agreed with the landlord or agent. If they withdraw from the agreement, they will not be entitled to have their holding deposit refunded and could be liable for other contractual remedies. The guidance for tenants therefore advises them that if they choose to put down more than one holding deposit, they should expect to lose this money on tenancies that do not progress.

Q. Do I need to protect a holding deposit in one of the three tenancy deposit protection schemes?

No, the holding deposit does not need to be protected in a tenancy deposit protection scheme. However, you must take reasonable steps to ensure that the money is held safely and that you can refund this to the tenant when necessary.

As required by law, from **1 April 2019**, any holding deposit taken by a letting agent must be protected through membership of a client money protection scheme. More information about the requirement for agents to belong to a scheme is available [here](#).

If you subsequently enter into a tenancy agreement with the tenant, any amount of their holding deposit that they agree can be used to offset a tenancy deposit payment that they are required to pay must be protected within a government approved tenancy deposit protection scheme within 30 days of the date of the tenancy agreement.

Q. Can I refund a tenant's holding deposit by putting it towards their first month's rent or tenancy deposit?

Yes. You can either refund the holding deposit directly to the tenant or put it towards their rent or tenancy deposit. However, you can only do so if the tenant has given their consent for this to happen. If a tenant consents for the holding deposit to be used as a contribution towards the tenancy deposit, you will have 30 days to protect this money (and their full tenancy deposit) within a Government-approved tenancy deposit protection scheme from the date of the tenancy agreement.

You cannot impose a charge where a tenant has requested that their holding deposit be refunded directly.

Q. Do I have to explain to a tenant why I have retained their holding deposit?

Yes, if you decide to retain all or part of your holding deposit you must be able to provide written evidence and explain the grounds for your decision. If a tenant disagrees with your decision or you do not provide a reasonable explanation or supporting evidence, a tenant can challenge your decision through the local authority (usually [Trading Standards](#)), a redress scheme (if it concerns an agent) or via the [First-tier Tribunal](#).

You must set out in writing to the tenant why you are retaining their holding deposit. A tenant is automatically entitled to have their holding deposit returned if you do not do this within:

- 7 days of deciding not to let the property to them if this is before the **'deadline for agreement'**.
- 7 days of the **'deadline for agreement'** passing (this is usually 15 days after a holding deposit has been paid unless otherwise agreed in writing)

Any written explanation should set out clearly the grounds under which you are entitled to retain their deposit and ideally any evidence which you have to support this.

Please note: you cannot evict a tenant using the [section 21 eviction procedure](#) until you have repaid any unlawfully charged fees or returned an unlawfully retained holding deposit. All other rules around the application of the section 21 evictions procedure will continue to apply.

Case studies

*Please note: the following list of case studies is **illustrative** and not exhaustive of the circumstances in which a landlord or agent may or may not retain a holding deposit.*

False or misleading information

Q. Can I retain a tenant's holding deposit if they provided false information for the reference check?

Yes. You may retain a holding deposit in this situation if a tenant provides false or misleading information and it is reasonable for you to take this, or the tenant's conduct, into account when deciding whether to grant the tenancy (i.e. the information is relevant to the tenant's suitability to rent the property or calls into question their credibility).

We encourage you to only retain as much of the holding deposit as needed to cover your costs. It may only be reasonable for you to retain a fee to cover the cost of any referencing checks which have been carried out. You should be able to provide evidence in the form of receipts or invoices to demonstrate the costs incurred.

Q. What qualifies as false or misleading information that I am reasonably entitled to take into account when deciding whether to let the property to a tenant?

You may, in some circumstances, retain a tenant's holding deposit if they provided false or misleading information. The holding deposit may be retained if the difference between the information a tenant has provided and the correct information, or their conduct in providing false or misleading information, materially affects your decision to grant the tenancy because it reasonably calls into question the tenant's suitability to rent the property.

This is likely to be the case only where the mistake casts doubt on a tenant's financial suitability or honesty, for example:

- the tenant's income declaration was significantly too high
- the tenant has provided information which is clearly inaccurate about their income or employment
- the tenant failed to disclose (when directly asked) any relevant information which later comes to your attention, such as valid County Court Judgements

You cannot retain a tenant's holding deposit if the false or misleading information they provided is not relevant to their suitability as a tenant, for example:

- where a tenant misspelled their name, the name of their employer or a previous address
- a tenant omitted to declare a previous address – and the omission had no bearing on their credit worthiness or other assessment of suitability
- the tenant slightly misstated their income

You must always provide the tenant with reasons in writing to explain why you are retaining their holding deposit and what the false and misleading information that they have provided is.

Q. In a joint tenancy, what happens to the holding deposit if one sharer provides false or misleading information or withdraws from the proposed agreement?

While you would be entitled to retain a holding deposit in this situation, we encourage you to consider on a case-by-case basis whether it would be appropriate and reasonable to do so.

Q. What if a tenant provided false or misleading information unknowingly?

You can still retain a tenant's holding deposit in this situation if it materially affects your decision to grant the tenancy but should consider whether it is necessary to do so. You should consider whether there are reasonable and legitimate circumstances under which the information a tenant has provided may not be corroborated by a relevant third party. This could be where:

- an employer holds out-of-date salary information
- a tenant has multiple sources of income/employment and it is hard to verify their overall income
- a tenant is self-employed or has an irregular income

Where you consider that a tenant has unknowingly provided false or misleading information, we encourage you to give the tenant the chance to rectify the mistake or to only retain the costs of undertaking the reference check rather than the full amount of the holding deposit.

Reasonable requests for information

Q. Can I retain a tenant's holding deposit if they do not provide all the necessary information to carry out referencing checks?

You should take all reasonable steps to engage with the tenant by responding promptly to any queries and making clear which information that they must provide in order for a tenancy to proceed. Similarly, a tenant should respond promptly to any reasonable request for information in respect of the tenancy. This is likely to include:

- **proof of ID:** passport or any other official form of ID
- **proof of residence:** recent bank statements, utility bills or voter registration confirmation or council tax statements
- **credit check:** you can ask a tenant for any information required in order to carry out a credit check – you should explain the credit worthiness requirements and ask the tenant to disclose any relevant information
- **proof of income:** recent bank statements, employer contact details, signed contract of employment or a letter from a tenant's employer

If a tenant fails to provide the necessary information in good time, and you can demonstrate that you have given them sufficient notice to provide this, you will be entitled to retain their holding deposit. You must provide reasons in writing to the tenant to explain why you have retained their holding deposit.

We would consider not providing the necessary information or documents to enable you to carry out a [right to rent check](#) as not taking all reasonable steps to enter into the tenancy.

Please note: landlords and tenants will usually have two weeks to enter into a tenancy agreement. The '**deadline for agreement**' is the 15th day after the holding deposit has been received by a landlord or agent. However, you may agree a different '**deadline for agreement**' with the tenant in writing.

Q. Can I retain a tenant's holding deposit if I do not properly explain the information required for referencing?

No. You can only retain the holding deposit if a tenant provided false or misleading information or failed to take all reasonable steps to enter into the tenancy agreement (when you have taken all reasonable steps).

You should not waste a tenant's time. You should clearly explain the criteria by which you judge suitability to rent the property (such as income and credit worthiness requirements). You should request relevant information that would enable you to determine this before accepting a holding deposit. When explaining the credit worthiness requirements, you should clearly define what you consider to be credit worthiness and the tenant should have a clear understanding of information they are required to disclose (e.g. whether this includes missed or late payments).

If a tenant provides accurate information but fails a reference check, you must still return their holding deposit.

Failed reference check

Q. Can I retain a tenant's holding deposit if they provided correct information but I do not consider that their references are good enough?

No. If a tenant has provided factually correct information which you have requested, but you do not consider their references to be sufficient in order to let the property, the tenant is entitled to a full refund of their holding deposit.

You cannot retain a tenant's holding deposit merely because you do not consider their references to be satisfactory. This also applies where you are not able to let the property for any other reason which is not the tenant's fault. Failing a reference check should not automatically disqualify a tenant from renting a property.

We encourage landlords and agents to consider on a case-by-case basis whether an adverse credit history or bad references affect someone's suitability as a tenant. You may ask a tenant to justify information which calls into question their credibility – such as a previous County Court Judgement (CCJ).

Q. Can I ask for additional financial assurances if a tenant has adverse credit history?

If a tenant has a poor credit history, you should consider whether additional financial assurances would be appropriate (e.g. a rent guarantor or rent payments in advance). You should discuss these options with the tenant.

Withdrawing from a property

Q. If a tenant decides that they no longer want to rent a property but has already put down a holding deposit, can I keep the holding deposit?

Yes. If a tenant changes their mind and decides to withdraw after paying a holding deposit, and they notify you of this before the '**deadline for agreement**' has passed, you are entitled to retain their holding deposit. Even if a tenant does not notify you of their decision to withdraw, you are still entitled to retain the holding deposit if they have not taken reasonable steps to enter into the tenancy before that date (i.e. providing reasonable information required to progress the tenancy) and you have taken all reasonable steps.

If a tenant has to withdraw from a property due to exceptional circumstances which are beyond their control, we would strongly encourage you to take this into account and consider returning the holding deposit in full. This could be, for example but not limited to circumstances where, a tenant's employment circumstances have changed, they have suffered with a physical or mental health crisis or they have experienced domestic violence from a cohabitee.

Q. Can I retain a tenant's holding deposit if they withdraw from a property before I have incurred any costs?

Yes, you are entitled to retain a tenant's holding deposit in this situation but must explain to the tenant why you are doing so. However, if a tenant pulls out of a proposed agreement before you have incurred any demonstrable costs, such as, costs for referencing checks or you are yet to take the property off the market, we would strongly encourage you to refund their holding deposit.

Right to rent checks

Q. What is a right to rent check?

You must check the immigration status of anyone aged 18 or over who'll be living in the property before a tenancy is agreed. This is known as a 'right to rent check'.

You can ask to see a tenant's passport or other official documents that prove their immigration status. You should take copies of the documents and keep them safe. More guidance on right to rent checks is available [here](#).

Q. If a tenant fails right to rent check, can I retain their holding deposit?

Yes. You have a legal obligation to check that a tenant has permission to stay in the UK. You cannot rent a property to someone who is unable to demonstrate that they have the right to rent. You should be up-front and ask a tenant whether they have a legal right to reside in the UK – making clear that this is a condition of renting a property. If a tenant fails a right to rent check or does not provide you with the necessary evidence required to complete the check, you can retain their holding

deposit. You must explain to the tenant in writing that you are retaining their holding deposit because they have failed a right to rent check.

If the Home Office has a tenant's original documents because of an ongoing immigration application or appeal, you can ask for a Home Office right to rent check. You will need the tenant's Home Office reference number and should receive a response within 2 days.

Q. If the Home Office tells me in error that a tenant does not have the right to rent, can I still retain their holding deposit?

No. If the Home Office told you that a tenant did not have the right to rent, but it is later apparent that the Home Office made an error, you must return any amount of the holding deposit that you previously retained. You should do this once you have received updated confirmation of a tenant's status from the Home Office. While you are not liable for a financial penalty in this circumstance, a tenant still has the right to seek repayment of their holding deposit through the local authority (usually [Trading Standards](#)) or [First-tier Tribunal](#) if it has not been returned.

Landlord or agent withdraws

Q. If I decide to not let the property because I do not like a tenant's references, can I retain a tenant's holding deposit?

No. If you decide to withdraw from the proposed agreement because you do not wish to let the property to the tenant, you must return their holding deposit within 7 days of making that decision.

If you fail to take all reasonable steps to enter into the agreement, for example, by failing to send a copy of the tenancy agreement before the '**deadline for agreement**', you must also return their holding deposit.

Please note, when a landlord or agent is already in receipt of a holding deposit for a property, they cannot accept another holding deposit until the former deposit has been repaid (unless they have legitimate grounds to retain this deposit under the Tenant Fees Act).

Q. Can I retain a tenant's holding deposit if the property is not ready in time?

If you fail to enter into the tenancy agreement before the '**deadline for agreement**' because the property is not ready in time and the tenant has taken all reasonable steps to enter the tenancy, then you must return their holding deposit.

Where you previously agreed for a tenant to move in on a specified date and you subsequently alter that decision, and this then materially affects the tenant's ability to let the property, you may have acted in such a way that it would be unreasonable for a tenant to enter into a tenancy agreement with you. If this is the case, you would have to return their holding deposit.

DEFAULT FEES AND DAMAGES PAYMENTS

Q. What is a default fee?

You can only charge a default fee where a tenancy agreement permits you to do so **and** one of the following applies:

1. A tenant is late paying their rent

- A default fee can be charged for late payment of rent but only where the rent payment has been outstanding for 14 days or more (from the date set out in the tenancy agreement)
- Any fee charged must be no more than 3% above the Bank of England's base rate for each day that the payment has been outstanding. A fee which exceeds this amount is a [prohibited payment](#).

2. A tenant has lost a key or security device giving access to the housing and requires a replacement

- A default fee can be charged for a lost key or equivalent security device. The landlord or agent must provide evidence in writing to the person liable for the payment to demonstrate that the costs they have incurred are reasonable. A fee which exceeds the reasonable costs incurred by the landlord or agent is a [prohibited payment](#).

The tenancy agreement should set out the circumstances under which a tenant is liable for a default fee and how the fee will be determined. This might be called a default fee provision or payment in the event of default provision. Landlords and agents should highlight relevant default provisions within the agreement to the tenant before it is signed. Agents must also publicise any default fees they charge on their website and in their offices.

If a tenancy agreement does not permit you to charge default fees, you may still be able to recover damages for breach of contract. Most landlords and agents will seek to recover damages by claiming against the tenancy deposit at the end of the tenancy (but may do so at any time through agreement with the tenant or by initiating legal proceedings)¹.

Examples of default fee provisions:

- Interest will be charged in line with the Bank of England's rate if a rent payment is more than 14 days overdue for each day the payment is outstanding.

¹ The Tenant Fees Act 2019 does not affect the landlord's entitlement to recover damages for breach of the tenancy agreement by way of a deduction from the tenancy deposit or taking court action.

- The tenant is responsible for ensuring that they look after the keys for the property throughout the tenancy. If they fail to do so, they will be responsible for covering the reasonable costs of replacement.

Q. What is the difference between a default fee and damages?

- A default fee is a payment which can be required by a landlord or agent under an express provision in the tenancy agreement and would therefore be permitted under the Tenant Fees Act. Default fees are only permitted where a tenant is late paying their rent or loses a key or security device giving access to the housing. You should highlight relevant default provisions within the agreement before the tenant signs it.
- Damages are the general remedy available for breach of contract and cover any contractual breach which is not expressly covered by a default provision in the tenancy agreement for late payment of rent or for replacing lost keys/security devices.

Q. What are contractual damages?

The ban does not prevent landlords and agents from recovering damages for breach of contract. A landlord or agent is entitled to recover the costs to put them back in the position they would have been had a tenant carried out all the obligations in their contract (e.g. returning the house in the same condition as which it was found while allowing for fair wear and tear).

However, claims for damages which are aimed at deterring a breach of contract or punishing the party in breach are generally not enforceable. Terms which require a consumer to pay a disproportionately high sum to the trader in compensation for failing to fulfil their obligations under a contract are also considered unfair terms and unlawful under the Consumer Rights Act 2015.

Landlords and agents cannot write terms into the tenancy agreement that require a payment as a penalty should a tenant fail to perform an obligation. For example, any clause that says ‘**if you fail to do x then you must pay y**’ even if the amount is not specified is likely to be [prohibited](#). Any claims for damages must be based in evidence and are only permitted where you have incurred costs/actual loss as a result of the contractual breach (unless this is for a default fee for a late payment of rent or lost key/security device which is required under the tenancy agreement).

Examples of terms that are likely to be unfair and/or breach the ban:

- £25 fixed penalty charge for any late payment of rent which is 7 days or more overdue.
- £100 per hour for a contractor to visit the property to carry out repairs and maintenance.
- £50 for a missed appointment with a contractor.
- Should it be necessary to send a letter with regard to late payment of rent, these are chargeable to the tenant at a rate of £25 plus VAT. Personal visits are charged at £75 plus VAT.

Q. What should I do if I wish to recover a payment for damages from a tenant during the tenancy?

You should be clear and up-front with tenants if you wish to recover a damages payment for breach of contract. You should provide evidence of the costs that you have incurred as a result of the breach. A tenant can refuse to pay a fee which breaches the ban or which you fail to substantiate.

Q. Shouldn't a landlord use the tenancy deposit to claim back damages?

In most cases, it will make sense for you to recover claims for damages through the tenancy deposit at the end of the tenancy, where independent arbitration will be available through the relevant tenancy deposit protection scheme.

The Alternative Dispute Resolution (ADR) arrangements provided by the tenancy deposit protection schemes are designed to make disagreements over the repayment of the deposit faster and cheaper to resolve than going to court. Where both the landlord and tenant agree to using the ADR service the case will be handled by an independent, impartial and qualified adjudicator, and a decision will be made on the basis of the evidence provided.

However, it is still the landlord or agent's right to seek contractual damages during the course of the tenancy where this is appropriate. For example, you may ask a tenant to make a payment to cover the cost of repairing a fitting or furnishing where this work cannot reasonably wait until the end of the tenancy (e.g. a broken window), and the tenant is responsible for the damage having occurred. You should be able to demonstrate evidence of the costs you have incurred. However, where possible, we encourage landlords and agents to allow tenants to resolve issues independently.

It is worth noting that according to the Landlord and Tenant Act 1985, it is a landlord's legal responsibility to immediately address hazards which present a risk to occupiers and to comply with any of their repairing obligations under that Act. In

addition, the Homes (Fitness for Human Habitation) Act 2018 will come into force from 20 March 2019. Under this Act, if rented houses and flats are considered not 'fit for human habitation', then tenants can take their landlords to court. The court can order their landlord to carry out repairs or put right health and safety problems. They can also make the landlord pay compensation in the form of damages for the harm caused to the tenant. We have produced guidance for tenants on the Act [here](#).

A landlord is always responsible for repairs to:

- the property's structure and exterior
- basins, sinks, baths and other sanitary fittings including pipes and drains
- heating and hot water
- gas appliances, pipes, flues and ventilation
- electrical wiring
- any damage they cause by attempting repairs

Landlords are also responsible for repairing and replacing any appliances that they supply, such as white goods or furniture.

Q. Can I still recover fees for late payment of rent or a lost key/security device through the tenancy deposit?

As is the case now, you may seek to recover any loss suffered or damages incurred through the tenancy deposit but only if you have not already sought to recover the money from the tenant during the tenancy.

Q. Can a landlord and agent both charge a default fee for late payment of rent?

No. A landlord and agent cannot both require a tenant to pay a default fee for a late rent payment – a tenant can only be charged once either by the landlord or agent and only when the rent is more than 14 days late.

Q. Can a landlord or agent recover costs for damages for breach of the tenancy agreement if they didn't write them into the tenancy agreement?

Yes. The Tenant Fees Act 2019 does not affect the landlord's entitlement to recover damages for breach of the tenancy agreement by way of a deduction from the tenancy deposit or court action.

If a tenancy agreement does not permit you to charge default fees, you may still be able to recover damages for a breach of the tenancy agreement. In most cases, you can seek to recover damages by claiming against the deposit at the end of the

tenancy (but you may do so at any time). Any damages claim that a tenant does not agree to pay will need to be enforced through the courts.

If you are claiming against the deposit and there is a disputed charge, you can use the alternative dispute resolution service offered by the [three tenancy deposit protection schemes](#).

Q. Can a tenancy agreement include a clause that says in the event that legal fees are incurred for evicting the tenant, the tenant will have to cover the legal fees?

No, we consider this would be a prohibited default fee provision which is requiring a payment in the event of the default of a tenant. Landlords, agents and tenants are responsible for their own legal costs resulting from a dispute of the tenancy agreement. If the dispute progresses to court, it may make a ruling on how legal costs are to be distributed between the parties.

Q. Is there any other relevant legislation?

The Consumer Rights Act 2015 prohibits agents and those landlords that are considered traders from including unfair terms in their agreements. A term is unfair if it creates a substantial imbalance in the rights and obligations between a 'trader' and a 'consumer', contrary to the requirements of good faith, to the detriment of the consumer².

An unfair term in a tenancy agreement is one that creates such an imbalance between a landlord and a tenant, to the tenant's detriment. This would prohibit such landlords from requiring a tenant who fails to fulfil their obligations under their tenancy agreement to pay a disproportionately high sum in compensation. A term or notice that is unfair is not legally binding on consumers³.

The terms of a tenancy agreement cannot unreasonably exceed anything needed to protect the legitimate interests of those landlords considered traders or their agents. A term such as the following is likely to be unfair:

- If the rent shall be 14 days in arrears, then the full amount to the end of the tenancy shall become due.

The provisions of the Consumer Rights Act may be enforced by Trading Standards or the Competition and Markets Authority.

² <https://www.gov.uk/government/publications/unfair-contract-terms-cma37>

³ <https://www.gov.uk/guidance/unfair-terms-explained-for-businesses-full-guide>

Default fees permitted under the ban

Late payment of rent

Q. Can I charge for a late rent payment?

You can only charge interest on a late payment of rent where there is a term in the tenancy agreement which permits you to do so and the rent has been outstanding for 14 days or more.

Fixed penalty charges for late payment of rent and/or fees imposed for chasing up late rent are [prohibited](#), for example:

- £25 fixed penalty charge for any late payment of rent which is 7 days or more overdue.
- Should it be necessary to send a letter with regards to late payment of rent, these are chargeable to the tenant at a rate of £25 plus VAT. Personal visits are charged at £75 plus VAT.

Q. How much interest can I charge for a late rent payment?

You can charge interest on overdue rent if the late payment has been overdue for 14 days or more. Any interest charged must not exceed the Bank of England's base rate +3%. You can check the base rate [here](#).

For example, if the bank's interest rate is 3%, the landlord or agent (but not both) would be entitled to charge the tenant interest at no more than 6% on the overdue amount for the number of days that the payment has been outstanding.

Q. How do I calculate the maximum amount of interest that can be charged on a late rent payment?

1. Work out the yearly interest: take the amount of rent that is owed by the tenant and multiply it by the Bank of England's base rate + 3%.
2. Work out the daily interest: divide your yearly interest from step 1 by 365 (the number of days in a year).
3. Work out the total amount of interest: multiply the daily interest from step 2 by the number of days that the tenant's rent has been overdue.

Example

For this example, we are assuming that the Bank of England's (BoE) base rate is 3%. As any interest charged must not exceed the BoE's base rate +3%, the total interest that could be charged would be: (BoE base rate at 3%) +3% = 6%.

If a tenant owed the landlord or agent £500:

1. the annual interest would be £80 ($500 \times 0.06 = 30$)
2. you'd divide £30 by 365 to get the daily interest: about 8p a day ($30 / 365 = 0.08$)
3. after 30 days this would be £2.40 ($30 \times 0.08 = 2.4$)

We encourage landlords and agents to approach default fees on a case-by-case basis. For example, it may not be appropriate to charge a default fee where a tenant has provided a reasonable explanation for a late rent payment and sufficient notice that the payment would be delayed. This is especially the case if a tenant normally pays their rent on time or their rent is late for a circumstance outside of their control (e.g. banking systems are down, delayed Housing Benefit or Universal Credit payments).

Q. Can I pass on costs from a third party owing to a tenant's late rent payment?

You cannot pass on any costs that you have incurred from a third party (such as mortgage company) as a default fee. However, you may seek contractual damages for any loss you have incurred where a tenant has breached their contract (e.g. if you have been charged £20 for failing to meet a mortgage repayment because of a tenant's late rent payment).

Replacement key or security device

Q. How much can I ask a tenant to pay for a replacement key or security device?

You can ask a tenant to pay a fee to cover the cost of replacing the lost key or security device giving access to the housing, where this is required under the tenancy agreement. However, you can only charge a tenant for the reasonable costs that you have incurred as a result of the lost key or security device. Costs associated with the loss of a key or security device vary depending on the key/device. It is possible to get a new standard door key for between £3 and £10, a specialist door key could cost between £5 and £20 to replace and a key fob could be up to £50.

You are required to demonstrate that your costs are reasonable by providing written evidence (e.g. an invoice or receipt for a replacement key or security device). Any evidence should be fully itemised with an accurate and clear breakdown to allow the tenant to determine the reasonableness of the fee charged. You should proactively seek value for money in respect of any works undertaken.

Where possible, we encourage a landlord or agent to allow tenants to resolve issues independently. For example, you may give a tenant the option to replace a lost key or security device at their own cost instead of requiring them to pay a default fee. This would not be in breach of the ban.

Q. Does a tenant have to pay the charge if I do not provide evidence to demonstrate that the costs incurred are reasonable?

No. A tenant is not liable for the fee until suitable evidence is provided. If you fail to provide written evidence of your costs or impose an unreasonable default fee, you will be in breach of the Tenant Fees Act. A tenant can refuse to pay the fee and/or complain to the relevant enforcement authority (usually [trading standards](#)), the [First-tier Tribunal](#) or the relevant [redress scheme](#) (if it concerns an agent). Enforcement authorities will be able to impose a financial penalty of up to £5,000 if you have imposed an unlawful or unreasonable default fee.

The following default fees are not likely to be permitted because they would usually exceed the costs reasonably incurred in the loss of a key or security device:

- A charge of £100 as well as the cost of replacement keys/fobs will be issued to the tenant for the replacement of lost keys or security devices during the course of the tenancy.
- A charge of £50 for a standard front door key.

Q. Can I charge for my time in replacing a key or security device?

Generally, we do not consider it necessary for landlords or agents to charge for their time in replacing a lost key or security device.

In certain cases, it may be appropriate, but the onus will be on the landlord or agent to demonstrate that they have incurred costs which are in addition to their general responsibilities in addition to the cost of replacing a lost key or security device. You must be able to provide written evidence that the costs are reasonable and attributable to the default.

We would consider a cost of no more than £15 per hour, which is the median hourly wage of an employee in the lettings industry (taking into account non-wage costs) to be a reasonable charge for a landlord or agent's time in replacing a lost key or security device.

Q. If a tenant requests more sets of keys (e.g. for family or cleaners) can they be charged for the cost of extra sets of keys?

The decision on whether to provide tenants with additional keys or secure devices giving access to the housing is a matter for landlords and agents. If a tenant voluntarily requests additional keys or security devices, you may ask the tenant to pay for this service. However, you must not require a tenant to pay for the additional key or security device that wasn't requested.

For example, you would be prohibited from requiring a tenant to pay for additional keys or security device for a cleaner or contractor that wasn't requested by the tenant.

This is distinct from replacing keys or security devices which you must provide but you can charge for your reasonably incurred costs which have been evidenced in writing provided this is set out in the tenancy agreement.

CHANGES TO A TENANCY

Q. What do you mean by a change to a tenancy?

A change to a tenancy is any reasonable request to alter a tenancy agreement. This could be making changes to the tenancy agreement to enable:

- pets to be kept in the property
- a change of sharer in a joint tenancy
- permission to sub-let
- a business to be run from the property
- or any other amendment which alters the obligations of the agreement

Where possible, you should make every effort to accommodate any reasonable changes requested by the tenant.

Q. Can I charge a tenant for a change of sharer?

Yes. Where a tenant requests a change of sharer on a joint tenancy, you are entitled to charge them for any costs incurred for amending the tenancy agreement up to £50 (inc. VAT), or for any reasonable costs incurred if these are higher than £50.

The general expectation is that this charge will not exceed £50. In some circumstances, it may be appropriate for this to be higher. In any case, you should be able to demonstrate that any fee above £50 is reasonable and provide evidence of the costs you have incurred in the form of receipts or invoices. Any costs that are not reasonable are a [prohibited payment](#).

N.B. You cannot charge a tenant for changes to an agreement before it is entered into (e.g. requests to remove specific clauses or provisions from a tenancy agreement before it is signed).

Q. If a tenant has found a suitable replacement tenant, can I still charge more than £50 for a change of sharer fee?

It is unlikely that you could justify charging a fee above £50 in this circumstance. The costs involved in referencing the replacement tenant, re-issuing the tenancy agreement and protecting the tenancy deposit should be small. You could also ask the tenant to obtain such a reference voluntarily (although you cannot require a tenant to do this as a condition of granting them a tenancy) to further reduce the costs incurred. There are a number of third-party organisations which will carry out professional referencing checks at a small cost – for example a full tenant reference check can cost up to £30.

You should be able to demonstrate to a tenant that any fee charged above £50 is reasonable and provide evidence of your costs. Any costs that are not reasonable are a [prohibited payment](#).

Q. Can I charge a fee for each change to a tenancy agreement?

Yes, but you should be able to justify the costs you have incurred as a result of each change. Not all changes to a tenancy agreement will incur the same cost, for example, including a pet clause within an existing tenancy agreement is unlikely to incur the same cost as a change of sharer.

The general expectation is that charges for this should not exceed £50. If you seek to charge more than £50, you should provide written evidence in the form of receipts or invoices to demonstrate that the amount charged does not exceed reasonable costs. Any costs that are not reasonable are a prohibited payment.

EARLY TERMINATION FEES

Q. Can I ask a tenant to pay a fee if they want to leave a tenancy before the end of their fixed-term or the end of their notice period?

A landlord or agent can require a tenant to make payments in connection with the early termination of the tenancy where the tenant has requested this, but there are restrictions on what can be charged.

Generally, the costs charged for early termination must not exceed the loss incurred by the landlord (usually the loss in rent resulting from a tenant's decision to leave and/or the costs of re-advertising or referencing), or the reasonable costs to the agent (such as referencing and marketing costs).

If you agree to a tenant leaving early, you can ask them to pay rent as required under their tenancy agreement until a suitable replacement tenant is found. A tenant can be held liable for rent until their fixed-term agreement has ended or, in the case of a statutory periodic tenancy, they have given the notice required under their tenancy agreement. However, a landlord is not able to charge more than the rent they would have received before the end of the tenancy.

If you agree to terminate a tenancy early, you should clearly set this out in writing. It is good practice for a landlord or agent to agree to a reasonable request to end the tenancy early. Where agreed to, landlords and agents should consider on a case-by-case basis whether it is appropriate to charge an early termination fee, for example, whether there are any exceptional circumstances which require the tenant to leave early.

Please note: you should not require a tenant to pay a fee in this circumstance if they are exercising a break clause in their contract which permits them to leave before the end of their fixed-term (provided that they have given notice as required by the terms of their agreement).

Q. What can I charge if a replacement tenant has been found?

Where a suitable replacement tenant is found and the landlord has agreed to an early termination of the tenancy, you can only charge the tenant rent until the new tenancy has started. If you do not stand to lose any rent because of a tenant's decision to leave, you would not be permitted to consider lost rent in any fee you wish to charge for early termination. However, you could reasonably charge a fee to cover any referencing and advertising costs that you have incurred as a result of a tenant leaving early, but you should be able to provide evidence to demonstrate these costs.

Q. Can I require a tenant to pay their outstanding rent in a lump sum?

No. You cannot require the tenant to do this. You can require them to continue paying rent as set out in their tenancy agreement (usually monthly) until a new tenant is found (unless they still agree to terminate the tenancy and agree to pay the rent as a lump sum).

A landlord is only entitled to recover the loss they have incurred in this situation. You are not permitted to benefit financially from a tenant leaving early. Any payment which exceeds the loss incurred by the landlord or the reasonable costs to the agent will be a [prohibited payment](#) under the ban.

Q. Can a tenant sub-let as an alternative to terminating their fixed-term agreement early?

A tenant should not sub-let unless their tenancy agreement allows this, and this has been agreed in writing by the landlord.

If it is not appropriate for a tenant to sub-let, we would encourage you to let the tenant leave the tenancy agreement early provided that a suitable replacement is found.

OTHER PAYMENTS

Q. Are there other payments that a tenant can be required to make?

Yes, tenants are responsible for bills if these are not included within their rent. Payments for utilities, broadband, TV, phone and council tax are all excluded from the ban.

However, landlords must not over-charge tenants where they pay utilities separate from the rent.

Q. Are utility payments (gas, electricity, water) excluded from the ban?

Yes. Tenants are still required to pay for any utility services, such as gas, electricity or water that they consume – where they are responsible for these payments in the tenancy agreement. However, there is legislation which prevents landlords from over-charging tenants for provision of these services (the Office of Gas and Electricity Markets, 'OFGEM', fixes maximum resale prices under section 44 of the Electricity Act 1989, section 37 of the Gas Act 1986 and the Water Resale Order 2006 governs the maximum price for water).

Q. What can I charge tenants for gas and electricity?

Landlords who resell energy to their tenants for domestic use are governed by Maximum Resale Price (MPR) provisions set by Ofgem. This means that landlords can only resell energy at the price they have paid to a licensed energy supplier. Tenants are entitled to receive a breakdown of the costs paid by a landlord upon request and can take a landlord court to recover any amount which has been overcharged. Guidance on these provisions is available [here](#).

[Citizens Advice](#) and Ofgem offer advice on the rights and responsibilities of landlords in respect of utilities payments.

Q. What can I charge tenants for water?

Similar provisions exist for the resale of water. Landlords are prohibited from over-charging tenants for the resale of water under the Maximum Resale Price provisions set out in the Water Resale Order 2006. The Maximum Resale Price ensures that landlords who resell water or sewerage services must charge no more to tenants than the amount they are charged by the water company.

Landlords are also allowed to charge a reasonable administration fee. The administration charge is set to cover administration costs and the maintenance of meters. Generally, landlords can recover around £5 each year in administration for a property without a meter and £10 for a property with a meter.

Q. Do tenants have the right to change the gas and electricity provider?

If tenants are directly responsible for paying the gas or electricity bill, they have the right to choose the supplier. You are not allowed to prevent them from doing this.

Q. Can a tenant ask for a pre-payment meter to be removed?

If a tenant is responsible for paying the gas and electricity bill they have the right to change the type of meter installed in the property, this includes the removal of an existing prepayment meter.

Q. What happens if a tenant has a debt on their account?

The Debt Assignment Protocol enables prepayment meter customers with a debt up to £500 per fuel to switch to another supplier's cheaper prepayment tariff. This is designed to help tenants pay off your debt quicker and save money on their energy use.

Q. Are loans under the Green Deal (or any subsequent energy efficiency scheme) excluded from the ban?

Yes. Tenants are still liable to make any payments that they are responsible for under a [Green Deal loan](#).

Q. Are broadband, TV or phone payments excluded from the ban?

Yes. Tenants are still liable to pay for services (e.g. broadband, TV or phone), they are required to pay under the terms of their agreement or that they may choose to contract if these are not included within the rent. Landlords are prohibited from over-charging for communications services under the ban.

Q. Are council tax payments excluded from the ban?

Yes. Tenants are still liable to pay for any council tax payments associated with the property, unless a valid exemption applies (e.g. they are enrolled in a full-time higher education course).

Q. If a tenant owes a permitted fee which they don't pay, can interest at 3% above the Bank of England base rate be charged?

No. Landlords or agents can only charge interest on a late payment of rent where there is a term in the tenancy agreement which permits you to do so and the rent has been outstanding for 14 days or more. Where the rent includes payments in respect of council tax, utilities, television licences or communication services, the landlord or agent would be entitled to include the amount owed by the tenant for these services which has been outstanding for 14 days or more.

Please note: you cannot evict a tenant using the [section 21 eviction procedure](#) until you have repaid any unlawfully charged fees or returned an unlawfully retained holding deposit. All other rules around the application of the section 21 evictions procedure will continue to apply.