

A guide to Holding Deposits



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Background

The Renting Homes (Fees etc.)(Wales) Act 2019 (The Act) came into effect on the 1st of September 2019. This legislation passed determines what an agent or landlord can charge to a tenant by specifying the fees that are permitted. A fee that is not listed as a permitted payment under The Act is classed as a prohibited payment.

One of the permitted payments allowed under The Act is a 'Holding Deposit'. Please read the guide below for more information about Holding Deposits.

What is a Holding Deposit?

It is a fee that can be charged to a prospective tenant to put a property 'on hold' while any necessary checks are carried out to determine if the tenant is suitable for the property in question.

When a Holding Deposit is taken, the landlord is assured that the tenant is committed to entering a contract for the property and the tenant is assured that the landlord will hold the property for them, pending successful completion of their suitability tests.

The payment of a Holding Deposit gives the tenant the right to first refusal on a property.

Is a Holding Deposit always needed before an Occupation Contract can be issued?

No - a Holding Deposit is an optional deposit that can be charged to tenants.

If a Holding Deposit is charged, it is essential that all of the regulations for charging a Holding Deposit are met.

How much can be charged as for a Holding Deposit?

A Holding Deposit can be any amount up to a maximum of the equivalent of one weeks' rent. This can be calculated by dividing the monthly rent amount by 4.35.

If the amount charged for a Holding Deposit is greater than one weeks' rent, the excess amount is classed as a prohibited payment.

What information needs to be given to a tenant before a Holding Deposit is taken?

The following information must be provided in writing. It can be given in person or electronically (if the tenant has given permission to receiving this information electronically).

- a) amount of holding deposit,
- b) address of the dwelling in respect of which the deposit is paid,
- c) where a holding deposit is to be paid to a letting agent, the name and contact details of that letting agent,
- d) where a holding deposit is to be paid to a landlord, the name and contact details of that landlord,
- e) duration of the contract,
- f) proposed occupation date,
- g) amount of rent or other consideration,
- h) rental period,
- i) any proposed additional contract terms or proposed modifications to fundamental or supplementary terms or terms proposed to be omitted from the contract,
- j) amount of any security deposit,
- k) whether a guarantor is required and, if so, any relevant conditions,
- l) reference checks the landlord (or letting agent) will undertake, and
- m) information the landlord or letting agent requires from the prospective contract-holder.

When does the Holding Deposit need to be returned to the tenant?

The Holding Deposit must be paid back to the tenant by 'the deadline for agreement', which is 15 calendar days from the date that the Holding Deposit is paid. This deadline can be extended, but it can only be done if both parties agree to this in writing.

The amount of money taken in the Holding Deposit can be put towards either the first months' rent or for the tenant's security deposit.

Unless the Holding Deposit is used against the first months' rent or the security deposit, the deposit must be repaid to the tenant within seven days of 'the deadline for agreement' (whether that is the 15 day deadline or a deadline that has been mutually agreed to).

When can the Holding Deposit be retained by the landlord/agent?

The Holding Deposit can be retained by the landlord/agent if the tenant provides false and misleading information or if they fail to enter into the contract.

To retain a Holding Deposit because false and misleading information was provided by the tenant, the landlord/agent must be certain that the tenant acted deliberately and it was not a mistake.

To retain a Holding Deposit because the tenant failed to enter into the contract, the landlord/agent must be certain that the tenant was clear of what they needed to do, but did not take the necessary steps as agreed.

Rent Smart Wales strongly advises that the decision to retain a Holding Deposit is done on a case-by-case basis and that evidence is kept to justify the decision.

What are the consequences of requiring a prohibited fee to be paid?

Requiring a tenant to make a prohibited payment could lead to a Fixed Penalty Notice of £1,000 and/or prosecution, which if convicted, may result in a fine (not subject to any statutory limit).

Failing to repay the Holding Deposit as required by the Act will mean that the landlord/agent will be unable to issue a notice, seeking possession of a property (unless it is being used towards the security deposit, or the first months' rent).

Additional resources

Further advice and guidance, published by Welsh Government, on The Renting Homes (Fees etc.) (Wales) Act 2019 can be found **here**. Section 5 relates specifically to Holding Deposits.

An electronic copy of The Renting Homes (Fees etc.) (Wales) Act 2019 can be found **here**.

An electronic copy of The Renting Homes (Fees etc.) (Holding Deposit) (Specified Information) (Wales) Regulations 2019 can be found **here**.