



Tenancy Deposit , is this the same as a deposit?

No these are two separate things. A deposit is used when you buy a house. It is a sum of money paid to the seller's solicitor on exchange to bind both seller and buyer to the contract at exchange. The balance is paid on completion (move date).

So what is a Tenancy deposit?

This applies where you are renting a property (not the same as buying a leasehold property).

Section 214 of the Housing act 2004 lays down the rules for the protection of deposit paid by tenants to landlords. Firstly the deposit must be registered with an authorised scheme. Secondly prescribed details about the protection of the deposit must then be served on the tenant. The landlord must comply with both requirements and a failure to do so can result in a financial penalty as well as the landlord not being entitled to serve a notice under section 21 of the Housing act 1988 to recover possession.

In a recent case the Court of Appeal decided that a statutory tenancy arising on the expiry of the original fixed term was a new tenancy in its own right and thus is subject to the tenant deposit rules. In the particular case the tenancy had been created before the rent deposit rules were brought into force but the original fixed term had subsequently expired and thus the tenant was in occupation under a new statutory tenancy and by that time the rent deposit rules had come into force. The Court of Appeal held that the landlord should have complied with the statutory requirements for protecting the deposit at the time the new statutory tenancy was created. Thus its section 21 notice was invalid and its possession claim failed.

The logic used by the judge in coming to its view was that details of a deposit protection scheme can change over time and thus a fresh notice should be served with a new statutory tenancy arises

It is vitally important that landlords realise that prescribed information must be reserved when a fixed term tenancy expires with the tenant then remaining in occupation as a statutory tenant. Failure to do so will probably lead to financial penalties, up to 3 times the amount of the deposit, and an inability to serve a section 21 notice.