
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

The Tenancy Deposit Schemes (Scotland) Regulations 2011

PART 6

Dispute resolution

Dispute resolution mechanism

33.—(1) A scheme administrator must make available a mechanism for the resolution by an adjudicator of disputes between landlords and tenants about the amount of the tenancy deposit to be repaid to the tenant at the end of the tenancy (“dispute resolution”).

(2) The dispute resolution mechanism must be fair and cost-efficient having regard, in particular, to—

- (a) the proposed provider of dispute resolution and the number of adjudicators that will be available;
- (b) the circumstances in which and the procedures by which disputes may be notified to the scheme administrator;
- (c) the procedures by which the scheme administrator will refer disputes to the dispute resolution mechanism;
- (d) the type of supporting material which the landlord and the tenant will be required to submit to the scheme administrator for the purposes of that referral;
- (e) the estimated costs of running the dispute resolution mechanism and how those costs will be met by the scheme;
- (f) the basis on which decisions will be made by an adjudicator;
- (g) the procedure by which an adjudicator will decide disputes including the procedures by which the adjudicator may seek further supporting material or submissions;
- (h) the extent to which that procedure will be proportionate to the value of the disputed amount; and
- (i) the circumstances in which and the procedures by which the decision of the adjudicator may be reviewed.

34.—(1) The dispute resolution mechanism must be provided free of charge to the landlord and to the tenant.

(2) Adjudicators must be, and appear to be, independent of the landlord and the tenant.

(3) Both the landlord and the tenant must be permitted to request that the scheme administrator refer a dispute to the dispute resolution mechanism.

(4) Use of the dispute resolution mechanism must not be compulsory, but the tenancy deposit scheme must require a landlord who has submitted a deposit to it to use the dispute resolution mechanism in any case where the tenant requests a referral.

35.—(1) Procedures must be in place whereby the scheme administrator will refer all disputes to the dispute resolution mechanism, regardless of the value of the disputed amount, where—

- (a) either the landlord or tenant requests the referral (although if the request is made by the landlord the referral must be made only if the tenant consents to use of the dispute resolution mechanism); and
 - (b) the scheme administrator is satisfied that attempts to resolve the dispute without recourse to the dispute resolution mechanism have been made and have not been successful.
- (2) The procedures referred to in paragraph (1) must—
- (a) specify the timescale within which a referral to the dispute resolution mechanism may be requested by the landlord or tenant; and
 - (b) provide that where a dispute has been referred to the dispute resolution mechanism it may only be suspended or abandoned with the consent of both parties.

The decision of the adjudicator

36.—(1) The adjudicator must decide any dispute within 20 working days of receipt by the adjudicator of the referral.

(2) Within 5 working days of reaching a decision on a dispute, the adjudicator must give notice of a decision in writing to the scheme administrator, the landlord and the tenant and must set out—

- (a) the facts on which the decision is based;
- (b) the reasons for the decision; and
- (c) the amounts of tenancy deposit to be repaid by the scheme administrator to the tenant and to the landlord.

Review

37.—(1) Procedures must be in place whereby either the landlord or the tenant may apply to the scheme administrator, within 10 working days of an adjudicator giving notice of a decision under regulation 36, for review of that decision but only on the grounds that the adjudicator has erred in fact or in law (or both).

(2) On receipt of such an application the scheme administrator must decide whether to accept or reject it, but may not accept it without inviting written representations from the other party to the dispute to enable the scheme administrator to consider whether the adjudicator may have erred in fact or in law.

(3) Where an application for review by a landlord or tenant is rejected by the scheme administrator, that person may not make a further application for review of the adjudicator's decision.

(4) Where an application for review is rejected by the scheme administrator, the scheme administrator must repay the tenancy deposit as soon as is reasonably practicable, but not before the expiry of the time within which another person may request review in terms of paragraph (1).

38.—(1) If, after consideration of the application under regulation 37(1) and any representations regarding it, the scheme administrator considers that there is a reasonable ground for believing that the adjudicator may have erred in fact or in law, the scheme administrator must accept the application and refer the decision of the adjudicator under regulation 36 for review by an adjudicator who was not involved in deciding the original referral.

- (2) The adjudicator carrying out the review under paragraph (1) may—
- (a) affirm the decision made under regulation 36; or
 - (b) substitute a different decision for that decision,

and in either case must give notice of the review decision in accordance with regulation 36(2).

(3) A decision of an adjudicator under paragraph (2) on a review is final.

(4) The scheme administrator must repay the tenancy deposit in accordance with the adjudicator's decision on the review within 5 working days of receipt of the notice of that decision

Information about dispute resolution

39. The scheme administrator must collect and maintain information about disputes referred to the dispute resolution mechanism, in particular—

- (a) the name and contact details of both the tenant and the landlord;
- (b) the amount of the tenancy deposit required in respect of that tenancy;
- (c) the disputed amount of the tenancy deposit;
- (d) the nature of the dispute;
- (e) the outcome of the referral to the dispute resolution mechanism, including details of any review of the adjudicator's decision; and
- (f) the cost to the scheme administrator of the referral.