

PRIVATE TENANT

Tenancy Deposit Schemes – answer to tenants' prayers or unholy mess?

CFPT ALONGSIDE OTHER TENANT groups and Shelter campaigned long and hard for the introduction of a mandatory national rent deposit scheme to protect private tenants money from being unreasonably withheld or just pocketed by landlords or agents who saw it as a 'perk' of the job.

The 2004 Housing Act finally laid down the foundations for the introduction of such a scheme – or rather, schemes. Housing groups wanted to see a single mandatory preferably 'custodial' scheme whereby the deposit money was held in a separate ring-fenced account via an independent body with speedy adjudication over disputes. However, given the fervent opposition from landlords and agents to deposit schemes in general let alone a custodial scheme that would take the money away from landlords altogether, it is not surprising that the Government opted for this route. Particularly as the Association of Residential Letting Agents (ARLA) favoured the insurance option, in which the deposit would be held by the affiliated agent but would be covered by insurance.

So although every landlord or agent who takes a tenant's deposit will eventually have to subscribe to an approved scheme, it is not clear yet how many schemes there may be, or indeed when they may be implemented. The Government put the schemes out to tender earlier in the year, so far there seems to be only one clear potential provider – the Tenancy Deposit Scheme for Regulated Agents or TDSRA. The TDSRA has the backing of the Association of Residential Letting

Agents, the Royal Institute of Chartered Surveyors and the National Association of Estate Agents, and is in fact the brainchild of Lawrence Greenburg, formerly of the Independent Housing Ombudsman (IHO) who managed the pilot voluntary tenancy deposit scheme between 2001 and 2003.

Although already up and running the TDSA still has to be 'approved' as one of the Government backed schemes, but with the industry backing and framework in place, this seems more than likely. There is nothing to stop other providers from setting up their own schemes, however.

The one good thing about having provision for the insurance-based models is that it might encourage more letting agents to affiliate to ARLA or other industry regulatory bodies thus improving general standards of letting by proxy.

More interesting perhaps will be to see whom, if any, will step in with a custodial scheme. This will be for those landlords who don't use agents and aren't affiliated to a nationally approved insurance based scheme, and will involve a third party holding the deposit money itself in a separate ring-fenced account. It is estimated that £790 million of tenants' money is being held in deposits in England alone*, generating an awful lot of interest which landlords and agents currently enjoy as a perk. Given this sort of profit margin, there will undoubtedly be a lot of interest in setting up custodial schemes.

The big problem of course, is who will act as adjudicators over deposit disputes? The provisions at the moment allow for any number of

schemes and there is a very real worry that with differing adjudicators there will be no consistency, also that private schemes particularly under the insurance option could be biased toward landlords. CFPT asked the IHO, with it's experience what plans it had in setting up a scheme. Deputy Director Raphael Runco told CFPT that it would be happy to offer an adjudication service under either or both of the custodial or insurance schemes but is not interested in holding any monies. Runco emphasised the need for a level playing field though and favoured a single national adjudication scheme, preferably a

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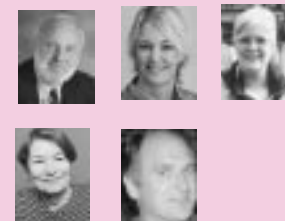
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Camden Federation of Private Tenants is registered under the Industrial and Provident Societies Act as The Camden Federation for Private Tenants Limited
Registered No: 25086R

**Election Special
Issue**

Can't afford a deposit?

Nobody would argue that Camden like other London boroughs is experiencing a housing crisis; with the right to buy depleting council housing stock together with the chronic shortage of land for new housing there is a serious lack of accommodation for the 15,000 plus on Camden's housing register.

Try one of Camden's rent deposit schemes

In response to the government's Choice Agenda and the council's inability to provide permanent social housing for its homeless, Camden is developing a number of local initiatives to expand housing options such as the Rent Deposit Scheme and the Rent Guarantee Scheme. These aim to open up private sector housing to those who can't afford a deposit and are on low incomes.

Marilyn Bramble-Litchmore of Camden's Housing Advice Service explains here ...

The Housing Advice Service (HAS) works with a number of people who are looking for a place to live and welcome reputable landlords who are willing to participate in either of the schemes and accept tenants on low income. Housing Advice and Camden's Procurement Team find properties for the schemes but applicants are encouraged to locate their own accommodation. As a means of preventing homelessness the HAS and the Homeless Persons Unit have been promoting the schemes to clients they have identified as being in housing need. Certain criteria apply before applicants can be considered for the scheme. Applicants should always get advice before entering into any agreement with a landlord.

The Rent Deposit Scheme

The rent deposit scheme enables priority homeless households to resolve their housing situation by finding private rented accommodation that is suitable for their needs in a location of their choice.

Who can apply?

The scheme is available to:

- pregnant women,
 - people with dependant children,
 - those who are being advised by the HAS,
- and who are likely to lose their home.

Only people who are either threatened with homelessness or are actually homeless will be eligible for the scheme. Applicants must also have rights to remain in the country and are eligible to public funds, such as council housing and housing benefits.

What does the Rent Deposit Scheme Offer?

This scheme offers a non-refundable deposit and generous cash incentive to landlords or agents in return for suitable tenancies, which are then let to priority homeless households for a minimum 12-month period. The landlord can keep the deposit and incentive if the tenancy lasts for at least 12 months. There are conditions attached to the incentive given to landlords. The council will not take any responsibility for management and maintenance of the property which will remain the landlord's for the duration of the tenancy. The property will also be visited by the Procurement Team to ensure it meets Camden's fitness standards.

What are the requirements?

The main conditions of the rent deposit scheme are:

- Landlords are asked to accept the rent set by the rent officer under the Pre-Tenancy Determination form.
- Landlords are required to grant a 12-month contract under an assured shorthold tenancy.

- The HAS will work with the client and landlord to prolong individual tenancies beyond this period to sort out any problems.

What are the advantages of the scheme?

- If clients choose this option they can gain speedy access to self-contained accommodation in an area of their choice.
- Self-contained accommodation means that there would be no need to share with other people who are not family members.
- Waiting in temporary accommodation such as hostels would not be necessary.
- A deposit is provided and takes away the stress of finding a deposit.
- Choosing the rent deposit scheme instead of pursuing a homeless application in some cases may avoid a negative homeless decision being made by the Homeless Persons Unit. A negative homeless decision may result in the applicant being advised to find their own accommodation because they were found to have made themselves intentionally homeless.

The Rent Guarantee Scheme

The Rent Guarantee Scheme is operated by the HAS and is essentially for single people and childless couples who are in danger of losing their private rented accommodation or are homeless and staying with friends. The scheme does not offer immediate access to housing and can take some time to arrange. Clients will need to be able to stay temporarily with friends or family where possible while we work with them

to find housing. All applicants are taken through a number of checks, which include entitlement to housing benefit before they are approved for the scheme:

- They must be able to manage a tenancy independently.
- References and address history are obtained.
- All applicants will have a named adviser who will liaise with the landlord and applicant to resolve any issues.

The scheme does not involve payment of money to the landlord. Instead a letter of guarantee is given to landlords for a fixed sum of £700 deposit that is secured against the tenancy, and covers:

- Accidental damage or theft to furniture, fixtures or fittings beyond fair wear and tear.
- Rent arrears, that does not relate to any shortfall between the weekly contractual rent and housing benefit payment.

The landlord or agent can claim against the deposit guarantee at the end of the tenancy by writing to the HAS stating the reason for the claim and what it relates to.

What are the requirements?

The main conditions of the guarantee scheme are:

- Landlords are required to grant an assured shorthold tenancy, which can be for a period of 6-12 months
- Landlords are asked to accept the rent set by the rent officer under the Pre-Tenancy Determination form.
- The landlord, council and tenant will sign a three-way contract

Who finds the property for the deposit schemes?

- Applicants who are accepted for either scheme are encouraged to locate a property themselves giving them a greater element of choice.
- Sometimes the council can assist by identifying a suitable property for applicants, particularly for the rent deposit scheme.

Both options can operate simultaneously in order to speed up the process of finding accommodation. The property does not have to be in Camden to be eligible for the scheme.

In conclusion, the Housing Advice Service will work with casework clients to help them to access either of the two schemes according to their needs and circumstances. It is important to note, given the huge demand for council and Housing Association accommodation, that people applying for council housing or looking for a place to live need to reconsider their expectations. This will mean evaluating positive housing options that might enable them to access private accommodation or move to areas where there are more realistic chances of being housed. The Rent Deposit and Rent Guarantee Schemes are real options that can help people to meet their housing need. Progressively these options will become the main way forward for Camden's future housing solutions as the number of council homes decreases and the demand for council housing increases.

Marilyn Bramble-Litchmore

Thanks to Housing Adviser Marilyn Bramble-Litchmore for this article

Camden Housing Advice Service

Free, expert advice for private tenants, leaseholders and people seeking accommodation. You can phone us, come in or email us.

Housing Advice Centre North team

Tel: 7974 8855

Opening hours

Mon, Thurs, Fri: 9.30 – 4pm

Tues: 9.30 – 1pm; 4 – 7pm

Wed: Closed

Housing Advice Centre South team

Tel: 7974 5801

Opening hours

Mon, Tues, Thurs,

Fri: 9.30 – 3pm

Tues: 4 – 6 by appointment

Wed am: Somali speakers only



Awarded for excellence

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statutory body, although stressed that it needn't have to be the IHO.

The Government has the opportunity to introduce a national adjudication scheme, particularly given that while landlords will have a choice over which deposit scheme to adopt, tenants won't have that luxury. Above all, adjudication over deposit disputes must be fair, consistent and transparent, and with this kind of money sloshing about, fairness, consistency and transparency are not going to be the top of everyone's agenda. It is worth mentioning at this point that during the IHO's pilot scheme only 3.5% of disputes went in favour of the landlord, in all other cases (or 96.5%) the tenant was returned all or part of the deposit because the landlord had been wrong.

As already mentioned, it is not known when the schemes will be implemented as secondary legislation will be required to iron out details, such as setting time limits for dealing with disputes; it could very well be 2006 before we see the mandatory tenancy deposit schemes in place.

So what are the provisions under the 2004 Act?

- Any landlord or agent who takes a deposit from a tenant for an Assured Shorthold Tenancy must safeguard it in an approved tenancy deposit scheme
- The tenant must be informed which one
- The deposit must be in money
- Landlords in breach of these provisions will not be able to issue S 21 notices, and may have to pay the tenant compensation of three times the deposit
- The landlord/agent must submit the deposit to the operators of their scheme when requested to do so
- Each scheme must have procedures for resolving disputes without going to court
- There are strict time limits for the return of deposits where there is no dispute

** Tenancy Money: Probity and Protection 2002 (ODPM)*



Labour

Frank Dobson – Holborn & St Pancras

As the local MP since 1979, before that as Leader of Camden Council and before that as a local activist, I have worked hard to help private tenants.

In the 1960s, I helped provide an advice service. On the Council I was responsible for buying up over 4,000 properties from private landlords to guarantee tenants security, fair rents and decent standards as Council or Housing Association tenants. These included the Hillview Estate in King's Cross, the Rugby Estate in Holborn, streets around Castlehaven Road and Lissenden Gardens on Parliament Hill.

As MP, I have helped many private tenants get a better deal from their landlords and to improve

the quality and safety of their homes. As recently as my advice service on 5 March, I was pressing a private landlord to provide decency and privacy for an elderly tenant. Last year's Housing Act included a number of measures I had been urging on the Government. These included changing the law to permit the selective licensing and registration of private landlords to prevent them letting their properties to irresponsible and criminal elements and being turned into crack houses and drug dens which make life intolerable for their

neighbours. Higher risk houses in multiple occupation will require a licence and landlords will be required to bring their properties up-to-date and manage them properly. Action is also being taken to clamp down on housing benefit fraud which often benefits only dodgy landlords. Action to clamp down on loan sharks will also help a lot of the worst-off private tenants.

I will continue to give the interests of private tenants the priority it deserves, to help provide security, good quality homes at prices local people can afford.



Liberal Democrat

Jill Fraser – Holborn & St Pancras

Liberal Democrats say decent affordable housing is a basic human right. We want more affordable housing and aim to strengthen communities by encouraging and working with tenants' associations.

Tenants of private sector landlords too often receive poor quality for the rent they pay. We need a new partnership approach to stimulate expansion in quality privately rented housing.

Change has started with the Housing Act 2004, with tenant protections lobbied for and won by the Liberal Democrats. All tenants will benefit from the new Tenants' Deposit Scheme, which helps in disputes over rental deposits. Tenants of houses in multiple occupation and of homes covered by the new selective licensing regime also get new protections.

So far organisations representing good landlords have struggled, because landlords are so many and so various. Liberal Democrats would support the further development of landlord associations, in return for their co-operation in developing

training, good practice support and accreditation systems. By improving the quality of landlords, we may avoid the potential disadvantages of further regulation.

Liberal Democrats regard property letting as serious business, not a cottage industry or opportunistic means of exploitation. We would review the tax and regulatory system to stimulate the sector without jeopardising tenants' rights.

We would consider taxing rental income as trading income instead of as investment income, as at present. We would amend the current regulation that first-time landlords can reclaim tax on renovations only if they let the property before renovating it.

Liberal Democrats welcome the Government's proposed "real estate investment trusts" (REITs) as a way

to attract more investment. We want REITs to create developments modelled on proposals like the Joseph Rowntree Foundation's CASPARs – City-centre Apartments for Single People at Affordable Rents. REITs could help meet the housing needs of often overlooked single adults.

We would enable developers to offer cheap private rented housing as part of their affordable housing provision quota, with affordable rents set indefinitely, regardless of changes in tenants, so the developer becomes the landlord, meeting the affordable housing obligation through rent subsidy.

We would allow investors to put residential property into self-invested personal pension schemes (SIPPs), one way to encourage investment in the buy to let sector.



Conservative

Margot James – Holborn & St Pancras

I agree very much with the message from the Camden Federation of Private Tenants conference at the end of last year described in 'Private Tenant' as "a tenant's house or flat is their home and not simply a piece of someone else's property".

I am concerned particularly about the position of older tenants who are unlikely to be able to move on to any form of home ownership. Given the waiting list for council accommodation in Camden older tenants are highly dependent on a better regulated private sector. Help the Aged's research has found many tenants worried by harassment from landlords.

Harassment can be extremely upsetting and intimidating even when, as it usually does, it stops short of physical abuse. Victims should have redress through the criminal justice system but help is needed. Specialist advice should be provided to tenants who find themselves at the mercy of landlord harassment. Many landlords are bona fide and need to be better

supported if the private sector are to contribute more to the solving the problem of homelessness. Labour inherited a legacy of falling homelessness with absolute numbers falling year on year from 127,630 in 1992 to 102,000 in 1997. Since 1997 the numbers of homeless have risen by 35% to a high of 137,440 in 2003. And there are almost 700,000 empty homes.

The private rented sector must be part of the solution to this problem. At the moment it accounts for just 10% of all homes in the UK. The introduction of licensing has been well received by tenants but it needs to be made less complex. At the moment there is a danger that the effect will be to raise rents (owing to the higher regulatory costs that fall on landlords) and to

inhibit some landlords from renting their properties.

Housing regulations need to protect tenants from unscrupulous landlords without regulating the market so much that properties stand empty. There have to be incentives to landlords if the private sector is to be developed to the extent that it will contribute to the problems I have outlined above. Of course a six month tenancy is too short for people to feel secure. And it is concerning that there are a large number of people who become homeless on vacating a property at six months. But the way to deal with this is by incentivising landlords to let their properties for longer – not to prevent them from letting their properties for just six months if that is what they want to offer.

Green Party

Adrian Oliver – Holborn & St Pancras

Sian Berry – Hampstead and Highgate

The Green Party believes that affordable secure accommodation is a basic human need. Those forced into inadequate or unaffordable housing, and those who move frequently, can lead diminished lives and can be socially excluded, unable to participate fully in the life of the community.

We support a balanced mix of housing provision and emphasise local provision for local needs and the empowerment of tenants. We would reform housing associations and increase the amount of social housing and commonly owned housing because we think these are the best ways of ensuring that affordable homes are available to all.

The private rented sector has a role, particularly in areas such as Camden with high house prices, for those unable or unwilling to borrow money, for people on low incomes who do not qualify for social housing, and for short term accommodation. Both Adrian Oliver and Sian Berry, the two Green Party candidates in Camden, are private tenants and

understand well the difficulties that can arise with short term tenancies and moving frequently. We believe that people who rent should be able to regard their accommodation as their own home, not just a unit of someone else's property.

The Greens would give new legal rights to tenants, including the right to improve their homes, and we would give means-tested grants to help with environmental improvements and other renovations. We would also set up Housing Advice Centres to help all tenants with grievances against their landlords. We would enforce current rules protecting tenants from harassment more strictly giving tenants automatic right to appeal against eviction.

Civil liberties in the home would be protected with new legislation. Under the Greens, tenants would have the right to keep pets and otherwise pursue the lifestyle of their choice, provided they make good any damage.

A range of periods of tenancy is needed, and we would ensure that tenants were able to negotiate with landlords to find the most suitable terms for them. Private tenants would be protected from harassment and exploitative changes in terms and we would set up a full register of private sector tenants and landlords to help in monitoring this and to enforce health and safety standards.



Labour

Glenda Jackson – Hampstead and Highgate

Because of concerns highlighted in the NACAB report ‘unsafe deposits’ published in June ‘98, that same month the Government announced it was examining options for reform to tackle the problem of rent deposits being unreasonably withheld.

At that time local authorities were being encouraged to set up rent deposit guarantee schemes to assist prospective tenants on low incomes.

In October of that year the Government launched a voluntary tenancy deposit scheme funded by a \$460,000 grant that was piloted in five areas of the UK, one being here in Camden.

The aim was to discover whether such a scheme could work voluntarily. In 2002 independent research as to the effectiveness of this approach published by the

ODPM was hardly a ringing endorsement. A consultation paper was produced which culminated in the winding up of the voluntary scheme in June 2003.

Calls for a statutory scheme were deemed by Government to be ‘finely balanced’, but then in May ‘04, Government amendments to the Housing Bill were tabled requiring the safe guarding of tenancy deposits schemes. The Act received Royal Assent in Nov ‘04 giving some idea of how long legislation can take.

It is very rare for me to receive a constituency case, based on the failure of a landlord to return a deposit, but that was not the case when I was first elected in ‘92.

Today, the anecdotal evidence is of landlords refusing tenants on housing benefit, but the real underlying problem is still the shortage of affordable housing and that will take not only the money and political will which the Government has committed, but also time.

Liberal Democrat

Ed Fordham – Hampstead and Highgate

Housing and issues facing tenants have always been largely unspoken issues in election debates, but in fact is one of the most critical facing residents.

Camden faces particular issues:

- High cost properties, both in terms of maintenance and purchase
- Limited access to local authority housing, and
- Significant demand for rented accommodation

All of these bring individual problems and none of these problems have simple or blanket solutions.

On a simple and cursory level the problems of private rented accommodation in the Hampstead and Highgate constituency are acute. Firstly, there is a real shortage (possibly in fact an excess of demand), second prices are being forced higher and higher and third there are real issues around quality, legality and living standards.

I can honestly say that some of the private rented accommodation in Camden accounts for some of the worst I have ever seen, my feeling is that tenants are being charged too much, for too little at a poor and in many cases sub-standard level.

These is another aspect to this: how low are standards being pushed and is it the market forces pushing standards down or are tenants in fact being taken for a bit of a ride?

Of course the people these problems hit the most are those on low and fixed wages, older people and younger people who can’t afford to live near where they work or the area in which they grew up and consider home.

I really believe that there is more that local authorities could and should do, but there are two restrictions on this approach.

The first is resources and the second is legislative. Local authority resources just have not prioritised the environmental health and protection agenda for which private rented tenants need support, and secondly the legislative limitations placed by successive governments onto local authorities means that in many instances Camden’s hands are tied.

The pledge I can most meaningfully make as a candidate for the Hampstead and Highgate constituency is that the issues associated with private rented housing is an agenda I will engage with. We cannot afford to sideline the issues any longer, for the best interests of our young people and our older population we owe them nothing less.



Conservative

Piers Wauchope – Hampstead and Highgate

For most of us, society means belonging, and no one can feel a sense of belonging if they know that they may be moved on at any moment. I very much support the CFPT's campaign to challenge the destruction of the assured shorthold tenancy.

But we are in the middle of a housing crisis, and we desperately need more homes. At the moment the private rented sector accounts for just under 10% of housing tenure in the UK, but it is growing and it is needed to grow.

Through the Housing Act 2004, the government is creating a licensing regime for the private rented sector that is both complex and confusing. The Residential Landlords Association has estimated that the cost of licensing each property will be between £10,000 and £20,000, with rents likely to rise as a result.

Labour's complex licensing arrangements are likely to discourage better landlords while not stopping the bad ones. The Social Market Foundation argues that '...raising the hurdle for being a legitimate HMO landlord may encourage the unscrupulous to be illegal ones... This is another risk of regulation: putting things beyond the law can encourage the existence of some appalling housing situations.'

What is needed is a system that stops unscrupulous landlords who exploit the most vulnerable members of our society but at the

same time does not discourage the development of the private rented sector. It also needs a system where landlords will be encouraged to give longer tenancies.

Conservative policy is to work towards consistency and a lighter touch in regulation. We deplore the climate of uncertainty Labour has created around security of tenure and investment in private renting. We need to re-establish confidence in order to encourage investment, but we also need a proper balance. And that means decent housing legislation that ensures that tenants feel that they belong.

The General Election

From The Leaseholder – the newsletter of the Campaign for the Abolition of Residential Leasehold (CARL)

Unless you have been sailing single-handed around the world for the last three months, you will have detected that there will be an election soon. This is the prime opportunity for CARL to raise the profile of our leasehold campaign. Members of the CARL committee have been meeting MPs face-to-face at the House of Commons. Particularly encouraging was our meeting with Matthew Green MP, the housing spokesman of the Liberal Democrats. The LibDems are planning to publish a housing manifesto soon, and this will include proposals to abolish both forfeiture and the payment of marriage value on enfranchisement. They also have plans to ease the transfer to commonhold tenure for existing leaseholders.

We have also met John Hayes MP, Conservative housing spokesman. He expressed concern at the high cost of professional fees that leaseholders have to pay when acquiring their freeholds and extending their leases.

When the Queen does fire the starting gun for the general election, write to the prospective candidates standing in the constituency where you live. Ask them about their policies on leasehold reform. Press them on those issues of immediate concern to you and your fellow leaseholders. If you wish, tell them that you support CARL, and that you would like to see our objectives implemented in the course of the next parliamentary session.

What do we want?

- The abolition of the leasehold system and its replacement by commonhold for flat owners
- The abolition of marriage value for leaseholders buying their freeholds
- The abolition of forfeiture and the threat of forfeiture
- A leasehold regulator to crack down on rogue landlords and managing agents
- Extending the role of the housing ombudsman to replace the leasehold valuation tribunals

Thanks to Nigel Wilkins of CARL for this article. Visit CARL at www.carl.org.uk

Protect yourself and your home

by trying the 'intruder test'

1. Do you have outside lights?
2. Do you have a burglar alarm?
3. Does your door fit properly, is the lock properly attached and does it keep the door firmly shut?
4. Do you always lock your door (even if nipping next door to borrow some sugar)?
5. Do you shut and lock windows when you are going out (even if you live on the second floor)?
6. If you have deadlocks do you use them (burglars hate them because you need a key to open them)?
7. Do you use a timer switch for lights and radios when you're out or away (to give the impression you're in)?
8. Do you have a smoke alarm (that works!)?*
9. Do you make sure any valuable items – TVs, CDs, laptops or mobiles – are hidden from outside view?
10. Do you always keep your door chain on when answering the door?
11. Do you always ask for ID from callers wishing to enter your home (e.g., water, gas or electricity men/women)?

* OK, it's not really an intruder question, but we thought we'd slip it in. If you scored 1–3, you tend to throw caution (and sense) to the wind! If you scored 4–8, you're getting there. If you scored 8–11, you live in Fort Knox, well done!

**Think safe,
be safe**



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