

TENANT FEES: Guidance

1 THE TENANT FEES ACT 2019

The Tenant Fees Act 2019 (The Act) helps to achieve fair private rental market where services are paid for by the person that contracts them.

The Act applies to Assured Shorthold Tenancies (“ASTs”), student accommodation and licenses to occupy housing, in England only. The Act covers licences to occupy housing, to ensure that lodgers or tenants of houses in multiple occupation (“HMOs”) also cannot be charged fees.

The Act does not apply to Non-Housing Act contracts, long leases, as defined in Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993. Nor does it apply to shared ownership leases as defined by section 7(7) of the Leasehold Reform, Housing and Urban Development Act 1993, where the tenant’s total share (within the meaning given by that section) is 100%.

The transitional period for compliance with the Act has expired. All contracts must comply.

1.1 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.

1.2 PERMITTED PAYMENTS ‘IN CONNECTION WITH A TENANCY’ ARE:

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

- 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

¹ As defined in the Housing Act 1988

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1.3 DEFINITIONS

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

- a. 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
- b. 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
- c. 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
- d. 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
- e. in consideration of providing a reference for a former tenant

2 THE CONSUMER RIGHTS ACT 2015

Chapter 3 of Part 3 of the Consumer Rights Act 2015 requires an agent in England to **display information about their relevant fees** and membership of redress and client money protection schemes prominently in their office and on their website. The amendments are:

- a. to apply those requirements in relation to third party websites (any portal on which a property to let is advertised, for example, Rightmove, Zoopla or Facebook),
- b. to make new provision to allow a local weights and measures authority in England to impose more than one financial penalty in respect of a continuing breach of the requirement to publicise fees in England; and,
- c. to require letting agents to give the name of their Client Money Protection scheme (not just whether they are a member of such a scheme, as this will become a mandatory requirement from April 2019).

If a letting agent breaches the duty in section 83(3C) (duty to publish list of fees etc on third party website), that breach is taken to have occurred in each area of a local weights and measures authority in England in which a dwelling-house to which the fees relate is located.

3 NON-HOUSING ACT TENANCIES

If a tenancy of residential premises is **not an AST**, then fees are not restricted by the Tenant Fees Act 2019.

However, other legislation will still apply, including, but not limited to;

- the Consumer Rights Act 2015, and
- the Unfair Terms in Consumer Contracts Regulations 1999

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This requires the Agent/Landlord to comply with the requirements detailed above re publicising fees and ensure that those fees do not breach the Unfair Terms in Consumer Contracts Regulations. Guidance on the Regulations can be found here.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/616956/oft356.pdf

Housing Act Tenancies	Non-Housing Act Tenancies (NHA)
<p>Assured Shorthold Tenancies (AST)</p> <p>An AST is the most common type of tenancy if you rent from a private landlord or letting agent.</p> <p>You usually have an AST if:</p> <ul style="list-style-type: none">▪ you don't share any accommodation with your landlord and they live elsewhere▪ the rent is less than £100,000 a year▪ the tenant is an individual and is using the property as their main home.	<p>Common Law Tenancies</p> <p>A tenancy would be created as a NHA if the rent is over £100,000 a year, or where it is not the tenant's main home.</p> <p>Company tenancies are also NHA's.</p> <p>A company let is when a company takes on a residential tenancy agreement as the tenant, rather than an individual. The tenancy will be in the company name. The company employee will live in the property.</p>

TENANCY INFORMATION

Our Schedule of Fees

1. HOUSING ACT TENANCIES (AST) GENERAL FEES & CHARGES

- 1.1. **Fee of Intent 'holding deposit'** - Equivalent of one (1) week's rent which will be put towards your first rental payment and is your agreement to proceed with the agreed tenancy terms subject to contract and references. This may be retained if you provide false or misleading information when submitting an offer that is subsequently accepted by the Landlord, or in the event in that you are unable to provide satisfactory 'Right to Rent' checks.
- 1.2. **Tenancy Deposit** - If the annual rent is less than £50,000, your deposit will be equivalent to five (5) weeks' rent, if the annual rent is £50,000 or more, this will be the equivalent of six (6) weeks' rent.
- 1.3. **Change of Sharer (variation of tenancy)** - Up to £50 to cover referencing and administration, or any reasonable costs incurred if these are higher than £50.
- 1.4. **Early termination (at Landlord's discretion)** - All costs, fees and charges incurred by the Landlord for allowing early termination by the tenant, including the agent's existing or re-letting fees as well as the rent until such time as the tenancy is terminated upon mutual agreement.
- 1.5. **Bank charges** - There is no charge for payments to UK bank accounts. A £25 charge is payable for overseas transactions.
- 1.6. **Default fees and charges** - Interest may be charged on late or unpaid rental payments at 3% above the base rate of Bank of England per annum, calculated daily where rent is unpaid for fourteen (14) days or more.
- 1.7. **Lost keys** - Any reasonably incurred cost for the replacement of keys, fobs, security devices or associated items which have been lost, damaged or broken.
- 1.8. **Stamp Duty Land tax (SDLT)** - Payable by the tenant to HMRC on tenancies where the rent for the cumulative total tenancy exceeds £125,000.
- 1.9. **Payment in respect of utilities etc.** - A payment for or in connection with the provision of a utility if the tenancy agreement requires the payment to be made.
- 1.10. **Payment in respect of a television licence** - A payment to the British Broadcasting Corporation in respect of a television licence if the tenancy agreement requires the payment to be made.
- 1.11. **Spence Willard is a member of [The Property Ombudsman (TPO) and is part of the RICS Client Money Protection Scheme (CMP).**

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2. NON-HOUSING ACT TENANCIES

GENERAL FEES & CHARGES

- 1.12. **Pre-Tenancy Application Charge (PTAC)** - The equivalent of one week's rent or £600, which will be put towards your first rent due on completion of the tenancy. If you withdraw from the tenancy: Private tenancies – minimum of £300 per person. Company tenancies – a minimum of £600.
- 1.13. **Tenancy paperwork** - £300 per tenancy for contract negotiation and arranging the tenancy
- 1.14. **Company reference checks** - £120 per reference
- 1.15. **Deposit** - Usually equivalent to five weeks rent or if you have a pet this will usually be equivalent to eight weeks.
- 1.16. **Withdrawing from the tenancy** - Private tenancies – minimum of £300 per person. Company tenancies – minimum of £600.
- 1.17. **Check-in and/or check out** - From £120 to £620 approx. Check your tenancy agreement to confirm who is responsible for paying this charge.
- 1.18. **Call out services (inc. out of hours)** - £60 per hour and/or you'll have to pay the contractors invoice where your actions or lack of actions result in us or a contractor attending the property to remedy the situation.
- 1.19. **Last minute cancellation or no cancellation of pre-arrange visits.** - £60 per visit and any contractor invoice. If you cancel an appointment less than 24 hours before, or we have arranged to visit your property and we can't gain access.
- 1.20. **Hourly rate** - £60 plus any replacement costs if we or the landlord have to replace any damaged or broken items or return any fixtures or fittings to their original position, as per the inventory.
- 1.21. **Any overseas payment charges** - £30 per payment. Unless you ask us to pay monies to a UK bank account instead.
- 1.22. **Late/unpaid/returned rent payments** - £60 late payment charge and 3% above the base rate of Bank of England per annum, calculated daily.
- 1.23. **Change of sharer** - £375
- 1.24. **Additional sharer** - £75 if they change at the same time as the above
- 1.25. **Renewal negotiation** - £180 for each renewal. If additional referencing is required, we'll also charge you £45 per reference.
- 1.26. **Any tenancy agreement specially negotiated clauses agreed after the tenancy agreement has been signed** - £180 each time a change is requested and agreed by the landlord
- 1.27. **Early termination (at landlord's discretion)** - All costs, fees and charges incurred by the landlord for allowing early termination including the agent's existing or re-letting fees.
- 1.28. **Stamp Duty Land Tax** - This tax is payable on tenancies where the rent exceeds £125,000
- 1.29. **Bank Charges** - There is no charge for payments to UK bank accounts, if you ask us to pay an overseas account, we'll charge £30 per payment.