

## LETTING AND PROPERTY MANAGEMENT AGENTS

### HOLDING OR RESERVATION DEPOSITS

In their Guidance for Lettings Professionals<sup>1</sup> the Competition and Markets Authority (CMA) have provided further detail on how information on these fees should be presented.

#### What is a holding deposit?

It is a fee paid by a potential tenant to reserve the property while negotiations are made with the landlord. The deposit is to cover potential losses by the landlord and to confirm a potential client's interest in the property. Different terms have been used in the past and you need to be clear to tenants about what it is and its purpose.

#### What should my terms & conditions say?

The CMA guidance states you must make clear what the deposit covers.

This is known as material information and includes at least:

- The circumstances in which a deposit or any part will be refunded
- Whether or not payment of the deposit means that the property will be taken off the market.
- Whether the holding deposit, or any part of it, is to be used as payment towards future rental costs in the event that the tenancy agreement goes ahead.
- The details and sums of any costs and disbursements to be taken out of the deposit, and the approximate dates or stages in the process when these will be incurred.

#### If the tenancy doesn't go ahead can the whole deposit be retained?

The CMA guidance states that a term making a holding or pre tenancy deposit non-refundable in all circumstances is highly likely to be found unfair. This is because there are some circumstances where they are likely to be refundable, see follows;

- The tenant pulls out before costs are incurred,
- The agent continues to market the property and the landlord has not suffered loss by the property being held,
- Any loss the landlord suffers is smaller than the deposit,
- The property is not ready on date specified and/or is not as described,
- The landlord decides not to let to the tenant even though all checks are satisfactory

Part of the deposit may be retained if there has been a loss due to a fault on the tenant's part. The amount retained should only cover the actual loss. If the loss has been mitigated, for instance the tenant withdrew at an early stage or a new tenant was quickly found the potential tenant must not be penalised.

## **GUIDANCE FOR BUSINESSES**

Where the potential tenant was at fault, for instance by giving misleading information, the landlord may retain enough to cover loss of rent. The agent may retain an amount to cover reasonable costs such as reference checks.

If the potential tenant was not at fault he or she must receive a full refund.

### **Should the holding fee be placed in client account?**

Yes. Industry Codes of Practice require the deposit to be protected in a clients' account. The deposit does not belong to either the agent or the landlord. The tenant should also be provided with a written receipt.

### **How can I get further advice?**

If you require further information, clarification or advice on any of the above, please do not hesitate to contact the Trading Standards Service by telephone on 020 8753 1081 or via email at [trading.standards@lbhf.gov.uk](mailto:trading.standards@lbhf.gov.uk)

**In offering the above advice this Authority wishes to make it clear that only the Courts can interpret the Law.**

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<sup>i</sup> Competition and Markets Authority Guidance <https://www.gov.uk/government/publications/consumer-protection-law-for-lettings-professionals>