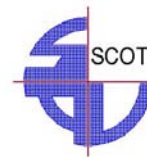


# Dealing with Deposits

***John Blackwood***

***Director, Scottish Association of  
Landlords***



SCOTTISH ASSOCIATION OF LANDLORDS

# Dealing with Deposits

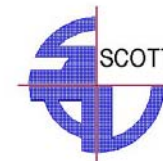
- Deposit Clauses in tenancy agreements
- Holding Deposits
- Deposit Disputes
- Guarantor Agreements

# Deposit Clauses in Tenancy Agreements

- Clearly state terms of liability
- Avoid 'unfair terms'
- Avoid 'silent' deposit clauses
- Make provision for dispute resolution
- Draw up a detailed inventory that ALL PARTIES AGREE TO

# Terms of Liability & Unfair Terms

- Outline the amount of deposit held (*no more than two months equivalent rent!*)
- Make clear in which way you 'hold' deposit
- State what the deposit covers
- Emphasise tenants responsibility
- Make terms fair and 'reasonable'
- Make reference to you inventory of conditions
- Make provision for interest payment (?)
- Outline timetable for return

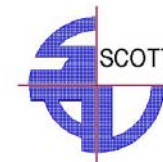


# Example of an Unfair Term

- *In the event that the tenant's belongings are left in the property after the tenant has vacated it, such belongings will be deemed abandoned and the landlord may remove, sell or dispose of these without being liable to pay for any compensation.*

# Way of revising the clause

- *The tenant will be responsible for meeting all reasonable removal and/or storage charges when items are left in the premises. The landlord will remove and store them for a maximum of one month. The landlord will notify the tenant at the last known address. If the items are not collected within one month, the landlord may dispose of the items and the tenant will be liable for the reasonable costs of disposal. The costs may be deducted from any sale proceeds or the deposit and if there are any costs remaining they will remain the tenant's liability.*



# Pitfalls!

- **‘Silent’ Clauses**

Cover every angle!

Be clear and explicit

- **‘Unenforceable’ Clauses**

Clauses that are unreasonable or limit landlords liability

# Pitfalls cont...

- **Interest Clauses**

Make proper provision for payment of interest – or not.

- **Dispute Resolution**

Agree dispute resolution mechanism



# Property & Contents Inventory

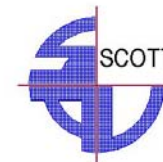
- The most important statement of condition of fixtures, fittings & furnishings.
- ***Clearly state:***  
Condition of decoration, carpets & fixtures/fittings.  
Itemise furniture & condition/location (i.e. in which room)
- Utility readings, meters & providers
- Make reference to cleanliness and request tenant to check it.
- Take photographic evidence (BOT & EOT)
- Get all parties to sign agreement

- Avoid 'Unfair terms'
- Set out landlord/agent & tenant's responsibility
- State clearly any deductions in case of cancellation

# Holding Deposits cont..

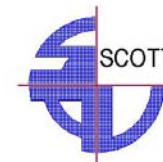
## Remember:

- Can only charge 'reasonable' costs (i.e. loss) and CANNOT constitute a penalty!
- Can only withhold 'whole' deposit held if deposit is nominal which could justify reasonable costs to landlord/agent



# Deposit Disputes

- **Agree dispute resolution mechanism/mediation**
- **Apply test of ‘reasonableness’**
- **Discount fair ‘wear & tear’**
- **Emphasise deposit return timetable**



# 'Reasonableness' and Wear & Tear

- Cannot replace new for old if item has come to the end of its usefulness

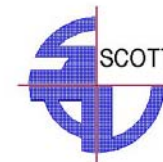
*(i.e. mitigate loss but cannot gain from it!)*

- Examples of 'lifespan':

Carpets/Furniture: 10 – 12 yrs

Lawnmower: 5 – 8 yrs

White Goods: 5 – 8 yrs



# Guarantors' Agreements

- **Emphasise responsibility**

*'This guarantor agreement creates a binding legal contract. If you do not fully understand the nature of the agreement, then it is recommended that you take independent legal advice before signing.'*

- **Remember limit of liability!**

- **Sign contract at least 7 days in advance!**

- **Consider renewing contract for another fixed term**



# Contact Details

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