A diagram showing the process of assessing the lawfulness of handling a holding deposit

Q1: Did the landlord or agent ask you to pay a holding deposit above one week's rent for the property?

Yes: The excess is a prohibited payment. You should ask your landlord or agent to return the excess amount. Return to the start for remaining deposit amount.

No: Proceed to Q2.

Q2: Did you enter into a tenancy agreement with the landlord?

Yes: The landlord or agent must return the holding deposit within 7 days of entering the

No: Proceed to Q3.

Q3: Did the landlord or agent set out the reason for retaining your deposit in writing?

Yes: The landlord or agent must return the holding deposit within 7 days of entering the

No: Proceed to Q4.

Q4: Was the reason given any of the following?

- You failed a right to rent check
- You withdrew from the proposed agreement
- You failed to take all reasonable steps to enter into a tenancy whilst the landlord or agent did (this does not apply if the landlord or agent imposed a requirement that breached the ban and/or acted in such a way that it would be unreasonable to expect you to enter into a tenancy agreement with them).

Yes: The landlord or agent can retain your holding deposit (a landlord or agent must set out the reason for retaining your deposit within 7 days of deciding not to let the property to you if the '**deadline for agreement'** has not passed or within 7 days of the **'deadline for agreement'** passing).

No: Proceed to Q5.

Q5: Was the reason given any of the following?

- You failed a reference check as the landlord considered you unsuitable (but you provided accurate and honest information as required)
- You failed to reach an agreement in time (and neither the landlord, agent or you were at fault)
- The landlord or agent withdrew from the proposed agreement
- You took all reasonable steps to enter reasonable steps to enter into the tenancy (i.e. responding to reasonable requests for information required to progress the agreement)

Yes: The landlord or agent must return the holding deposit within 7 days of entering the agreement.

No: Proceed to Q6.

Q6: Did you provide false or misleading information that is reasonable for a landlord or agent to take the false or misleading information, or your conduct, into account when deciding whether to grant you the tenancy?

Yes: The landlord or agent can retain your holding deposit.

No: The landlord or agent must return the holding deposit within 7 days of entering the agreement.

If you fail to provide the necessary information in good time, and a landlord or agent can demonstrate that they have given you enough notice to provide this, they will be entitled to retain your holding deposit. A landlord or agent must provide reasons in writing to you to explain why they have retained your holding deposit.

We would consider not providing the necessary information or documents to enable your landlord to carry out a right to rent check as not taking all reasonable steps to enter into the tenancy.

Please note: landlords and tenants will usually have two weeks (14 days) to enter into a tenancy agreement once a holding deposit has been received by a landlord or agent. The '**deadline for agreement'** is the 15th day after a holding deposit has been received. However, you may agree a different **'deadline for agreement'** with your landlord or agent in writing.

Q. Can a landlord or agent retain my holding deposit if they fail to properly explain the information required for referencing?

No. A landlord or agent can only retain the holding deposit if you provide false or misleading information or fail to take all reasonable steps to enter into the tenancy agreement (when the landlord and/or agent has done so).

A landlord or agent should not waste your time. They should clearly explain to you the criteria by which they judge suitability to rent the property (such as income and credit worthiness requirements) and request relevant information that would enable them to determine this before accepting a holding deposit. When explaining the credit worthiness requirements, a landlord or agent should clearly define what they consider to be credit worthiness and give you a clear understanding of what information you are required to disclose (e.g. whether this includes missed or late payments).

If you provide accurate information but fail a reference check, a landlord or agent must still return holding deposit.

Failed reference check

Q. Can a landlord or agent retain my holding deposit if I provided correct information, but my references are not good enough?

No. If you have provided factually correct information which a landlord or agent has requested, but they do not consider your references to be enough in order to let the property, you are entitled to a full refund of your holding deposit.

A landlord or agent cannot retain a holding deposit merely because they do not consider your references to be satisfactory. This also applies where a landlord is unable to let the property for any other reason which is not your fault.

Failing a reference check should not automatically disqualify you from renting a property. We encourage landlords and agents to consider on a case-by-case basis whether an adverse credit history or bad references affect your suitability as a tenant. They may ask you to justify information which calls into question your credibility – such as a previous County Court Judgement. Adverse credit history should not automatically disqualify you from renting a property.

However, it is important to note that you should only apply for properties that you know you can afford. You should not waste a landlord or agent's time if you know that your references are likely to be refused.

Q. If I have a County Court Judgement against me, does this mean that I cannot rent a property?

No. However, you must disclose this information to the landlord or agent if they request it. Landlords and agents should consider on a case-by-case basis whether a previous Country Court Judgement affects your suitability to rent the property. If you have a poor credit history, a landlord or agent may request additional financial assurances from you (e.g. a rent guarantor or rent payments in advance).

Withdrawing from a property

Q. If I decide that I no longer want to rent a property, but I have already put down a holding deposit, can a landlord or agent keep my holding deposit?

Yes. If you change your mind and decide to withdraw from a property after paying a holding deposit, and you notify the landlord or agent of this before the **'deadline for agreement'** has passed, they are entitled to retain your holding deposit. Even if you do not notify them of your decision, they are still entitled to retain the holding deposit if you don't take reasonable steps to enter into the tenancy before that date (e.g. providing information requested by the landlord or agent to progress the tenancy).

If you have to withdraw from a property due to exceptional circumstances which are beyond your control, we would encourage a landlord or agent to take this into account and consider returning your full holding deposit. This could be, for example but not limited to circumstances where, your employment circumstances have changed, you have suffered with a physical or mental health crisis or you have experienced domestic violence from a cohabitee. We encourage you to discuss this with your landlord or agent at the earliest opportunity.

Q. Can a landlord or agent retain my holding deposit if I withdraw from a property before any costs have been incurred?

Yes, a landlord or agent is entitled to retain your holding deposit in this situation and must explain in writing that this is the reason they are doing so. However, if you pull out of a property before a landlord or agent has incurred any demonstrable costs, such as costs for referencing checks or they are yet to take the property off the market, we would strongly encourage them to refund your holding deposit.

Right to rent checks

Q. What is a right to rent check?

A landlord or agent must check your immigration status and that of anyone aged 18 or over who'll be living with you before they rent a property to you. This is known as a 'right to rent check'.

To do this, a landlord or agent will ask to see your passport or other official documents that prove your immigration status. They must take copies of the documents and keep the copies safe.

Q. If I fail a right to rent check, can a landlord or agent retain my holding deposit?

Yes. A landlord has a legal obligation to check that you have permission to stay in the UK - this is known as a 'right to rent' check. A landlord or agent cannot rent a property to someone who is unable to demonstrate that they have the right to rent. They should be up-front and ask you whether you have a legal right to reside in the UK - making clear that this is a condition of renting a property. If you fail a right to rent check or do not provide a landlord or agent with the necessary evidence required to complete the check, a landlord or agent can retain your holding deposit and must explain to you in writing that this is because you have failed a right to rent check.

If the Home Office has your original documents because of an ongoing immigration application or appeal, a landlord or agent can ask for a Home Office right to rent check. They will need your Home Office reference number and they should get a response within 2 days.

More guidance on right to rent checks is available here.

Q. If the Home Office tells a landlord or agent in error that I do not have the right to rent, can they still retain my holding deposit?

No. If the Home Office reported to a landlord or agent that you did not have the right to rent, but it is later apparent that the Home Office made an error, the landlord or agent must return any amount of the holding deposit which they previously retained. They should do this once they have received confirmation of your status from the Home Office.

While a landlord or agent is not liable for a financial penalty in this circumstance, you still have the right to seek repayment of your holding deposit through the local authority or First-tier Tribunal if it has not been returned.

More guidance on right to rent checks is available here.

Landlord or agent withdraws

Q. If a landlord or agent decides not to let the property because they do not like my references, can they retain my holding deposit?

No. If a landlord or agent decides to withdraw from the proposed agreement because they do not wish to let the property to you, they must return your holding deposit within 7 days of making that decision. If a landlord or agent fails to take all reasonable steps to enter into the agreement by, for example, failing to send you a copy of the tenancy agreement before the **'deadline for agreement'** they must also refund your holding deposit.

Q. Can a landlord or agent retain my holding deposit if the property is not ready in time?

If you have failed to enter into the tenancy agreement before the **'deadline for agreement'** because the landlord and/or agent did not have property ready in time and you have taken all reasonable steps to enter the tenancy, then they must return your holding deposit.

Where a landlord or agent previously agreed for you move in on a specified date and subsequently changes that decision and the change in date materially affects your decision or ability to let the property, they may have acted in a way that it would such be unreasonable for you to enter into a tenancy agreement with them. If this is the case, a landlord or agent would have to return your holding deposit.

DEFAULT FEES AND DAMAGES

Q. What is a default fee?

Landlords and agents can only charge a default fee where a tenancy agreement permits them to do so **and** one of the following applies:

1. **You are late paying your rent**
   - A default fee can be charged for late payment of rent but only where the rent payment has been outstanding for 14 days or more (from the date set out in your tenancy agreement)

   - Any fee charged by a landlord or agent cannot be more than 3% above the Bank of England's base rate for each day that the payment has been outstanding. A fee which exceeds this amount is unlawful.

2. **You have lost a key or security device giving access to the housing and require a replacement**
   - Landlords and agents can charge a default fee for a lost key or equivalent security device. The landlord or agent must provide evidence in writing to the person liable for the payment to demonstrate that their costs in replacing the lost key or security device are reasonable. A fee which exceeds the reasonable costs incurred by the landlord or agent is unlawful.

Your tenancy agreement should set out the circumstances under which you will be liable for a default fee and how the fee will be determined. This might be called a default fee/or payment in event of default provision. Landlords and agents should highlight relevant default fee terms within a tenancy agreement before it is signed. Letting agents must also publicise any default fees they charge on their website and in their offices.

If your tenancy agreement does not permit a landlord or agent to charge default fees, they may still be able to recover damages for breach of contract. Often, a landlord or agent will seek to recover damages by claiming against the tenancy deposit at the end of the tenancy (but may do so at any time through agreement with you or by initiating legal proceedings)[2].

<u>Examples of default fee provisions:</u>

- Interest will be charged in line with the Bank of England's rate if a rent payment is more than 14 days overdue for each day the payment is outstanding.

[2] The Tenant Fees Act 2019 does not affect the landlord's entitlement to recover damages for breach of the tenancy agreement by way of a deduction from the tenancy deposit or otherwise.

- The tenant is responsible for ensuring that they look after the keys for the property throughout the tenancy. If they fail to do so, they will be responsible for covering the reasonable costs of replacement.

Q. What is the difference between a default fee and damages?

- A default fee is a payment which can be required by a landlord or agent under an express provision in the tenancy agreement and would therefore be permitted under the Tenant Fees Act. Default fees are only permitted where a tenant is late paying their rent or loses a key or security device giving access to the housing. A landlord or agent should highlight relevant default provisions within an agreement before you sign it.
- Damages are the general remedy available for breach of contract and cover any contractual breach which is not expressly covered by a default provision in the tenancy agreement for late payment of rent or for replacing lost keys/security devices.

Q. What are contractual damages?

The ban does not prevent landlords and agents from recovering damages for breach of contract. A landlord or agent is entitled to recover the costs to put them back in the position they would have been had you carried out all the obligations in your contract (for example, returning the house in the same condition as which it was found while allowing for fair wear and tear).

However, claims for damages which are aimed at deterring a breach of contract or punishing the party in breach are generally not enforceable. Terms which require a consumer to pay a disproportionately high sum to the trader in compensation for failing to fulfil his obligations under a contract are also considered unfair terms and unlawful under the Consumer Rights Act 2015.

Landlords and agents cannot write terms into your tenancy agreement that require a payment as a penalty should you fail to perform an obligation. For example, any clause that says **'if you fail to do x then you must pay y'** even if the amount is not specified is likely to be prohibited. Any claims for damages must be based on evidence and would only be permitted where a landlord or agent has incurred costs/actual loss because of the contractual breach (unless this is for late payment of rent or a lost key/security device which are expressly permitted default fees under the ban. Payments for lost keys/security devices must also be reasonable and evidenced in writing).

Examples of terms that are likely to be unfair and/or breach the ban:

- £25 fixed penalty charge for any late payment of rent which is 7 days or more overdue.

Q. Can a landlord and agent both charge a default fee for late payment of rent?

No. A landlord and agent cannot both require you to pay a default fee for a late rent payment – you can only be charged once either by the landlord or by the agent and only when the rent is more than 14 days late.

Questions to ask:

- Is there a relevant provision within your tenancy agreement that permits a landlord or agent to charge for late rent or a lost key/security device?
- Is the default fee for a late rent payment or lost key/security device?

If the answer to these two questions is 'no', it is likely that the default fee you are being charged is unlawful.

Q. Can a landlord or agent recover damages for breach of the tenancy agreement even if they didn't write them into the tenancy agreement?

Yes. The Tenant Fees Act 2019 does not affect the landlord's entitlement to recover damages for breach of the tenancy agreement by way of a deduction from the tenancy deposit or court action.

If your tenancy agreement does not permit a landlord or agent to charge default fees, they may still be able to recover damages for a breach of the tenancy agreement. In most cases, a landlord or agent can seek to recover damages by claiming against the deposit at the end of the tenancy (but they may do so at any time). Any damages claim that you do not agree to pay would need to be enforced by the landlord or agent by them making a claim in the courts. You should consider seeking advice before refusing to pay any damages claims.

If a landlord or agent is claiming against your tenancy deposit and there is a disputed charge, you can use the independent dispute resolution service offered by the three tenancy deposit protection schemes.

Q. Can a tenancy agreement include a clause that says in the event that legal fees are incurred for evicting the tenant, the tenant will have to cover the legal fees?

No, we consider this would be a prohibited default fee provision which is requiring a payment in the event of the default of a tenant. Landlords, agents and tenants are responsible for their own legal costs resulting from a dispute of the tenancy agreement. If the dispute progresses to court, it may make a ruling on how legal costs are to be distributed between the parties.

Q. Can a landlord or agent pass on costs from a third party?

A landlord or agent cannot pass on costs that they have incurred from a third party (such as a mortgage company) as a default fee. However, they may seek contractual damages for any loss they have incurred because of your breach of contract (e.g. if a landlord has been charged £20 for failing to meet a mortgage repayment because of your late rent payment).

Replacement key or security device

Q. How much can a landlord or agent charge me for a replacement key or security device?

A landlord or agent may charge you a fee to cover the cost of replacing the lost key or security device giving access to the housing. However, they can only charge you for the reasonable costs that they have incurred because of the lost key or security device. Costs associated with the loss of a key or security device vary depending on the key/device. It is possible to obtain a new standard door key for between £3 and £10, a specialist door key could cost between £5 and £20 to replace and a key fob could cost up to £50.

Landlords or agents are required to demonstrate that their costs are reasonable by providing written evidence (e.g. an invoice or receipt for a replacement key or security device). Any evidence should be fully itemised with an accurate and clear breakdown to allow you to determine the reasonableness of the fee charged. Landlords and agents should proactively seek value for money in respect of any works undertaken.

Where possible, we encourage a landlord or agent to allow you to resolve issues independently. For example, your landlord or agent may give you the option to replace a lost key or security device at your own cost instead of requiring you to pay a default fee. If this is not offered as an option, you can ask your landlord or agent if this would be possible.

Q. What should I do if a landlord or agent does not provide evidence to demonstrate that their costs are reasonable?

You should inform them that under the Tenant Fees Act 2019 any default fee charged for the loss of a key or security device giving access to the housing must be accompanied by evidence which demonstrates the reasonableness of the fee. This must be provided in writing to the person who is responsible for making the payment.

You are not responsible for paying the charge until evidence is provided. If you have been asked to pay a default fee or you have requested evidence of the reasonable

costs incurred by a landlord or agent in replacing the key or security device, you should keep a clear record of this in writing.

A landlord or agent who fails to provide written evidence of their costs or imposes an unreasonable default fee will be in breach of the Tenant Fees Act. You should object to paying the fee and follow the steps outlined on page 16. Enforcement authorities will be able to impose a financial penalty of up to £5,000 where a landlord or agent has imposed an unreasonable default fee.

The following default fees are not likely to be permitted because they would usually exceed the costs reasonably incurred in the loss of a key or security device:

- A charge of £100 as well as the cost of replacement keys/fobs will be issued to the tenant for the replacement of lost keys or security devices during the course of the tenancy.
- A charge of £50 for a standard front door key.

Q. Can a landlord or agent charge for their time in replacing a key or security device?

Generally, we do not consider it necessary for landlords or agents to charge for their time in replacing a lost key or security device.

In certain cases, it may be appropriate, but the onus will be on the landlord or agent to demonstrate that they have incurred costs which are in addition to their general responsibilities in addition to the cost of replacing the lost key or security device. A landlord or agent must provide written evidence that their costs are reasonable and attributable to the default.

We would consider a cost of no more than £15 per hour, which is the median hourly wage of an employee in the lettings industry (taking into account non-wage costs) to be a reasonable charge for a landlord or agent's time in replacing a lost key or security device.

Q. If a tenant requests more sets of keys (e.g. for family or cleaners) can the they be charged for the cost of extra sets of keys?

The decision on whether to provide tenants with additional keys or secure devices giving access to the housing is a matter for landlords and agents. If a tenant voluntarily requests additional keys or security devices, landlords or agents may ask the tenant to pay for this service. However, landlords or agents must not require a tenant to pay for the additional key or security device that wasn't requested. For example, you would be prohibited from requiring a tenant to pay for additional keys or security device for a cleaner or contractor that wasn't requested by the tenant.

This is distinct from replacing keys or security devices which you must provide but you can charge for your reasonably incurred costs which have been evidenced in writing provided this is set out in the tenancy agreement.

CHANGES TO A TENANCY

Q. What do you mean by a change to a tenancy?

A change to a tenancy is any reasonable request to alter a tenancy agreement. This could be making changes to the tenancy agreement to enable:

- pets to be kept in the property
- a change of sharer in a joint tenancy
- permission to sub-let
- a business to be run from the property
- or any other amendment which alters the obligations of the agreement

Where possible, a landlord or agent should make every effort to accommodate any reasonable changes you have requested.

Q. Can a landlord or agent charge me a fee for a change of sharer?

Yes. Where you request a change of sharer, a landlord or agent is entitled to charge you for any costs incurred for amending the tenancy agreement up to £50 (inc. VAT), or for any reasonable costs incurred if these are higher than £50. The general expectation is that this charge will not exceed £50. In some circumstances, it may be appropriate for this to be higher. In any case, a landlord or agent should be able to demonstrate to you that any fee charged above £50 is reasonable and provide evidence of their costs. You should ask your landlord or agent to provide evidence in the form of receipts or invoices. Any costs that are not reasonable are a prohibited payment.

Note: A landlord or agent cannot charge you for any changes to an agreement before it is entered into, for example, if you request to remove specific clauses or provisions from a tenancy agreement before it is signed.

Q. I have found a suitable replacement tenant, can the landlord or agent still charge more than £50 for a change of sharer fee?

It is unlikely that a landlord or agent could justify charging a fee above £50 in this circumstance. The costs involved in referencing the replacement tenant, re-issuing the tenancy agreement and protecting the tenancy deposit should be small. You could also offer to obtain such a reference voluntarily (a landlord or agent cannot require you to do this though) to further reduce the costs incurred by the landlord or agent. There are a number of third-party organisations which will carry out professional referencing checks for you at a small cost – for example, a full tenant reference check can cost up to £30.

A landlord or agent should be able to demonstrate to you that any fee charged above £50 is reasonable and provide evidence of their costs. You should ask your landlord

or agent to provide evidence in the form of receipts or invoices. Any costs that are not reasonable are a prohibited payment.

Q. Can a landlord or agent charge a fee for each change to a tenancy agreement?

Yes. However, a landlord or agent should be able to justify the costs that they have incurred because of each change. Not all changes to a tenancy agreement will incur the same cost, for example, including a pet clause within an existing tenancy agreement is unlikely to incur the same cost as a change of sharer.

The general expectation is that this charge should not exceed £50. If a landlord or agent seeks to charge you more than £50, you should ask your landlord or agent to provide written evidence in the form of receipts or invoices to demonstrate that the amount charged does not exceed reasonable costs. Any costs that are not reasonable are a prohibited payment.

EARLY TERMINATION FEES

Q. Can a landlord or agent charge me if I want to leave a tenancy before the end of my fixed-term or the end of my notice period?

A landlord or agent can require you to make payments in connection with the early termination of the tenancy if you have requested this, but there are restrictions on what can be charged.

Generally, the costs charged for early termination must not exceed the loss incurred by the landlord (usually the loss in rent resulting from your decision to leave and/or the costs of re-advertising or referencing), or the reasonable costs to the agent (such as referencing and marketing costs).

If a landlord or agent agrees to your leaving early, they can ask you to pay rent as required under your tenancy agreement until a suitable replacement tenant is found. This is because you are liable for rent until your fixed-term agreement has ended or in the case of a statutory periodic tenancy, until you have given the notice required under your tenancy agreement. However, a landlord is not able to charge more than the rent they would have received before the end of the tenancy.

If a landlord agrees to terminate your tenancy early, you should make sure that this is clearly set out in writing. It is good practice for a landlord or agent to agree to a reasonable request to end the tenancy early. Where this is agreed to, landlords and agents should consider on a case-by-case basis whether it is appropriate to charge an early termination fee, for example, whether there are any exceptional circumstances which require the tenant to leave early.

However, they could reasonably charge a fee to cover any referencing and advertising costs that they have incurred because of you leaving early, but they should be able to provide evidence to demonstrate these costs.

Please note: a landlord or agent should not require you to pay any charges in this circumstance if you are exercising a break clause in your contract which permits you to leave before the end of your fixed-term (if you have given notice as required by the terms of your agreement).

Q. What can a landlord or agent charge if a replacement tenant has been found?

A landlord or agent may be more willing to let you leave early if you offer to help find a suitable replacement, as this is likely to reduce the up-front costs.

Where a suitable replacement tenant is found and the landlord has agreed to an early termination of the tenancy, the landlord or agent can only charge you rent until the new tenancy has started. If a landlord or agent does not stand to lose any rent because of your decision to leave, they are not permitted to consider lost rent as part of any fee charged for early termination. The landlord or letting agent could

reasonably charge a fee to cover any referencing and advertising costs that they have incurred because of you leaving early, but they should be able to provide evidence to demonstrate these costs.

Q. What should I do if a replacement tenant has not been found?

If there is no replacement tenant and the landlord or agent insists on you paying rent until the end of your fixed-term agreement, we would encourage you to continue paying your rent monthly (or as required under your tenancy agreement), until a new tenant is found. You are not required to pay the outstanding rent amount as a lump sum unless you still agree to terminate the tenancy and agree this with the landlord.

Q. Can I sub-let a property as an alternative to terminating my fixed-term agreement early?

You should not sub-let a property unless your tenancy agreement allows this and this has been agreed in writing by the landlord.

If it is not appropriate for you to sub-let the property, we would encourage a landlord or agent to let you leave the tenancy agreement early provided that a suitable replacement is found.

OTHER PAYMENTS

Q. Are there any other payments that I can be required to make?

Yes. You are responsible for your bills if these are not included within your rent. Payments for utilities, broadband, TV, phone and council tax are all excluded from the ban. However, landlords must not overcharge tenants if they pay utilities separately from the rent.

Q. Are utility payments (gas, electricity, water) excluded from the ban?

Yes. You can still be required to pay for any utility services, such as gas, electricity or water that you consume. However, there is legislation which prevents landlords from over-charging tenants for provision of these services (the Office of Gas and Electricity Markets, 'OFGEM', fixes maximum resale prices under section 44 of the Electricity Act 1989, section 37 of the Gas Act 1986 and the Water Resale Order 2006 governs the maximum price for water).

Q. What can my landlord charge for gas and electricity?

Landlords who resell energy to their tenants for domestic use are governed by Maximum Resale Price provisions set by Ofgem. This means that landlords can only resell energy to you at the price they have paid to a licensed energy supplier. You are entitled to receive a breakdown of the costs paid by a landlord upon request, and you can take your landlord to court to recover any amount which has been overcharged. Guidance on these provisions is available here.

Citizens Advice and Ofgem offer advice on your rights in respect of utilities payments.

If you pay a flat rate for accommodation which includes utilities, you should consider whether this rate is affordable and reasonable for the property concerned.

Q. What can my landlord charge for water?

Similar provisions exist for the resale of water. Landlords are prohibited from over-charging tenants for the resale of water under the Maximum Resale Price provisions set out in the Water Resale Order 2006. The Maximum Resale Price ensures that landlords who resell water or sewerage services must charge no more to tenants than the amount they are charged by the water company.

Landlords are also allowed to charge a reasonable administration fee. The administration charge is set to cover administration costs and the maintenance of meters. Generally, landlords can recover around £5 each year in administration for a property without a meter and £10 for a property with a meter.

Q. Do I have the right to change my gas and electricity provider?

If you are directly responsible for paying the gas or electricity bill, you have the right to choose the supplier. Landlords or agents are not allowed to prevent you from doing this. Ofgem has published guidance on its website to explain your right to choose your energy supplier.

Q. If I have a pre-payment meter installed, can I have this removed?

If you are responsible for paying the gas and electricity bill you have the right to change the type of meter installed in the property, this includes the removal of an existing prepayment meter.

Q. What happens if I've got a prepayment meter and have a debt on my account, can I still switch provider?

The Debt Assignment Protocol enables prepayment meter customers with a debt up to £500 per fuel to switch to another supplier's cheaper prepayment tariff. This is designed to help you pay off your debt quicker and save money on your energy use.

Q. Are loans under the Green Deal (or any subsequent energy efficiency scheme) excluded from the ban?

Yes. You are still liable to make any payments that you are responsible for under a Green Deal loan.

Q. Are broadband, TV or phone payments excluded from the ban?

Yes. You are still liable to pay for any services (e.g. broadband, TV or phone), that are a condition of the tenancy, or that you may choose to contract if these are not included within your rent. Landlords are prohibited from over-charging for communications services under the ban.

Q. Are council tax payments excluded from the ban?

Yes. You are still liable to pay for any council tax payments associated with the property that you are responsible for, unless a valid exemption applies (e.g. you are enrolled in a full-time higher education course).

Q. If a tenant owes a permitted fee which they don't pay, can interest at 3% above the Bank of England base rate be charged?

No. Landlords or agents can only charge interest on a late payment of rent where there is a term in the tenancy agreement which permits you to do so and the rent has been outstanding for 14 days or more.

Where the rent includes payments in respect of council tax, utilities, television licences or communication services, the landlord or agent would be entitled to include the amount owed by the tenant for these services which has been outstanding for 14 days or more.

EXCLUDED LICENCES TO OCCUPY (HOMESHARE ORGANISATIONS)

Q. What are Homeshare organisations?

Homeshare organisations recruit and match people who need companionship and sometimes low-level care and support ('Householders'), with people ('Homesharers') who need somewhere affordable to live. Householders are often older people but can be adults with other support needs such as disabled people or people with mental health problems. They can have 'low-level' support needs but Homeshare arrangements do not involve the provision of regulated personal care. They either own their own homes or are tenants with a spare room. Homesharers are often younger people, such as students or people starting their careers. Homeshare organisations have traditionally charged both participants for their support and advice in facilitating an arrangement.

A national charity, Shared Lives Plus, provides membership to UK Homeshare organisations and a register of its members is available here: https://homeshareuk.org/. Further guidance on Homeshare can be sought from Shared Lives Plus.

Q. Is there a tenancy agreement involved?

No. The Householder offers the Homesharer a licence to occupy. No rent is paid, and no money is earned by the Householder for the accommodation provided. Often there will be an agreement to share household bills and council tax.

Q. Why do the Householder and Homesharer pay fees to the Homeshare organisation?

Homeshare organisations typically help potential participants understand what is involved in Homeshare and vet potential Homesharers before supporting the participants to decide on a Homeshare match. The organisation may provide training as well as ongoing advice and support to the participants, including ending or replacing matches where necessary.

Q. Does the Tenant Fees Act 2019 apply to Homeshare organisations?

The Tenant Fees Act excludes certain licences to occupy from the ban, including those which are typically established under Homeshare arrangements. These licences to occupy must be:

- arranged between the licensee and licensor with the assistance or advice of a registered charity or Community Interest Company (usually a registered Homeshare organisation) and
- arranged in order to provide the licensor with companionship sometimes combined with care or assistance (but not financial assistance)

No rent or other consideration must be paid to the licensor for the accommodation, but they may receive payments from the licensee in respect of council tax, a utility, a communication service or a television licence.

Where all of these conditions apply the licenses are excluded from the Tenants Fees Act and Homeshare organisations can charge fees to the Homesharer as well as the Householder for their support, assistance and advice.

ANNEX B – DRAFT LETTERS TO LANDLORDS AND AGENTS

You should consider seeking independent assistance from a charity like Citizens Advice if you are unsure of whether you are being asked to pay a prohibited fee or damages before taking action.

You can use the templates below to ask your landlord or letting agent to return your fees or your holding deposit, or to ask a landlord or agent to provide evidence to support fees that have been charged or retained.

TENANT FEES

Re: Return of banned fees under the Tenant Fees Act 2019

I am writing to request the return of the **[£X]** I was charged in relation to my **[proposed]** tenancy agreement at **[insert property address],** which is unlawful under the Tenant Fees Act 2019.

The Tenant Fees Act 2019 prohibits a landlord or agent of privately rented housing in England from requiring a tenant or any persons acting on their behalf or guaranteeing the rent, to make certain payments in connection with a tenancy.

The fee charged does not amount to a permitted payment under the Act.

Please return this fee within **[XX*]** days from this date, or I will pursue this matter via the relevant enforcement authority or First-tier Tribunal.

More information about the Tenant Fees Act is available at:
https://www.gov.uk/government/collections/tenant-fees-act

I look forward to hearing from you soon.

Yours sincerely,

***Please note: A prohibited payment is unlawful and should be repaid immediately. 'XX' is the amount of time you are giving the landlord or agent before you will take further action.**

HOLDING DEPOSITS

Re: Return of holding deposit under the Tenant Fees Act 2019

I am writing to request the return of the **[£X]** paid as a holding deposit in relation to **[insert property address],** which I believe has been unlawfully retained under the provisions of the Tenant Fees Act.

The Tenant Fees Act 2019 sets out the circumstances under which a landlord or agent is entitled to retain a holding deposit in relation to privately rented property in England. Where landlord or agent wishes to retain a holding deposit, they must set out in writing the reason for retaining the holding deposit to the person who paid the deposit[5].

A holding deposit can only be retained if I:

- provide false or misleading information which it is reasonable for you to take it into account (or my conduct in providing it), when deciding whether to grant the tenancy
- fail a Right to Rent check
- withdraw from a property
- fail to take all reasonable steps to enter into a tenancy agreement when you have done so

You are required to return the holding deposit or set out in writing your reason for retaining the deposit to me within 7 days of the date the landlord decided not to enter the agreement if this is before the **'deadline for agreement'** or the **'deadline for agreement'** (usually 15 days after a holding deposit has been paid unless otherwise agreed in writing with the tenant). If a landlord or agent enters into a tenancy agreement, the holding deposit must always be returned to the tenant within 7 days of the date that agreement was signed.

If you consider that you have legitimate grounds to retain my holding deposit, please provide the reason in writing and any appropriate evidence to support your claim in accordance with the above. If you do not return my holding deposit or fail to provide a satisfactory reason for retaining the deposit within the required period, I will pursue this matter via the relevant enforcement authority or First-tier Tribunal.

More information about the Tenant Fees Act is available at:
https://www.gov.uk/government/collections/tenant-fees-act

I look forward to hearing from you soon.

Yours sincerely,

[5] A landlord or agent must provide this information within 7 days of deciding not to let the property to the tenant **or** 7 days of the 'deadline for agreement' passing (usually the 15th day after a holding deposit has been received by the landlord or agent unless otherwise agreed in writing with the tenant).

DEFAULT FEES

Re: Default fees under the Tenant Fees Act 2019

I am writing to **[request the return of the £X I was charged as a default fee] [challenge the default fee I have been charged]** **[delete as appropriate]** in relation to my tenancy agreement at **[insert property address].**

Under the Tenant Fees Act 2019 you are prohibited from requiring me to make certain payments in connection with a tenancy.

The Act only permits default fees to be charged for late payment of rent or a lost keys/security device giving access to the housing[6]. Whilst you are permitted to charge me a fee in the event of a late rent payment or a lost key/security device, this must be required under the tenancy agreement and there are restrictions on the amount of fee that can be charged. These restrictions are set out below:

Late payment of rent

Where a payment of rent has been outstanding for 14 days or more (in accordance with the date set out in the tenancy agreement), interest can be charged at no more than an annual percentage rate of 3% above the Bank of England's base rate for each day that the payment is outstanding.

Lost keys/security devices

Where a replacement key or security device is required in order to give access to the housing, any amount charged must not exceed a landlord or agent's reasonably incurred costs in replacing the lost key or security device. These costs must also be evidenced in writing to the person liable for the payment.

[delete as appropriate]

Where your tenancy agreement does not permit a default fee to be charged **[I do not believe that my tenancy agreement allows for a default fee to be charged in the event of a late rent payment/lost key/security device].**

For late rent payments charges **– [I believe that the amount charged as interest for my late rent payment exceeds the limit set out in the Tenant Fees Act 2019 as outlined above.]**

For lost key/security device charges **– [Under the requirements of the Act, please could you provide evidence to justify that the costs incurred in replacing the lost key/security device were reasonable.]**

[6] Please note, the Act does not affect a landlord or agent's entitlement to recover damages for breach contract

Where the default fee charged is NOT for late rent or a replacement key/security device – [**In accordance with the Tenant Fees Act, the default fee you have charged is unlawful and breaches the ban.]**

Please could you **[provide appropriate written evidence to support the charge] [return the charge within XX* days from this date] [delete as appropriate]**, or I will pursue this matter via the relevant enforcement authority or First-tier Tribunal.

More information about the Tenant Fees Act is available at: https://www.gov.uk/government/collections/tenant-fees-act

I look forward to hearing from you soon.

Yours sincerely,

***Please note: A prohibited payment is unlawful and should be repaid immediately. 'XX' is the amount of time you are giving the landlord or agent before you will take further action.**