



BRIEF ENCOUNTER

Deposit must be protected, but a penalty is unlikely

Q In October last year my now son-in-law entered into a one-year shorthold tenancy and paid a deposit of one month's rent. The agreement makes no reference to any official tenancy deposit protection scheme and we know that the deposit has not been protected. The Tenancy Protection Scheme website says that a tenant can go to court during the tenancy to ensure that the deposit is protected and the court will order the landlord to pay three times the deposit to the tenant. Does this still apply?

A I answered a question about tenancy deposits this year, but a recent appeal case has clarified the position. Under section 213 of the Housing Act 2004, a landlord who takes a deposit must protect it with one of three government-approved tenancy deposit schemes within 14 days and give the tenant specific written details about that scheme. Under section 214, a landlord who fails to satisfy these "initial

requirements" faces various penalties, including a court order to pay the tenant a sum equal to three times the amount of the deposit.

Over the years, local judges have been sometimes inconsistent about these sanctions, so the Court of Appeal has taken the opportunity of the case of *Tiensia v Vision Enterprises Ltd* to give guidance about section 214. Although one of the judges gave a dissenting judgment, the majority of the court decided that a landlord should not be penalised if it is able to meet the initial requirements outside the 14-day time period. The court accepted that allowing the landlord to be late had "the practical consequence of robbing section 214 of virtually all its force" but considered that it was better to encourage landlords to protect their deposits late than to leave tenants without any protection at all.

Your son-in-law's landlord must use an approved deposit scheme, but the landlord is unlikely to be penalised if he is late.

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