



The Tenant Fees Act 2019
1 June 2019

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Got a question? Get in touch.



Alex Cook Partner

Alex initially trained as a Barrister (non-practicing) before cross-qualifying as a specialist commercial and property litigation solicitor. Prior to becoming joint owner of Helix Law in 2013, he was Head of Litigation and one of the youngest partners in the region in a large firm based in Eastbourne. Comfortable and experienced litigating against large international City firms, he has successfully resolved complex commercial and property disputes for clients ranging from large international businesses and property investors to individual business people.

Partner **Laura Albon**

Laura has been working in litigation for nearly 10 years. She works almost exclusively with property investors and agents across the whole country. She trained with the partners of Helix Law and has extensive experience in possession, service charge recovery, breach of covenant and commercial contract claims. She is able to pursue matters through the court and through The First Tier Tribunal (formerly the Leasehold Valuation Tribunal or LVT).



Fiona Wheeler Solicitor

Fiona has a background in information and libraries. Prior to joining Helix Law she provided information management services to legal and recruitment firms. She recently completed the Graduate Diploma of Law at the University of Brighton, winning the Thomson Reuters prize for best overall mark, and is currently studying the Legal Practice Course at the University of Law in parallel with her training contract.

Trainee Solicitor **Sam Packwood**

Sam graduated with a 2:1 LLB Hons. Degree from the University of Manchester in 2016 and attained his LPC whilst also achieving a Masters in Law and Business in 2017. Before joining Helix Law, Sam has had previous legal work experience overseas in Spain and is able to speak Spanish fluently.



Tenant Fee Ban – What fees can Landlord and Lettings Agents charge and what is prohibited?

The Tenant Fees Act 2019 comes into force on 1 June 2019 and limits the fees landlord and letting agents can charge to tenants.

What fees can you ask a tenant to pay?

From 1 June 2019, the only fees you can charge in connection with a tenancy are:

- the **rent**
- 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. This should be protected in a Deposit Protection Scheme.
- a **refundable holding deposit** (to reserve a property) capped at no more than one week's rent
- payments to **change the tenancy** when requested by the tenant, capped at £50, or reasonable costs incurred if higher
- payments associated with **early termination** of the tenancy, when requested by the tenant
- payments in respect of **utilities**, communication services, TV licence and council tax; and
- a **default fee for late payment of rent or replacement of a lost key/security device**, where required under a tenancy agreement.

Any fees not included in this list are a 'Prohibited Payment' which may not be charged under the ban.

Points to note relating to permitted fees

- **Rent** – Rent should be equally split across the tenancy and paid at regular, specified intervals. In the first year of the tenancy, you must not charge more rent at the start of the tenancy e.g. you cannot require the tenant to pay £1,000 in month one and £600 in month two onward – the excess of £400 in month one will be a Prohibited Payment.
- **Tenancy Deposits** – Any amount charged over the 5 weeks' rent or 6 weeks' rent if the annual rent is over £50,000 will be a Prohibited Payment.
- **Holding Deposits** – now capped at one week's rent.
 - You may only accept one holding deposit at a time per property.
 - You must refund the holding deposit when the tenant enters into the tenancy; the landlord decides not to rent the property; an agreement is not reached before the 'deadline for agreement' through no fault of the tenant; or you act in such a way it would be unreasonable to expect the tenant to enter into the AST.
 - You can retain the holding deposit if the tenant provides false or misleading information; they fail a right to rent check; they withdraw from the agreement; or fail to take reasonable steps to enter an agreement
 - The deadline for an agreement is usually 15 days after a holding deposit has been received unless agreed otherwise in writing.

- If you retain the holding deposit, you must set out in writing to the tenant the reasons why within 7 days of deciding not to enter the agreement or the deadline of agreement.
- **Default Fees** – You can only charge a default fee where it has been included in the AST.
 - You can charge a default fee for late payment of rent once it has been outstanding for 14 days, and only at a rate of 3% above the Bank of England base rate per annum, or lower. You cannot charge more than this percentage of interest.
 - You can charge the ‘reasonable costs’ of replacement of a lost key or security device.
- **Changes to the tenancy** - if a tenant requests changes to the tenancy, you may charge up to £50 (including VAT) for the work involved in amending the AST or the amount of your ‘reasonable costs’ if they are higher. If you charge more than £50 (including VAT), you should document why you did so.
- **Renewals** – From 1 June 2019 you will not be able to charge the tenant for a renewal of a tenancy. This will apply to all tenancies entered into after 1 June 2019. However, if the tenancy was entered into before 1 June 2019 and contained provision for renewal fees, you may still charge these fees up to 31 May 2020.
- **Early Termination** – if the tenant requests to leave early, before the fixed term has expired, you may charge an early termination fee which must not exceed the financial loss the landlord will incur in permitting the early termination (i.e. loss of rent to the end of the fixed term of the tenancy). An agent may charge the ‘reasonable costs’ incurred in making the arrangements for early termination. If you are going to make such charges, you should give evidence to the tenant of the specific costs incurred.

Fees that are not permitted

Any fees not expressly included on the permitted list above, or in excess of those set out in the permitted list, are Prohibited Payments. The following list are examples of payments which will be prohibited:-

- Reference check fees
- Inventory fees
- Tenancy check out fees
- End of tenancy profession cleans
- Payments to third parties – e.g. requiring the tenant to pay referencing fees directly to the reference check provider rather than to you.

Who does the ban apply to?

All assured shorthold tenancies, tenancies of student accommodation and licences to occupy housing in the private rented sector in England. The ban does not apply to any properties based in Wales.

When does the ban apply?

From 1 June 2019, when entering into a tenancy agreement, student let or licence to occupy housing in the private rented sector, you will be prohibited from charging any fees or other payments that are not included in the list of permitted payments above.

Agents and landlords do not have to pay back any fees that have been charged to a tenant before 1 June 2019.

Where a tenancy agreement was entered into before 1 June 2019, you will still be able to charge fees until 31 May 2020, but only where these are provided for in an existing tenancy agreement.

From 1 June 2020, the ban on fees will apply to all applicable tenancies and licences to occupy housing in the private rented sector. You will not be able to charge any fees apart from the expressly permitted fees.

Enforcement & Penalties

Trading Standards will enforce the ban. The ban may also be enforced by district councils. A breach of the ban will usually be a civil offence with a financial penalty of up to £5,000 per breach. Multiple simultaneous breaches will incur penalties of up to £5,000 each. If a further breach is committed within 5 years of a financial penalty being imposed, this will be a criminal offence. The local authority may in this circumstance impose a financial penalty of up to £30,000 as an alternative to prosecution.

Compensation to tenants

Tenants who have been charged a Prohibited Payment may recover unlawfully charged fees through applying to the First-tier Tribunal and may also recover interest on these fees. Tenants can also seek repayment through the relevant redress scheme.

Section 21 Notice

Of most concern to landlords is likely to be the provision that you cannot evict a tenant using the Section 21 Notice eviction procedure unless you have repaid any unlawfully charged fees or returned any unlawfully retained holding deposit.

This is likely to be a headache to sort out at the point you wish to serve notice on the tenant. If the tenant refuses to accept return of the sums, you may be prevented from serving notice. Therefore, to avoid this be careful to ensure no prohibited payments are taken from the outset of the tenancy.

Action points

1. Check your standard tenancy agreement – does it contain fees that are not on the list of fees a tenant can be asked to pay? If so these are prohibited payments and you should remove them for the agreement.
2. Ensure that any permitted fees that must expressly be included in the AST to be chargeable are included in the AST.
3. Ensure you keep clear records of evidence of payments that you have requested a tenant to make and why.

What our clients say

"I highly recommend Alex at Helix Law. He is a true professional and provided invaluable professional advice to evict a tenant who was months in arrears on their rent and refused to leave the property. I can't recommend Alex's services enough and, although I hope I never have to contact Helix Law for an eviction again, they will undoubtedly be my first port of call in the unfortunate event of another eviction."

★★★★★ - Edward P

"So impressed with this company really professional friendly and helpful. Laura, extremely knowledgeable gave me some fantastic advice I would highly recommend and I will definitely use in the future!"

★★★★★ - George D

"We recently used Helix Law to help us with a difficult eviction. We found them to be extremely helpful, professional and friendly. Sam Packwood gave us an excellent service and very helpful advice during and after the process. We also found Alex Cook to be just as diligent and we would not hesitate to recommend this very excellent firm of solicitors."

★★★★★ - Mark P

"I have been speaking to Fiona at Helix Law over the last few months. She has been so helpful and quick to respond to my concerns. She shows empathy, and wants what's best for you in a professional manner and knows your rights."

★★★★★ - Claire G

"Alex has been more than helpful with my queries raised on using a guarantor to support a tenant's application. He responded very promptly giving me all the necessary information required. I won't hesitate to use his services again."

★★★★★ - Jeff H

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