

Shelter Parliamentary Briefing: Lords Second Reading of Tenant Fees Bill

Summary:

Shelter helps millions of people every year struggling with bad housing or homelessness – and we campaign to prevent it in the first place. We're here so no one has to fight bad housing or homelessness on their own.

Shelter supports the Tenant Fees Bill and the Government's ongoing commitment to making private renting fairer and more affordable. We are very pleased the Government has held firm on its promise to introduce an outright ban on upfront letting fees, as this will ease the significant financial pressures renters can face when moving, whilst making the lettings market more competitive and transparent.

However, without more protections, renters are still open to exploitation. The clause on 'default fees' specifically creates a backdoor through which unfair fees could still be charged. Some letting agents themselves have admitted the intention to misuse this category of fees. We'd like to see more protections in the legislation, to guard against this behaviour.

Background to the Tenant Fees Bill

In Autumn 2016 the government announced it was banning letting fees to tenants, with the stated aim of 'a fairer, more competitive, and more affordable lettings market where tenants have greater clarity and control over what they will pay'. On average, tenants pay **more than £200** in letting agency fees each time they move, on top of rent in advance and deposits. Over the past 5 years, tenants have paid over **£678million** in unfair fees. Shelter research found that **one in seven** tenants have been charged more than £500 in fees.

These charges are routinely exploited, with agents charging arbitrary amounts for various services. There is a lack of transparency about exactly what costs are being covered and how fees are set. Shelter research **found inexplicably wide variations in pricing**; fees for reference checks can range from **£30 to £220** and tenancy renewal can cost anything from **£35 to £150**.

The Tenant Fees Bill received pre-legislative scrutiny from the Housing, Communities and Local Government Select Committee where the government's approach of an upfront ban on fees received **cross-party support**.

Key proposals provided by this Bill

Upfront Ban on fees to tenants: Currently, landlords and letting agents can charge tenants for a wide range of activities and services (some further examples/explanation). This Bill bans landlords and letting agents from charging any upfront fees to tenants (**Clause 1 and 2**). Any charges or fees *not* enumerated in Schedule 1 of the Bill are considered 'prohibited payments'. Financial penalties for charging prohibited fees are outlined in the relevant section below

- The banning of upfront letting fees will **immediately reduce the cost of moving** for private renters. Shelter's most recent private renters survey showed average total moving costs were around £1,400, with those who were charged letting fees paying an average of nearly £250 in fees. Banning fees will remove a key barrier to securing a new tenancy, **particularly benefitting those on low incomes**.
- Shelter supports the government's chosen approach of pursuing an upfront ban, which has been endorsed by the HCLG Select Committee and has cross-party support.

Cap on tenancy deposits: Tenancy deposits are often taken at the start of a tenancy by a landlord from tenants to cover any damages to the property. Paying a security deposit upfront can significantly add to the costs which tenants must budget for when moving home and for those on low incomes, without savings or the ability to borrow from family or friends, sometimes these costs can be an insurmountable barrier to securing a new home. There is currently no limit on the amount that can be taken as a security deposit, meaning there can be significant variation and certain groups of tenants face higher deposits. This Bill **caps the amount that can be taken as a security deposit** at 6 weeks' rent ([Schedule 2, Clause 2 \(3\)](#)).

Cap on holding deposits: A holding deposit is paid by a tenant to a landlord or letting agent to reserve a property while references are checked - they are separate to tenancy deposits. This Bill introduces a one-week cap on holding deposits. ([Schedule 1, Clause 3 \(3\)](#))

Enforcement of the legislation and penalties for offences: The measures introduced by this Bill will be enforced by local authorities' trading standard departments (local weights and measures authorities) ([Clause 6](#)). District Councils will also have the power to enforce the Bill if they wish ([Clause 7](#)). Financial penalties for charging prohibited fees can be up to **£5,000** for an initial breach ([Clause 8](#)), with a **criminal offence** where a person has been fined or convicted of the **same offence within the last 5 years** ([Clause 12](#)). Financial penalties of up to **£30,000** can be issued as an alternative to prosecution ([Clause 8 \(3\)](#)). An offence under Clause 12 of this Bill will also constitute a **banning order offence** under the Housing and Planning Act 2016. Banning orders prevent landlords from making profit from a property for a minimum of 12 months. Tenants will be able to recover unlawfully charged fees from the First-Tier Tribunal ([Clause 15 \(3\)](#)).

The Bill prevents landlords from regaining possession of their property via the **section 21** Housing Act 1988 procedure (also known as '**no-fault**' eviction) until they have repaid any unlawfully charged fees ([Clause 17 \(3\)](#))

Funding: We warmly welcome the government's announcement that funding will be provided for the first year of the legislation, to support implementation and education to enforce the legislation.

Issues to be addressed

Default Fees: The Bill allows landlords and agents to charge "default fees" and this creates a potential loophole, which can be exploited. Default fees are payable if a tenant does something which breaches a term of the tenancy agreement, like losing a key or paying rent late. Although these fees must be written into the tenancy agreement, it is **likely to be difficult for a tenant to identify and challenge any unfair fees when negotiating a tenancy**. Agents have already admitted, in their evidence to the Select Committee, they will try to charge disproportionate default fees, in order to make up revenue lost from other fees.

We are pleased that the government has taken steps to tighten the definition of default fees and provide additional protections for renters. These include the **two amendments passed at Third Reading** in the House of Commons, both of which provide further protections:

- The Bill now limits how much can be charged as a default fee to the "costs which are reasonably incurred" by the landlord or letting agent. The government is also planning to issue guidance on the type and reasonableness of fees.
- It also now requires landlords or agents to evidence this loss in writing. This paper trail will give tenants more clarity over what they are being charged and why, and should help them to identify and challenge unreasonable fees and practices.

However, neither of these amendments, nor non-statutory guidance, will be enough to prevent landlords and agents from adding in unfair terms to tenancy agreements and trying to charge unreasonable amounts. **There needs to be more protections in the legislation** to limit the types of defaults that can be charged for and what can be considered reasonable costs. Specifically, Shelter does not believe that landlords and letting agents should be allowed to charge for communications in relation to defaults, such as letters or phone calls to chase late rent.

Options for ensuring renters are sufficiently protected include:

- Amend the Bill to include a **prescribed list** of permitted default fees with limits on how much can be charged. This list could include allowing agents to charge for a lost key or interest on late rent payment. These are the only two commonly cited examples of default fees and in both these cases it is clear that the tenant is at fault and what it would be reasonable to charge them to pay for this breach (i.e. the cost of a replacement key or interest on late rent). The benefit of such an approach would mean there would be almost no room for exploitation and it would be very clear to all parties whether or not a charge was a permitted default payment.
- **Set out in regulations** the types of default fees which can be charged for, what is allowable in terms of an approach to charging fees and which practices are prohibited. In contrast to non-statutory guidance, regulations would specify what can legitimately be charged for, provide a stronger deterrent for landlords and agents considering charging unfair default fees and give tenants a **statutory basis to challenge** prohibited fees.

Tenancy deposits: The government did not accept the Select Committee's cross-party recommendation to cap tenancy deposits at 5 weeks' rent. Capping deposits at 6 weeks will mean renters in England still have to find up to an average of **over £1100 (£1800 in London)** to put down a deposit. Given most landlords already ask for 6 weeks or less, the cap is likely to have little meaning in practice. Shelter feels this is a missed opportunity and would like to see this cap reviewed.

Holding deposits: There is ongoing confusion and a lack of clarity around the circumstances in which landlords or agents can and can't retain a holding deposit. A holding deposit can be retained if a tenant has provided false and misleading information which landlords and agents are reasonably entitled to take into account when assessing a tenant's suitability to rent a property. However, it is unclear what will be considered false and misleading information and whether any evidence will be required to demonstrate this, which means this is therefore open to abuse. The confusion was highlighted during the Third Reading debate in the House of Commons, in which a Conservative MP called for regulations to establish some clarity amongst all parties. As such, Shelter believe that more protections are needed for tenants:

- There should be a **transparency requirement** for landlords and agents to set out in writing to a tenant how they will treat a holding deposit and if not returning it, the reasons for this, including any information they believe to have been false and misleading. will make it easier for tenants to challenge if their holding deposit is withheld unfairly. Equally, understanding exactly why a holding deposit has been withheld should help to prevent tenants applying for properties and repeatedly losing numerous holding deposits for the same reason.
- Unless there is more clarity on what will be considered false and misleading and more protections to prevent this being exploited, Shelter believes the **holding deposit cap should be lowered to 3 days rent**, as opposed to a week. This would be sufficient to cover landlords costs (i.e. reference checks, re-marketing the property if a tenancy doesn't go ahead) but would limit the financial risk faced by tenants.

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