

There are currently a number of opposing precedent cases (cases that make law by their outcome) being referred to by advocates in court. This appears to be following advice that has been issued to tenants reps and housing solicitors by the legal action group.

The cases are based on the legal requirements in regard to registering deposits.

There are 2 elements to the current legislation

- i) when it is registered
- ii) the prescribed information

Prescribed information simply means that the minimum information and the format of the information forms part of the legislation itself and must be complied with.

There are currently law making decisions in cases that allow for late registration providing no notices are issued before the deposit is registered. However a high court case has recently been reported which states that unless the tenancy has ended there is always a requirement to provide the prescribed information to the defendant. The case further stated that the information must be provided by the landlord and not an agent, solicitor or the deposit protection scheme.

The decision further states that prescribed information must be contained in a certificate, the certificate must be provided to the tenant and if not countersigned by the tenant then proof of service must be established.

All the information required must be contained within the certificate and though it may refer to the tenancy agreement for specific clauses the reference information in regard to those clauses must be on the certificate

Any email from the Deposit Protection Schemes was dismissed by the Court as not demonstrating compliance with the requirements to any material degree.

The decision went on to state that even if a particular scheme does provide a certificate it must comply fully with the prescribed information regulations and it must be served on the defendant by the landlord. The document supplied by the service will not be proof of compliance as it has not been served by the landlord to the tenant.

Failure to provide the information invalidates the section 21 notice and opens the landlord to a counter claim for 3 times the deposit.

We would recommend that all deposits are checked and :-

- If a certificate is present verify that it complies with the prescribed information and that it has been served on the defendant by the landlord. **Proof of service will be required.**
- Where there is no certificate provide a certificate for the landlord to sign and serve on the defendant.
- If a section 21 notice has been served on the defendant before the certificate was served then that notice is invalid and a new notice will be needed.