

Key Matters

Opening the door to tenancy deposit protection in Scotland

ISSUE 1 - MAY 2020



NEWS - STATISTICS - ADVICE



SafeDeposits
Scotland

SCOTLAND'S LEADING TENANCY DEPOSIT SCHEME



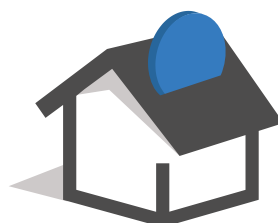
**The only not-for-profit tenancy deposit scheme
based in Scotland, offering:**

- Client Support
- Training
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- Easy-to-use System

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**SafeDeposits
Scotland**

Come on in...



WELCOME

Welcome to the first issue of Key Matters. We've given our magazine a bit of a makeover with its new title and I'm also pleased to tell you that we're increasing the frequency from an annual to a quarterly publication – keeping readers more up to date than ever on matters of tenancy deposit protection.

We are living in unprecedented times, and the impact of COVID-19 on our sector, our country and beyond remains a very fluid situation. We have summarised the information available at the time of publication within these pages and we will keep our online platforms updated as further information emerges.

Regular readers will spot a couple of new features, but we've ensured that popular mainstays like statistics and adjudication case studies retain their places too.

We hope you like the new look. If you would like to share any feedback on the magazine please email us on: magazine@safedepositsscotland.com

Wishing you the best of health and resilience during these testing times.

Mike Smith
Operations Manager
SafeDeposits Scotland

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Published in Glasgow by SafeDeposits Scotland

SafeDeposits in Numbers

A selection of statistics from the financial year ending 31st March 2020



DEPOSIT PROTECTION

SafeDeposits Scotland is the largest tenancy deposit scheme in Scotland, protecting approximately 63% of the market. At 1st April 2020 we were protecting:

- 139,319 deposits
- with a combined value of £101,733,109
- and an average deposit value of £730



CUSTOMER SERVICE

Our experienced team of customer service advisors is available to assist landlords, letting agents and tenants 9am-5pm, Monday-Friday. In the year ending 31st March 2020 the team:

- answered 43,187 telephone calls, with an average wait time for calls to be answered of just 6 seconds
- handled 20,605 emails, with an average response time of 21 minutes



DISPUTES

We offer a free Alternative Dispute Resolution (ADR) service to users in the event that there is a dispute over repayment at the end of a tenancy. In the year ending 31st March 2020 we handled:

- 2,164 disputes

The types of claim made* were:

Cleaning	63%
Damage	36%
Rent arrears	12%
Redecorating	19%
Gardening	8%
Other	41%

*There can be more than one claim/dispute on a tenancy.

Have You Heard?

The latest news from SafeDeposits Scotland and the wider private rented sector

End of Tenancy Helpline Introduced

SafeDeposits Scotland has further enhanced the service available to all users of the scheme with the introduction of a special hotline for parties approaching the end of a tenancy.

The hotline has been created for those who foresee a dispute arising and would like to discuss this in more detail before the tenancy ends and the repayment process can begin.

End of Tenancy Expert Cameron will advise on potential scenarios and options ahead, should there be any complications with the tenancy. If a dispute looks likely he will explain the alternative dispute resolution (ADR) process.

The service proved to be particularly valuable in resolving potential disputes following the introduction of the UK lockdown – where movement restrictions presented some challenges to normal check out procedures and landlords, letting agents and tenants understandably had questions and concerns about where the crisis placed them.

To speak to Cameron with your end of tenancy queries, please call 03333 213 136 and select option 5.



SafeDeposits Scotland Shortlisted for ESTAS Award

For the second year running, SafeDeposits Scotland has been shortlisted in the Supplier category at the ESTAS Estate & Letting Agent Awards.

The shortlist and winner for the category are selected based on scored votes cast by letting agents throughout the year.



Commenting on the nomination, Carol Bradburn – Customer Relations Manager at SafeDeposits Scotland – said: "We're extremely grateful to everyone who voted for SafeDeposits and for the kind comments they made alongside their votes – it's a fantastic feeling to have our service recognised in this way.

One of the great things about the ESTAS is also getting to see the work of Scottish letting agents celebrated at a UK-wide level."

The Supplier category includes a variety of organisations serving the private rented sector across the UK. SafeDeposits' sister scheme TDS Northern Ireland has been a multiple winner of the award in recent years. 2020 winners will be announced at a virtual awards ceremony on Friday 3rd July.

See pages 12-13 for a News Special on COVID-19, our response to the crisis and comment from around the sector.

Research Shows Effect of COVID-19 on Buy-to-Let Market

Research carried out by money comparison company Moneyfacts, for its UK Mortgage Trends Treasury Report, has revealed a notable fall in buy-to-let mortgage deals since the start of March 2020 – signalling an impact on the market from the COVID-19 crisis.

Moneyfacts' data highlights that the number of buy-to-let products has fallen by 1,304 since the beginning of March.

At the same time, interest rates on existing products have risen. Examples given in the research include an increase of 0.35% on the average interest rate for a two-year fixed buy-to-let deal at a 60% loan-to-value ratio.



Adjudication Digest

SafeDeposits Scotland's Resolution Manager, Paula Guthrie, explores an adjudication case study



The spirit of Tenancy Deposit Schemes Regulations is that the deposit belongs to the tenant and places the burden of proof with the landlord, and when a dispute reaches adjudication, an adjudicator's starting position mirrors that of the courts.

The deposit is first and foremost the tenant's money and this remains the case until the landlord can justify their claim to it. The onus is on the landlord to show why they are entitled to claim money from the deposit and any submitted evidence needs to be both robust and reliable in support. When any disputed amount is returned to the tenant following an adjudication, this is primarily because the landlord has not provided a strong enough case to prove why the deduction was deserved.

Case Study: Check-in and Check-out Reports Present a Clean-cut Case

In this example, the letting agent was claiming £175 for a light clean to a four bedroom property in Aberdeen.

In deciding any claim against a deposit for issues such as cleaning, the adjudicator relies upon detailed check-in and check-out reports as being two key documents in recording the condition and cleanliness of the property at the start and end of the tenancy. The importance of a properly completed inventory cannot be underestimated. It must be detailed and defensible if it is to be held up as a proper indicator of the facts and it is important that the inventory process is done well. Recording any changes in condition will help identify what changes have taken place and who should be responsible for them. SafeDeposits Scotland takes the view that condition is not the same as cleanliness and so it is important that both of these factors are included when creating an inventory. Without reasonably detailed check-in and check-out reports it can be extremely difficult to persuade an adjudicator that deductions from the deposit sought by the landlord are justified. This is because it is much more difficult to prove the property's condition both at the start and end of the tenancy and the extent to which the property may have deteriorated. A comparison of such reports will therefore show if the property's condition had deteriorated during the tenancy and so identify a tenant's liability.

On this occasion, the agent presented comprehensive check-in and check-out inventories which clearly demonstrated a deterioration in the cleanliness at the property, and an invoice to quantify their claim.

In response the tenant disputed that the property required additional cleaning, and asked that the adjudicator take their issues with the agent's conduct into account. The adjudicator cannot deal with complaints about an agent's conduct in the context of their decision, and without evidence from the tenant to challenge the submission made by the agent, the agent's claim was upheld.

What was particularly helpful in this case was that in their overview of the dispute, the agent took time to clearly lay out their claim – specifically how they calculated the difference in cleanliness and explained that the amount sought was reasonable for similar work in the area. They also highlighted the relevant clause in the lease which held the tenant accountable, and directed the adjudicator to specific records within the inventories which demonstrated the tenant's liability.

The agent was awarded their full claimed amount.



Legislation Matters

We know from conversations and surveys that an up-to-date understanding of legislation and regulations is important to responsible landlords and letting agents.

We maintain an in-depth knowledge of everything that affects Scotland's private rented sector so that we are best placed to support landlords, letting agents and tenants.

In the event of developments in or changes to legislation we will always update our users via available channels and that includes this magazine.

In this edition we re-cap on the amendments to Tenancy Deposit Scheme Regulations which came into force towards the end of last year...



Amendments to Tenancy Deposit Scheme Regulations Effective 11th November 2019

On 11th November 2019 a short series of amendments to the Tenancy Deposit Schemes (Scotland) Regulations 2011 came into force. All tenancy deposit schemes in Scotland, including SafeDeposits Scotland, are required by law to abide by the regulations. Please read on below for a summary of what the 2019 amendments meant for the regulations.

Tenancy deposit schemes are now required to notify tenants if their deposit has been lodged late

The regulations have always required that a deposit is lodged with an approved scheme within 30 working days of the tenancy commencing. If the deposit is not lodged within that time frame, the tenant can take their landlord to the First-tier Tribunal for Scotland (Housing and Property Chamber) where the landlord could face a sanction of up to three times the value of the deposit.

As of 11th November 2019 tenancy deposit schemes are now required – at both registration and repayment stages – to communicate to the tenant if their deposit was registered late and inform them of their rights in respect of the First-tier Tribunal. Instances to date of SafeDeposits Scotland having to send such communications have been minimal – pointing to good levels of compliance by landlords.

If the duration of the tenancy is less than 30 working days, it is not a requirement to lodge the deposit with a tenancy deposit scheme

This amendment provided guidance for scenarios where a tenancy is shorter in duration than 30 working days – in such an instance, where the full amount of the tenancy deposit received by the landlord is returned to the tenant within said 30 working days, then the landlord is not required to lodge the deposit with a tenancy deposit scheme.

Clarification on deposit protection when the deposit is paid in instalments

A common question asked by landlords is what they should do regarding deposit protection in the event that they have agreed to receive the deposit in instalments from their tenant. An amendment to the regulations confirms that any instalments should be lodged within 30 working days of that instalment being paid. Each instalment would have the same requirements as that of a full deposit – as well as the instalment being lodged with a tenancy deposit scheme within 30 working days of payment, information should be provided to the tenant on each occasion and the tenant could take the landlord to the First-tier Tribunal for Scotland if an instalment is lodged late and/or the prescribed information is not provided to them within the required timeframe.

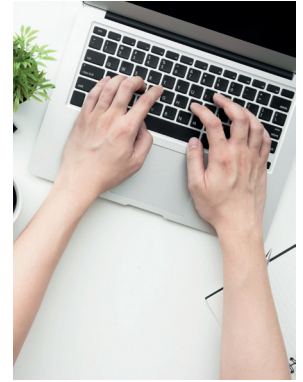
The Basics...

LODGING A DEPOSIT

Before lodging a tenant's deposit, there are certain things you will need to have to hand, namely: the tenancy address, tenant(s) name(s), tenant(s) contact details (phone number and email, if available), start date of tenancy, when you received the deposit amount, landlord registration number and landlord contact details. You should also have your tenancy agreement to hand, particularly if you want to pre-fill the Prescribed Information document – although you are able to complete that later if you wish.

When you have the above information go to www.safedepositsscotland.com, select Login Online and log in using your email/PIN and password. You will be met with a simple portal which gives you access to all tenancy deposit options and from there you can start adding tenancy deposits.

Once the deposit has been lodged we will send your tenant(s) a deposit protection certificate. Remember you must also provide the tenant with the Prescribed Information (detailed on the opposite page) within 30 working days of the tenancy start date.



DEPOSIT REPAYMENT

After your tenant moves out, you should log in to your account to enter a repayment request. The repayment request will confirm if the full deposit should be repaid to the tenant, or if any should be paid to you. You can also contact us by phone, email or post and we can enter a repayment request on your behalf.

We will send a copy to the tenant to ask if they agree or disagree with the breakdown you have entered. If the tenant agrees, we'll pay the deposit within five working days.

Tenants can also start the repayment process by logging in at www.safedepositsscotland.com/repayment and entering a repayment request. This will confirm if the tenant wants the full deposit repaid to them and any other tenants or if any should be paid to the landlord or agent. As with the process started by the other party, we will email the landlord or agent to ask if they agree or disagree and if they agree the deposit will be repaid within five working days.

ALTERNATIVE DISPUTE RESOLUTION (ADR)



In the event that a landlord or agent wants to keep some or all of the deposit for reasons which the tenant disagrees with, either party can refer the repayment to our adjudication service. This means that both parties will be asked for further information about the tenancy. An impartial person will decide what repayment is fair based on that information.

During the adjudication process both parties will be asked to provide information as evidence, and each party will be able to see what the other provides as evidence.

The adjudication service is free to use for all parties. You can find out more about this service, including the type of evidence we look for, on our website.

...what you need to know about tenancy deposit protection

THE TENANCY DEPOSIT SCHEMES (SCOTLAND) REGULATIONS 2011

Under the Tenancy Deposit Schemes (Scotland) Regulations 2011, if a landlord or agent in Scotland takes a deposit from their tenant, they must: Transfer the deposit to a government approved tenancy deposit scheme; Provide the tenant(s) with particular key information, known as Prescribed Information, detailed below.

The deposit must be transferred, and the Prescribed Information provided to all tenants on the tenancy agreement, within 30 working days of the tenancy start date.

If a landlord fails to comply with the Regulations, tenants can apply to the First-tier Tribunal for Scotland (Housing and Property Chamber) for financial sanctions. If the Chamber is satisfied that the landlord has failed to comply, they can order the landlord to pay the tenant up to three times the amount of the deposit.

How to comply...

To comply with the Regulations, you should:

- Register an account with a tenancy deposit scheme online, over the phone or by post
- Add the tenancy details (i.e. address, start date, deposit amount and tenant's name and contact details) to your account
- Transfer the deposit by online banking, debit card or cheque
- Provide the tenant(s) with a copy of the following Prescribed Information:
 - ◊ Tenancy address
 - ◊ Total deposit paid and the date you received it from the tenant
 - ◊ Your registration status with the local authority
 - ◊ Date you paid the deposit into a tenancy deposit scheme
 - ◊ Name and contact details of the tenancy deposit scheme
 - ◊ The reasons why you might keep some or all of the deposit when the tenant moves out, with reference to the tenancy agreement (e.g. rent arrears, cleaning etc).

SafeDeposits Scotland covers those tenancies to which the landlord registration provisions in the Antisocial Behaviour etc. (Scotland) Act 2004 apply. Therefore, if a landlord is required to register with a local authority, and takes a deposit from their tenant, that landlord must also comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011.



Tenant Matters

Unclaimed Deposits - Don't Miss Out



When a landlord or agent agrees to a deposit repayment, all we need is for the tenant to provide their bank account details and their deposit will be repaid to them within no more than five working days. But believe it or not, not all tenants respond to the prompt that will see them reunited with their money – some deposits even remain unclaimed for a matter of years.

At the time of writing we are currently holding 2,271 unclaimed deposits (i.e. those where repayment has been agreed but the tenant has not provided bank details) totalling £542,568 in value. Fortunately one of our Senior Client Advisors, Andy, is on the case and proactively tracks down former tenants whose completion of the repayment process is overdue. In 2019 alone his efforts reunited tenants with £912,418 in unclaimed deposits.

While Andy's efforts will continue, his advice for tenants is simple: "Don't miss out on money that is rightfully yours. A deposit is not typically a small amount of money, so as soon as your landlord has agreed to repayment make sure you respond and provide your details to get those funds back in your bank account."

Donate, Recycle, Sell... But Don't Leave Your Items Behind

Games consoles, designer clothes, coffee tables... just some of the personal possessions to have been left behind by tenants after they have moved out of private rented properties in Scotland. A common – and well intentioned – misconception among people leaving items in their rented property when they move out is that they are doing the landlord or the new tenant a favour. That the landlord or new occupant gains something.

The truth is though that leaving your own items behind in your rented property could result in a deduction from your tenancy deposit – if the property is not left as it was found, and the landlord needs to arrange for removal of items, then they could feasibly make a deduction for cleaning or uplift charges incurred.

If you have items you no longer need at the end of the tenancy, consider recycling, donating to a charity (some organisations such as Shelter Scotland will even pick big items up at no charge) or selling online.

Graduating? Make Sure We Have Up-to-Date Contact Details



Many of the tenants whose deposits we protect are students and we know that as summer begins, so does graduation season.

Upon leaving university or college, the "ac.uk" email address allocated to you by the academic institution will typically be closed down, and promptly.

Email is our primary means of communication to tenants and plays a crucial role in the deposit repayment process. We therefore urge tenants who are graduating to make sure they don't miss out on important communications regarding their tenancy deposit.

If your ac.uk email address is set to close, then update your contact details to provide an alternative email address that you can be reached on. You can do this either by logging on with your user details at www.safedepositsscotland.com or calling us on 03333 213 136. Congratulations to everyone graduating!

SafeDeposits Scotland Charitable Trust

Do you know of a project that could qualify for funding?

About the Trust

The SafeDeposits Scotland Charitable Trust is a grant giving charity designed to promote education, training and best practice in Scotland's private rented sector.

As a not-for-profit organisation, any surpluses generated by SafeDeposits Scotland are donated to the Trust.

To date the Trust has awarded over £490,000 to projects delivered both at local and national level by charities and organisations across Scotland.

The Aims of the Trust

The key aims of the Trust are:

- To advance education, particularly in relation to best practice in the management of private rented housing; and to legal rights and obligations which are of particular relevance to those who are involved in the provision or management of private rented sector housing or who hold tenancies within the private rented housing sector.
- To advance conflict resolution through promoting the use of alternative dispute resolution processes for the more efficient resolution of disputes between landlords and tenants within the private rented housing sector.

How to Apply for Funding

An application form and bid guidance can be found at www.safedepositsscotlandtrust.com
We also welcome enquiries via info@safedepositsscotlandtrust.com



SafeDeposits Scotland Charitable Trust

Case Study - Positive Action in Housing

Positive Action in Housing is an independent Glasgow-based human rights charity dedicated to supporting refugees and migrants to rebuild their lives.

Following a successful pilot programme in 2019, the charity has this year been awarded a further £30,000 by the SafeDeposits Scotland Charitable Trust for a project called Action & Education in the Private Rented Sector.

The project aims to deliver multi-lingual information, advice and support on the PRS for BAME communities in the Greater Glasgow area, as well as offering help to landlords of these groups with advice and mediation support.



News Special

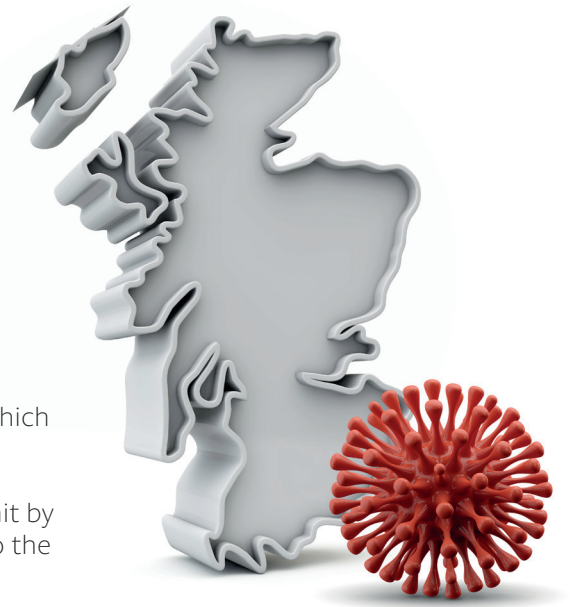
COVID-19

An Unprecedented Challenge

The world has, to put it lightly, been on a rough journey since 2020 commenced. The COVID-19 pandemic has swept across the planet claiming a terrible human toll and delivering an economic impact which at this time is still being assessed.

Just as Scotland was not exempt from the endless list of countries hit by COVID-19, the private rented sector was not spared when it came to the disruption this crisis has wrought on most if not all industries.

Here we have invited a selection of contributors to offer their observations on how the pandemic and its resultant lockdown have affected the sector so far.



Ian Potter, Chair, SafeDeposits Scotland

"The scheme has never underestimated the responsibility it has to all of its customers, who have entrusted deposits with us, and therefore has robust business continuity procedures in place.

While few could have foreseen a crisis on the scale of this arise, the preparations made allowed SafeDeposits to respond rapidly to the situation as it unfolded. Within a few hours of a decision to move to remote working being made on 16th March, the team had dispersed from the office and were set up answering calls and emails from their homes.

The lockdown will likely have a knock-on effect on the lettings landscape that we had become used to – if nothing else, we would anticipate at least a temporary shift from traditional busy and quiet spells, due to key seasonal peaks for tenancies starting and ending being knocked off course by the crisis.

Whatever the coming months bring, we recognise the challenges being faced by all scheme users and SafeDeposits remains ready to help."

Daryl McIntosh, Strategic Development Manager for Scotland and Northern Ireland, ARLA Propertymark

"This crisis has required letting agents to respond and adapt on two fronts – namely making significant changes to how their businesses operate, and keeping up to date with legislative developments within the sector.

During the course of recent events we have seen temporary updates made to the model tenancy agreement in response to COVID-19, while the timeline for new energy efficiency regulations has been postponed.

We know that our members are committed to ensuring both compliance and good service for landlords and tenants, and they have taken these changes and others on board against the backdrop of significant challenges. These include adapting to home working, travel restrictions and in some cases the necessity to furlough staff.

For our part, ARLA Propertymark continues to represent members in national conversations and to provide up to date news and information to agents."





John Blackwood, Chief Executive, Scottish Association of Landlords

"Since the earliest days of this crisis, we have been working hard to represent our members' views and to ensure the most up to date guidance is available for all.

Among our efforts has been the lobbying of the Scottish Government for financial assistance to landlords who suffer a loss of income as a result of the COVID-19 crisis. We are pleased that these concerns were heard and that steps have now been taken towards providing such assistance.

Our website contains an ever expanding range of guidance, including news on changes to eviction procedures and advice on matters such as mortgage holidays and student let council tax exemption.

The health of our members and their tenants is our first priority and so we have also published online guidance on what we consider to be necessary and not necessary landlord duties during a lockdown scenario."

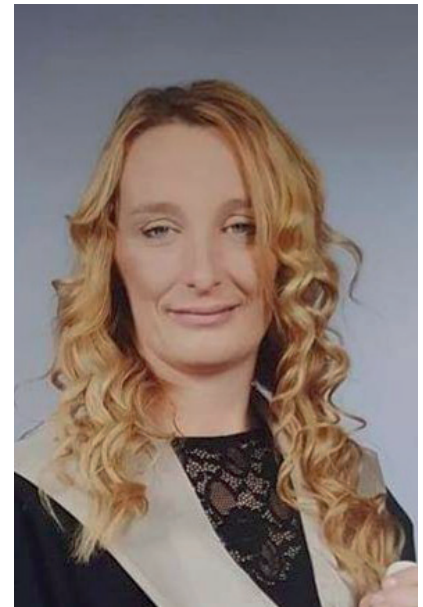
**Shirley Ritchie, Housing Mediation Service Adviser
Clackmannanshire Citizens Advice Bureau**

"The service has witnessed more enquiries since lockdown was enforced and as a Bureau we have continued to serve the community, working remotely.

A significant number of enquiries relate to financial difficulties, with people being furloughed or having lost their jobs. We are witnessing people turning to Universal Credit to cover housing costs across all sectors, and for many this is their first time claiming a benefit – they have no experience of the system and we are assisting people through the processes here.

Tenants' experiences vary from case to case, but we have heard many instances of landlords being fantastic and supportive of tenants during what is a difficult time for all parties.

Cases in Clackmannanshire are typically echoed across the country. Another trend noted nationally by our colleagues is that of tenants being left behind in HMOs by co-tenants who do not realise they are still liable for the tenancy."



Spotlight On...

ORKNEY

In January the Orkney Islands were named Scotland's best place to live in the Bank of Scotland Quality of Life Survey 2020... for the eighth consecutive year no less!

One only needs to look at the archipelago's stunning scenery to get a hint that this is a good place to call home, but the celebrated title is also robustly justified with a number of statistics in Bank of Scotland's report. The islands' employment rate is high, their crime rate low. It's one of the most affordable places to live for first time buyers with an average house price of £131,913 – 3.8 times the average annual pre-tax local income, compared to the national average of 4.3.

Positivity is also apparent in terms of both mental and physical health. The report cites latest Office for National Statistics (ONS) figures in saying that "adults living in Orkney are amongst the most happy, satisfied and content in the UK." It adds that anxiety rates on the islands are low. Meanwhile 97% of residents report that they are in good or fairly good health.

So is Orkney's feel good factor reflected in local statistics for SafeDeposits Scotland?

The average deposit amount compared to the rest of the country certainly echoes the trend for property affordability. The average deposit amount we protect for tenancies in Orkney is £531 – nearly £200 lower than the national average of £729.

During the year 2019–20 only three disputes were raised for tenancies on the islands – that equates to only 1.27% of Orkney deposits protected by SafeDeposits Scotland ending in dispute. Again this is lower than the scheme's Scotland-wide dispute rate, which for the same year was 1.4%. It would appear that the happiness and contentment noted by the ONS extends to a general sense of harmony between tenants and landlords in Orkney.



Meet Our Partners

SafeDeposits Scotland is an innovative partnership in the private sector. We're governed by people who understand and have a wealth of experience in the Scottish private rented sector. Our partners are:



The over-arching aim of ARLA Propertymark is to promote the highest standards of professionalism and integrity among those working within the property industry and to encourage members of the public to proactively seek out their members when involved in any kind of property transaction. ARLA Propertymark also runs some 250 short courses each year covering a wide range of property and industry related subjects, as well as holding a number of specialist conferences and forums throughout the year.



The Scottish Association of Landlords (SAL) represents the interests of all landlords and letting agents throughout Scotland. Working with various Holyrood and Westminster government departments, plus Scotland's local authorities, SAL campaigns for recognition of their interests as a profession and provides information, training and advice to their members nationally, and through their local branch network.



SAL provides a comprehensive package of membership services, advice support and policy work for Scotland's registered letting agents via its Council of Letting Agents (CLA) membership plan. The CLA represents Scotland's leading letting agents and leads the lettings industry in Scotland.



The Royal Institution of Chartered Surveyors (RICS) provides the world's leading professional qualification in land, property, construction and the associated environmental issues. An independent organisation, RICS acts in the public interest: setting and regulating the highest standards of competence and integrity amongst their members; and providing impartial, authoritative advice on key issues for business, society and governments worldwide.



The Dispute Service (TDS) is an independent, not-for-profit company established in 2003 to resolve tenancy deposit disputes in the private rented sector in England and Wales. The company has achieved the UK Government Standard for Customer Service Excellence.



safedepositsscotland.com

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