



Adjudication Digest No 8/2012

- The Adjudication Digest takes a recent decision by a TDS Adjudicator and sets out the reasoning behind it. We hope that you will find these digests informative in understanding how we reach our adjudication decisions.
- This document is for guidance only – it is not intended to guarantee when an award will be made.
- Each dispute is different and the actual award made will be based on our interpretation of the specific evidence presented to us.

The Adjudication Digest takes a recent decision by a TDS Adjudicator and sets out the reasoning behind the decision. The aim of these Digest reports is to help tenants, landlords and agents better understand how we make our adjudication decisions. The names of the landlords and tenants involved have been removed and this is only a brief summary of the dispute.

Amount of deposit in dispute: £ 750.00

Dispute initiated by: Landlord

Award made:

Tenant £ 675.00

Landlord £ 75.00

Agent £ 0.00

If in doubt claim everything.....

This month's adjudication digest looks at a case where a landlord claimed the full deposit for a number of different items with differing levels of evidence to support the various claims. The adjudicator was faced with a complex combination of factors to consider in deciding responsibility.

In the first claim, the landlord claimed £50.00 towards the repair of a damaged garden gate. It was claimed that the catch to the gate had broken during the tenancy, and that the tenants had allowed it to repeatedly swing open and shut in high winds, eventually causing the wooden gate to smash. The check in and check out reports did not mention the gate in any detail. The tenants admitted that the gate had broken, but that they did not report it to the agents even though the banging of the gate had disturbed them regularly during the tenancy. The adjudicator accepted that an award was due to the landlord, but there was no evidence to show the gate's age, condition or quality. In the absence of further evidence the adjudicator awarded a nominal amount of £25.00 in recognition of the damaged caused. Although the tenants could not be held responsible for bad weather, they ought to have reported the damage to the gate to the landlord sooner, or taken steps to prevent it becoming more severely damaged, once they knew there was a problem.

In his second claim, the landlord had replaced a recessed spotlight in the hallway ceiling and found that there was a leak from the shower tray in the bathroom above the hallway. In this case, there was no obvious defect noted to the shower tray or hallway ceiling in the check in or check out report. Worried about the effect of the leak on the electrics, the landlord had also obtained a report from a plumber and electrician. The electrician reported that there was no immediate danger from the leak. The plumber found that there was a "concealed" leak in the waste pipe beneath the shower tray. The landlord claimed that this was caused by too much weight being placed in the shower, for example by too many people using it at once. There was no comment about this in the plumber's report. In this case the adjudicator was not able to make any award to the landlord in respect of his claim for repair costs amounting to £200.00. Although there was a leak in the shower this was concealed and was not something that the tenants ought to have noticed and reported. There was no evidence to support the landlord's claim that the shower had been misused.

Finally, the landlord claimed £500.00 for severe condensation mould damage to the bedroom. The landlord referred to a surveyor's report which claimed this was due to tenant misuse, but this was not provided to the adjudicator.

It was clear that during the tenancy the tenants complained to the agents about dampness in the bedroom. An inspection report from the agents identified the cause as the lack of a damp proof membrane in the bedroom wall, causing penetrating dampness into the bedroom. The landlord claimed that, once they knew of the problem the tenants ought to have reduced the amount of condensation they caused to the property. The check in report identified that there was evidence of condensation to the windows to the bedroom at the start of the tenancy. The bedroom curtains were noted to have condensation staining at check out, together with a build-up of black mould around the window reveals. The adjudicator was unable to hold the tenants responsible for the extensive damage claimed for by the landlord. However the adjudicator accepted that the tenant could have taken action to regularly clean the windows which would have reduced staining to the curtains and adjacent window reveals. For this minor damage, the adjudicator awarded the landlord £50.00 as a reasonable contribution towards the making good of these areas.

So what are the key points here?

- Check in and check out reports are key documents in enabling an adjudicator to compare the condition of the property at the start and end of the tenancy. In this case, the check in and check out reports did not cover all items in great detail, which undermined the landlord's claim. Make sure check in and check out reports are properly completed.
- Tenants can be responsible for damage which was caused by them not doing something, which in itself has caused harm to the landlord's property. The tenant has an implied obligation to report faults when they knew, or should have known, about a problem. So in this case the tenant was responsible for the gate but not the leak. Make sure tenants know when they need to report problems to their landlords.
- Contractor/expert reports can be very helpful in establishing the cause of any damage. The more specific they are, the more helpful they are likely to be in supporting or defending a claim. In this case, contractor's invoices helped establish that the tenants could not be held responsible for the hidden leak.

Contact details

Tenancy Deposit Scheme
PO Box 1255
Hemel Hempstead
Herts HP1 9GN
Tel: 0845 226 7837
Fax: 01442 253 193
Email: member.relations@tds.gb.com
Web: www.tds.gb.com

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