

ment of deposit  
g adjudication



THE DISPUTE SERVICE

ing The Dispute Service Ltd how they want their share of the disputed deposit  
favour. Failure to do so will delay payment. In the case of a joint tenancy,  
ts named in the tenancy agreement, unless they have given him written

Tenancy number

**The Dispute Service**  
Annual Report 2008-09



# The Dispute Service Annual Report 2008-09

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THE DISPUTE SERVICE

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Registered number: 4851694

# 1 Forewords

## Chairman of the Board of Directors

This second annual report comes at a time when we have completed two years of the Statutory Tenancy Deposit Scheme and the level of activity suggests that the Scheme is now much better understood and utilised within the industry.

However the consequence of the maturity of the Scheme is a significant increase in the number of deposit disputes being referred, with a consequent strain on our resources in dealing with the administration and adjudication processes.

As a Board our focus has been on providing Lawrence Greenberg, our Independent Case Examiner, with the necessary resources whilst preparing and approving a budget which keeps membership costs at the minimum level compatible with financial prudence. We planned for a surplus of income over expenditure in years one and two of the Scheme in the knowledge that by year three we would be facing a dramatic increase in dispute numbers and this prediction has proved to be accurate. We are now receiving over 200 disputes a week and so are expecting a minimum of 10,000 cases in the current year compared to 2,000 in year one and over 7,000 in year two. To enable us to deal with this increase we have had to increase our staff and accommodation and the result is a 42% increase in our costs. Despite the increase in subscription rates imposed in March our budget for the year shows a substantial deficit which will, as planned, be met out of the accumulated reserves from the previous years. If the volume of disputes continues to rise, a significant increase in subscriptions for 2010-11 will be unavoidable.

Another challenge has been created by the economic conditions which meant that we were unable to obtain insurance cover for agents who were not members of one of the professional bodies. As a result we were unable to offer renewal of membership to approximately 300 firms. However, half of these subsequently joined NALS and so were able to maintain their membership.

Our focus in the coming year is to provide advice and technical assistance to members to help them reduce the number of cases which need to be referred to us and to enable them to deal with those cases which have to be submitted as efficiently as possible. We also aim to continue improving our administrative systems.

**John Hornsey**  
*Chairman*

## Chairman of the Council

During the year covered by this report, the governance arrangements for The Dispute Service have been overhauled. The Board, whose Chairman has written the preceding foreword, is now supported by a Council. Its principal functions are to ensure the independence of the Independent Case Examiner and his team of Deputy Examiners and adjudicators, and to represent the public interest in the development of the service. I was honoured to have been asked to chair the newly constituted Council.

In the reporting year, we held two initial meetings at which we settled our terms of reference and began to identify our programme of work for the coming year. It is clear that the members of the Council bring a breadth of experience and considerable enthusiasm in support of a service that aims to resolve disputes between agents, landlords and tenants in a proportionate, and frequently pioneering, way.

In the coming months we will be considering the different ways in which TDS communicates with the public, through its website and call centre; how current processes and procedures can be made more effective; and how TDS may learn from current experience so that future potential disputes may be nipped in the bud.

The members of the Council are listed at Appendix B and I would like to thank them all publicly for the contribution they have already made to the working of TDS. I am confident that they will continue to support me and TDS in the foreseeable future.

**Professor Martin Partington** CBE, QC  
*Chairman*

## 2 Introduction

### 2.1 What is The Dispute Service Ltd?

The Dispute Service Ltd is an independent, not-for-profit company established in 2003 to resolve complaints and disputes arising in the private rented sector speedily, cost-effectively and fairly.

**2.1.1** At the end of the year the company had a Board of five directors. Two of them, the main professional bodies in the lettings industry, were shareholders: the National Federation of Property Professionals (NFOPP) and the Royal Institution of Chartered Surveyors (RICS). The other three directors are independent, one of whom is the Chair. A list of directors can be found in Appendix A.

**2.1.2** The Company also has a Council of twelve people with experience of, or interest in, the private rented sector. A minority are directly involved in residential lettings. A list of Council members can be found in Appendix B.

### 2.2 Significant events during the year

- Changes to the governance of The Dispute Service Ltd
- Changes to the rules of the Tenancy Deposit Scheme
- Termination of membership of unregulated agents
- Insolvencies amongst members
- Continuing rise in the volume of disputes
- Augmentation of senior management
- Renting additional offices

## 3 Governance

**3.1** Governance of the Company was previously exercised by an Interim Management Board. These arrangements were reviewed. The Interim Board considered that users of the service would be re-assured if its functions were divided between a Board of Management and a Council. The Board remains wholly responsible for the management of the business of the Company. The Council's functions are to:

- protect and maintain the independence of the Independent Case Examiner;
- monitor the delivery of casework and performance by the Independent Case Examiner in relation to contractual obligations and agreed service standards;
- provide a forum for stakeholders, practitioners, consumer groups and other interested parties to assist in the development and delivery of dispute resolution services;
- agree, with the Board, budgets and provide resources for the Independent Case Examiner to deliver the agreed services;
- monitor and review the performance of the Independent Case Examiner against the agreed performance criteria and targets.

**3.2** Neither the Board nor the Council can be involved in the investigation and determination of disputes submitted to the Independent Case Examiner, save where a member of the Council independently reviews how an original dispute has been handled in accordance with the Company's complaints procedure.

## 4 Schemes operated by The Dispute Service Ltd

### 4.1 The Company currently runs the following schemes:

- The Tenancy Deposit Scheme, to ensure that the deposits held by regulated agents are protected and to resolve disputes about their return.
- The Association of Residential Letting Agents (ARLA) complaints scheme to deal independently with complaints against its members.
- A similar scheme for members of the Ombudsman for Estate Agents (OEA) who undertake lettings was brought to an end this year.<sup>1</sup>

### 4.2 The Tenancy Deposit Scheme

The Housing Act 2004 (Chapter 4, sections 212-5; & Schedule 10) made provision for both the protection of tenancy deposits and the resolution of disputes over their return. The legislation came into effect on 6 April 2007. After that date all deposits taken for Assured Shorthold Tenancies had to be covered by a tenancy deposit protection scheme.

**4.2.1** The Tenancy Deposit Scheme is one of three schemes authorised by [the Department of] Communities and Local Government (CLG). It has been designed primarily for agents, but membership is also open to landlords. Mandatory deposit protection was implemented in April 2007, but The Dispute Service Ltd offered a voluntary scheme to regulated agents for three years before that (the Tenancy Deposit Scheme for Regulated Agents). It operates as follows:

- The member holds the deposit.
- Where there is no dispute at the end of the tenancy, the member will, as normal, pay out the deposit promptly;
- If any of the parties wants to challenge the proposed apportionment of the deposit, they should do so within 20 working days. If there is an agent, they must try to negotiate a settlement between the parties within 10 working days;
- If this cannot be done, any of the parties can refer the dispute to the Independent Case Examiner (ICE) for third party independent adjudication;
- The deposit-holder must transfer the deposit to The Dispute Service. The ICE will carry on with an adjudication and pay out the deposit even if the deposit has not been submitted. The Dispute Service will claim the amount in question from its insurers, and seek to recoup it from the member. Persistent

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<sup>1</sup> This arrangement came to an end by mutual agreement in September 2008

failure to submit disputed deposits may lead to the termination of membership.

- The ICE seeks to make his decision within 28 days of receiving all the necessary information. The deposit is paid out within a further 5-10 working days.

**4.2.2** Members join directly, rather than through their membership of another body. Agents pay an annual subscription based on the number of offices they have and their membership of a relevant regulatory body which requires them to carry Client Money Protection Bonding: the Association of Residential Letting Agents, National Association of Estate Agents, Royal Institution of Chartered Surveyors, National Approved Lettings Scheme, the Law Society. The subscription for landlords is based on the number of properties they own, and can be ameliorated by their membership of other bodies. It is a matter for members to decide if and how they recover the subscription from landlords or tenants.

**4.2.3** There is no additional fee for adjudication on disputes arising out of tenancies which started after the member joined the scheme.

### **4.3 TDS Methodology**

While our current methodology is tried and tested, it continues to evolve to meet the changing demands generated by the growing number and range of cases. We have changed our original premise that nearly all disputes justify a full adjudication. In order to focus our resources most effectively, we need to both contain the volume of disputes to those which genuinely require our input; and to use a form of adjudication which is both appropriate and proportionate to the case concerned. To achieve this aim we:

- Apply the adjudication selection criteria set out in the scheme rules to determine early those cases which do not require an extensive adjudication. For example – identifying cases that can be dealt with summarily by letter; cases that can be dealt with in short-form rather than full adjudication; etc
- Increased ‘filtering’ at the administrative stage to establish that key documentation has been submitted – e.g. tenancy agreement, inventories – to avoid delays during the adjudication itself.
- Where the amount in dispute is small and the issue straightforward, contact the parties to suggest that it does not need TDS to resolve, and give a time limit for them to sort it out.
- Vary the extent of the adjudication to match the nature of the dispute.

- Publish TDS L *Progress of a dispute* to advise landlords and tenants about how we deal with disputes and the evidence we will need. It is available at the point of dispute, both on the website and for members to hand out.
- Publish TDS D *Operational procedures and advice* for members to help firms deal with particular issues which may arise from time to time e.g. “What happens with let-only properties?”; “What do we do about changed and replacement tenancies?”; “What evidence will we need to resolve the dispute?”; and so on.
- Produced some short videos and articles to explain the most frequent enquiries in an attempt both to be helpful and to diminish our call centre costs.
- Publish regular digests of cases so members can see how particular disputes were resolved.

4.3.1 We regularly review this material, refining and adding to it as necessary.

#### 4.4 The ARLA Scheme

- The landlord or tenant makes a complaint to ARLA;
- ARLA ensure that the complaint meets their criteria of eligibility;
- It is referred to The Dispute Service Ltd.;
- We check the documentation and send it to one of our adjudicators for consideration;
- They liaise as necessary with the parties, and produce a report for the ICE.
- He aims to issue his adjudication within 60 days of receiving the complaint.

4.4.1 We apply a similar methodology to TDS, but benefit from the sifting carried out by ARLA before cases are sent to us. The greater complexity of these cases means they frequently have considerably more documentation.

#### 4.5 The OEA Scheme

The OEA Scheme was very similar to the ARLA scheme, as were the complaints, but the methodology was varied slightly to comply with the OEA’s approach to sales complaints. OEA asked the agent to submit the full case file, rather than a response to the complaint with supporting evidence. When the ICE had received the adjudicator’s report, he invited the parties to comment before finalising it. The timescale was therefore extended to 90 days. Again we benefited from the sifting carried out by OEA before cases were sent to us.<sup>2</sup>

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<sup>2</sup> This arrangement came to an end by mutual agreement in September 2008

## 5 Changes to the Rules of The Tenancy Deposit Scheme

- 5.1** The court’s decision in *Harvey v Bamforth* revealed an ambiguity in the Housing Act 2004. It appeared that it might not be possible to insist, as had been the intention of the Act, that the Prescribed Information should be served on the tenant within 14 days of receiving the deposit. This also cast doubt on the requirement that the deposit should be formally registered within the same period.
- 5.2** The Act also provides that an authorised scheme may impose “initial requirements” on which *fall to be complied with by a landlord on receiving such a tenancy deposit*. Following legal advice we decided to clarify the scheme rules to make its initial requirements explicit – namely both the service of the Prescribed Information and the registration of the deposit must be achieved within 14 days of the tenant paying over the deposit. We believe this resolves the ambiguity identified above.
- 5.3** Following the statement by our insurers that they would no longer provide cover for unregulated agents (see paragraph 6.2), we had to change the scheme rules in order to allow us to bring their membership to an end.
- 5.4** A summary of the rule changes is in Appendix C.
- 5.5** TDS has been in operation for two years. It has grown considerably in that period and has had to deal with circumstances not all of which could have been foreseen. We have decided that it is now appropriate to review the scheme rules overall. This will take place during 09-10.

## 6 Insolvencies

- 6.1** The year 2008-09 saw a dozen TDS members unable to stay in business. Those who were regulated agents had, for the most part, complied with the Scheme's requirement to keep tenancy deposits in ring-fenced client accounts. The call on our insurance policy for them will therefore be relatively modest.
- 6.2** This was not always the case for unregulated agents<sup>3</sup>. Two had registered between them over £500,000 of deposits, imposing a significant liability on our insurers. Consequently they decided that they could no longer bear the risks posed by unregulated agents and withdrew our insurance cover for them. We had no choice but to terminate their membership with effect from 6 April 09.
- 6.3** The general reaction was muted, and not critical. Most public statements expressed the view that if the effect was to encourage unregulated agents to join regulatory bodies, it would be to the benefit of the private rented sector and the general public. In fact, of the 249 firms affected, about half subsequently joined a regulatory body and re-joined TDS. Clearly many of the unregulated agents caught up in this exercise were running a competent business, and we apologised for being unable to take that into account.

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<sup>3</sup> *Regulated agents are defined as firms belonging to ARLA, NAEA, NALS, RICS and the Law Society, all of whom require their members to have Client Money Protection Bonding*

## 7 Facts and figures

### 7.1 Summary of the position at the end of the year

In the company-only access to the website we now have a number of reports, including the table below which adjusts in real-time. At midnight on 31st March each year it read:

<b>TABLE 1</b>	<b>2007-08</b>	<b>2008-09</b>
<b>Landlords registered:</b>	<b>361,522</b>	<b>611,861</b>
<b>Tenancies registered:</b>	<b>470,323</b>	<b>786,405</b>
<b>Tenants registered:</b>	<b>731,244</b>	<b>1,215,003</b>
<b>Tenancies renewed</b>	<b>7,877</b>	<b>59,254</b>
<b>Tenancies made periodic:</b>	<b>3,881</b>	<b>14,853</b>
<b>Total number of tenancies ended in dispute:</b>	<b>577</b>	<b>6,284</b>
<b>Total amount of deposits protected from current tenancies registered:</b>	<b>£466,190,677.96</b>	<b>£694,738,318.34</b>

**7.1.1** This demonstrates the exponential growth experienced by the company in 08-09. All of these indicators grew by a minimum of 50%. Not surprisingly, this put some strains on our systems and we commissioned an extensive review to identify and rectify weaknesses. Most of the recommendations were implemented without delay, but some had to await new premises.

### 7.2 Management Accounts

The Management Accounts for the 12 months to 31st March 2009 show a surplus of £364k (2007-08: £1,629k) compared to the budget for the period of £362k. (See *management accounts* table 2 on page 12).

**TABLE 2 Management accounts** 1 April 2008- 31 March 2009

<b>Income</b>	<b>Budget</b>	<b>Actual</b>	<b>Variance</b>
Subscriptions	3,004,017	3,123,398	119,381
ARLA complaints scheme	30,000	47,400	17,400
OEA complaints scheme	25,000	43,590	18,590
Other income	10,000	32,102	22,102
Interest received	70,000	129,691	59,691
<b>Total</b>	<b>3,139,017</b>	<b>3,376,181</b>	<b>237,164</b>
<b>Overheads</b>	<b>Budget</b>	<b>Actual</b>	<b>Variance</b>
Staff costs	1,000,345	1,019,779	19,434
Travel and subsistence	8,000	6,471	1,529
Board	13,000	6,471	6,529
Staff training	32,000	32,484	484
Staff recruitment	35,000	84,973	49,973
Accommodation	113,122	87,688	25,434
Office running costs	80,000	199,608	119,608
Insurance	202,000	220,730	18,730
Publicity and promotion	80,000	52,274	27,726
External adjudication	739,000	675,454	63,746
Consultancy and professional fees	40,000	95,310	55,310
IT support and maintenance	77,163	108,582	31,419
Call centre	357,120	421,597	64,477
<b>Total</b>	<b>2,776,750</b>	<b>3,011,421</b>	<b>484,399</b>
	<b>Budget</b>	<b>Actual</b>	<b>Variance</b>
<b>Retained surplus</b>	<b>362,267</b>	<b>354,760</b>	<b>-247,235</b>

**7.2.1** The increase in income was matched by a similar growth in expenditure. Within the overall figures, the following are worth highlighting:

- We dealt with considerably more ARLA and OEA complaints than had been anticipated.
- Judicious investment enabled us to earn more interest on income waiting to be used.
- Recruitment of senior managers proved to be more costly and time-consuming than hitherto.
- Hefty mail-outs in connection with the termination of membership of unregulated agents contributed substantially to office-running costs.
- External adjudication costs were about 10% less than anticipated due to the deployment of a short form of adjudication in more cases.

- We invested considerably in upgrading and enhancing our IT systems.
- We have no control over the extent to which people use the call centre. As TDS is the largest tenancy deposit protection scheme we get an appreciable number of general enquiries.

**7.2.2** A number of factors have caused us to increase the subscriptions for 2009-10:

- The volume of disputes continues to grow and we cannot project when this is likely to peak. We must ensure that we have sufficient funds in order to meet our commitments.
- About 20 of our members ceased trading in 2008-09. Whilst the cost of repaying the deposits they hold will be covered by our insurers, there will be a time lag and the company will have to make significant outlays, as well as having to devote some of administrative resource to dealing with liquidators, receivers, administrators, police, etc.
- Our insurers have taken the view that they are more exposed to risk and have increased the premiums TDS has to pay to protect itself against any default by its members.
- They also decided that the risks posed by unregulated agents were too great and withdrew cover for them. This represented a significant loss of income to TDS, but not a commensurate diminution of expenditure in the short term. TDS remains responsible for the protection of the tenancy deposits concerned for up to a year.

**7.2.3** The audited accounts will be published separately.

### **7.3 Membership**

Table 3 shows that TDS membership continues to be predominantly regulated agents, even before our insurers changed their requirements. Their number climbed steadily during the year, boosted from January onwards by those unregulated agents who had decided to take steps to avoid having their TDS membership terminated. However, the effect of losing a considerable number of unregulated agents altogether means that our subscription will fall accordingly in 2009-10.

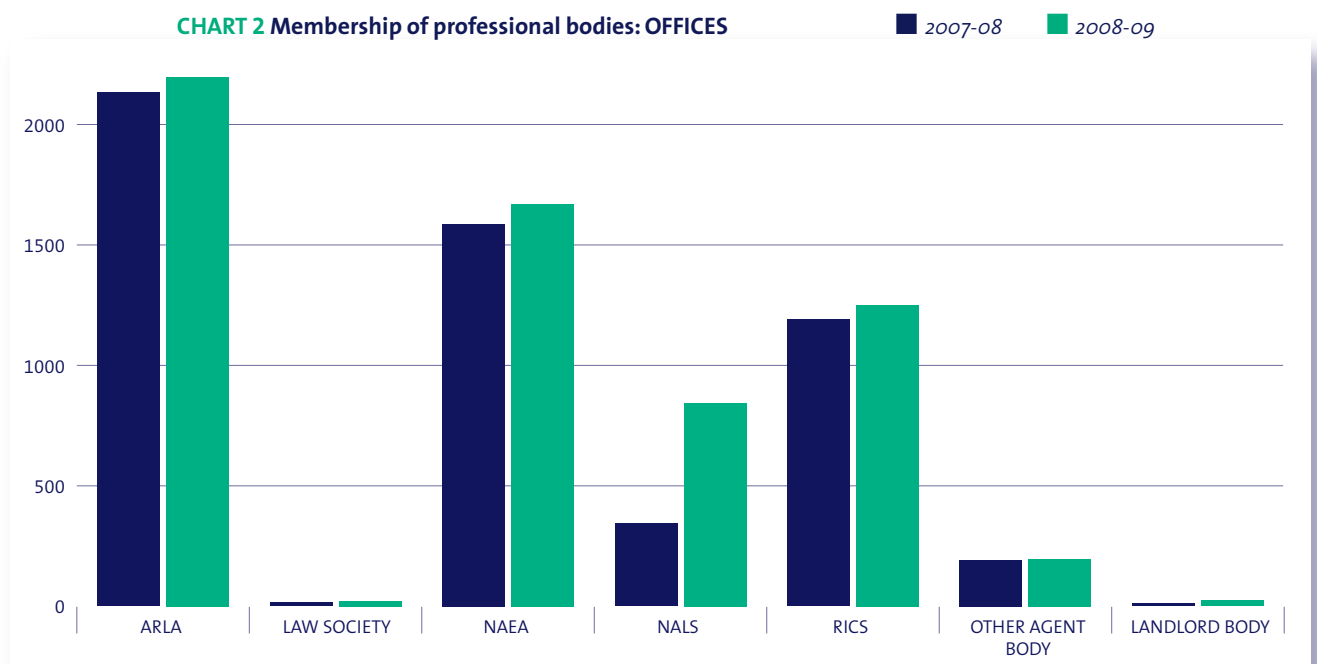
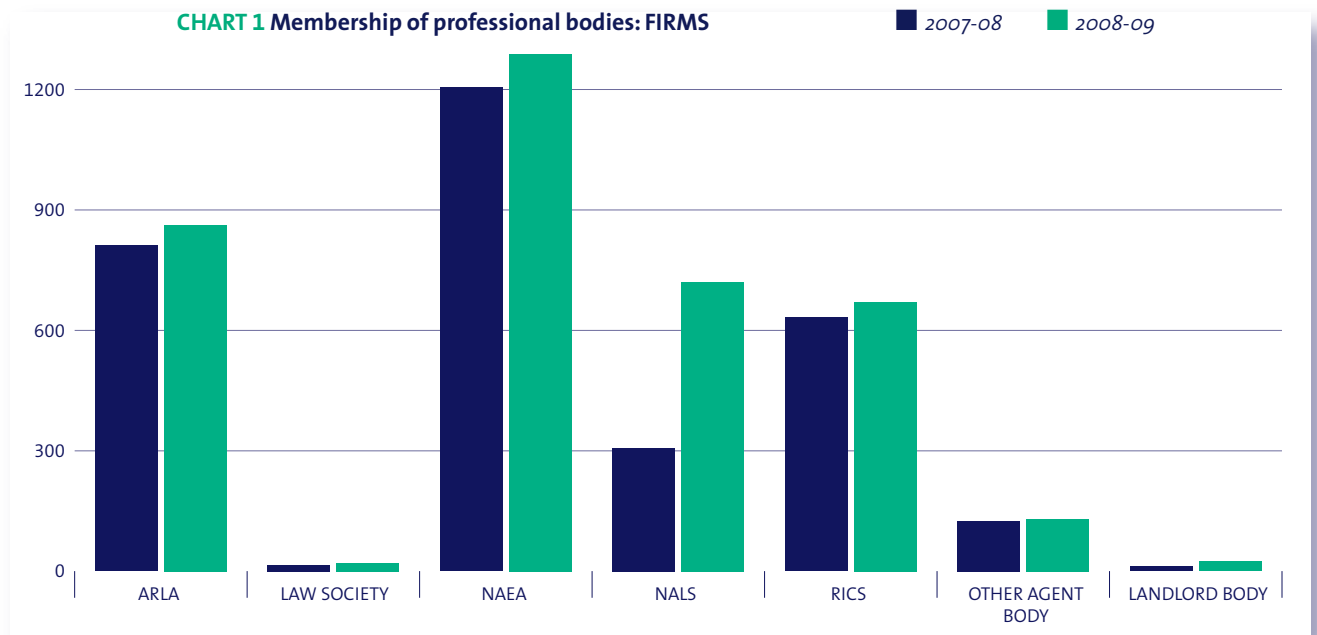
**7.3.1** Membership by corporate landlords increased by over one-third, but is still a relatively small proportion of the total.

**7.3.2** We continue to attract hardly any non-corporate landlords. This is neither surprising nor alarming. TDS is designed primarily to reflect the way agents and corporate landlords operate. The other insurance-based scheme is better organised for small landlords.

**TABLE 3 Membership by firm**

	as at 31/03/2008		as at 31/03/2009	
	Firms	Offices	Firms	Offices
Regulated agents	2,298	2,783	2,783	4,607
Unregulated agents	268	315	21	24
Corporate landlords	27	37	28	69
Other landlords	27	28	28	28
<b>Total</b>	<b>2,620</b>	<b>4,296</b>	<b>2,860</b>	<b>4,728</b>

**7.3.3** The pattern of membership of professional bodies was much the same each year. Membership of NAEA is the most quoted (CHART 1), but more offices were registered with ARLA (CHART 2).



## 7.4 Tenancies and disputes

TABLE 4<sup>4</sup>

	2007-08		2008-09	
	Projected	Actual	Projected	Actual
Tenancies registered		470,323		786,405
Tenancies termination	157,966	41,261	438,739	224,731
Disputes	4,703	577	3,955	6,284
Dispute rate %	2.98	1.40	0.90	2.80

**7.4.1** Registration of tenancies has increased by 67% as members have been bringing them into the system as they have turned over or been renewed. This has also been at a slower pace than might have been expected, but changes in the housing market and on the wider economic front have meant that people have been moving less often. Tenants are more likely to want to stay where they are, and landlords less keen to test the market. Consequently, more tenancies have been prolonged. There may also have been some under-reporting of tenancies which ended, and we will be investigating this in 09-10.

**7.4.2** Our provisional projections were that the dispute rate for regulated agents would be around 2%. In the first year of the Scheme, review of tenancies registered indicated it would be nearer 3%; ultimately, the dispute rate was about half the projection. In 08-09 our low expectations were confounded and the dispute rate was considerably higher. Without extensive research, it is impossible to ascertain why this should be. It seems reasonable to speculate that both tenants and landlords might be more concerned than hitherto recover what they see as rightfully theirs. Greater familiarity with the Scheme may have induced more people to use it to resolve their disputes. Whatever the reason, it seems clear that the dispute rate is volatile and attempts to predict it with any degree of accuracy are likely to fail.

### 7.4.3 Disputes handled

Table 5 is a snapshot. Whilst the number of cases received in a given year is fixed, the number resolved will include cases submitted in the previous time period.

TABLE 5

	2007-08		2008-09	
	Received	Closed	Received	Closed
TDSRA	1,324	1,341	600	907
TDS	577	423	6,284	5,584
<b>Total deposit disputes</b>	<b>1,901</b>	<b>1,764</b>	<b>6,884</b>	<b>6,491</b>
ARLA	109	88	113	132
OEA	93	63	71	106
<b>Total disputes</b>	<b>2,103</b>	<b>1,915</b>	<b>7,068</b>	<b>6,729</b>

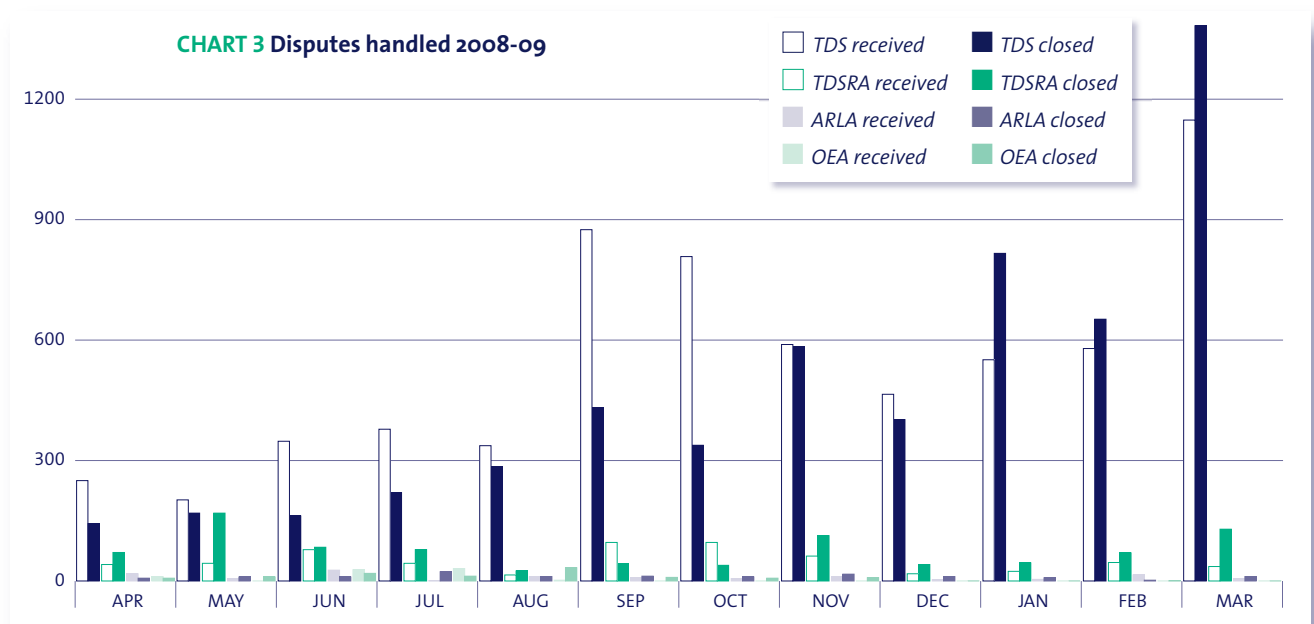
**7.4.4** We recognise that it is in everyone's interests to resolve a dispute as quickly as possible. We make our best endeavours to complete the whole process in

<sup>4</sup> according to the tenancy agreement

about 40 working days i.e. 56 calendar days, but this depends on the completeness, organisation and clarity of the evidence submitted to us. It is also affected by the volume of disputes with which we are dealing at a given time. This breaks down into the following stages:

Days for completion	Working	Calendar
<b>Pre-adjudication:</b> establish eligibility, clarify dispute, copy papers to other party/ies, await responses, database input	15	21
<b>Adjudication:</b> starting when the final paperwork has been received	20	28
<b>Payment</b>	5	7

**7.4.5** There was a huge increase in TDS cases in 2008-09 and we were not always able to resolve them within the time specified. There is a wide range around the average. Some disputes are resolved in as little as three days. Others have taken several weeks, either because the parties have been dilatory in responding to communications from us, or because they have sought an extension. The longest delays tend to occur at the pre-adjudication stage when people may genuinely be unable to respond in the specified time, or when it is not clear if the dispute is eligible for adjudication by the ICE. We devoted considerable time, effort and resources to maintaining the flow of adjudications and, as CHART 3 shows, by the end of the year we were closing more cases than we received.



**7.4.6** Cleaning continues to be the major source of dispute. It would be beneficial to both reduce the number coming to us and to streamline their adjudication process. We have suggested that, where it is possible, members give tenants a list of cleaning companies with whose work they are content. Members would make it clear that there was no compulsion for tenants to employ one of these firms to clean the property at the end of the tenancy; but if they did, and there was a complaint about the standard of cleanliness, the tenants would not be responsible to put matters right.

## 8 Staffing

- 8.1** We had anticipated that the volume of disputes would increase and have expanded our staff accordingly. This has mainly been by recruiting additional adjudicators, but we also added a fourth DICE to help supervise casework. At the end of the year we were also in the process of taking on extra CSMs both to determine how to tackle cases and to do brief adjudications.
- 8.1.1** It remains our objective to have fewer adjudicators doing more cases, mainly through their becoming part-time employees or consultants on contract. We are fortunate that many of our experienced adjudicators have opted for the latter.

**TABLE 6**

<b>Casework staff:</b>	<b>2007-08</b>	<b>2008-09</b>
Independent Case Examiner	1	1
Deputy Independent Case Examiners	3	4
Casework Scrutiny Managers	2	2
Outreach Manager		1
Dispute Support Officer		1
PA/Facilities management	1	1
Administrators	10	10
Adjudicators:		
<i>Part-time</i>		3
<i>Contract</i>	10	22
<i>Freelance</i>	35	45
<b>Total casework staff</b>	<b>62</b>	<b>90</b>
<b>Non-casework staff:</b>	<b>2007-08</b>	<b>2008-09</b>
Chief Operating Officer		1
Financial Controller	1	1
Disputes Operations Manager	1	1
Finance	3	6
Membership	2	2
<b>Total non-casework staff</b>	<b>7</b>	<b>11</b>
<b>Total employees</b>	<b>34</b>	<b>56</b>
<b>Total all staff</b>	<b>69</b>	<b>101</b>

**8.2** The flow and volume of disputes is neither smooth nor predictable. We are therefore building up a cadre of trained adjudicators and “overflow” DICE for those occasions when we do not have enough resources to deal with the exigencies of the work in hand. Over the coming year we will be taking the same approach with administration and finance staff.

**8.2.1** The explosive growth of TDS has required and enabled us to appoint a Chief Operating Officer. She will take care of the business side of the company, leaving the Independent Case Examiner able to concentrate on casework.

**8.2.2** Extra staff has also meant that we needed bigger premises. Fortunately, the building next door to us was vacant and by the end of the year we had completed negotiations to rent it.

**8.3** Processing disputes continues to be time-consuming and exhaustive. The weight of paper submitted, the need to check eligibility, and the requirement to have relevant documents before being able to do so, are amongst the factors attenuating the process. We have therefore increased staffing in this area too, whilst rigorously streamlining procedures. For instance, we now scan all case papers to make them electronically and quickly available to adjudicators. We would also like to be able accept dispute documentation electronically, but experience so far has been discouraging: the quality of scanning submitted is often too poor to be usable.

**8.4** We also need to deal with the deposits accompanying – or not – the disputes, again requiring additional staff resources to meet growing demand. Again we are continually seeking to refine our procedures to limit our costs. For instance, we no longer pursue agents who fail to submit the correct, disputed amount. If we have received sufficient money to meet an award to the tenant, we will only pay the landlord what is left and leave it to them to address the shortfall with the agent. If the money received is not enough even to pay the tenant, we instigate legal action against the agent for the recovery of the balance – and the associated costs. So far, all such cases have been settled satisfactorily before the court hearing was due to take place.

## 9 Training

- 9.1** Our objectives are to ensure that caseworkers are fully equipped to carry out their tasks, so that they need minimum supervision and assistance. We run an intensive residential training programme for new adjudicators consisting of:

Programme	Duration
<b>General induction</b>	half day
<b>Law</b>	one day
<b>Practice of letting agents</b>	one day
<b>Report writing</b>	one day
<b>Practical casework</b>	half day

- 9.1.1** We continue to offer regular feedback and individual extra training as necessary. Over the next year, the DICE will be doing regional workshops to give adjudicators feedback and mentoring tailored to their needs and circumstances
- 9.1.2** We have developed a course with NFOPP to train and educate its members so that they can avoid or resolve more disputes before they reach us. It has proved successful and popular and we hope it will continue to run for the foreseeable future.
- 9.1.3** In-house training has covered time management, appraisals and report-writing.

## 10 External relations

### 10.1 Outreach Manager

We have appointed an Outreach Manager whose role is to:

- provide advice and training to members
- channel feedback from members to senior staff
- develop methods of communicating more effectively with members.

**10.1.1** Over the coming year we will be implementing many of the proposals which she is starting to develop as a result of her discussions with members.

**10.2** Senior staff have attended many conferences, seminars and workshops to talk about TDS. We have added to our series of short films for the website about the Scheme in general, and also to deal with operational and practice issues which are frequently raised with us.

**10.3** Our call centre dealt with over 100,000 calls and 25,000 emails during the year. All but a handful were dealt with promptly, albeit not always to the satisfaction of enquirers. Operators are equipped with helpscreens to ensure, as far as possible, that they give correct advice. If the screens do not cover the issue in question, it will be referred to senior staff for resolution. All calls are recorded and if complainants are able to tell us when, and preferably from whom, they received advice, we can check its accuracy. In most instances, it is clear that the advice given was right but perhaps not what the enquirer wanted to hear.

### 10.4 Website and database

We have been developing tools from the database to give us accurate and timely information to enable us to estimate our resource requirements and track the progress of individual cases. These are not yet fully operational, but are already yielding useful information.

**10.4.1** We have also been refining the website and database to enhance its user-friendliness. As a result of feedback from members and input from the Outreach Manager we expect to do more of this work in the coming year.

# 11 Casework

## 11.1 Methodology

We constantly have to balance the requirement to complete adjudications within tight timescales and the obligation to get them as right as we can. We don't have time to go looking for evidence, and we have to allow that there might be inconsistencies e.g. where one adjudicator might award £50 for gardening, another might conclude that £40 is more appropriate. We also have to recognise that it is inappropriate to treat a dispute over £25 with the same gravity and effort as one for £2,500.

- 11.1.1 Consequently, we are refining our methodology so that we can deal quickly with smaller and more straightforward disputes, allowing us to devote more expertise to the ones which need it.

## 11.2 Cases

The cases in Appendix D have been selected largely at random from the huge number that has passed over our desks to give a flavour of the issues that arise – but also including some interesting or unusual examples.

## 12 Matters of concern

**12.1** Many of the issues highlighted in the Annual Report for 2007-08 persist:

- We have a continuing problem of members failing to send us the disputed amount correctly or on time. We also find that they often fail to account adequately for the disbursement of the deposit.
- All too frequently, members fail to send key documents such as the tenancy agreement; or the rent account where arrears are a feature of the case. Inventories are often absent or insufficiently thorough, particularly in relation to gardens.
- We are getting an alarming number of disputes where it is clear that the agent has failed to register the deposit; and/or to serve the Prescribed Information – despite us providing it in a format which can be easily added to tenancy agreements. Whilst this means we will award the deposit to the tenant without further ado, it also exposes the landlord/agent to legal action for compensation by the tenant.
- We appreciate that people may dig their heels in over “a matter of principle” leading to disputes over very small sums, and we have to resolve them so that they can be brought to an end. But in many cases it is hard to avoid the conclusion that agents are not trying to resolve the dispute, but are simply passing it to us. This will clearly affect the costs of the Scheme and what we have to charge for membership.
- A considerable number of disputes are generated from ‘Let Only’ tenancies. The quality of evidence presented to substantiate a landlord’s claim often falls short of what is required. Most members shy away from getting involved in any negotiations as they feel it falls outside their terms of instruction. This can cause administrative difficulties and a higher volume of deposit dispute cases that could have been resolved if the agent had been pro-active – particularly in cases where they were taking a fee for holding the deposit.
- A small proportion of members is responsible for the great majority of cases brought to us. The differential is so marked that we were obliged to take it into account in the subscription calculation for 2009-10 and may have to do so in future years.
- We remain concerned that members do not seem to be fully familiar with the requirements and operation of TDS. Through the work of the Outreach Manager we are exploring what other methods we might use to help them. Many enquirers to our call centre could have answered their questions directly from material available on our website. The call centre is one of the most expensive parts of our operation, and the level of use inevitably figures significantly in our subscription calculations.

## 13 Bouquets, brickbats & other remarks

- 6 *I wish to thank you for your help in claiming my deposit back and finding that the landlord was very unfair to me as his tenant. Thank goodness for The Dispute Service! 9*
- 6 *I am writing this letter to say a big thank you to TDS for dealing with our dispute with our tenants regarding the Eastleigh property. We received your report and the deposit money and are so pleased with the outcome 9*
- 6 *The Dispute Service should be commended for the efforts made to protect a tenant like me... If it had not been for your department, I would not have gotten anything back 9*
- 6 *I would like to inform you that, following your intervention, we have managed to come to an agreement [with the tenant]. We would like to take this opportunity to thank you for dealing with our case 9*
- 6 *I would like to thank you for your professional, thorough and efficient work in dealing with my case with the estate agent. Thank you very much for the wonderful work you have conducted. Your time and effort has been sincerely recognised and greatly appreciated 9*
- 6 *Whilst the youngsters were pleased to get the balance of their deposit returned, I was pleased and impressed with the analysis of information and presentation of the adjudication 9*
- 6 *We are pleased with the decision reached, as is our Landlord, as this will go some way to mitigating the damage caused 9*

“ I claimed £600 for cleaning [a studio flat] because that is what it cost me. I have been using the same company for 30 years and they always do an excellent job. You upstarts cannot tell me that I am over-charging ”

Comment from tenant on Notification of deposit dispute:

“ I will gather what evidence I can to support my claim. My home was a living, sacred place of healing, reflecting my highest beliefs and values. I have to honour it and myself ”

Response from agent:

“ ... Ms X is a person with strong character and somewhat strange beliefs, she is verbose and apparently suffers from elements of delusion and a vivid imagination ”

Taken from a Notification of a deposit dispute (form TDS 2):

<b>How much is the deposit?</b>	<b>£575.00</b>
<b>How much is in dispute?</b>	<b>£575.00</b>
<b>Total amount being claimed?</b>	<b>£575.00</b>
<i>What is this for?</i>	
<b>Damage to property or contents</b>	<b>£240.00</b>
<b>Other</b> (please specify) <i>sheer b****y mindedness</i>	<b>£335.00</b>
<b>TOTAL</b>	<b>£575.00</b>

## 14 Thank you

TDS works because of the effort, skill and dedication of its staff, with the unstinting support of its Board and Council. We can also only resolve disputes with the trust and goodwill of those involved in them. We are continually grateful, and never take it for granted.

## Appendix A

# Board of Management

**National Federation of Property Professionals**

**Royal Institution of Chartered Surveyors**

**John Hornsey** (Chair)

**Malcolm Lindo** (Finance Director)

**Vacant**

## Appendix B

# Council

<b>Jodi Berg</b>	Independent Case Reviewer
<b>Fiona Dickie</b>	Barrister, congestion charge adjudicator & housing adviser
<b>Ian Fletcher</b>	Landlord trade body – British Property Federation body
<b>Tim Hyatt</b>	Letting agent – Knight Frank
<b>Robert Jordan</b>	Letting agent – Jordans Residential Lettings Ltd
<b>Chris Lowe</b>	Broadcaster/ex-Board member IHO
<b>Liz McCallum</b>	Corporate landlord – Grainger Trust PLC
<b>Martin Partington</b> (Chair)	Barrister/ex-Law Commissioner
<b>Marveen Smith</b>	Solicitor
<b>Andrew Thomas*</b>	Letting agent – Chris John & Partners
<b>Kit Wilby</b>	Landlord
<b>Teresa Warn</b>	Tenant Participation Advisory Service

*\* resigned during year – replacement being recruited*

# Appendix C

## Summary of changes to the Rules of the Tenancy Deposit Scheme

Agreed by the Board of The Dispute Service Ltd on 26 January 2009

Changes and additions are in green. The remainder of the Rules are unchanged. Some extracts have been included to show where the changes and additions fit in.

### Definitions

**Insurer** means the company/broker appointed by the Board from time to time to arrange the necessary insurance cover required to operate TDS.

**Notice** any reference to Notice or Notification means written notice, sent by first class post, to the relevant party and such notice will be deemed served 2 working days after posting.

### 1 Eligibility

**1.1** Membership of the Scheme is open to all landlords and agents in the PRS subject to the approval of the Insurers. Prospective Members will be asked to complete an application form to provide, amongst other things, the following information:

- a** Do they hold separate clients accounts for deposits and other client money?
- b** Do they have a written complaints procedure?
- c** Are they covered by a Client Money Protection Scheme?
- d** Do they hold Professional Indemnity insurance?
- e** Do they adhere to a recognised Code of Practice?
- f** Are they members of a self-regulatory body?
- g** Are they members of an accreditation scheme?
- h** Are they members of a trade or professional body?
- i** Are they members of an Approved Body?
- j** Have they ever been refused a licence to operate an HMO under the mandatory requirements of the Housing Act 2004?

and other matters at the Board's discretion.

Their answers will determine the insurers' estimate of risk and affect their annual subscription fee.

**1.2** Applications from landlords and agents will be considered on an individual basis and referred to Insurers for approval. The Insurers approval will be final and could be subject to change during the annual subscription period and any subsequent renewal. Among additional factors which may be taken into account in assessing their applications will be:

- a Length of time the firm has been established
- b Staff training and qualifications
- c Credit ratings of the firm and its Directors or Partners.

**1.4** Applicants will be refused membership or their membership could be withdrawn, **subject to the relevant procedure (Rule 11)**, by the Board if:

- a Information supplied as part of their application proves false
- b They refuse to agree to comply with the rules of the Scheme
- c They fail to pay their initial subscription
- d Information provided causes the insurers to decline to provide cover under the policy.

**1.6** The Scheme Administrator may, **after consultation with the Board**, reject or **withdraw** applications to join TDS, or **subsequent renewals**, at his **discretion as set out in Rule 11**. His decision is final.

#### **11 Removal or Withdrawal of Member from TDS**

**11.7** The Board may also **withdraw membership of a Member upon the Insurers request**. Such **withdrawal will be subject to the relevant procedure**.

**11.8** The Board may also **withdraw membership of a Member following a change in the Rules of Membership**. Such **withdrawal will be subject to the relevant procedure**.

#### **12 Continuation of cover in the event of a cessation of membership**

**12.1** If an agent or landlord fails to renew their Membership of the Scheme, or the Membership is cancelled as a result of termination or withdrawal, the protection afforded to deposits collected and registered under the scheme will continue, including access to the ICE for dispute resolution:

**12.1.1** for a period of 12 months from the initial commencement date of the tenancy or;

**12.1.2** for a period of 3 months from the date of cessation of Membership whichever is the later, but only until the landlord/agent has made alternative arrangements for the protection of any deposit.

#### **Agreed by the Board of The Dispute Service Ltd on 4 December 2008:**

Paragraph 4.1.4 changed to:

If the information specified in paragraph 14.3 is not entered, TDS will cover the deposit as long as it is held by a Member. But if there is a dispute at the end of the tenancy, and information has not been entered into the TDS database, the deposit will be awarded to the tenant without formal adjudication.

The following sentence at the end of paragraph 8.2, after 8.2.2

Paragraph 8.2 comprises the initial requirements of the Tenancy Deposit Scheme.

## Appendix D

# A selection of cases

### Example case 1

<b>Complaint brought by:</b>	<b>Agent</b>
<b>Amount of deposit:</b>	<b>£1,537.50</b>
<b>Amount in dispute:</b>	<b>£240.00</b>
<b>Amount awarded to:</b>	
<i>landlord:</i>	<b>£240.00</b>
<i>agent:</i>	<b>£N/A</b>
<i>tenant:</i>	<b>£0</b>

In this case, the landlord was claiming £240 for rent arrears, which the tenant had knowingly deducted from their rent in light of a parking fine imposed by a parking company hired by the landlord.

The tenant had been issued a parking voucher, yet failed to take the necessary steps to prevent his vehicle being clamped.

The TDS' remit is to adjudicate claims against a tenant's deposit in relation to the tenancy agreement. In this case, the tenant had taken it upon himself to deduct an avoidable expense from his rent. This issue lies outside of the jurisdiction of the TDS and as such is for the tenant and landlord to settle between themselves.

In light of this, the Independent Case Examiner ruled that the tenant owed the sum to the landlord, and awarded the money accordingly.

### Example case 2

<b>Complaint brought by:</b>	<b>Agent</b>
<b>Amount of deposit:</b>	<b>£550.50</b>
<b>Amount in dispute:</b>	<b>£585.00</b>
<b>Amount awarded to:</b>	
<i>landlord:</i>	<b>£00</b>
<i>agent:</i>	<b>£N/A</b>
<i>tenant:</i>	<b>£550.00</b>

The sum in this case is in dispute as a result of the state in which the garden had been left at the end of the tenancy.

The landlord had claimed that the garden was unrecognisable, and provided photographic evidence to this end, alongside the check-out inventory. It noted that the garden was not in a condition matching that when the tenancy began, over three years previously.

Before moving in, the tenants had been warned that there was a badger sett

at the end of the garden; and that it would be their responsibility to minimize the damage the animals caused, whilst keeping the garden “..neat and tidy.”

However, the check-in and check-out reports both failed to include a description of the state of the garden, and the photographs supplied by the landlord depicted the garden two years prior to the tenant moving in. Furthermore, the tenant was not given any guidance as to how to manage the badger population.

Reviewing the evidence, the Independent Case Examiner felt that managing the badgers was outside of the scope and expectation of the clause in the tenancy agreement pertaining to the garden. He found that the tenants were not responsible for the state of the garden and awarded them the deposit in full.

### Example case 3

<b>Complaint brought by:</b>	<b>Tenant</b>
<b>Amount of deposit:</b>	<b>£1,275.00</b>
<b>Amount in dispute:</b>	<b>£1,028.44</b>
<b>Amount awarded to:</b>	
<i>landlord:</i>	<b>£1,028.44</b>
<i>agent:</i>	<b>£N/A</b>
<i>tenant:</i>	<b>£0</b>

In this case, the tenants had entered into a 12 month tenancy beginning in September 2008. However, shortly after moving in, they became aware of a number of issues with the property that prompted them to consider moving before the tenancy expired.

In November, the landlords agreed in principle. In January, the tenants gave notice on their intention to surrender the property on 27th February, before signalling their intention to move out on 4th February. The proposed date of 27th was agreed by the landlord, but the other one was not. The tenants were contractually obliged to pay rent up until the date agreed between them and the landlord. Moving prior to the agreed date did not relieve them of that liability.

The carpets in the property were found to require cleaning, and in some cases replacing. The amounts claimed by the landlord for these repairs were deemed to be reasonable, as was a cost for oil used during the tenancy period. The Independent Case Examiner awarded the full amount in question to the landlord.

In response to this decision, the tenants challenged the adjudication and awarding of the money to the landlord. The Independent Case Examiner explained his decision by stating that the tenants had not agreed the

landlord's unconditional offer to vacate the property without penalty, and had changed the dates without his agreement.

## Example case 4

<b>Complaint brought by:</b>	<b>Tenant</b>
<b>Amount of deposit:</b>	<b>£1,560.00</b>
<b>Amount in dispute:</b>	<b>£78.40</b>
<b>Amount awarded to:</b>	
<i>landlord:</i>	<b>£0</b>
<i>agent:</i>	<b>£N/A</b>
<i>tenant:</i>	<b>£78.40</b>

The landlord claimed for repairs carried out as a result of a vermin infestation that occurred during the tenancy.

The landlord refused to meet the cost incurred, blaming the tenant for the infestation. The tenants paid the local authority to remedy the problem of the vermin, and proceeded to withhold this sum from their rent. They denied responsibility, citing the infestation of other properties in the block.

Further evidence was supplied in the form of an email from the agents to the landlord informing him of his responsibility to pay for the costs of remedial works.

The landlord failed to demonstrate to the Independent Case Examiner that the tenant was in breach of their tenancy agreement, nor that they must have acted negligently in order for the infestation to occur. The Independent Case Examiner also found that the problem was block-wide and not limited to the property in question.

In his decision, the Independent Case Examiner also noted that the TDS does not normally rule on counterclaims, as in this case. However they felt it to be unreasonable not to take into account the reason for the tenant's withholding of the rent in the circumstances described, and that awarding the sum to the landlord would be wrong when the damage was not the fault of the tenant, who was duly awarded the full amount.

## Example case 5

<b>Complaint brought by:</b>	<b>Tenant</b>
<b>Amount of deposit:</b>	<b>£1,620.00</b>
<b>Amount in dispute:</b>	<b>£1,620.00</b>
<b>Amount awarded to:</b>	
<i>landlord:</i>	<b>£0</b>
<i>agent:</i>	<b>£0</b>
<i>tenant:</i>	<b>£1,620.00</b>

The tenant disputed the portion of the deposit which was withheld by the agent for cleaning. The cleaning had taken place, yet the agent had failed to provide the tenant with their deposit, or information on the cost of cleaning, for over a month after the property was vacated. The rules of the TDS state that the landlord/agent and tenant should agree on any deductions within ten days after the end of the tenancy and that the balance of the deposit (or the deposit in full) will be paid within a further 10 days.

The Independent Case Examiner quoted clause 9.3 of the TDS rules of membership, and awarded the disputed amount in full to the tenant without formal adjudication. The agent had failed to include appropriate references to the TDS in the tenancy agreement, and had also failed to provide information to the tenant as required by The Housing (Tenancy Deposits) (Prescribed Information) Order, thereby being in breach of the Housing Act 2004.

## Example case 6

<b>Complaint brought by:</b>	<b>Tenant</b>
<b>Amount of deposit:</b>	<b>£1,275.00</b>
<b>Amount in dispute:</b>	<b>£353.05</b>
<b>Amount awarded to:</b>	
landlord:	£0
agent:	£0
tenant:	£353.05

The tenant initiated the dispute, taking issue with the agent's decision to deduct £353.05 from their deposit to cover cleaning felt to be required at the end of the tenancy.

However, the landlord sided with the tenants stating:

*'I question the necessity for the agent to have commissioned further cleaning by contractors, and...challenge the amount charged...I believe...the tenant should receive the balance of their deposit.'*

Under the rules of the TDS, agents are entitled to raise a dispute about a deposit with the Independent Case Examiner, but only when acting on behalf of the landlord or tenant. In this case, they were clearly acting for neither.

The Independent Case Examiner was unable to allow a claim against the deposit, and the full amount was returned to the tenant.

# Appendix E

## Publications

### Documents

- TDS A** *Rules of Membership*
- TDS B** *Management and administration of the Tenancy Deposit Scheme*
- TDS C** *Criteria for approved bodies*
- TDS D** *Operational procedures and advice for members\**
- TDS E** *Consumer Leaflet What is the Tenancy Deposit Scheme?\**
- TDS F** *Procedure for complaining about the way the ICE handled your case*
- TDS G** *Clauses for inclusion in agreements\**
- TDS H** *Certificate of tenancy registration\**
- TDS J** *Procedure for complaining about the way The Dispute Service Ltd handled your membership application or deposit Schedule of fees*
- TDS K** *Schedule of fees*
- TDS L** *Progress of a dispute*

*\* Available to members only*

*\*\* Also translated into:*

<b>Arabic</b>	<b>Polish</b>
<b>Bengali</b>	<b>Punjabi</b>
<b>Cantonese</b>	<b>Russian</b>
<b>Gujarati</b>	<b>Spanish</b>
<b>Hindi</b>	<b>Urdu</b>
<b>Mandarin</b>	<b>Welsh</b>

### Forms

- TDS 1A** *Application for an agent to join TDS*
- TDS 1B** *Application for a landlord to join TDS*
- TDS 2** *Notification/referral of a deposit dispute*
- TDS 3** *Report of adjudication*
- TDS 4** *Consent to submit to adjudication disputes on tenancies which started before the member joined TDS*
- TDS 5** *Registration of a tenancy*
- TDS 6** *Response to dispute*
- TDS 7** *Notification of an office opening/closure*
- TDS 8** *Changes during the tenancy*
- TDS 9** *End of tenancy*
- TDS 10** *Application to be an Approved Body*
- TDS 11** *Declaration by members of TDSRA*

*These documents may also be downloaded from the website [www.thedisputeservice.co.uk](http://www.thedisputeservice.co.uk)*

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