

TDSL Tenancy Deposit Scheme

The progress of a dispute

SECOND EDITION



I want to bring a dispute...

You have reached the end of the tenancy, but you can't agree about what should happen to the deposit. What should you do now? This leaflet explains:

- how you bring your dispute to the Independent Case Examiner (ICE),
- how he will deal with it,
- what information you will have to give him,
- what the timescales are,
- and how to work out whether you might be successful.

This leaflet is designed to help tenants who initiate or respond to a dispute, but landlords and agents will also find it useful in understanding what goes on.

First things first

Is the dispute about the deposit?

If it isn't, you will need to take it down a different route. If your dispute is with an agent, please consult one of the professional bodies concerned e.g. the Association of Residential Letting Agents (ARLA), the Royal Institution of Chartered Surveyors (RICS), National Association of Estate Agents (NAEA) or the National Approved Lettings Scheme (NALS). If it is about a landlord, or an agent who is not a member of one of these bodies, please ask for assistance from your local Citizens' Advice Bureau, Housing Advice Centre, Law Centre or other advice organisation.

You may feel that you have a counterclaim against the landlord, or you may think that the landlord's claim should be reduced because of what you regard as a failure on their part. The ICE cannot deal with these issues in his adjudication. If they are important to your case, you may wish your dispute to be resolved in the county court.

Is your tenancy covered by TDS?

When you paid over your deposit, you should by law have been given certain Prescribed Information, which would have included the name of the Deposit Holder – usually your landlord or the agent through whom you rented the property. By looking at the list of members on our website www.thedisputeservice.co.uk you can check to see if your Deposit Holder is recorded there.

If you were not given the Prescribed Information, please look in your tenancy agreement for the name of your landlord/agent and check to see if they are listed as members.

If your deposit is not held by a member of the Scheme, TDS will not be able to deal with your dispute. You will need to see if the Deposit Holder is a member of one of the other tenancy deposit protection schemes by checking with them, or asking the Deposit Holder.

The ICE will be able to deal with your dispute even if your tenancy has not been registered with TDS. But you may be better advised to take action in a county court. This is because, under the Housing Act 2004, Section 214, you could be awarded the whole of your deposit plus three times its amount by way of compensation for failure to register the tenancy. The ICE can award no more than the amount of the deposit.

Has the landlord/agent had the opportunity to resolve the dispute?

If not, you must let them try to do so. The ICE may return a dispute if he feels the landlord/agent hasn't tried to deal with it before it was sent to him.

How much is in dispute?

The ICE will deal with any dispute, however small the sum – although his approach may vary if only a little money is involved. However, you should consider whether the amount involved is enough to justify the time and effort you will have to put in to completing the dispute form (*TDS 2 Notification of a dispute*) and gathering evidence to support your case. Your landlord will need to make the same assessment. TDS does not award sums in addition to the actual amount claimed.

Do you want the ICE to resolve your dispute, or would you rather go to court?

You may go to court if you prefer, and the ICE can only deal with your dispute if both you and the landlord agree that you want him to do so (except where the landlord refuses to make any decision, when the dispute will automatically go to the ICE). Most people prefer the ICE because they feel that his way of resolving disputes will be quicker, cheaper and less stressful. Like the courts, he is also independent and authoritative.

How do I submit a dispute?

Please complete Form TDS 2 *Notification of a dispute*. You can download it from our website www.thedisputeservice.co.uk. This will tell us what the dispute is about, and who is involved. We need it in writing because we have to copy it to the other party or parties for their response. If you have difficulty with completing the form, e.g. if English is not your first language, please ask someone to help you.

Send the form to us with the evidence you want the ICE to take into account when dealing with the dispute. You will find a check-list on the form to help you. It is important that you send the information you feel is necessary to support your case. The ICE will make his adjudication on the basis of what you and the landlord (and the agent) send to him. He will not normally ask the parties for additional information – it is not for him to go looking for evidence. **You will not be able to submit additional material after your case has been sent to an Adjudicator.** Nor will the ICE be able to accept new evidence after he has made his adjudication. So it is important that you send all your evidence with your *Notification of a dispute* or with your *Response to a dispute* (TDS 6) as appropriate.

If you send any photographs or videos you must sign them, show the date on which they were taken and indicate which part of the dispute they relate to. Two copies must be provided, one for the ICE and one for the other party.

In signing the *Notification of a dispute* or *Response to dispute* you will agree that the ICE's adjudication is final and binding. There is no appeal against it within the rules of TDS, but you are entitled to complain about the way your case was handled should you feel this is necessary (please see TDS F *Procedure for complaining about the way the ICE handled your case*).

What happens then?

If you want, we will acknowledge receipt of your papers before we do anything with them. Please complete the tear-off strip in TDS 2 or TDS 6 as appropriate.

We will check that the dispute is one the ICE can deal with, and that it falls within the time limit set in the Rules (see *What are the timescales* page 7). We will also check that you have filled in the form properly. If not, we will return it to you to complete it. If everything is okay, we will acknowledge receipt of your dispute and send it to the landlord/agent for their response. We will ask them to send us the amount of money in dispute - even if it has been decided that the dispute is to go to court.

We will send the landlord/agent TDS 6 *Response to a dispute* and ask them to put their side of the story. It is important that they send us their evidence too. In particular, if they want to withhold all or part of the deposit because they say the property is damaged, dirty, in need of decoration, or that things are missing, they must be able to demonstrate this. If they say that you were behind with the rent, we will need to see a copy of the rent account; and the tenancy agreement which you signed must allow the deposit to be used to settle rent arrears.

It sometimes happens that, the person who raises the dispute does not present the full or correct picture. Occasionally in their response, the landlord/agent will raise new matters to justify withholding the deposit. If they do, we will give you the opportunity to comment on them before the ICE proceeds with the adjudication.

In signing TDS 6 *Response to a dispute*, the landlord/agent will also agree that the ICE's adjudication is final and binding.

Will consideration of my dispute be delayed if the landlord/agent refuses to co-operate or doesn't send in the deposit?

No. The ICE will continue with his adjudication regardless. If he has not received the deposit, he will make a claim from the TDS insurers and pursue the landlord/agent for reimbursement. If the landlord/agent does not give a response to your evidence, the ICE will continue his adjudication without it.

It can also happen that the landlord/agent only sends in part of the deposit. Again, the ICE will continue with his adjudication regardless. If the ICE makes an award to the tenants, they will be paid first. There may therefore be a shortfall in the amount available to settle an award to the landlord or the agent. We would expect them to resolve this between themselves.

How is the dispute resolved?

First of all, the ICE or one of his colleagues will establish the following:

- Have you and the landlord/agent sent all the documents we need?
- Has the landlord/agent fully paid their subscription to TDS?
- Has the landlord/agent sent the correct sum in dispute?
- How much is in dispute?

- How many issues are in dispute?
- Would this matter be better resolved by formal adjudication or other means e.g. by one of his colleagues talking to both you and the landlord/agent to see if s/he can help you reach agreement without a formal adjudication.

The ICE may reject your case if, in his opinion it is:

- being pursued in an unreasonable manner;
- frivolous;
- vexatious;
- seeking to raise again and, unreasonably in his view, matters which:
 - a) he has already adjudicated upon;
 - b) have already been settled by another similar dispute resolution process; or
 - c) have been determined by the courts.

The ICE may *at his discretion* award you the disputed amount without adjudication where:

- The Deposit Holder has not paid their subscription in full.
- The full disputed amount has not been submitted within the time specified.
- You were not given a written tenancy agreement
- There is a written tenancy agreement but it does not contain appropriate reference to the TDS as prescribed in the Scheme's rules
- There is either no check-in or no check-out inventory or report
- In the opinion of the ICE the landlord/agent has unreasonably sought to delay the repayment of the deposit or the referral of the dispute
- The Prescribed Information has not been given to you.

What happens in a TDS adjudication?

The ICE appoints one of his adjudicators to appraise the evidence submitted by you and the landlord/agent, and recommend to him how the disputed amount should be paid out. In determining awards, the adjudicator may have regard to publicly available sources of information such as high street stores and services and products on the internet. If it is obvious that a key document is missing e.g. the page in the tenancy agreement which contains the clauses relevant to the dispute, s/he may ask for them. But as a general rule, s/he will base her/his considerations solely on the evidence presented.

The ICE will review the case and the adjudicator's report to see if he agrees with her/his recommendations. He will make any changes he thinks are necessary, and then send the report to you and the landlord/agent.

When will the ICE pay out the disputed amount?

We normally pay by cheque, sent to you within 5-10 working days of sending you the adjudication. We can arrange to pay by bank transfer. That will take longer to set up and there may be a charge. Only in the most exceptional circumstances will we be able to pay out in cash.

What are the timescales?

Within 14 days of receiving your deposit, it should have been registered on the TDS database. You will have been sent a *Certificate of registration* (TDS H) which contained a Unique Identifier which enables you to check that the details of your tenancy have been properly recorded. It will also allow you to follow the progress of your dispute.

You can register a dispute with your landlord/agent at any time after either of you has given notice to end the tenancy, but no later than 20 working days after it has finished.

Your landlord/agent must tell you within 10 working days of the end of the tenancy if they propose to withhold any of your deposit.

The landlord/agent should attempt to resolve the dispute within 10 working days. If they cannot do so, or you remain dissatisfied, the dispute should be referred promptly for resolution by the ICE or the courts.

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 about 40 working days. In summary, we will aim to apply the following timetable:

Action	Day
Dispute received (and deposit, if referred by landlord/agent)	1
Acknowledge receipt of papers if requested	2
ICE establishes that he can deal with the dispute	2
He informs and copies the papers to the other party(ies)	3
The other party(ies) tell(s) the ICE whether or not they want to contest the dispute	7
They submit their response and their agreement to his adjudication (and deposit, if not initially referred by Member)	13
ICE sends all the papers to the adjudicator	16
The adjudicator submits her/his report	26
ICE sends out his decision	35
Deposit paid out by The Dispute Service in compliance with the ICE's decision	40

The ICE will not normally accept disputes submitted six months or more after the end of the tenancy.

Summary

For the tenant

- Is your dispute one which falls within the remit of TDS?
- Do you want to take the time and trouble to pursue it?
- Do you want the ICE to adjudicate, or would you prefer to go to court?
- If so, are you willing to accept his adjudication as final and binding?
- Have you completed Form TDS 2 *Notification of a dispute*, and sent the ICE all the evidence you want to be taken into account?
- Are you within the time limits?

For the landlord/agent

- Have you paid your subscription in full?
- Does the tenant have a written agreement, which makes proper reference to TDS?
- Did you give the tenant the Prescribed Information?
- Do you have a check-in inventory and a check-out inventory or report?
- Do you want to take the time and trouble to pursue this dispute?
- Do you want the ICE to adjudicate, or would you prefer to go to court?
- If so, are you willing to accept his adjudication as final and binding?
- Have you completed Form TDS 6 *Response to a dispute*, and sent the ICE all the evidence you want to be taken into account?



THE DISPUTE SERVICE

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