



Tenancy Deposit Scheme

Adjudication Digest

No 12/2014

Winter blues.....

- 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.

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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 parties involved have been removed and this is only a brief summary of the dispute.

Winter blues.....

Amount of deposit in dispute:	£ 675.00
Dispute initiated by:	Landlord
Award made:	
Tenant	£ 275.00
Landlord	£ 400.00
Agent	£ 0.00

This month's case considers a claim for damage caused by burst pipes during the Christmas period when the tenant was absent from the property. This dispute arose after the tenant returned from a short visit to friends over Christmas, to find that a ceiling had collapsed and there was water damage to the room below and to its contents.

The landlord claimed that the tenant had failed to leave the property with adequate heating during his absence and this had caused the pipes to freeze and burst, leading to the damage. The agent provided a report from a building contractor on the remedial work required. The report indicated that the heating system appeared to have been set to come on for 2 hours twice each day but no information was given about the heating level. The contractor also noted that the existing system was old, including the pipework and lacked adequate insulation. A quotation was provided for a replacement system, repairs to the ceiling and walls, the pipework and full insulation of the loft area. The landlord said that he was not willing to make a claim on his insurance as the damage was the tenant's responsibility and the excess on the policy was a prohibitive £400.

The tenant says that the heating remained on a timer in his absence, set at the same timing and heat level as when he lived in the property. The tenant added that he had complained to the agent that the cost of heating the property was extremely high as the system was old and inefficient. He says that the problem was caused by the exceptionally cold weather over the period. In addition, the tenant provided a number of photographs of damage to his own property caused by the ceiling collapse. He considered that the landlord should compensate him for that damage, or at least add these items to his own insurance claim.

The inventory from the start of the tenancy showed the property to be in reasonable decorative order throughout. The lease provided that the landlord was responsible for ensuring that installations for the supply of heating and water were in a reasonable state of repair and that an insurance policy was in place to cover the premises and the landlord's contents against the risks usually covered by a comprehensive policy, on the terms the landlord regarded as appropriate. The tenant was responsible for either draining the system down, or leaving the property with sufficient heating to prevent pipes freezing in the event that the property was unoccupied for more than 48 hours.

There was no dispute in this case that damage had occurred in the property during the course of the tenancy. The principal issue for the adjudicator to decide was where the responsibility for the damage lay.

The adjudicator was satisfied from the evidence provided that the tenant had left the property with the heating set to come on for a portion of the day.

It was not clear the level of heating provided and the apparent inefficiencies of the system meant that it would have been difficult to assess how much heating was sufficient to prevent the pipes from freezing.

The adjudicator concluded that responsibility for the problem should be shared between the tenant and the landlord. Although the tenant may have taken further precautions to leave the heating set at a higher level/for longer, the contractor's report suggested that the system was insufficiently insulated, and the problem may therefore have arisen whether the tenant was in occupation or not.

In the circumstances, the adjudicator concluded that the tenant should be responsible for paying the landlord's insurance excess of £400. The adjudicator was unable to take account of the tenant's potential counterclaim relating to damage to his own goods. It was the tenant's responsibility to arrange insurance for his own belongings.

So what are the key points here?

- It may have assisted the adjudicator in this case if the landlord had provided the tenant with specific instructions about heating the property in cold periods. A tenant, who will have less detailed knowledge about the property than the landlord, will not necessarily be in a position to assess how the heating should be set in these circumstances.
- The adjudicator is unlikely to regard it as reasonable for the tenant to leave the heating on constantly when absent from the property for a period of time to avoid the possibility of pipes freezing.
- In general, the landlord should not be obliged to make a claim on their insurance policy unless the terms of the lease require him to insure the item subject to the dispute. The adjudicator will find it helpful to know the extent of the landlord's uninsured loss (excess) in insurance claims or disputes involving issues potentially covered by an insurance policy.