

Adjudication Digest February 2015

“Leaving early? Just sign here...”

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.

“Leaving early? Just sign here”

Amount of deposit in dispute:	£ 60.00
Dispute initiated by:	Tenant
Award made:	
Tenant	£ 0.00
Landlord	£ 60.00
Agent	£ 0.00

In this month's case an agent was faced with a joint tenant who wanted to leave the property early. As part of their exit from the tenancy, the agent arranged for all the current tenants, and the new replacement tenant, to sign a document agreeing terms for the early release of the tenant, as detailed below.

- The departing tenant was required to pay an administration fee, and arrange for the replacement tenant to pay the costs of their credit-referencing, in advance. Credit checks needed to be completed satisfactorily and these payments made before the change in tenants could proceed.
- The agents recognized that a check out was not possible whilst the tenants were still living at the property, but that they also needed to make allowance for the property not being in the condition it was when the tenant first moved in (carpets, windows and the oven not professionally cleaned etc). To cater for this the departing tenant was also required to agree to a percentage deduction from their deposit share that amounted to £60.00. This was said to “offset the change in the state of the property and to contribute to any final cleaning charges”.
- The replacement tenant was to pay the agent the same amount of deposit as the departing tenant's share, less the £60.00 deduction.
- All tenants who were to continue to live at the property were to sign a new replacement tenancy agreement.
- Once all arrangements were complete, the departing tenant would receive the balance of the deposit share, and the replacement tenant would move in.

Tenancy Deposit Scheme

All of the arrangements detailed above were agreed and took place. The departing tenant then had misgivings and challenged the deposit deduction on the basis that there was no evidence of the property's condition at the time he left.

The adjudicator concluded that the deduction was agreed to as a condition of the tenant's early release from the tenancy, was clearly set out, and was modest in its amount. In essence, the landlord could have held all the tenants to the terms of the original fixed term tenancy. Instead, she allowed them to renegotiate their contract to allow for a replacement tenant.

So what are the key points here?

- Agreeing the payment of fees to secure the early release of a tenant from the property is permissible, but make sure - as this agent did - that terms are clearly set out and easily understood.