



Tenancy Deposit Scheme

Adjudication Digest No 01/2014

There's no argument, you signed for it.....

- 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 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.

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

In this month's case, the tenant raised the dispute, claiming that they had a reason for not paying all of the rent during their tenancy. They also objected to paying for the check out fee because they were not present at the check-out inspection and did not believe one had been done.

The landlord's agent argued that the two deposit deductions claimed for were outside the scope of the adjudication process, because the tenant had agreed to pay the rent and a check-out fee in the tenancy agreement. They tried to have the dispute 'struck out' on the basis that the amounts were clear, as were the reasons why they were owed. TDS advised why it was permitted to adjudicate in these circumstances. The agent refused to pay the disputed deposit to TDS and deducted the amounts claimed from it.

Fortunately, both the landlord and the agent also sent TDS a rent statement detailing the rent arrears, and a copy of the check out report. This allowed TDS to adjudicate on the actual merits of the dispute. The tenancy agreement confirmed the rent that the tenant was obliged to pay, and also confirmed that the tenant agreed to pay the cost of a check out inspection at tenancy end.

The adjudicator awarded the cost of the check out inspection, as they were satisfied that the tenant's contract with the landlord did indeed require them to pay it – but that it was also clear that the inspection had taken place. The tenancy agreement had also specified the exact sum to be paid by the tenant.

With regard to the claim for rent arrears, the adjudicator also awarded the sum due. TDS will not normally consider counterclaims against unpaid rent for the reasons explained below.

So what are the key points here?

- There is no reason why disputes that relate to previously ascertained charges of this nature cannot be referred to TDS. The adjudicator's role is not only to quantify how much a landlord may be entitled to receive but also to decide whether the landlord's claim is in fact valid. A tenant may have a defence to a claim for rent – for example they might be able to show that they have already paid, or that the landlord agreed to a rent free period in exchange for work done to the property by the tenant. Similarly, a tenancy agreement may well specify the amount of a check out fee and why a tenant has to pay it – but a tenant might be able to show that the inspection was never carried out or that they had already paid the check out fee separately.
- In this case the tenant had withheld rent because the heating had broken down at the property. The TDS adjudicator is not able to consider 'set-offs' or 'counterclaims' brought by tenants. In general terms, a set-off is where the tenant withholds some rent. This may happen either because the tenant has had to spend their own money doing repairs which they

feel the landlord should have done, or because the tenant wants compensation because there was something wrong with the property that the landlord should have fixed.

- A counterclaim is where the tenant claims compensation from the landlord, for example where the tenant's belongings were damaged by a leaking pipe. The adjudicator can still make decisions about deductions from the deposit, but tenants who want to use set-off, or bring a counterclaim, may have to take their landlord to court to get their claim resolved.
- The 'bottom line' is that it is not for the tenant, landlord or agent to decide whether a sum is actually in dispute or not. All the parties are equally entitled to ask an independent person – in this case TDS – to decide whether the proposed deductions are fair and reasonable.