



Adjudication Digest No 6/2012

- 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.

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.

Amount of deposit in dispute: £ 300.00

Dispute initiated by: Tenant

Award made:

Tenant £ 150.00

Landlord £ 150.00

Agent £ 0.00

But I told you it was there.....

This month's case concerns an argument over the condition of the property at the start and end of a tenancy – where much turned on who had said what, when, and to who.

The first part of the landlord's claim related a deduction of £150.00 for scuff marks in the hallway, bedroom, and kitchen. The agents pointed to their check in report, which they had asked the tenants to sign and return when they moved in - which made no reference to scuffs. The tenants did not dispute the presence of the scuffs, but pointed to the copy of the check in report which they had signed and returned to the agents on the day they moved into the property. The agents did not dispute receiving the signed and amended check in report from the tenants. It included notes from the tenants referring to the scuffs being present at that time. The landlord argued that the scuffs which the tenants had noted as being present at check in must have been caused by the tenants during their move in, as they were not there before. The evidence presented did not include any photographs of the scuffed areas of the property.

The adjudicator noted a clause in the tenancy agreement asking the tenants to amend (if necessary), sign, and return the check in report within seven days of moving into the property – failing which its condition was accepted. The agents accepted that a signed, amended check in report had been returned by the tenants, which stated the scuffs were present when the tenants moved into the property. The rest of the check in report referred to the other minor deficiencies in the property, sufficient for the adjudicator to be satisfied that the property was not in a newly decorated condition at the start of the tenancy. It was for the landlord to show that, on the balance of probabilities, his claim was justified. The adjudicator could not exclude the possibility that the scuffs were already present when the tenancy started. Had there been evidence to show that the property had been freshly painted throughout (for example a decorator's invoice and suitable references to this in the check in report, or dated photographs to supplement the description of the property in the check in report), the adjudicator might have been able to infer that the scuffs were more likely to have been caused by moving into the property.

The landlord's second claim was for a cost of £150.00 for changing the lock to the front door at the end of the tenancy due to the tenants having replaced it without permission. The tenants state that they changed the lock as it broke and that they handed in the new keys at check out. There was no evidence to show that they had reported the broken lock to the agent or landlord during the tenancy, given the landlord or agent the opportunity to remedy it first, and the existing lock had been disposed of.

The adjudicator took the view that the tenants should have reported the broken lock to the agents at the time it occurred and that the landlord was entitled to the reasonable cost of changing the lock in order to safeguard the property.

So what are the key points here?

- In deciding any claim against a deposit for issues such as cleaning or damage, TDS takes the view that all parties to a dispute are entitled to rely upon properly completed and reasonably detailed check-in and check-out reports as key documents recording the condition of the property at the beginning and end of the tenancy.
- Practice varies between formally 'checking in' tenants on the first day of the tenancy or giving them the report on the understanding that any alterations are notified to the landlord/agent within a set period of time - this is typically 7 days. Failure to respond within the timescale set is normally considered to be acceptance by the tenant of the accuracy of the report at the start of the tenancy. However any comments or amendments that are made by the tenant should be clearly noted and confirmed by the agent/landlord as agreed. Where a tenant returns a check in report with additional damage noted, take steps to either agree that damage existed or arrange for, and document, its repair. The check-in report should be duly updated with a copy retained by each party.
- The tenancy agreement used in this case was well written – but a failure to follow up the amended check in report let down the landlord. Make sure that check-in procedures are properly understood by tenants – and by your own staff.

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