



Tenancy Deposit Scheme

Adjudication Digest

No 05/2014

Making a transparent case.....

- 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.

Making a transparent case

Amount of deposit in dispute:	£ 327.00
Dispute initiated by:	Landlord
Award made:	
Tenant	£ 327.00
Landlord	£ 0.00
Agent	£ 0.00

In this month's case a landlord claimed £327.00 for damage to his patio doors. This claim was in two parts: the cost of initially making the door safe (£102.00) and then replacing glass and adjustments (£270.00).

No damage was noted to the patio doors in the check-in report – although little else was said about their condition. The check-out report states that the inner glass panel to one of the patio doors was missing and there were remnants of broken glass where it had been. The door did not close properly and was loose in its mounting.

The tenants say that the door blew in during a storm and was faulty at the start of the tenancy. They reported this to the agents and say that the contractor who came out to make the door safe agreed that the tenants were not to blame for the damage, although the adjudicator was not presented with any further evidence to support these statements.

The landlord provided details of an inspection report, which suggested that considerable force would have been required to cause the damage. No copy of the report itself was provided, only an extract quoted by the landlords in a letter to the tenants. The tenants had asked the landlord to provide the original report but this was not forthcoming.

Both parties produced a copy of the invoice for 'making safe' the patio door. It included on it a statement from the contractor that *"this door is old and in poor condition and we would not quote to repair only replace"*. The landlord argued that this showed that the damage was so extensive that replacement was the only reasonable option, and that the damage could only have been caused by the tenants.

The adjudicator was persuaded by the evidence that the patio door was old and not in good condition at the start of the tenancy. The check in report did not confirm its condition, and it seemed unlikely that the defects noted in the general age and condition of the door, noted by the contractor, occurred during what was a short tenancy. The adjudicator considered that this gave weight to the tenants' claims about the door being damaged because it was faulty or ill-fitting. In interpreting the contractor's comments, the adjudicator considered that these meant that the door was past its best, rather than that the tenants were solely responsible for its condition. The evidence presented suggested that the door was likely to have needed replacement soon even if this damage had not occurred.

The adjudicator also considered the Landlord and Tenant Act 1985, which makes it the landlords' responsibility to keep the structure and exterior of the property in repair, unless the need for repair arises because of the tenants' failure to act "in a tenant-like manner". Faced with the evidence presented, the adjudicator could not conclude that there was enough to shift responsibility from the landlords to the tenants.

So what are the key points here?

- Remember to make sure that check-in reports cover the property's condition fully. General or 'overarching' statements in inventory documents can be useful as a 'catch-all' – for example, to state that the property and its fixtures and fittings are in good condition unless otherwise noted.
- Where you intend to rely on something as evidence, produce the complete document. In this case, the landlord's comment that considerable force was needed to damage the door was not helpful without seeing the original report referred to.