


Tenancy Deposit Scheme

protecting tenancy deposits

Adjudication Digest

No 3/2011

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:	**£456.57 claimed for damage to a stereo**
Dispute initiated by:	**Tenant**
Award made:	
Tenant	£ 456.57
Landlord	£ 0.00
Agent	£ 0.00

Sounds reasonable?...

In last month's case study we talked about the pitfalls of leaving potentially valuable items in a tenancy property.

In a recent case a landlord had an expensive stereo system at the property, and was concerned about it getting damaged. He asked the agents to include a clause in the tenancy agreement saying that the tenants' agreed to pay for repairs to it, outside its warranty period.

The adjudicator accepted that this was an individually negotiated clause, signed by the tenants – indeed, the tenants did not dispute accepting that condition in their tenancy. What they did not accept was having to pay for repairs to the stereo when no damage had been caused by them. They said that they did not appreciate the extensive nature of repairs which the landlord argued he was entitled to claim for.

The landlord's evidence included a job card from the stereo manufacturer's engineer. This explained that the work carried out was to replace part of the stereo's mechanism – this was due to age/wear and tear. The engineer also had to upgrade the stereo's software because of subsequent improvements to the operation of that particular model. Importantly, the engineer went on to state that the repairs needed were not the result of any breakage.

The adjudicator was satisfied that the tenancy clause put an obligation on the tenants to pay for repairs to the stereo. But he did not consider that this meant costs of any nature – any award needed to be fair and reasonable, and 'repairs' are not the same as 'improvements'. There was no evidence the tenants had damaged or misused the

unit; instead it appeared to be a high tech unit that had become worn and needed updating. The adjudicator did not consider the tenant to be liable for costs incurred to upgrade the old system or that the clause was intended to "future proof" the landlord.

So what are the key points here?

- 'Special' clauses in a tenancy agreement need special handling – do they cover specific circumstances or special events?

- Communicating with the tenant about the need for repairs arose may have helped prevent this dispute – and would have been aided by the clause making it explicitly clear who was responsible for what.

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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