



## Adjudication Digest No 7/2011

- 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.

**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.**

<b>Amount of deposit in dispute:</b>	<b>£345.00</b>
<b>Dispute initiated by:</b>	<b>Agent</b>
<b>Award made:</b>	
<b>Tenant</b>	<b>£345.00</b>
<b>Landlord</b>	<b>£0.00</b>
<b>Agent</b>	<b>£0.00</b>

### **But it's not your bill...**

Many cases presented to us involve claims for unpaid utility bills. In this particular case, the tenant argued that payment of utility bills was a personal liability, and not something that the deposit could be used for. The agents relied on a clause in the tenancy agreement which obliged the tenant to “provide the agent” with utility bill receipts “before any part of the security deposit will be released.” It appeared that the tenant declined to present any receipts, arguing that it is a matter between them and their utility provider (in this case, electricity).

The adjudicator agreed with the tenant’s argument that notwithstanding the obligations of the tenancy agreement, the electricity bill was primarily a matter between a tenant and the utility supplier, unless there was evidence of loss suffered by the landlord. There was nothing in the tenancy agreement that stated the tenant should pay utility costs directly to the landlord and no evidence was presented to suggest that liability for the debt had transferred to the landlord. Equally, there was no suggestion that the landlord had to bear any costs, for example in reconnecting the supply or re-instating a meter which the tenant had changed.

In order to make a successful claim from a tenant’s deposit, the landlord needs to be able to show that a breach of a tenancy obligation by the tenant has caused a loss to the landlord. Although the tenant did not provide evidence of receipted bills, the landlord was not able to demonstrate any loss to justify a deduction from the deposit.

### **So what are the key points here?**

- Particular care needs to be exercised in cases such as this in order to determine where responsibility for payment lies. Some tenancy agreements will state that tenants must pay all utility and council tax bills, and that the landlord may claim the cost of these from the deposit if any remain outstanding at the end of the tenancy. However a landlord will need to demonstrate that (s)he has, or will, suffer a financial loss as a result of a tenant's non-payment.
- An adjudicator will want to see whether the disputed utility bills are in the name of the tenant(s), and not the landlord. Tenancy agreements will often specify that the tenants are to transfer utility accounts into their own name. In those circumstances, the liability for their payment rests with the tenants, not the landlord and any recovery action would be taken against the tenants directly. In such cases the landlord is unlikely to be able to show that (s)he has, or will suffer a financial loss as a result of a tenants' non-payment. The position may be different in cases where the tenancy agreement requires the tenants to pay for (their share of) the utilities used during their occupancy, but does not require them to transfer utility accounts into their own name; or the landlord can demonstrate an unpaid utility bill, enforcement action for which will be taken against him rather than the tenants.

- We have recently introduced a modification to our procedures in cases like this where the tenant is seeking the return of a deposit, which is being retained because of a clause requiring the tenant to provide proof of payment. In future, we shall place the case on hold and ask the tenant to provide proof of payment and the landlord to provide evidence of loss. Usually, we will allow 21 days for evidence to be produced either way, unless the tenancy agreement allows for a longer period. However, unless the landlord can show a loss, we are unlikely to make an award in his favour, even if the tenant fails to provide proof of payment.

## STOP PRESS !

The Flood and Water Management Act 2010 has a provision for the requirement of landlords to provide water companies with tenants' contact details. This is to prevent tenants leaving properties without providing water companies with appropriate forwarding addresses and leaving unpaid bills. Should the landlord fail to comply with this provision, he or she may become jointly and severally liable for the invoices for water usage at the rented property.

When these changes are enforced, they will place a significant new obligation on landlords. They will also give the water companies a substantial advantage over other utility providers who do not have the benefit of this kind of statutory protection. To prepare, landlords and agents should consider amending their tenancy agreements to specify that tenants must provide evidence of the water bill being paid to date, otherwise it will be deducted from the deposit. Agents should also consider if they need to amend terms of business pointing out to landlords that this requirement must be met.

We have been advised by DEFRA that the government will shortly be consulting on draft regulations specifying the details which need to be provided, as well as considering an alternative, voluntary scheme. Landlords and related organisations will have the opportunity to submit evidence to this consultation. Consultation dates are to be announced by DEFRA.

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