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# Leaving a bad smell

Adjudication Digest December 2018

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:** £535.00

**Dispute initiated by:** Landlord

<b>Award made:</b>	<b>£535.00</b>
<b>Tenant</b>	<b>£260.00</b>
<b>Landlord</b>	<b>£275.00</b>
<b>Agent</b>	<b>£0.00</b>

In this month's case, a landlord claimed £535.00 for redecorating several areas to the property to remove marks and stains from the walls and to remove strong cooking smells. The estimate provided by the landlord included the removal of marks and grease to the wall around the cooker hood in the kitchen and repainting interior walls to remove cooking smells. The check-out report confirmed the marked walls and referred to the strong smell of cooking. The landlord explained that this remained in the property after a deep clean and professional carpet cleaning, producing invoices to show the work that was done. The property had been newly redecorated throughout a little over two years before.

The tenants argued that the deterioration in the property's condition was the result of wear and tear, and that cooking smells were inevitable in any property over time. They had already agreed to pay for the cleaning carried out and felt that this was enough to deal with the problem.

Having compared the evidence of the property's condition at the start and end of the tenancy, the adjudicator was satisfied that the marks and stains to the walls identified exceeded fair wear and tear. In relation to the cooking smells, the adjudicator took the view that the tenants were under an obligation to leave the property at the end of the tenancy in the same state and condition as at the start of the tenancy, allowing for fair wear and tear. This includes not only the visual appearance of the property but also smells, whether caused by normal activities, such as cooking, or prohibited activities, such as smoking.

The adjudicator was satisfied that the marks to the walls shown in the check-out photographs and the lingering smell of cooking also identified at check-out exceeded what would be considered reasonable. The landlord's evidence also included invoices from cleaning contractors, which detailed the work they had done and stated that the cooking smell remained.

The adjudicator was able to make a deduction from the deposit for a contribution towards the cost of redecorated the affected areas. Tenants are not responsible for fair wear and tear and landlords are not entitled to betterment. Given that it was over two years since the property had previously been repainted, the adjudicator considered that a fair and reasonable contribution towards redecoration costs would be £275.00.

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

When making a claim, a landlord needs to make sure they claim the most appropriate remedy. This will normally mean that a more expensive solution will not be justified where there is a more economic alternative. In this case, the landlord needed to be able to show that cleaning would not solve the problem, as this would be the most likely solution for the adjudicator to consider first.

One approach would be to obtain a written opinion from a suitably competent contractor stating whether they considered cleaning would solve the problem. An alternative approach, as in this case, was to attempt the cleaning to see if it worked. The landlord, very sensibly, asked the cleaning contractors to confirm the work they did, and that the cleaning smells remained. This was key to the adjudicator being able to accept that the landlord had done their best to sort the problem and that the smells remained, nonetheless.

The tenants had already agreed to pay for the cleaning attempted, but had they not done so the landlord could have claimed these costs as well as the contribution towards redecoration. As explained above, this was a reasonable cost for the landlord to incur in the first instance, and when the cleaning failed to solve the problem, the landlord's only other alternative would be to redecorate.