



Key Documents



Who should read this?



Tenants



Agents



Landlords

Insured

Rules for the Independent Resolution of Tenancy Deposit Disputes

Contents

General objectives	6
Fundamental principles	6
Stage 1: At the end of the tenancy	9
Stage 2: Informal Dispute resolution by Members	12
Stage 3: Formal Dispute resolution where the parties cannot resolve the Dispute	12
Dispute resolution by TDS	16
Joint tenancies	19
Complaints	20
Amendments	20

Definitions

In these Rules, certain words and phrases have a special meaning. These words or phrases are indicated by using initial capital letters, and their meaning in the context of these Rules is set out below. Definitions given in these Rules in the singular shall, where the context allows, include the plural meaning and vice versa.

1988 Act means the Housing Act 1988, in which the statutory requirements for ASTs are contained, and any statutory amendments to it, and secondary legislation made under it.

2004 Act means the Housing Act 2004, in which the statutory requirements for tenancy Deposit protection are contained, and any statutory amendments to it and secondary legislation made under it.

Adjudication means a decision about a Dispute made by an Adjudicator.

Adjudicator means a person appointed by TDS to resolve Disputes. “Adjudicator” shall, where the context allows, include a mediator, arbitrator or other expert appointed to resolve a Dispute by means other than litigation.

ADR means alternative Dispute resolution provided by TDS to facilitate the resolution of Disputes as an alternative to court proceedings.

Agent or **Letting Agent** means an individual or company appointed by an owner to let or manage property on his behalf.

Assured Shorthold Tenancy or **AST** means an assured shorthold tenancy as defined in the 1988 Act (as amended) and is the usual form of letting for a private Tenant renting from a private Landlord; where the tenancy began on or after 15 January 1989; the annual rent does not exceed £100,000; the house or flat is let as separate accommodation; and is the Tenant’s main home. A non-AST means a tenancy that is not an Assured Shorthold Tenancy.

Board means the Board of Directors of TDS.

Calendar Day or **day** means any day of the year, including Saturdays, Sundays and bank holidays. The 2004 Act uses both “days” (i.e. Calendar Days) and “Working Days” to calculate deadlines. TDS only sets a deadline in Working Days if it is a statutory deadline. Unless a deadline is given in Working Days, it should be assumed that the deadline is calculated in Calendar Days. “Promptly” means as soon as reasonably practicable in the circumstances. TDS will assume that a party has acted “promptly” in response to a trigger event if they have acted within 10 days of that trigger event.

Client Account means an account set up in a UK bank, building society or other financial institution in the UK specifically to hold Client Money. The financial institution operating the account must not be entitled to make withdrawals from the account or levy charges against the account if the account holder owes money to that institution or fails to comply with the terms and conditions applicable to the account or is in some other way in default. The Deposit holder must not keep any of its own money in a Client Account or use money from a Client Account for its own purposes.

Dispute means a dispute at the end of an AST about the allocation of a Deposit protected in the Scheme.

Disputed Amount means that sum of the Deposit over which the Landlord and Tenant cannot reach agreement at the end of a tenancy.

Dispute Application Form or **Dispute Response Form** means the forms so-named available from TDS’ website, which may be completed on paper or on-line using the TDS website.

Joint Tenancy and **Joint Tenants** means a tenancy with two or more Tenants, each of whom is jointly and severally liable for the performance of the obligations in, and the discharge of liabilities under or in connection with a tenancy.

Landlord means an individual or individuals, or a **Corporate Landlord**, who own(s) an interest in and let(s) residential property. Reference to a Landlord includes a reference to any person (including an Agent) acting on a Landlord's behalf in relation to a tenancy. Reference to a Landlord also includes any one or more joint Landlords. Irrespective of the terms of any partnership agreement, declaration of trust or other arrangement between joint Landlords, TDS will regard all Landlords of a tenancy as being jointly and severally liable for the Landlord's obligations and will treat the authority of any one or more joint Landlords as binding on the others.

Lead Tenant means in a Joint Tenancy, where one of the Joint Tenants is authorised to act for and on behalf of all Joint Tenants in relation to any Deposit Dispute.

Let Only tenancy means an AST where a Member introduced the Tenant to the property, but the property is not managed by the Member. Let Only tenancies will include situations where a Member has registered the Deposit on the TDS tenancy database but does not fully manage the tenancy. For the purposes of these Scheme Rules a Let Only tenancy is one which has been designated as such by a Letting Agent on the TDS tenancy database.

Member means an Agent or Landlord who has joined, and is a current Member of, the Scheme and Membership shall mean the state of being a Member, or the Members of the Scheme as a whole, as the context requires.

Membership Subscription is the charge paid by an Agent or Landlord to be a Member of the Tenancy Deposit Scheme.

Ministry means the Ministry of Communities and Local Government (MHCLG), or any other Government Department which becomes responsible for overseeing tenancy deposit protection schemes.

Non-AST see Assured Shorthold Tenancy.

Notice means written Notice, sent by ordinary first class post or an equivalent service that offers next day delivery in the majority of cases, to the postal address supplied to TDS by the relevant party and such Notice will be deemed served 2 Working Days after posting. Notify shall mean the giving of Notice and Notification shall be interpreted accordingly.

Prescribed Information means such information as a Landlord is required to provide to a Tenant and any Relevant Person, in accordance with the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 (Statutory Instrument 2007 No 797 available to view at www.legislation.gov.uk) or such other information as may be prescribed from time to time pursuant to section 213(5) of the 2004 Act.

Protect means register with the Scheme and remain for the time being entitled to the Scheme's benefits of insurance protection and access to the ADR process. **Protection, Protecting and Protected** shall be construed accordingly.

Relevant Person means any person who paid the Deposit or any part of it on behalf of a Tenant.

Renewed AST means a second or subsequent AST where the immediately preceding AST was a letting of the same or substantially the same property to the same Tenant (or to one or more persons who were previously one or more of the Joint Tenants of the immediately preceding AST) whether or not the property is let by the same Landlord, and whether or not the property is let on different terms and conditions. References to a Renewed AST shall include references to any contractual extension of an AST and any Statutory Periodic Tenancy where there is a material change in the terms from the fixed term AST (e.g. change in rent, change in Tenant, change in amount of Deposit), but shall not include a Statutory Periodic Tenancy where the terms are in all material respects the same as the rent payable under the fixed term AST.

Rule means any Rule published by The Dispute Service Ltd in relation to the operation of the Scheme.

Scheme or Statutory Scheme or Tenancy Deposit Scheme means any one (and, as the context requires, each and all) of the schemes run by TDS (set up in accordance with the 2004 Act and operated under a service concession agreement to the Ministry) for the Protection of Deposits and the resolution of Disputes about their return.

Scheme Administrator means The Dispute Service Ltd.

TDS, TDS Ltd or The Dispute Service means The Dispute Service Limited, a Company limited by guarantee registered in England and Wales with registered number 4851694, authorised by the Ministry to operate the Statutory Scheme. It has no share capital and has members rather than shareholders. Any surpluses are re-invested in the business.

TDS Direct means the scheme run by TDS, which permits tenants only to raise disputes.

Tenancy Deposit Protection Charge means the amount payable by Members to TDS for protecting an individual Deposit in the Scheme. The Rules stipulate the circumstances in which a Tenancy Deposit Protection Charge must be paid.

Tenant means one or more individuals who holds or possesses property under an AST. The expression Tenant includes Joint Tenants and former Tenants by whom a Deposit was paid

Undisputed Amount means as much of the Deposit as the Tenant and the Landlord have agreed is to be paid either wholly to one of them or partly to the one and partly to the other.

Working Day means a day that is not a Saturday or Sunday, nor any day that is a bank holiday under the Banking and Financial Dealings Act 1971 or any customary or public holiday in England and Wales. See also Calendar Day and Day.

We/Us/Our means The Dispute Service Limited.

Write, Writing and **Written** include electronic communications within the meaning of Section 15 (general interpretation) of the Electronic Communications Act 1971.

- 1 General objectives**
- 1.1 This document sets out the Tenancy Deposit Scheme rules relating to the independent resolution of tenancy disputes. These Rules should be read in conjunction with the relevant Membership Rules of the Tenancy Deposit Scheme.
- 1.2 The Scheme is an authorised tenancy deposit protection scheme, made available under the 2004 Act. Its objectives are to:
- 1.2.1 ensure that Deposits are held securely and are available for the person entitled to them when the tenancy ends;
- 1.2.2 resolve Disputes about the allocation of Deposits quickly, cheaply and fairly.
- 1.3 These Rules are designed to ensure that these objectives are met. They apply to all Landlords, Agents and Tenants connected with a Deposit that is Protected by the Scheme.
- 2 Fundamental principles**
- 2.1 Where there are Joint Tenants, TDS will require one Tenant to be appointed as Lead Tenant. The Lead Tenant must be authorised to act for and on behalf of all Joint Tenants in relation to any Deposit Dispute.
- 2.2 TDS will not consider Disputes until after the tenancy has lawfully ended.
- 2.3 The Deposit belongs to the Tenant unless and until the Landlord can establish a valid claim to the Deposit (or part of it).
- 2.4 When the tenancy ends, the Landlord and the Tenant must make every effort to resolve any Dispute by negotiation.
- 2.5 The parties must be able to show that they have made reasonable attempts to negotiate a resolution of the Dispute before referring it to TDS. Failure to do so may result in the Dispute being returned to the parties to attempt resolution. Persistent neglect of this requirement by Members may be taken into account when considering the renewal/termination of Membership.
- 2.6 Members must behave reasonably and co-operate fully with TDS to ensure that Disputes are resolved efficiently and effectively.
- 2.7 The Landlord and the Tenant must meet the deadlines set out in these Rules.
- 2.8 TDS does not charge the Landlord, Tenant or Agent for resolving a Dispute, as the costs of running the service are included in overall Membership Subscriptions and Tenancy Deposit Protection Fees. Members may make a fair and reasonable charge to their clients and customers to defray these expenses.
- 2.9 Each party to a Dispute will be responsible for their own costs of preparing and submitting their case. The Adjudicator will not award costs or expenses incurred in preparing a Dispute or during negotiations, as TDS does not regard such costs as costs of enforcement. (The Adjudicator may at their discretion award costs incurred in enforcing or remedying a Tenant's obligations – for example solicitor's costs for regaining possession, agent's fees for arranging contractors to carry out cleaning or repairs – as long as it was reasonable to incur the cost, the charges themselves are reasonable and supported by invoice or court order, and the tenancy agreement states that the Deposit may be used for this purpose).
- 2.10 Members must ensure that they correctly ascertain the Disputed Amount and promptly pay the correct Disputed Amount to TDS when requested to do so.

- 2.11 TDS has the discretion to use any kind of ADR, such as mediation, where it believes that method to be appropriate, but in most cases ADR will usually involve an independent review by an Adjudicator. The Adjudicator will assess the evidence submitted by the parties and determine how the Disputed Amount should be allocated between the parties. The ADR process is not investigative. It is for the party bringing the Dispute to provide documentary evidence to support their allegations, and it is for the respondent to provide documentary evidence to refute those allegations. Material which is received too late will be returned and will not be taken into account. No additional documentation will be considered after TDS has referred the case for ADR.
- 2.12 The parties do not attend any hearing and the Adjudicator will not visit the property. All the evidence which a party to a Dispute wishes to be considered by the Adjudicator should be submitted with their case. Parties should not assume that the Adjudicator will raise any enquiries with them or ask for any evidence they may have omitted. The burden of proof will be on the Landlord to justify any claim to the Deposit.
- 2.13 TDS will normally only seek further evidence if it is clear that particular evidence critical to ADR exists, was intended to be submitted, and was omitted in error. TDS will not normally request or take into account evidence which is referred to in a submission as being 'available on request'. TDS will not be liable for failing to consider any evidence if that evidence was not submitted, or if it was submitted late.
- 2.14 The decision of the Adjudicator is final and binding. By submitting a Dispute for ADR, Landlords, Tenants and Agents agree to accept the outcome and acknowledge that the Adjudicator's decision cannot be appealed except by applying to the court. There are strict time limits involved in making an application to court and any costs incurred are likely to be significant. There is no right of appeal to TDS or the Ministry.
- 2.15 TDS can only make an award in respect of sums claimed by a Landlord against a Deposit paid by a Tenant or a Relevant Person. If the Tenant or Relevant Person raises issues which are intended to be a counter-claim against the Landlord they must pursue those issues with the Landlord directly (taking independent legal advice if necessary). The Adjudicator will not take into account any issues raised in a possible counter-claim when deciding how the Disputed Amount should be allocated.
- 2.16 The Adjudicator will not take into account any attempt by the Tenant to justify a set-off (e.g. where the Tenant claims rent was withheld because repairs were not carried out). Tenants must take up such issues with the Landlord directly, as for counter-claims.
- 2.17 A Tenant who wishes to raise a substantial counter-claim or set-off defence may consider that it is in their interest to pursue their case through the courts (who can deal with such matters) rather than through ADR. However, if the Deposit is not the subject of court proceedings, they may still submit a case for ADR (subject to these Rules).
- 2.18 TDS will assume that, in all their dealings with TDS, Agent Members are acting within their Landlord client's authority, and in accordance with the terms of the Agent's agreement with their client. TDS shall not be liable to a Landlord or an Agent or any other person if an Agent acts outside their authority or fails to carry out their client's instructions. TDS may, at its discretion, allow a third party who is not an Agent Member to act on behalf of a Landlord or Tenant. That third party will need to submit Written authority from the Landlord or Tenant, as applicable, consenting to the third party acting on their behalf. TDS may ask the third party to confirm in Writing that they agree to comply with the applicable parts of these Rules. TDS will only make a payment to the third party with the Landlord's or the Tenant's or a Relevant Person's (as applicable) Written authority to make such payment.

- 2.19 TDS can only make awards up to the amount of Deposit (or, where there are agreed deductions, the amount of Deposit that remains after the agreed deductions have been made). If the sum claimed is in excess of the Deposit (or the available balance of the Deposit after agreed deductions) the Adjudicator will consider the extent to which the landlord's claim(s) to the deposit is justified based on the evidence submitted. The Adjudicator's report will explain briefly the reasons for the award and show the amount awarded. If the Landlord wishes to pursue the Tenant for any money over and above the Deposit (or remaining balance after agreed deductions), they may need to seek independent advice about what action they could take, as TDS is unable to deal with such matters.
- 2.20 If the Member sends TDS an amount that is higher than the Disputed Amount, TDS will assume, in the absence of any clear indication to the contrary, that the surplus is to go to the Tenant and pay it to them. If the Disputed Amount is more than the Adjudicator awards to the Tenant, TDS will pay the Tenant's award and return the remainder of the Disputed Amount to the person entitled to it.
- 2.21 The Adjudicator will consider, but is not obliged to accept, the Landlord's evidence of sums claimed or incurred. The Adjudicator will only award what they consider to be the reasonable cost of making good. In determining the amount, the Adjudicator may have regard to publicly available sources of information such as high street stores, and services and products available on the internet.
- 2.22 In making awards for the reasonable cost of making good, Adjudicators will take account of the age and quality of the item at the start of the tenancy, and the length of the tenancy. An allowance will be made for fair wear and tear during the tenancy (taking into account the permitted number of occupants and other terms of the tenancy agreement). Any award is intended to compensate a Landlord for the loss in value of an item or the property, where the loss in value is caused by the Tenant during the tenancy. Landlords are not entitled to receive new for old or in any other way be better off than they would have been if the Tenant had complied with their obligations in the tenancy agreement.
- 2.23 TDS will assume that the parties have stopped negotiating about the Dispute when it is submitted to TDS, unless there is clear evidence to the contrary. TDS has no liability to the Member or to the parties in the Dispute if the Adjudicator allocates the Deposit in a way that conflicts with an agreement that the parties have already reached between themselves, if the parties did not clearly make TDS aware of that agreement before the Adjudicator started to review the case. Where TDS is not aware of the existence of a binding agreement about the apportionment of the Deposit, TDS will pay the award decided by the Adjudicator (recovering any shortfall from the Member where applicable). It will then be for the parties to enforce the terms of any separate agreement they had previously reached about the Deposit.
- 2.24 The Adjudicator will not re-open any issues that are already the subject of a binding agreement by the time a Dispute is referred for ADR. If a Member sends TDS an amount that includes a sum which has clearly already been agreed by all the parties (including, where applicable, all Joint Tenants), TDS will usually pay out that sum in accordance with the agreement. The Adjudicator may, in their discretion, re-open issues that have already been agreed or partly agreed as long as the agreement has not become legally binding. The Adjudicator may take into account any offers made by either party unless clearly stated to be made WITHOUT PREJUDICE. A party who fails to accept an offer before TDS refers the case to the Adjudicator will not be able to challenge an Adjudication solely on the grounds that the offer was higher than the Adjudicator's award.

- 2.25 TDS may dispense with the need for Notification, authority, consent or agreement, from any party to be in Writing where there is other evidence (reasonably satisfactory to TDS) that the party is unable to communicate in Writing for reasons relating to a disability. In such cases, authority etc. will still need to be given, albeit in some form other than Writing.
- 2.26 TDS' Adjudicators are trained, experienced and have the skills necessary to make fair and reasoned decisions. They operate in accordance with TDS' Adjudicators' Code of Conduct. TDS encourages a consistent approach to certain commonly recurring types of dispute. However, the facts in cases may differ and Disputes may be more complex than the parties themselves realise.
- 2.27 The Adjudicator will consider the Dispute submitted to him/her within the framework of the law applying in England and Wales in a manner that is fair and proportionate to what is in dispute. The Adjudicator will make their decision on the balance of probability and make an award according to what they consider fair in the circumstances of the Dispute.

3 Stage 1: At the end of the tenancy General

- 3.1 Members may make payments from the Deposit if both the Landlord and the Tenant agree. Whilst any part of the Deposit remains in dispute the Disputed Amount must not be paid to either party until directed by an Adjudicator or by the courts, unless payment is made in accordance with Rules 3.28 to 3.36 (which apply where a landlord or tenant cannot be contacted).

If there are no deductions

- 3.2 If all the parties agree that there should be no deductions from the Deposit, the Member must promptly return the Deposit to the Tenant.
- 3.3 The Member must promptly confirm to TDS that the tenancy has ended.

- 3.4 TDS will then contact the Tenant(s) to inform them that the Member is ready to end Protection of the Deposit. The Tenant (or one of Joint Tenants) may object to ending Protection of the Deposit if the tenancy has not ended. In such cases, the Deposit will remain Protected.
- 3.5 If the Tenant does not receive the Deposit within 10 days of asking the Member to return it (beginning with the date the request was made) the Tenant is entitled to apply to TDS for ADR.

If the Landlord or Agent wants to make a deduction

- 3.6 The Member must promptly return to the Tenant any part of the Deposit that the Landlord or Member does not intend to claim.
- 3.7 The Member must contact the Tenant in Writing promptly after the end of the tenancy if they or the Landlord propose to make any deductions from the Deposit. The Member must describe the nature of each deduction and the amount proposed. If the exact amount is not known, the Member must give the Tenant an estimate, and make it clear to the Tenant that the estimate may be revised once quotations have been obtained. The Member's letter or email should ask the Tenant to indicate which (if any) of the proposed deductions s/he agrees, and which (if any) s/he disputes. The Member's letter or email must refer to these Rules and the Scheme Leaflet available to view on the TDS website (www.tenancydepositscheme.com), copies of which are also available from TDS upon request.
- 3.8 The parties should try to reach agreement where they can, and narrow down the issues in dispute. The Member must promptly pay, to the person entitled, any deductions that have been agreed.
- 3.9 If the Tenant does not agree to any proposed deduction from the Deposit, the Tenant should try to inform the Member of his/her objection as soon as practicable after being notified of the proposal.

- 3.10 The Member must give the Tenant a reasonable time in which to say whether they object or agree to proposed deductions. The Member must not take the Tenant's failure to object as an indication of the Tenant's agreement to the proposed deductions.
- 3.11 If either party does not receive the share of the Deposit to which they believe they are entitled within 10 days of asking the Member to return it (beginning with the date the request was made) that party is entitled to apply to TDS for ADR (except where the deposit is covered by the TDS Direct scheme where only the tenant can raise a dispute).

Agreed deductions

- 3.12 If the Member and Tenant agree that a proposed deduction is fair and correct, there is no Dispute about that deduction. The Member must promptly pay the Landlord and the Tenant the amount they have agreed is due to each.
- 3.13 After the Member has paid the parties the agreed amounts, and if none of the Deposit remains in dispute, the Member must promptly confirm to TDS that the tenancy has ended.
- 3.14 TDS will then contact the Tenant(s) to inform them that Protection of the Deposit can be ended. If a Tenant (or one of Joint Tenants) objects to ending Protection of the Deposit, the Deposit will remain Protected.
- 3.15 If the Member and Tenant are able to agree some deductions but not others, the Member must promptly pay the Undisputed Amounts to the person(s) entitled.
- 3.16 If any party does not receive their agreed share of the Undisputed Amount within 10 days of notifying the Member of their agreement (beginning with the date they informed the Member) that party is entitled to apply to TDS for ADR (except where the deposit is covered by the TDS Direct scheme where only the tenant can raise a dispute).

- 3.17 The Member must retain any Disputed Amount until either (a) all the parties agree how it should be allocated, or (b) there is a final court order authorising payment, or (c) TDS directs the Member to send the Disputed Amount to TDS. The Member may then pay the Disputed Amount in accordance with (i) the parties' agreement, (ii) the court order or (iii) TDS' direction, as the case may be.

Disputed deductions

- 3.18 Where the parties are not able to agree about a claim on the Deposit, they may apply to TDS for ADR if they have not been paid within 10 days of asking to receive the Disputed Amount (beginning with the date the request was made). References in these Rules to the parties who are able to raise disputes are to be read in the light of Rules 3.19 and 3.20 below.
- 3.19 The Housing Act 2004 as amended requires TDS to permit tenants to raise disputes, in accordance with these scheme rules. In addition to the requirements of the legislation, TDS may at its discretion:
- 3.19.1 permit specified member(s) or non-member landlord(s) to raise disputes;
- 3.19.2 and, following consultation, restrict the ability of all or specified member(s) or non-member landlord(s) to raise disputes, where their use of the dispute resolution scheme is in TDS' opinion excessive or unreasonable in relation to the fee they are paying to protect deposits.
- 3.20 TDS members who are using the TDS Direct scheme are not able to raise disputes themselves and nor may their non-member landlords.

- 3.21 No application for ADR may be submitted to TDS later than 3 months after the end of the tenancy. If no claim for ADR has been submitted within 3 months after the end of the tenancy, the parties will need to negotiate a settlement or use some other means of resolving their dispute (for example, court proceedings).
- 3.22 TDS will not refer a Dispute for ADR if the Dispute is already the subject of court proceedings, or if the parties have reached a legally binding agreement on the allocation of the Deposit.
- 3.23 Where only part of a Disputed Amount is subject to court proceedings or is the subject of a binding agreement, TDS may (in its discretion) proceed to refer the remainder of the Dispute to ADR.
- 3.24 If the parties have reached an agreement that is not legally binding, the Adjudicator may take account of that agreement, but is not bound to follow it.
- 3.28 TDS is prevented by law from adjudicating where, despite making reasonable efforts to do so, TDS is unable to contact the Member or the Tenant. The Member must share with TDS any relevant information they may have about the missing party's whereabouts, as long as it is lawful to do so. If the missing party cannot be contacted within a reasonable period the Member or the Tenant will need to claim the Disputed Amount through the county court if they want to take things further, or request the Member to proceed in accordance with Rules 3.29 to 3.36.
- 3.29 If the Member or the Lead Tenant (as the case may be) is successfully contacted within 3 months of the end of the tenancy, either of them may still submit a Dispute to TDS as an alternative to court proceedings. TDS will then ask the other party whether they consent to ADR. After 3 months from the end of the tenancy have elapsed, or once court proceedings are underway, TDS will not accept a Dispute and the parties will need to agree how the Deposit should be allocated or conclude the court action.

Delay in dealing with the Deposit

- 3.25 TDS may refuse to refer a case for ADR if any party has shown unreasonable delay in proposing, negotiating or disputing Deposit deductions, or paying Undisputed Amounts to the person(s) entitled.
- 3.26 If TDS is satisfied that the Tenant is entitled to be paid but neither the Tenant nor TDS has received the amount due from the Member, TDS will pay the Tenant the amount due, and seek to recover it (or any shortfall) from the Member or from its insurance.
- 3.30 If the Tenant cannot (despite reasonable efforts) be contacted within 3 months of the end of the tenancy, the Member must:
- 3.31.1 ascertain and record dilapidations, rent arrears and any other proposed deductions from the Deposit as they would normally do;
- 3.31.2 allocate the Deposit, pay the party who is present as appropriate, and transfer any amount due to the absent Tenant into a suitably designated Client Account (this will usually be a bank suspense account);
- 3.31.3 make a formal record of all actions taken, supported by appropriate documentation.

If a Tenant or Landlord cannot be contacted

- 3.27 Rules 3.29 to 3.36 concern cases where a person is no longer at their last-known address, and despite reasonable efforts, cannot be contacted at their last-known email address or telephone number. Rule 5 will apply in cases where a person can be contacted, but does not respond and Rules 3.29 to 3.36 will not apply in such cases.

- 3.31 The Member's allocation of a Deposit made under Rule 3.31 will not be final and binding if one of the parties brings a successful claim within the limitation periods applicable to the courts or stipulated in these Rules.
- 3.32 If the Member releases any payment that is due to, or may subsequently be claimed by, an absentee, the Member does so at their own risk. It would be prudent for the Member to ask any payee for an indemnity. The indemnity should require the payee to repay the money to the Member if the Member subsequently receives a valid claim from the absentee or from TDS, because the Member will have to meet that claim from its own resources. The indemnity should require the payee to accept responsibility for dealing with any subsequent claim from the absent party. This may be several years after the end of the tenancy.
- 3.33 After a sufficient time has elapsed after the end of the tenancy or, if later since the last attempt to contact the absentee (usually at least 6 years, or 12 years if the tenancy was made by deed) the Member may (at its discretion) donate to a suitable registered charity any Deposit amount which has not been claimed by an absentee or their representative or TDS. The Member may choose to ask the charity for an indemnity, because if a valid claim is subsequently made, the Member will have to meet that claim from its own resources. This may be several years after the end of the tenancy.
- 3.34 The Member is not required to allocate the Deposit as described in Rule 3.31, if one of the parties has initiated court proceedings about the allocation of the Deposit. In such circumstances the Member must either pay the Deposit or Disputed Amount (as the case may be) to TDS when directed or distribute the deposit in accordance with the court order once the court order has become final.
- 3.35 TDS accepts no liability to Landlords, Tenants, Relevant Persons or Members concerning Disputes where one of the parties to the Dispute cannot be contacted at any time.

4 Stage 2: Informal Dispute resolution by Members

- 4.1 Once the Member becomes aware that there is a Dispute the Member must make reasonable efforts to help the parties resolve the Dispute within a reasonable time. The Member must act fairly and professionally to try to bring about a satisfactory settlement. If the Dispute cannot promptly be resolved in this way, the Member must draw the attention of the parties to the ADR service available under the Scheme.
- 4.2 The Member or the Tenant may continue informal negotiations to resolve the Dispute and/or submit a Dispute to TDS for ADR within the time limits referred to in Rule 5.
- 4.3 If the Member or the Tenant need more than 3 months to enable the Dispute to be resolved without recourse to ADR, they must apply to TDS for an extension of the deadline before the expiry of 3 months after the tenancy lawfully ended. TDS is entitled to refuse to refer the matter for ADR if an application is submitted late without TDS' prior authorisation – even if the other party agreed to the delay.

5 Stage 3: Formal Dispute resolution where the parties cannot resolve the Dispute themselves

Dispute resolution by ADR through TDS

- 5.1 Before submitting a Dispute for ADR the Member or the Lead Tenant must have made reasonable attempts to:
- 5.1.1 resolve the Dispute under Stage 2 (See Rule 4);
- 5.1.2 ascertain (and try to agree with the other party/ies) what is in dispute; and;
- 5.1.3 copy to the other party/ies all relevant documents about the Dispute which they do not already have (e.g. check-out reports; quotations).

- 5.2 As long as the Dispute is eligible for ADR as set out in this Rule 5, the Lead Tenant can submit a Dispute to TDS for ADR:
- 5.2.1 if the Tenant has requested the Member to pay the whole or any part of the Deposit to him/her and the amount in question has not been paid within 10 days (beginning with the date on which the request was made); and
- 5.2.2 if the application for ADR is made to TDS not later than 3 months after the tenancy lawfully ended.
- 5.3 As long as the Dispute is eligible for ADR as set out in this Rule 5, the Member can submit a Dispute to TDS for ADR:
- 5.3.1 where TDS has exercised its discretion to allow them to do so, and;
- 5.3.2 they are not a Member using the TDS Direct service, and;
- 5.3.3 not sooner than 10 days after the Tenancy lawfully ended, and;
- 5.3.4 not later than 3 months after the Tenancy lawfully ended.
- 5.4 As long as the Dispute is eligible for ADR as set out in this Rule 5, a non-member Landlord can submit a Dispute to TDS for ADR:
- 5.4.1 where they are the Landlord of a tenancy agreement associated with a Letting Agent Member who uses the TDS 'Let Only' scheme for tenancies that are not managed by them; or
- 5.4.2 the Letting Agent Member is not a Member using the TDS Direct service, and;
- 5.4.3 not sooner than 10 days after the Tenancy lawfully ended, and;
- 5.4.4 not later than 3 months after the Tenancy lawfully ended.
- 5.5 Where a non-member landlord raises a Dispute, TDS will require the Member to submit the Disputed Amount to TDS. The Member will not be able to participate in the Dispute.
- 5.6 TDS will deal with the Dispute promptly and within the timescales set by the 2004 Act, the service concession agreement between TDS and the Ministry, and these Rules. TDS shall have discretion to adjust the deadlines stated in these Rules in individual cases where (in the opinion of TDS) it is in the interests of justice to do so.
- 5.7 TDS will only accept one application for ADR per tenancy agreement.
- 5.8 If the Member or the Tenant agree that the Dispute should be resolved by TDS, they must also accept that the outcome of the ADR will be final and binding (see Rule 2.13).
- 5.9 TDS will not accept Disputes for ADR if legal action for the resolution of the Dispute has been started, or if the Dispute has already been resolved through litigation, except as permitted by Rule 5.18.
- 5.10 TDS may refuse ADR in cases which are, in its opinion:
- 5.10.1 being pursued unreasonably;
- 5.10.2 frivolous;
- 5.10.3 vexatious;
- 5.10.4 seeking to raise again matters which:
- (a) TDS has already adjudicated upon;
- (b) have already been determined by another similar dispute resolution process;
- (c) have been determined by litigation.
- 5.11 At the start of the tenancy, the Member and the Tenant will have access to information about ADR through these Rules and in the Scheme Leaflet which is to be provided as part of the Prescribed

Information confirming the Protection of the Deposit. This will include details of how to contact the Scheme and explain that Adjudication is binding with no right of appeal (see Rule 2.13 above). TDS has a dedicated section on its website with information about how Disputes are resolved by Adjudication and information about the alternative of going to Court. The Scheme also operates a Customer Service Centre to provide guidance to all parties about how the ADR service works.

on which the Member receives the direction.

Dispute resolution by litigation through the courts

5.12 The Member and the Tenant are not obliged to use the ADR process and can choose to go to court to resolve a Dispute.

5.13 The Member must inform TDS in Writing as soon as practicable (and in any event within 10 days) after becoming aware that legal action to resolve the Dispute has been started.

5.14 Where TDS is made aware that the Member or the Tenant intends to take, or has taken, the Dispute to court, TDS will assume that the party in question does not consent to ADR and will not refer the case to an Adjudicator.

5.15 If the Member or the Tenant decide not to begin court action, either of them still has up to 3 months after the end of the tenancy to apply to TDS for ADR.

5.16 If, after receiving a Dispute, TDS becomes aware that any part of it has been referred to the courts for resolution, TDS will suspend the ADR process. If they cannot reach agreement, the Member or the Tenant will need to resolve the Dispute through the court, (unless the court refers the Dispute back to the ADR process, or the parties have withdrawn the proceedings).

5.17 TDS may still require a Member to submit the Disputed Amount to TDS at any time if legal proceedings are started (see Rule 5.27), whether or not an application for ADR has been made. The Member must by law submit a Disputed Amount to TDS within 10 days, beginning with the date

5.18 Where court proceedings do not lead to a judgement, TDS will have the discretion whether to accept a case for ADR. TDS will normally only accept a Dispute for ADR after legal proceedings have been started if:

5.18.1 the court makes an order that the Dispute must be submitted for ADR; or

5.18.2 there is cogent evidence that the proceedings have been discontinued or otherwise prevented from concluding in judgement and the request for ADR is made within the deadlines set out in Rule 5.2 above.

5.19 If a court order does not deal with the full Disputed Amount, TDS will consider whether the balance should be dealt with through ADR and inform the parties of its decision.

5.20 TDS will not deal with (and cannot be required to deal with) any aspect of a Dispute which has been, or is being, dealt with by a court. TDS will generally refuse to deal with new issues, where the Member or the Tenant had the opportunity to raise these in court, and failed to do so. TDS may at its discretion deal with any outstanding aspects of a Dispute which were not dealt with by the court. If TDS is not willing to offer ADR, and the Member or the Tenant still cannot reach agreement, they will need to take further court proceedings if they wish to pursue the matter further.

5.21 The Member or Lead Tenant must submit a copy of the court order to TDS as soon as practicable after the order is made.

5.22 It is the responsibility of the parties in court proceedings to ensure that they secure a clear instruction from the court about the payment of the Deposit, and about any matters upon which the court wishes TDS to adjudicate. The order should stipulate not only (i) what amount was awarded by the judge and to whom,

but it should also stipulate (ii) that the judgement debt may be paid out of the Deposit. TDS may refuse to make a payment from a Deposit if the court order fails to make both these points clear. The parties would then have to apply to court for the order to be amended. TDS will not accept liability for any additional costs incurred by the parties if they have not obtained a court order which clearly and unambiguously directs TDS to make a specified payment from the Deposit.

5.23 TDS will pay a Disputed Amount in accordance with the court order (as long as the order meets both the requirements in Rule 5.20) within 10 days, beginning with the date on which TDS receives Notification of the court decision becoming final.

5.24 A court decision becomes final:

5.24.1 if not appealed against, at the end of the period for bringing an appeal; or

5.24.2 if appealed against, once the appeal (or any further appeal) is disposed of.

5.25 The onus is on the party claiming payment to demonstrate to TDS that a court decision has become final (for example by proving that an appeal has been decided and the period for bringing any further appeal has ended; or that an appeal has been abandoned or has otherwise ceased to have effect).

Payment of the Disputed Amount to TDS

5.26 If a Member applies to TDS for ADR, the Member must send TDS (a) details of the Dispute and at the same time send TDS (b) the full Deposit less any payments that have been agreed by the parties in Writing and already paid to the person entitled.

5.27 Where the Lead Tenant submits the Dispute, the Member must send TDS (a) their response to the Dispute and (b) so much of the Deposit as TDS directs within 10 days of receiving a direction from TDS to do so.

5.28 If TDS is Notified that court proceedings relating to the Deposit have been started, the Member must send TDS so much of the Deposit as TDS directs within 10 days of receiving a direction from TDS to do so.

5.29 If TDS is Notified that a Tenant has requested the Member to repay the whole or any part of the Deposit and the outstanding amount has not been repaid within 10 days of the Tenant making the request, the Member must send TDS so much of the Deposit as TDS directs within 10 days of receiving a direction from TDS to do so.

5.30 Failure to make payment as required by Rules 5.26, 5.27, 5.28 or 5.29 will not delay ADR or payment to the Tenant. TDS will take appropriate action to recover any unpaid sum due from the Member. The Membership Rules require the Member to indemnify TDS for any costs associated with such failures to pay, including all legal costs and disbursements incurred in a debt recovery action and its subsequent enforcement.

5.31 If a Member does not pay the amount which TDS has directed the Member to pay:

5.31.1 TDS will pay the Tenant the full amount of any award due to them – payments to Joint Tenants will be dealt with in accordance with Rule 7 below;

5.31.2 if there is any money left after paying the Tenant's award, TDS will pay the remaining amount to the Member;

5.31.3 the Member will be liable to pay TDS the shortfall in any award made to the Tenant;

5.31.4 it will be the Member's responsibility to resolve with their client the issue of any shortfall in the Landlord's award if the Member is an Agent.

5.32 When considering the renewal or termination of Membership, TDS may take into account a Member's failure to pay Deposits as and when directed.

Default Awards

- 5.33 TDS may (in its discretion) award the whole of the Disputed Amount to the Tenant without formal Adjudication if:
- 5.33.1 the Member has not complied with any Scheme Rule;
 - 5.33.2 the tenancy is not subject to a written tenancy agreement; or
 - 5.33.3 in its opinion the Member (or where the Member is an Agent, the Landlord) has unreasonably sought to delay the repayment of the Deposit or the referral of the Dispute.

6 Dispute resolution by TDS

Agreement to use the ADR process

- 6.1 The Member and the Tenant are not obliged to use the ADR process. The person who applies to TDS for ADR must confirm that they consent to the Dispute being resolved through the ADR process.
- 6.2 TDS will give the other party to the Dispute the opportunity to respond to the issues raised in the Dispute. If they wish to make a response, they must confirm that they consent to the Dispute being resolved through the ADR process.
- 6.3 If the Member or the Tenant indicates that they intend to take the Dispute to court, TDS will assume that party does not consent to use ADR.
- 6.4 By law, if the Member or the Lead Tenant objects to the Dispute being resolved through the ADR process, TDS cannot refer the case for ADR. The parties will have to reach agreement or go to court if they want to take things further.
- 6.5 Where the Member or the Tenant does not make a decision about whether to use ADR, or fails to respond to TDS's request for their consent to ADR, TDS will be able to infer agreement to the Dispute being resolved through the ADR process. This means that as long as TDS is satisfied that the Member or the Tenant (as the case may be) received TDS's request for consent, the Member or the Tenant (as the case may be) will be deemed to have given consent if s/he does not object to ADR in Writing within 10 Working Days. The period of 10 Working Days shall begin with the day after that on which TDS contacted the Member or the Tenant to ask for consent.
- 6.6 If TDS is not able to satisfy itself that the Member or the Tenant received TDS's request for consent to ADR, TDS cannot refer the case for ADR. The parties are likely to have to go to court if they want to take things further.
- 6.7 If the Member or the Tenant does not consent to use ADR they will have up to 3 months after the end of the tenancy, or until the other party initiates court proceedings if sooner, to change their mind. After that, they will no longer be able to use ADR (unless TDS exercises its discretion to extend the deadline in the interests of justice).
- 6.8 If the Member or the Tenant does not consent to use ADR they will need to obtain a Court Order specifying the basis on which the Deposit is to be repaid, or reach their own agreement about its return. TDS will expect to see evidence showing Court proceedings or any agreement reached within 6 months from the date on which the Member or the Tenant confirmed that they did not consent to use ADR. Where this evidence has not been produced TDS shall have discretion to repay to the other party the Deposit amount which it holds. TDS will only exercise this discretion where
- 6.8.1 a Deposit amount has been paid to TDS, and;
 - 6.8.2 the Member or Tenant was advised by TDS of the operation of this Rule when they confirmed that they did not consent to use ADR.
- 6.9 Consent to use the ADR process also means agreeing that the Adjudicator's decision is final. These Rules do not give a right to appeal through TDS or the Ministry (see Rule 2.13 above).

How the ADR process works

- 6.10 The Member and the Tenant are able to submit and review forms and evidence through TDS's secure on-line portal before the case is referred to an Adjudicator. The parts of the forms containing the parties' current contact details are not available for other parties to see, but other parts of the forms, and all supporting evidence, is. TDS will not redact (hide) evidence submitted with the forms.
- 6.11 Either party may request TDS for a hard copy of the documents, but TDS will only provide these in exceptional circumstances such as if an inspection of the original is required (e.g. in cases where forgery is suspected) or if access to them via the on-line portal is not possible.
- 6.12 By participating in the ADR process, the Member and the Tenant agree that TDS may hold and process their personal data for the purposes of resolving their Dispute and for compiling statistical information. It is the responsibility of the person submitting the evidence to make sure their evidence does not contain anything they do not want the other party to see and that they have complied with the Data Protection Act 1998 (as amended) and General Data Protection Regulations in relation to any personal data which they transfer to TDS.

Dispute raised by the Tenant

- 6.13 The Tenant must give details of their request for the repayment of the deposit when raising their Dispute. TDS will make a copy of this (other than confidential details) available through TDS's secure on-line portal to the party who will be invited to respond to the dispute, namely:
- 6.13.1 the Member, or
- 6.13.2 the Landlord, if a Letting Agent Member uses the TDS Direct scheme and the tenancy is not managed by them; or
- 6.13.3 the Landlord, if a Letting Agent Member uses the TDS 'Let Only' scheme for tenancies that are not managed by them.

- 6.14 TDS will give the respondent the opportunity to submit their evidence and any documents that they wish the Adjudicator to take into account. The respondent will also have the opportunity to mention any other aspect of the Dispute which has not been raised by the Tenant.
- 6.15 TDS will make a copy of this (other than confidential details) available to the Tenant through TDS's secure on-line portal. TDS will give the Tenant the opportunity to submit their evidence and any documents that they wish the Adjudicator to take into account.

Dispute raised by the Member

- 6.16 The Member must give a concise summary of their case when raising their Dispute. The Member may set out a more detailed explanation of their case on additional pages if they believe it would be helpful. The Dispute Application must state what the claim is for (e.g. cleaning, arrears, damage) and how much is claimed. The Member must send TDS a copy of all documents relevant to the case (e.g. tenancy agreement; check-in report; check-out report; invoices, relevant emails).
- 6.17 TDS will make a copy of this (other than confidential details) available to the Tenant through TDS's secure on-line portal. TDS will give the Tenant the opportunity to submit their evidence and any documents that they wish the Adjudicator to take into account.
- 6.18 A person responding to a Dispute must send their response and all the evidence which they wish the Adjudicator to consider within 10 Working Days. The period of 10 Working Days shall begin with the day after that on which TDS contacted them.
- 6.19 If the respondent is the Member, they must by law send TDS the Disputed Amount within 10 Calendar Days. The period of 10 Calendar Days shall, by law, begin with the day on which the Member receives a direction from TDS to make the payment.

- 6.20 If a respondent raises new aspects of the Dispute, TDS will give the applicant the opportunity to respond to such additional facts and matters. TDS will not otherwise send a copy of that response to the other party/ies and there will be no opportunity to reply unless the applicant raises new issues. As the ADR process is intended to resolve Disputes quickly, each side has just the one opportunity to respond to issues raised by the other.
- 6.21 Once the parties to the dispute have submitted their evidence, TDS will review the case. If any of the parties to the dispute submits large quantities of information that is not relevant to the case (e.g. duplicates of documents, copies of all emails exchanged between the parties, whether relating to the Dispute or not) TDS may reject the case. TDS will reject forms which are incoherent, incomplete or which appear to TDS to be an abuse of the ADR process. Cases which have been rejected may be re-submitted to TDS within the 3 month period after the end of the tenancy, but if they are still incoherent, incomplete etc, TDS may reject them again.
- 6.22 If TDS is reasonably satisfied that (a) the paperwork is in order, (b) the parties are unlikely to reach agreement, and (c) the case is in other respects suitable for ADR, TDS will refer the Dispute to an Adjudicator.
- 6.23 As long as the parties to the dispute have agreed to use the ADR process, and as long as the deadline for submitting evidence has passed, TDS may refer the Dispute to an Adjudicator whether or not both parties have submitted evidence.
- 6.24 The Adjudicator will consider all the evidence submitted by the parties to the dispute and decide how the Disputed Amount is to be allocated between them. The Adjudicator will state the reasoning behind the allocation and state the amount to be awarded to each party in a brief report. The report will usually only comment on those aspects of the evidence which are relevant and material to the allocation of the Disputed Amount.
- 6.25 The onus is on the Member to prove (on the balance of probabilities) that they are entitled to a deduction from the Deposit. The presumption is that the Disputed Amount is the Tenant's money, unless and until the Member demonstrates that they are entitled to it. Where possible, the Member and the Tenant should support any assertions they make with documentary evidence.
- 6.26 Neither TDS nor the Adjudicator will be liable for any error or omission in an Adjudication if the error or omission arose because the application or response or supporting evidence was incomplete, illegible, confusing, contradictory or misleading, as long as TDS and the Adjudicator have taken reasonable care.
- 6.27 The Adjudicator will not set off claims, or consider counterclaims, made by the Tenant. If a Tenant believes they have a claim against the Member, they should seek advice from an appropriate source and may prefer to take court proceedings, where such matters could be considered.
- 6.28 The Adjudication will normally be completed in 28 days of TDS receiving the agreement of both parties to use ADR and TDS receiving all the evidence to be considered by the Adjudicator.
- 6.29 TDS will send a copy of the Adjudicator's report to:
- 6.29.1 the Member, or
- 6.29.2 the Landlord, if a Letting Agent Member uses the TDS Direct scheme and the tenancy is not managed by them.
- 6.30 The adjudication report will be sent by email or post and TDS will pay the amounts awarded by BACS or cheque within 10 days or less. Amounts awarded to a Letting Agent or Landlord will be paid to:
- 6.30.1 the Member, or
- 6.30.2 the Landlord, if a Letting Agent Member uses the TDS Direct scheme and the tenancy is not managed by them.

6.31 The evidence submitted by the parties will be retained electronically for a period of 7 years from the date of issue of the adjudication report and thereafter the evidence will be deleted. Evidence submitted in paper format will be retained in electronic format only and the paper submission will not be returned. The Member and the Tenant should therefore retain the original version of any evidence submitted to TDS.

If a Dispute goes to court

6.32 The Member or the Tenant must, if they have already consented to use ADR, inform TDS in Writing if legal proceedings in relation to any element of the Dispute are started within 3 months of the end of the tenancy (see also Rules 5.12 to 5.24).

6.33 If the Member or the Tenant intends to, or does, bring legal proceedings without informing TDS in Writing, and an Adjudication is made which does not coincide with the court's decision, TDS will not be liable for making up any difference between the Adjudicator's award and the amount ordered by the court.

6.34 If TDS incurs any costs or suffers any loss as a result of a party bringing court proceedings and failing to inform TDS in Writing, the party who brought the proceedings, and in default the Member, must indemnify TDS for any losses, claims or actions in respect of such payment.

If the Landlord failed to Protect the Deposit or provide Prescribed Information

6.35 The Adjudicator cannot consider claims by a Tenant for compensation for failure to comply with the Scheme's initial requirements or for failure to give Prescribed Information as required by law. If a Tenant wishes to claim against the Landlord or the Agent for such failures, the Tenant will need to proceed through the courts.

6.36 A claim through the courts for failure to protect the Deposit or provide Prescribed Information would not prevent the parties from having the Dispute about the Deposit resolved on its merits through ADR, as long as:

(a) both parties consent to ADR (or TDS can infer their consent); and

(b) the application and response are submitted within the deadlines for doing so; and

(c) the court has not made an order under section 213(3) of the 2004 Act (to repay the Deposit or protect it under an authorised custodial scheme).

Returned payments

6.37 Where payment of an award made by BACS is returned to TDS, TDS will make reasonable attempts to contact the intended payee to check account details and re-arrange payment. If the payment fails a second time, TDS will not make a third attempt until the intended payee contacts TDS to arrange an alternative means of payment. If the payment is made by cheque and has been sent to an incorrect address or has been made payable in an incorrect name (for example where the payee has married) TDS will reissue the cheque, or pay the amount by BACS, at the request of the payee on presentation of suitable documentation confirming the revised details. TDS shall have no liability to the intended payee for delayed payment or interest in such circumstances. TDS may charge a reasonable administration fee for arranging second and subsequent payments or attempted payments, as long as TDS sent the first attempted payment to the account stipulated by the intended payee.

7 Joint tenancies

7.1 Deposits relating to joint tenants will be dealt with by TDS in accordance with the procedures set out in the guidance document "How TDS deals with tenancies with more than one landlord or tenant". A copy of this

guidance document is available on the TDS website, and can be provided upon request.

- 7.2 TDS will only accept one Dispute per tenancy agreement. Members must make this clear to Joint Tenants.

Negotiated settlements

- 7.3 Where there are Joint Tenants, any negotiated allocation of the Deposit must be agreed in Writing by all the Joint Tenants before the Member can pay either the Landlord or any Tenant.

- 7.4 If all Joint Tenants agree to proposed deductions from the Deposit, there is no Dispute and the Member shall allocate the Deposit according to what the parties have agreed.

General

- 7.5 It is the responsibility of each person with an interest in the Deposit to ensure that they provide their correct contact details and notify TDS and the parties to the tenancy agreement of any change. It is the responsibility of the person submitting a Dispute to TDS to ensure that, as far as they are aware, the contact details provided for each party are current and correct. TDS will assume that when a Tenant leaves a property, they make proper arrangements for post to be forwarded to them at their new address. TDS does not accept any liability for loss suffered or expense incurred by anyone as a result of TDS being unable to contact a Tenant.

- 7.6 TDS will not arrange ADR for disputes between Tenants. The Adjudicator will only allocate the Deposit between the Member and the Tenant.

- 7.7 If court proceedings begin after the ADR process has started, TDS will suspend ADR until the proceedings have been disposed of.

- 7.8 TDS will presume that each Joint Tenant is jointly and individually liable for all the Tenants' obligations in the tenancy agreement, unless there is clear and robust evidence in the tenancy agreement to the contrary.

- 7.9 The tenancy agreement may specify to which Tenant the Deposit (or any balance remaining after lawful deductions have been made) should be paid at the end of the tenancy. If it does not, TDS will allocate any award made to Joint Tenants equally among the Tenants named in the tenancy agreement. TDS will send each of them the appropriate amount separately, by cheque or BACS as requested.

- 7.10 The only exceptions to Rule 7.9 will be where Joint Tenants authorise a different allocation of the award, in Writing and signed by all of them, or where one Tenant authorises (in signed Writing) the payment of their share of the Deposit to another Tenant or a third party.

8 Complaints

- 8.1 By agreeing to the use of ADR the parties agree that the Adjudication decision is final and binding.

- 8.2 Adjudication does not create any binding precedent for the courts or for other Adjudicators to follow. TDS does not accept liability for any Adjudicator reaching a different conclusion from another Adjudicator in cases with similar facts or issues, except in the case of serious and obvious error.

- 8.3 There is no provision for 'appeal' against an Adjudication. The money is distributed once the decision is made and TDS has no authority to reclaim or redistribute it. However TDS provides a procedure for reviewing concerns that a party to an adjudication may have about the way that decisions are made or the service received. The procedure is available on TDS' website (www.tenancydepositscheme.com).

9 Amendments

- 9.1 These Rules for the Independent Resolution of Deposit Disputes may be amended by TDS from time to time and all such amendments shall be deemed incorporated into these Rules and shall take effect on the next Working Day after TDS Notifies such changes to Members, or such later date as the Notification may specify.

- 9.2 Users of the Adjudication service can view and download the version of these Rules in force from time to time at www.tenancydepositscheme.com. TDS shall not be obliged to publish or advertise amendments to these Rules in any other way.
- 9.3 When they submit or respond to a dispute through the ADR process Members and parties to Disputes agree to abide by these Rules as amended and in force from time to time, even if an amendment to the Rules, or a later edition of the Rules, is implemented after a Deposit has been protected in the Scheme.
- 9.4 Disputes will be processed in accordance with The Tenancy Deposit Scheme Rules for the Independent Resolution of Tenancy Disputes (or such rules as may replace them – see www.tenancydepositscheme.com) in force when the Dispute forms and all other relevant documents relating to the dispute are received by TDS.
- 9.5 If in TDS’ opinion, any proposed changes to these Rules are significant, TDS will consult with Members to the extent and in the manner it deems appropriate, and consider Members’ representations before deciding whether to implement such a change.
- 9.6 If any changes incorporated into these Rules are reasonably regarded by any Member as material and unreasonable, that Member may Notify TDS of its intention to withdraw from the Scheme in accordance with the Membership Rule. In such cases, the Scheme Rules in force immediately before the Member’s Notification shall continue to apply to Deposits held by that Member until Protection by TDS ends.
- 9.7 If any court in England and Wales should decide that any Scheme Rule is unreasonable or for some other reason unenforceable, only so much of the Rule as is unenforceable shall not apply. Similarly, if a court should decide that any amendment to a Scheme Rule is unenforceable, the Rule as it was immediately before amendment shall continue to apply to the extent that is possible without altering the general intent and purpose of such of the amended Rules as are enforceable.
- 9.8 For further information, please visit the TDS website www.tenancydepositscheme.com or contact:
- TDS, 1 The Progression Centre
42 Mark Road
Hemel Hempstead
Herts HP2 7DW
- Tel: 0300 037 1000
Fax: 01442 253 193
Email: deposits@tenancydepositscheme.com
Web: www.tenancydepositscheme.com



0300 037 1000



www.tenancydepositscheme.com



**The Dispute Service
1 The Progression Centre,
42 Mark Road, Hemel Hempstead,
Herts, HP2 7DW**