



**Who should read this?**

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| Tenants                  | Agents                              | Landlords                           |

**Insured / Custodial**

# Adjudication Digest October 2013

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: £1000.00. Dispute initiated by: Landlord.

|                    |                 |
|--------------------|-----------------|
| <b>Award made:</b> | <b>£1000.00</b> |
| <b>Tenant</b>      | <b>£800.00</b>  |
| <b>Landlord</b>    | <b>£200.00</b>  |
| <b>Agent</b>       | <b>£0.00</b>    |

In this month’s case, a landlord claimed a sum that was considerably in excess of the £1,000 deposit. In support of his claims, the landlord produced a check in report that was dated several years before the start of the tenancy. The check in report was comprehensive, and had been well produced by an inventory clerk. The landlord claimed that although no new check in report had been produced when the tenant moved in, the tenant had been given a copy of the check in report and had made no objections on its content.

In their response to the dispute, the tenant made no comment about the landlord’s claim that they had seen the check in report. They did state that they disagreed with the landlord’s opinion of the property’s condition when they left, commenting that “I propose total deductions from the deposit of £200 as a gesture of goodwill, broken down as: cleaning £100...and carpets £100.00...”

The landlord argued that the tenant’s silence on the point meant that they must have accepted the landlord’s claims about the property’s condition when they moved into it. The adjudicator disagreed. The adjudicator noted that there was nothing in writing from the landlord to the tenant to state that they were expected to return the check in report with comments within a short time of the tenancy starting, failing which they would be taken as agreeing its content. The tenancy agreement made no references to the

tenant being bound by the content of that check in document.

In the absence of any evidence of the condition of the property and the inventory of its contents at the start of the tenancy, the adjudicator was not able to award any of the deposit to the landlord beyond those which the tenant offered as a goodwill offer to settle the dispute.

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

- The deposit is the tenant’s money and will be returned to the tenant in the absence of a landlord being able to justify deductions. Where there is doubt, it must be exercised in favour of the tenant if that doubt is sufficient to show that the landlord has not proved their case on the balance of probabilities.
- In this case, the weight of evidence was in favour of the tenant. Their offer to make a payment in settlement of the dispute might be regarded at best as some admission on their part that all was not as it should have been when they left the property.
- Beyond this, the tenant’s silence about the landlord’s claims about what had been discussed at the start of the tenancy did not amount to them accepting the truth of those statements – particularly when none of the documentary evidence in this case added any weight to the landlord’s claims.

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