



Who should read this?

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Tenants	Agents	Landlords

Insured / Custodial

Adjudication Digest September 2012

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: £400.00. Dispute initiated by: Landlord.

Award made:	£400.00
Tenant	£300.00
Landlord	£100.00
Agent	£0.00

This month's case concerns a tenant who made a number of changes to the property during their tenancy. At tenancy end, the landlord claimed from the deposit because the property was not returned to her in the property in which she had let it.

The landlord firstly claimed for repainting parts of the property including walls and woodwork. This claim was caused by the property having suffered a leak, which led the tenant to redecorate and make good at their own expense. The landlord argued that she did not consent to the changes in décor made by the tenant and was therefore entitled to claim for the cost of putting things right.

The check in report showed that the property was not in a good decorative condition at the start of the tenancy. Few changes in its overall condition were noted in the check out notes – but these did, however, contain a general statement that the property was “extremely tired” after a 6 month tenancy. The agents appeared to agree with this assessment, but argued that the tenant had redecorated the lounge without permission. They explained that a leak had occurred previously causing water staining to walls and ceiling. It was agreed that the tenant did not cause the leak, and they had told the agents that the lounge needed redecoration as a result. The agents had, in correspondence with the landlord, told the landlord of this and

appeared also to accept that redecoration was due. They did not however give permission for the tenant to redecorate.

The adjudicator agreed that the tenant had redecorated the lounge without permission. Ordinarily, this might entitle a landlord to claim for the reasonable cost of reinstatement. However the adjudicator did not consider an award to be justified in this case. Although the tenant did not have permission to redecorate, the evidence showed that the décor in the lounge was already in a very poor condition when the tenancy started. Even if the landlord did not approve of the colour chosen, it was difficult to accept that she had suffered a financial loss since she would have been obliged to redecorate in any case. No award was therefore made to the landlord.

The landlord also claimed for the costs of gardening because the tenant paved over an area of the back garden. The check in report showed that the garden was not generally in a good condition, with the lawn at the back being described as long and weedy. In the view of the agents, the tenant had improved the garden. Superficially it might appear that, as with the lounge, no award is therefore justified. However, the adjudicator took the view that the landlord was entitled to choose a lawn rather than a paved area in the garden, and that the tenant's actions in paving the lawn did put the landlord to an unreasonable expense in returning the garden

to lawn. The adjudicator agreed that the landlord was entitled to be compensated for the cost of the removal of the flagstones. However the landlord did not produce evidence to show the number of flagstones or an estimate for the cost of the work. Without evidence to calculate a specific claim, the adjudicator awarded £100.00 which was considered to be a reasonable sum for the cost of making good. If more evidence as to actual cost had been provided the award may have been higher.

So what are the key points here?

- Check in and check out reports are key documents in enabling an adjudicator to compare the condition of the property at the start and end of the tenancy. Make sure check in and check out reports are properly completed.
- Tenants may make changes to a property during the tenancy. This may entitle a landlord to claim for the cost of making good – but the adjudicator will want to see evidence to show that the landlord has been left in a worse position as a result. In this case, it was likely that the landlord was faced with the cost of redecoration in any event. The tenant's work did not change that position – the landlord was faced with the same expense.
- Ideally, tenants should seek permission before making changes and landlord/agent should document carefully what has been agreed, and whether there are any conditions attached e.g. returning the property to its previous condition when leaving.

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