



## Case Study: Counter Claim for Rent Arrears made by Tenant

Sandy Bastin, Head of Adjudication Services at [Tenancy Deposit Scheme \(TDS\)](#), the only not-for-profit tenancy deposit protection scheme, looks at a recent decision by a TDS Adjudicator where a 'counterclaim' was made by the tenant.

### The Claim

The landlord claimed for rent arrears amounting to two months' rent, which the landlord said was not paid during the tenancy.

### The Tenant's Response

The tenants did not dispute that they had withheld rent for two months during the tenancy, however, stated that they had been without hot water and heating for two months during the winter, and despite reporting the issue on several occasions, the boiler for the heating and hot water system was out of action for some time. They accept that attempts were made to rectify the problem; however, it took many visits from the contractor and they were inconvenienced during this time. The tenants, therefore, considered that they were entitled not to pay rent for the period that they were without hot water and heating.

## What the evidence showed

The landlord submitted a tenancy agreement setting out the obligations of the landlord and tenant, which contained a clause setting out how the deposit may be used at the end of the tenancy, along with a rent statement to show that rent was owing. The tenants provided email evidence to show that they had reported the lack of hot water and heating, in which reference was made to the withholding of rent until the matter was addressed.



## The Adjudicator's Decision

The adjudicator made an award for the amount of unpaid rent claimed. The tenants were contractually obliged to pay the full rent due for the entire term of the tenancy. Without evidence that the landlord agreed to waive the rent due on account of the maintenance issues with the hot water and heating, or that the tenants had subsequently made payment of the outstanding sum to the landlord, the landlord's claim from the deposit was justified.

While the tenants' reasoning for withholding rent was noted, the adjudicator was unable to deal with the tenants' counterclaim in the context of the adjudication, as counterclaims fall outside the remit of the adjudicator. The purpose of the adjudication was to settle the dispute in relation to the deposit. The deposit is taken as security against the non-performance of a **tenant** obligation as set out in the tenancy agreement. Any allegation of breach of contract on the part of the **landlord** is a separate issue and is outside the remit of the adjudication.

### Key Pointers to Take Away:

- An adjudicator is not able to consider counterclaims made by a tenant against a landlord. If the tenant wishes to pursue such concerns, they may wish to seek legal advice.
- Other matters that fall outside the adjudicator's remit are disputes between tenants, and disputes between agents and landlords, and where the dispute does not relate to the deposit.

If you are interested in further guidance relating to deposit disputes, visit the [Information Lounge](#) at TDS to browse further [case studies](#) and [guides](#).

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