



Tenancy Deposit Scheme

Adjudication Digest

No 04/2014

Falling at the final hurdle.....

- The Adjudication Digest takes a recent decision by a TDS Adjudicator and sets out the reasoning behind it. We hope that you will find these digests informative in understanding how we reach our adjudication decisions.
- This document is for guidance only – it is not intended to guarantee when an award will be made.
- Each dispute is different and the actual award made will be based on our interpretation of the specific evidence presented to us.

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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.

Falling at the final hurdle

Amount of deposit in dispute:	£ 900.00
Dispute initiated by:	Landlord
Award made:	
Tenant	£ 900.00
Landlord	£ 0.00
Agent	£ 0.00

In this month's case the landlord claimed for extensive gardening work needed at the end of the tenancy. The claim appeared, at face value, to be justified by comments in the check-out report, by end of tenancy photographs, and by mid-term inspection reports and subsequent correspondence to the tenant.

Taken together, these all indicated that significant garden maintenance work was required well before, and at the end of, the tenancy. That said, the check in inventory described the property as being in a "generally good and clean condition" at the start of the tenancy. There was no specific reference to the garden, and no photographs of it, in the check in inventory.

The tenants resisted the claim for a number of reasons:

- although the check in inventory stated that the property was generally good and clean, the tenants claimed never to have seen the document before;
- they claimed that the garden was in fact in a poor condition when they first moved into the property, so it would be unreasonable to expect the tenants to improve it at their expense;
- the tenants also argued that even if they were responsible for the garden they had not been provided with suitable gardening equipment by the landlord;
- lastly, and most significantly, the tenants argued that it was not clear who was responsible for maintaining the garden in any event.

Taking the tenants' arguments in turn:

- the adjudicator was presented with a letter from the agents to the tenants enclosing their check in inventory when they first moved into the property. This asked them to review and return the document with comments if they disagreed with its statements about the condition of the property. The adjudicator was prepared to accept this document at face value and to accept that the tenants had been sent the inventory. The adjudicator might have been persuaded differently had they also seen correspondence from the tenant to the agent, when they first moved into the property, pointing out that the inventory had not in fact been received and asking for a copy to be sent;

- although the tenants also argued that the garden was in poor condition when they moved in, the evidence presented to the adjudicator included nothing to this effect and from that point in time. The tenants appeared only to have first raised the issue when presented with the claim. The adjudicator was therefore persuaded that the property was, in general terms, in good and clean condition at the tenancy start, although could not conclude exactly what this meant in terms of the condition of the garden.
- the claim that any obligation to maintain the garden was dependent on the supply of gardening equipment was somewhat undermined by the inventory referring to a lawn mower and other items of gardening equipment in the property's shed.

This left the adjudicator with the issue of whether there was an obligation on the tenant to maintain the garden. When making their claim, the landlord referred to a specific clause in the tenancy agreement. This required the tenant to work in conjunction with other proprietors to maintain "common parts" and "communal areas" of a property in a block of flats. Although the address was correct, the property was in fact a self-contained house. In these circumstances the adjudicator could not in fact conclude that the tenancy agreement required the tenant to maintain the garden. Even had they been able to do so they could not conclude with any certainty what condition the garden was in when the tenants moved in.

So what are the key points here?

This was an interesting case with a range of arguments:

- if you do not routinely ask tenants to sign check in reports/inventories, keeping an audit trail to confirm that these are sent to the tenant(s) is important – as is making sure that they are advised to return them with any comments, failing which the document will be treated as agreed.
- claiming that "the property wasn't like that when I moved in" is a common defence, but adjudicators will want to see documented evidence from tenants to confirm that was reported by them to the agent or landlord at that time.
- general or 'overarching' statements in inventory documents can be useful as a 'catch-all' – but only if they are appropriately worded. In this case, the description of the property's condition was too vague and would have been strengthened by a supporting statement to cover the garden.
- in a similar vein, 'standard' tenancy agreements can make life easier – but only if they suit the case in hand. In this case the tenancy agreement did not suit the type of property and did not make clear who was responsible for garden maintenance.