



Tenancy Deposit Scheme

Adjudication Digest No 08/2013

I can see clearly now.....

- 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.

I can see clearly now?.....

In this month's case study, we are looking at a case where there was a dispute about a broken glass window, and who was responsible for this..

Amount of deposit in dispute:	£ 134.00
Dispute initiated by:	Tenant
Award made:	
Tenant	£ 134.00
Landlord	£ 0.00
Agent	£ 0.00

The tenancy agreement included a standard clause requiring the property to be left in the same state of repair as it was found at the start of the tenancy (with allowance being made for fair wear and tear) and provides that deductions may be made from the deposit to compensate the landlord for any failure to fulfil this obligation.

The landlord claimed for the replacement of a cracked window pane. Both the landlord and the tenant agreed that at the start of the tenancy it appeared to be sound, while at the end there was a long crack. However, while the landlord claimed that the tenants are responsible for the replacement of any broken window panes, the tenant said that in this case the pane cracked partly as a result of age and partly as a result of adverse weather. She argued, in other words, that the damage was attributable to wear and tear rather than negligence on their part.

The tenant supported her argument with a letter from a glazier. This reads: "It is our opinion that there was a stress fracture in this glass which when temperature fluctuates caused the 6mm annealed glass unit to crack... This came from behind the plastic bead which would indicate the unit was not damaged by human negligence." The landlord argued that windows do not break without reason, and that this must have been the result of damage caused by the tenant.

The adjudicator took the view that in order to make a claim the landlord must show that the tenant is in some way responsible for the damage caused to the glass. In many such cases an adjudicator would rely on the contents of the check in and check out reports – such that if damage was present at the start of the tenancy and not present at its beginning, one might presume that this happened "on the tenant's watch" and they should be responsible.

Unusually in this case, the tenant produced evidence that casts doubt on whether she was in any way responsible for the damage. Faced with that evidence the adjudicator could not conclude, on the balance of probabilities, that the tenant did indeed cause the damage to the glass. Given the clear professional opinion provided, the adjudicator did not consider that the deduction claimed from the deposit was justified.

Following this adjudication, the landlord produced another opinion from a different glazing contractor, which concluded that the damage was caused by impact damage for which the tenant should be held responsible. It was of course too late for that evidence to have been included in the adjudication. But would the adjudicator have reached a different conclusion when faced with such competing opinions? Probably not – the experts give polar opposite opinions, with no other evidence to swing the balance.

So what are the key points here?

- Technical or expert opinions can be useful, but make sure that the person giving them is sufficiently competent to do so.
- Remember that the adjudicator cannot see the property, so photographs, clear instructions to contractors, and clear written opinions are important.
- The adjudicator can only consider evidence that is presented before they make their decision. In this case the extra evidence did not affect the outcome. But where extra evidence might make a difference, make sure the adjudicator sees it. Evidence presented late cannot be used to overturn an adjudicator's decision.