



Tenancy Deposit Scheme

## **Adjudication Digest**

### **No 02/2014**

## **If I knew then what I know 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.

tel: **0845 226 7837**

fax: **01442 253 193**

email: **deposits@tds.gb.com**

**www.tds.gb.com**

Tenancy Deposit Scheme, PO Box 1255, Hemel Hempstead, Herts, HP1 9GN

**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.**

**If I knew then what I know now .....**

<b>Amount of deposit in dispute:</b>	<b>£ 539.37</b>
<b>Dispute initiated by:</b>	<b>Tenant</b>
<b>Award made:</b>	
<b>Tenant</b>	<b>£ 539.37</b>
<b>Landlord</b>	<b>£ 0.00</b>
<b>Agent</b>	<b>£ 0.00</b>

In this month's case, a landlord's agent made two claims following the tenants' early departure from the property. The first claim was £264.37 for unpaid rent from when the tenants left, until the date the tenancy would have ended had they remained. The agent also claimed £275.00 re-letting costs as a result of ending the tenancy early. The agent argued that had the tenants not vacated early there would be no rent shortfall and no need to incur re-letting costs. Whilst that might be true, the important point was that the landlord had agreed to the tenants leaving early, without also specifying that it was part of the agreement that the tenant should pay for the rent shortfall and re-letting costs.

The landlord claimed that he felt misled by the tenants' reasons for wanting to leave early. It was necessary to do some maintenance work at the property, and the tenants claimed that the work required and the amount of disruption it was likely to cause meant that they did not feel able to continue living at the property. The landlord had agreed that they could leave when the maintenance works began. As the works progressed, the landlord considered that the tenants could have remained at the property notwithstanding the maintenance works.

The adjudicator considered two issues. Firstly, the adjudicator took the view that in relation to the agreement to leave early, the essential facts were that the tenants asked to move out early and their landlord agreed without any conditions attached.

Secondly, the adjudicator considered whether the landlord could argue that the agreement to leave early should be treated as null and void. In order to make that agreement null and void, the tenant would have had to make an untrue statement of fact that induced the landlord to enter into the agreement. From the correspondence the adjudicator had seen, the landlord did not give his decision on the basis of the tenants' assessment of the works alone. In their approach to the landlord, the tenants did not conceal the fact that they wanted to buy their own properties, and that this was partly why they wanted to leave early. The landlord agreed to an early end to the tenancy knowing that. The adjudicator also took the view that the landlord had time to check what work would need doing, and how much disruption would be caused, before agreeing to accept a surrender.

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

- Agreements to surrender a tenancy early need to be entered into carefully. In reality, the landlord and tenant are renegotiating the terms of their original tenancy agreement, so make sure all the terms/conditions attached to leaving early are set out in writing.
- Be careful to check your facts before agreeing to anything. In this case, the landlord might have avoided a dispute had he spoken to his maintenance contractor before agreeing the tenants could leave early.