



Tenancy Deposit Scheme

## **Adjudication Digest**

### **No 07/2013**

## **How many of you are there?.....**

- 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.**

### **How many of you are there?.....**

In this month's case study, we are looking at a case where there was a dispute about rent arrears and cleaning costs which exceeded the amount of the deposit, and an argument about which tenants the deposit was to be returned to.

<b>Amount of deposit in dispute:</b>	<b>£ 3,000.00</b>
<b>Dispute initiated by:</b>	<b>Tenants</b>
<b>Award made:</b>	
<b>Tenant</b>	<b>£ 3,000.00</b>
<b>Landlord</b>	<b>£ 0.00</b>
<b>Agent</b>	<b>£ 0.00</b>

The adjudicator was able to determine that the landlord's claim for rent arrears and cleaning were not justified because no rent statement or check in/check out evidence had been provided.

Simple enough one might think – but it was at this point that the more thorny problems came to the fore. It was necessary in this case for the adjudicator to determine two key facts – who were the actual tenants, and how many of them were actually claiming the return of their deposit? Without establishing this, the adjudicator could not return the deposit to the right tenants in the correct shares.

The tenancy agreement referred to three tenants, but the Deposit Protection Certificate referred to four. The fourth named tenant claimed to have been an occupier at the property during part of the tenancy. They produced an unsigned tenancy agreement showing the names of all four tenants and argued that they were entitled to have a quarter of the deposit returned to them.

Given the conflicting information TDS made further enquiries with the agent to confirm whether there was indeed a fourth tenant at the property. The agent confirmed that this person was not a tenant and that they had never moved into the property or signed a tenancy agreement. The Deposit Protection Certificate had included all four tenants' names in error when the deposit was first received and before the final tenancy agreement had been concluded.

The adjudicator could only deal with the dispute on the basis of the evidence provided. The signed copy of the tenancy agreement included the three tenants only. On that basis, the adjudicator determined that those were the three tenants that were entitled to the return of the deposit.

This then presented the next issue. Of those three tenants, two claimed that the third tenant had agreed that the deposit could be returned to them (half each). However in the absence of an agreement from all three listed tenants directing the repayment of the deposit to only two of them, the adjudicator could not establish that a separate agreement for the repayment of the tenants' deposit had been reached. Without this, TDS returned the tenants' deposit in equal shares to each of the three tenants named in the tenancy agreement.

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

- This was an unfortunate case – it seemed that much of the evidence submitted was about which tenants were entitled to what, and not about the merits of the landlord's claim itself.
- It is in the interests of all parties to check their Deposit Protection Certificate records accurately the information contained in it. It appeared in this case that actual events had overtaken the Certificate which the deposit holder had not updated.
- The tenancy agreement may specify to which tenant the deposit (or any balance remaining after lawful deductions have been made) should be paid at the end of the tenancy. If it does not, TDS will allocate any award made to joint tenants equally among the tenants named in the tenancy agreement.
- The only exceptions to this will be where joint tenants authorise a different allocation of the award, in writing and signed by all of them, or where one tenant authorises (in signed writing) the payment of their share of the deposit to another tenant or a third party.