



Tenancy Deposit Scheme

Adjudication Digest

No 06/2013

I know I caused the damage but.....

- 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

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 know I caused the damage but....

In this month's case study, we are looking at a couple of cases where damage seemed to have been an open and shut case, but the adjudicator was not able to award the full amount claimed.

Amount of deposit in dispute:	£ 220.00
Dispute initiated by:	Agent
Award made:	
Tenant	£ 170.00
Landlord	£ 50.00
Agent	£ 0.00

In our first case, the landlord claimed £220.00 in order to replace two light fittings to the living room on the basis one of the two matching light fittings was broken at the end of the tenancy. The agent submitted an estimate for a replacement light fitting in the sum of £110.00, together with check in and check out reports.

The tenant did not dispute that the damage was caused, but felt that it was not so serious as to warrant the replacement of both items at the tenant's expense.

The adjudicator was able to see from a comparison of the check-in and check-out reports that one of two matching light fittings was broken at the end of the tenancy. The report did not detail what the extent of the damage was, nor did it show exactly what was broken.

Although the agent had submitted evidence for replacement costs, no evidence had been produced to show the age, cost or quality of the light fittings when new.

The adjudicator considered that they were unable to make an award for the cost of replacing both light fittings. The evidence presented did not detail to what extent the light fitting was broken, or whether it was capable of repair. It did not show whether the damage was so bad that replacement of both fittings was the only recourse. Taking that into account, and that the landlord is not entitled to betterment, the adjudicator considered it reasonable that the tenants compensate the landlord with £50.00 for the breakage

Amount of deposit in dispute:	£ 120.00
Dispute initiated by:	Agent
Award made:	
Tenant	£ 60.00
Landlord	£ 60.00
Agent	£ 0.00

The agent claimed £120.00 in respect of scratches to the flooring to the lounge.

The tenants agreed that an unspecified degree of 'localised' scratching occurred to the flooring but argued that this was fair wear and tear. The evidence (some photographs) showed that the damage had occurred in a corner of a room.

Because the tenant had admitted the scratching took place, the agent did not submit a check in or check out report, or any evidence to show how the figure of £120.00 had been arrived at. They

argued that if TDS agreed that the damage was more than fair wear and tear, TDS had to pay the amount claimed based on the tenant's admission.

Taking account of the area where the scratching occurred, the adjudicator was prepared to accept that the scratching was damage and the tenancy agreement allowed the landlord to claim monies from the deposit in order to cover the costs of repairing this. There was no other obvious reason why the damage had occurred in the area that it did. The adjudicator might have reached a different conclusion had the damage been in a high traffic area.

However, because the agent had not presented any evidence to show that the amount sought was reasonable for the spot repair of the scratching, the adjudicator considered it unreasonable to award the full amount claimed. In the absence of further evidence, and in order to reach a reasonable compromise between the parties, the adjudicator awarded £60.00 as a contribution towards the cost of making good.

So what are the key points here?

- When claiming for damage to items, it can be helpful to show what items cost when they were new and how old they were. Showing the quality of items helps the adjudicator make more accurate calculations to allow for fair wear and tear/betterment, because it will be relevant to how long they might be expected to last.
- Even where tenants make admissions, it is important to submit evidence to show the amount claimed and the reasons for it.
- If an adjudicator has limited information, they will make a conservative award because any doubt must be exercised in favour of the tenant. This is not favouring the tenant, but reflects the starting point that the deposit is the tenant's money until the landlord can justify fully the amount they are claiming.