



Tenancy Deposit Scheme

Adjudication Digest

No 06/2014

When things run away with you.....

- 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.

When things run away with you

Amount of deposit in dispute:	£ 1,750.00
Dispute initiated by:	Landlord
Award made:	
Tenant	£ 1,750.00
Landlord	£ 0.00
Agent	£ 0.00

In this month's case a landlord claimed £1,750.00 for the cost of carpeting wooden floors and a further £180.00 in solicitors' fees. The landlord was the leaseholder of a flat in a block, which they in turn let to the tenant.

The claims arose because of complaints from neighbours in the block about noise caused by the tenant's young son running across wooden floors in the property. Following one complaint, the landlords provided some runners and rugs. However this evidently did not reduce the noise sufficiently and further complaints followed, leading to the issue of a notice under Section 146 of the Law of Property Act 1925 by the freehold owner of the block.

This notice directed the landlord to carpet the wooden floors in accordance with a covenant contained in their lease which required them *"To keep the flat and the passages thereof substantially covered with carpets except that in the kitchen and bathroom all-over cork or rubber covering or other suitable material for avoiding transmission of noise may be used instead of carpet."*

The landlord argued that because the need to carpet was caused by the tenant's unreasonable use of the property, they should meet its cost. The landlord also argued that other flats within the building had wooden floors and that noise from other tenants did not give rise to complaints.

The adjudicator considered carefully the wording of the tenancy agreement. Sadly, this appeared to be a 'standard form' tenancy agreement which was not suited to a block of flats. There was nothing in the tenancy agreement which allowed the cost of compliance with the landlords' obligations to be passed on to the tenants. The adjudicator was unable to conclude therefore that a claim against the deposit for the cost of carpeting or for the landlords' legal costs was justified.

So what are the key points here?

- When letting out a property, remember to check whether your tenant will be bound by obligations that affect you – this isn't automatically the case.
- Be careful when using 'standard' tenancy agreements – although these are often useful for 'standard' situations they do not cover all eventualities. In this case, seeking advice on how to make the tenant responsible for the obligations in the head lease would have been a worthwhile investment before the tenancy agreement was signed.