



Adjudication Digest No 5/2012

- 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.

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.

Amount of deposit in dispute: £ 1,200.36

Dispute initiated by: Tenant

Award made:

Tenant	£ 0.00
Landlord	£ 1,200.36
Agent	£ 0.00

When it isn't a case of water under the bridge

This month's case concerns a tenancy which ran for almost four years, at the end of which the landlord claimed £1,200.36 for water and sewerage charges for the property. The landlord pointed to a contractual obligation in the tenancy agreement which required the tenants to *"pay promptly to the authorities to whom they are due ... water and sewerage charges...relating to the Property..."*.

The tenants claimed that they did not have to pay the charges, because they were included in the service charge on the property. The tenancy property formed part of a larger development. The tenants produced a letter from the water supplier, addressed to a third party, confirming that the tenancy property did not have a separate supply and that the water charges were paid by the development's management company.

The evidence presented by the landlord also showed that the water supplier charged the management company for supplies to the development. The management company in turn passed on a proportion of the charges for water and drainage to the landlord, via their service charge.

It appeared from the evidence presented that, over time, the tenants did not receive regular water bills but were aware that water was billed to their landlord as part of the service charge. This may have led the tenants to believe that they would not be liable for water and drainage charges in addition to their rent.

The adjudicator considered that the fact that the management company, rather than the tenants, were the customer of the water supplier would not prevent water charges for the property being re-charged to the tenants. It was a matter between the landlord and the tenants whether the rent for the property was inclusive or exclusive of water charges.

In any event the adjudicator noted that the tenants agreed in their contract to pay water and sewerage charges relating to the property. The adjudicator was satisfied that the tenants must have understood, at the time they entered into the tenancy, that water and drainage charges were not included in the rent. The charges sought by the landlord were clearly water and sewerage charges that **related** to the property. The fact that the landlord paid them through the service charge, and then sought reimbursement from the tenants did not alter the intention of the agreement. The adjudicator was satisfied that that the rent did not include such charges and the tenants would have to pay them as extras.

The tenants also claimed that because of delay, the landlord had by implication assumed responsibility for the charges. The adjudicator did not consider that to be the case. Whilst it seems odd that the landlord waited so long before claiming payment, the landlord had, in law, a period of up to 6 years to claim charges after they fell due. The charges in this case fell due under a contractual arrangement between the landlord and the tenant, and the landlord was entitled to receive them.

So what are the key points here?

- It would have been preferable for the tenancy agreement to explain the actual arrangement more specifically, rather than using standard wording about paying “to the authorities”. This may have avoided the misunderstandings that arose in this case.
- The dispute may have been prevented had regular invoices been produced to show the tenants the charges that fell due during the course of the tenancy, rather than waiting until its end.
- Where charges of this nature are ‘re-charged’ to tenants, landlords should ensure that they produce an invoice which sets out the method of calculating them. The adjudicator will want to see that the liability to pay formed part of the agreement, that it was not honoured, and that the amount then claimed was explained/calculated reasonably.

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