



Tenancy Deposit Scheme

Adjudication Digest

No 05/2013

It's all in the small print.....

- **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.

It's all in the small print....

In this month's case study, we are looking at the pitfalls that can catch agents out with claims for check out fees.

Amount of deposit in dispute:	£ 90.00
Dispute initiated by:	Agent
Award made:	
Tenant	£ 90.00
Landlord	£ 0.00
Agent	£ 0.00

In our first case, the agent claimed £90.00 from the tenants' deposit for the check-out fee. The tenancy agreement permitted deductions from the deposit for any unpaid money payable by the tenant under the tenancy agreement. One particular clause of the tenancy agreement required the tenant to pay the cost of a missed appointment for the check-out. However there was no other provision in the tenancy agreement for the payment of any check-in and check-out fees by the tenant.

The agent referred to other terms and conditions that they issued, which the tenants claimed never to have seen. These were in a separate printed document which was not signed or dated – it appeared to be a standard 'leaflet' referring to other charges payable by tenants, including a check out fee of £90.00.

The adjudicator took the view that they could make no award to the agent from the deposit for the check out fee. The tenancy agreement itself made no reference to the payment of check out fee, so it could no be said that there was an obligation on the tenant to pay it in the tenancy agreement. Neither did it incorporate any other charges payable by the tenant – for example a cross-reference to the charges document produced by the agent. Even had it done so, it was not clear when this document had been issued, or how it was that it formed part of the tenant's contract with the landlord/agent.

Amount of deposit in dispute:	£ 250.00
Dispute initiated by:	Agent
Award made:	
Tenant	£ 100.00
Landlord	£ 0.00
Agent	£ 150.00

In our second case, the tenancy agreement referred to the tenant being responsible for the payment of a check out fee, but did not specify its amount. After the tenants left the property, the agents emailed them to confirm that the inventory clerk estimated the check out report fee would be in the region of £95.00 and £150.00. When the tenant pressed the agent for a more precise figure a second email confirmed the price "*should not be more than £150.00*". After the check out inspection, the agent produced an invoice for a check out fee of £250.00, which was disputed by the tenant.

The adjudicator noted that the amount claimed seemed high for a check out fee for the size of property involved. No explanation had been given for such a significant discrepancy between the invoice and the amount mentioned in the emails. In the absence of evidence to demonstrate why the cost has escalated to such a degree the adjudicator limited the award to the agent to £150.00, the amount specified in their second email.

So what are the key points here?

- Make sure that charges payable by tenants are included in the tenant's obligations in the tenancy agreement itself.
- Check that the deposit clause in the tenancy agreement allows the deposit to be used to pay for the costs claimed.
- Ideally, the tenancy agreement should specify the amount of the check fee, or give a formula for how it will be calculated. This is so that it is clear to all parties what the obligation to pay it, and how much it will be for. Where this is not the case the adjudicator may reduce the amount of the award if they feel it is proportionate to the size of the property.