



Adjudication Digest No 2/2012

- 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.

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.

Amount of deposit in dispute: £575.00

Dispute initiated by: Agent

Award made:

Tenant £505.00

Landlord £ 70.00

Agent £ 0.00

Court in the middle with you....

We are seeing more cases recently, no doubt due to the economic climate, where Court action follows the end of a tenancy. In this case the agents made a claim to TDS on behalf of the landlord for the full deposit to cover cleaning, damage and redecoration costs. The tenancy had not run smoothly, and the landlord stated that he had already taken the tenants to Court for rent arrears.

The evidence sent to TDS included a Court Order referring to the payment of “debt and interest”. The order did not specify what this judgement debt was actually for, nor did it refer to the tenancy deposit, but it was clear from the other information sent to us that the order was understood by the landlord to cover rent arrears. This presented the TDS adjudicator with a dilemma. An adjudicator cannot reopen a matter already dealt with by the Court. But the adjudicator could not tell what the Court had in fact dealt with – or what was owed to whom. The adjudicator would have been mindful that if the landlord was not awarded the full deposit, any balance of the deposit following adjudication would usually be returned to the tenants.

It was imperative that TDS saw evidence from the Court linking the debt to the rent arrears. Although we do not routinely look for additional evidence, the situation here is different – knowing the detail behind the Court Order was relevant to how the deposit might be affected by it. What might then have been useful to TDS could, for instance, have been a copy of the Claim Form raised with the Court. With proof of what the “debt” was for, the adjudicator could award any remaining deposit in accordance with the Court Order.

Sounds simple enough. However although the landlord was given opportunities to provide more detail of the judgement debt, no further confirmation was received to link the “debt” to the rent arrears. Consequently, the adjudicator had to make their decision based on the information presented by the parties.

The adjudicator dealt with the claims for cleaning, damage and redecoration as set out in the tenancy agreement. The deposit clause showed that claims of this nature would be deducted from the deposit first. Both parties were equally entitled to rely on the check in and checkout reports to establish the condition of the property at the start and the end of the tenancy. However the check out report did not support the landlord’s claims that all matters were the tenant’s responsibility. The adjudicator was only able to make an award for £70.00 for items which the tenant admitted damaging.

Dealing with the balance of the deposit the adjudicator concluded that “TDS is not able to adjudicate on any matter that has been decided by the Courts and therefore rent arrears do not form part of this adjudication”. However because the Court order did not show what the debt was actually for, the

adjudicator could not assume it was for rent. The adjudicator had no alternative but to return the remainder of the deposit to the tenants because he could not be certain what the Court Order in fact covered. The outcome could have been very different had the landlord produced the necessary information to support/clarify the Court Order.

So what are the key points here?

- Always remember when at Court to advise the judge that there is a deposit in existence and instruct the order to be specific – for example “the defendant pay the claimant £1000 for rent arrears”, “the defendant pay the claimant’s court costs of £275”.
- Even better, ask the judge to make a specific direction about the deposit – for example “the tenancy deposit of £1000 is to be paid to the landlord in settlement of this judgement debt”.
- Send TDS all relevant paperwork concerning Court action, showing the claim, the Order made, and what it was for.

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