



Adjudication Digest No 6/2011

- 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: £1500.00

Dispute initiated by: Tenant

Award made:

Tenant £ 1500.00

Landlord £ 0.00

Agent £ 0.00

I can't possibly live with that....

This was a case where the agents claim that the property was let “as seen”. The evidence presented to the adjudicator did not make it clear whether the tenant, who had recently moved to the UK, visited the property before agreeing to rent it or whether she relied on advertising materials. However the tenant considered that the property was not fit for human habitation, and did not want to move into it. However, it being a bank holiday weekend, she decided to continue with her move and occupied another flat in the same building.

The tenant experienced further problems in the new flat, including an intruder. The tenant had not chosen originally to rent a ground floor flat and was a single female living alone in London. She offered to move to another property belonging to the same landlords, but that did not happen.

We accepted that as a general principle, it is the tenant’s responsibility to ensure that the property they agree to rent is suitable for their needs. A landlord has no obligation to point out any defects, although a landlord may be liable if a tenant is injured because the premises are defective. However a furnished property must, in law, be fit for habitation at the start of the tenancy. The evidence submitted by the tenant, and the check-in report, raised a strong possibility that it was not.

If the property was not fit for habitation, the tenant was entitled to reject the contract at the outset. As it was, the tenant tried to move into another property – which the adjudicator considered to be a reasonable compromise by both parties to try and minimise loss.

The tenant experienced further problems in the alternative flat. Although the landlords were not responsible for the intruder, the adjudicator did not consider that the tenant’s obligation to minimise her loss required her to stay in a property where she did not feel safe. The tenant believed that she was entitled to terminate the contract under the tenancy agreement, as she considered the flat to be “totally uninhabitable”. The landlords were willing to accept a surrender, but only on the terms that the tenant paid the rent until a new tenant took over responsibility for the flat. The tenant was not willing to agree to this.

The landlord arranged to complete remedial works to the first flat, and once this was complete, the property was in a lettable condition and vacant for 16 days before a new tenant moved in. The tenant was in occupation of the substituted flat for only 4 days, but paid one month’s rent.

This was a difficult case to determine. The adjudicator was not satisfied that the property was fit for habitation at the start of the tenancy, and did not consider that the tenant had broken the terms of her contract. He concluded that the landlords had been adequately recompensed for the tenant's occupation and early departure in the circumstances. For these reasons, no award was made to the landlords from the deposit.

So what are the key points here?

- Document the condition of the property correctly at check in and check out.
- Conduct viewings with tenants wherever possible, to prevent problems at a later date.

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