

Adjudication Digest No 11/2012

Striking oil.....

- 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.

Striking oil....

In this month's digest we look at two recent cases concerning heating oil tanks and claims for refilling them at tenancy end.

In one case, a check in inventory stated that the oil tank was full. The tenants amended the report to indicate that the tank was only half full at the start of the tenancy, and that the gauge was not working. No evidence was produced to counter this claim. The check out report indicated that the tank was one third full at the end of the tenancy. The agents claimed the difference in cost between one half and one third of the tank (a little over £100.00). The tenants agreed that the tank was not full to the correct level when they left the property, but disputed the claim on the basis that there was no means of definitely ascertaining the amount of oil in the tank and the figure reached had therefore been calculated on the basis of unreliable estimates.

The adjudicator took the view that whilst the estimates about the tank's contents may not be completely accurate, there was sufficient evidence that the oil level at the end of the tenancy was lower than the level at its start. As it was not possible to take definitive readings the adjudicator was unable to award the landlord the full amount claimed but accepted that the landlord was entitled to something. In the absence of further evidence and in order to reach a reasonable compromise the adjudicator awarded £50.00 by way of a contribution towards the cost of refilling the tank.

In our second case, a landlord wished to claim £199.92 for the cost of topping up the oil tank to the level agreed with the tenant at the end of the tenancy. The landlord explained that the tenant agreed to fill the tank to a level of 365 mm that was agreed and marked on the outside of the tank and the tenant had £500.00 litres delivered at the end of the tenancy to do this. However the landlord claimed that the tank was underfilled at tenancy end by 348 litres which would cost £199.92 to buy at the rate of 57.45 pence per litre. The tenant disputes the claim on the ground that the gauge was faulty. The tenant has explained that the gauge was showing 1850 litres at the start of the tenancy. He ordered 500 litres to top up the tank at the start of the tenancy but the gauge remained at 1850 litres indicating that it was not working. The tenant says that he then used a dipstick and a reading of 1850 was shown which meant that the true level of the tank at the start of the tenancy was 1350 litres. The tenant says that the level of the tank was 1200 litres at the end of the tenancy and he topped it up by 500 litres to 1700 litres and as such he has over filled by 350 litres.

The adjudicator was satisfied in this case that there was an agreement to leave the oil tank at the same level upon vacation as on occupancy. However the landlord had not provided evidence of the oil level reading at the start of the tenancy or an explanation of how the 365mm level converts into litres. A reading of the oil level is vital in allowing the adjudicator to identify if there is has been an under fill at the end of the tenancy. Whilst the landlord states that the tenant agreed to fill the tank to 365 mm at the end of the tenancy without proof that the oil level was at 365 mm at the start of the tenancy and how many litres this level constitutes, the adjudicator was unable to ascertain with any accuracy the oil level at the end of the tenancy. Unlike the first case discussed above, there appeared to be no common ground between the parties, and the adjudicator awarded nothing.

So what are the key points here?

- Check in and check out reports need to identify oil levels using a measure that can be compared for start and end of the tenancy
- Make sure that oil gauges are checked and tested regularly
- Estimates/invoices should show the amount of oil in litres, together with the unit price and cost calculation

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