



Tenancy Deposit Scheme

Adjudication Digest

No 11/2013

Be careful what you say.....

- 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.

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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.

Be careful what you say.....

Amount of deposit in dispute:	£ 509.00
Dispute initiated by:	Landlord
Award made:	
Tenant	£ 509.00
Landlord	£ 0.00
Agent	£ 0.00

In this month's case, a landlord claimed £134.00 for unpaid electricity charges at tenancy end. The tenancy agreement included the following clause:

"Any reference in this agreement to notifying the council or utility suppliers in relation to the council tax, water, gas and electric bills is not applicable due to these being included in the rental amount and the responsibility for the payment of these will be the Landlords [sic]."

The landlord argued that he had made it clear to the tenants when they moved in that he expected them to pay electricity charges if these exceeded the rent. The tenants denied that this was the case. The agents acting on the landlord's behalf had completed the tenancy agreement and paid the electricity bills from the rent received during the course of the tenancy. However the rent received had not been sufficient and a shortfall remained at tenancy end.

Based on the wording of the tenancy agreement – and the absence of any further evidence to show that the tenants had agreed to anything different - the adjudicator was not able to support the landlord's claim for the unpaid utility charge.

The landlord also claimed £375.00 from the deposit in lieu of notice. An individually negotiated term of the tenancy agreement stated that the tenants were obliged to give one calendar months' notice to coincide with the rent due date after the end of the fixed term of the agreement. The landlord states that he did not receive the notice until 9th September 2013, two weeks before the end of a monthly rental period, meaning that the full notice due under the tenancy agreement had not been given. In order to reach a compromise, he claimed two more weeks' rent from 30th September to 14th October 2013. The tenants objected to the deduction on the basis that they had spoken with the landlord in August about wanting to leave the property. They said that the landlord was happy for them to leave and had asked them to show potential tenants around the property. The tenants assumed from this that the landlord had in fact received their notice and accepted them leaving the property quickly.

The landlord's evidence included a letter from him dated 9th September 2013 acknowledging receipt of a hand delivered copy of the tenants' letter giving their notice on the same date. It explained that the landlord had fallen out with the agents over the unpaid electricity bill, and therefore wanted to end the tenancy without the agents' involvement. The landlord acknowledged that the property would be empty by the end of September 2013 and stated that the deposit would be released after an inspection of the property. The landlord did not indicate at that stage that the tenants' notice was not acceptable.

The adjudicator concluded that the landlord's letter constituted acceptance of the tenants' notice and they were entitled to rely on it. The adjudicator did not consider the landlord to be entitled to further rent for any period after 30th September 2013.

So what are the key points here?

- Read tenancy agreements carefully and understand what they say. If they are incorrect and need changing, make sure this is done in writing and with the agreement of both parties. Although the landlord was adamant that the tenant had agreed to pay for any utility shortfall, on the evidence presented this was a case of one person's word against another.
- Be careful about what is said when accepting notice from tenants. In this case, the tenancy agreement was clear, but the landlord's letter was sufficient for the adjudicator to conclude that the landlord did not in fact want to hold the tenants to its terms.