

Adjudication Digest No 10/2012

What a difference a day makes.....

- 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.

Amount of deposit in dispute: £ 245.00

Dispute initiated by: Landlord

Award made:

Tenant £ 212.00

Landlord £ 33.00

Agent £ 0.00

What a difference a day makes.....

In this month's case a landlord claimed £245.00 for expenses arising as a result of the tenants leaving the property a day late. The landlord provided invoices of £75.00 for a cancelled locksmith appointment and £179.60 for hotel costs for the incoming tenant. The departing tenants disputed responsibility for these costs but offered to pay an additional day's rent.

The tenancy agreement allowed the landlord to charge a sum equal to the proportion of rent due if the tenants failed to vacate the property at the end of the tenancy and to remove all their belongings, and to pay any reasonable costs incurred in replacing locks to which keys are not returned. It also allowed the deposit to be used for *"reasonable compensation for the Tenant's use and occupation of the Property if the Tenant fails to vacate on the due date"*.

It was not clear from the evidence provided what date, if any, was agreed with the tenants for the check-out inspection, or whether the tenants were expected to return the keys at the time of the check-out inspection or to the agent/landlord directly. However the tenants accepted that they left the property a day late and the evidence presented showed that they returned the keys on that day.

The adjudicator took the view that as the tenants vacated only a day late, and assuming that the check-in inspection was to take place promptly after that, it would be unusual for arrangements to be made for the locks to be changed before the check-out inspection. The decision to send a locksmith to the property (which, from the evidence presented, had been made before the check-out inspection had taken place) or before the agent had visited the property to confirm if the tenant had vacated, was premature.

The landlord had also raised successful claims for cleaning and other works required to the property after the tenants had left. For these reasons too, it would have not been possible for the incoming tenant to move in immediately after the tenancy had ended. However the adjudicator did not consider the costs of the new tenant's overnight hotel stay as relating to the departing tenant's use and occupation of the property. It would be impossible to predict whether a property was fit for the new tenant to move in until the existing tenant had left and a check out inspection carried out. Again, it appeared that the landlord had acted with undue haste and not made allowance for any necessary remedial works that might be needed before a new tenant could move in.

Give that the tenants have accepted responsibility for an additional day's rent according to their obligations under the tenancy agreement the adjudicator awarded this sum only to the landlord.

So what are the key points here?

- A tenant may be liable for costs incurred by their late departure, but adjudicators will look at what is reasonable in the circumstances of each case.
- In this case, the new tenants were a day late moving into the property. But the landlord in this case had made no allowance for a short 'void' period between tenancies. Landlords should act reasonably to keep losses to a minimum – assuming that a property would be fit for occupation the day after the tenancy's contractual end date was neither realistic nor reasonable.

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