



Tenancy Deposit Scheme

Adjudication Digest

No 09/2013

Tread carefully.....

- 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.

Tread carefully.....

Amount of deposit in dispute:	£ 1,750.00
Dispute initiated by:	Landlord
Award made:	
Tenant	£ 1,750.00
Landlord	£ 0.00
Agent	£ 0.00

In this month's case the landlord claimed £1,750.00 is claimed for the cost of carpeting wooden floors and a further £180.00 in solicitors' fees. The claims arose because of complaints from neighbours about noise caused by the tenant's young son running across wooden floors in the property.

Following one complaint, the landlords provided some runners and rugs. However this evidently did not reduce the noise sufficiently and further complaints followed, leading to the issue of a notice under Section 146 of the Law of Property Act 1925 by the superior landlord.

This notice directed the landlords to carpet the wooden floors in accordance with a covenant contained in the lease requiring them *"To keep the flat and the passages thereof substantially covered with carpets except that in the kitchen and bathroom all-over cork or rubber covering or other suitable material for avoiding transmissison of noise may be used instead of carpet."*

As part of their claim the landlords argued that they had only had to incur these costs because of the tenants' behaviour. The landlords also argued that there were other flats in the property that did not have wooden floors. The tenants argued that they should not be obliged to pay for something that the landlord was obliged to do in any event.

The adjudicator considered that the covenant places a clear obligation upon the landlords to use the right floor coverings. There was nothing in the tenancy agreement which allowed the cost of compliance with these obligations to be passed on to the tenants.

So what are the key points here?

- Landlords who are subject to superior leases should check to see whether any clauses in the superior lease will affect them letting out their property.
- Where such conditions incur costs to the landlord, they may in turn want to consider the extent to which it might be possible to recover their costs from the tenant. This is likely to need individually negotiated clauses in the tenancy agreement, but this may not always be possible to achieve.