



Tenancy Deposit Scheme

## How TDS approaches disputes involving agents' fees

- Here are some pointers from TDS on how we approach claims for agents' fees. We hope that you will find them informative and helpful in deciding if you want to proceed with sending a dispute to us.
- 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.

tel: **0845 226 7837**

fax: **01442 253 193**

email: **deposits@tds.gb.com**

**www.tds.gb.com**

## Key principles in our approach to agents' fees

**These key principles guide our approach to dealing with disputes about agents' fees. However every case has to be reviewed on its merits.**

- 1 The tenancy agreement needs to explain clearly the circumstances in which a tenant would be expected to pay a fee to an agent. What is the fee for? When does it apply? How is it calculated?
- 2 The tenancy agreement must make clear that the deposit can be used to pay the fee. If it doesn't, a tenant may be liable to pay the fee but TDS may not be able to award it from the deposit.
- 3 Wherever possible, the likely amount of the charge should be set out within the tenancy agreement, particularly for things like check out fees. If it is not, we would expect to see evidence that the tenant had otherwise been informed, when the tenancy was signed, about fees that may be incurred.
- 4 If it is not possible to specify in advance the exact fee, at least explain how it will be calculated. Where no indication is given, any award we make will be for what we consider to be a reasonable sum. This may not be the same as the amount actually incurred.
- 5 We will consider whether any charge is reasonable in relation to the work likely to be needed from the agent. For example, if a fee is expressed as a percentage of a contractor's invoice, we may not award the full amount if the invoice is for a substantial sum and the agents' input was only to commission the contractor.
- 6 We may reduce the award if we have not awarded, fully or in part, the landlord's claim for the underlying work. For example, if the landlord has made a claim for cleaning and we do not regard the tenant as liable for the cleaning costs, we are unlikely to award the agent any associated administration fees.
- 7 Where agents refer to a fee of 'up to' a certain figure, we may reduce the award if the agent appears to charge the maximum fee in every case.
- 8 We will want to see evidence that the sum claimed for has actually been incurred. For example, we are unlikely to make an award for a check out fee without evidence to show that the check out was done.
- 9 The agent should not automatically deduct a check out fee from the deposit if the tenant wishes to dispute it. If the fee forms part of the deposit dispute, it should be sent to TDS along with any other disputed funds.
- 10 If the agent expects to receive the fee direct, the deposit clause in the tenancy agreement must provide for payment of the fee to be made to them. Alternatively, we will need the landlord's consent for the sum to be paid to the agent.