

How does a TDS adjudicator decide how to divide a disputed deposit?

This document sets out the TDS adjudicator's general approach when deciding whether and in what proportions to return a disputed deposit to the tenant or the landlord at the end of the tenancy.

It is an independent review and adjudication process. The adjudicator reviews the evidence received and decides how to divide the disputed amount between the parties.



tel: **0845 226 7837**

fax: **01442 253 193**

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

www.tds.gb.com

How a TDS adjudicator decides to divide the disputed deposit

- **Disputes settled by a court** The adjudicator cannot consider any dispute that a court has already dealt with.
- **Disputes that are going to court** If one of the parties says they intend to take the matter to court and the disputed deposit has been sent to us, we will keep the deposit until we receive clear instructions from the court. If you are taking the dispute to court, you should ensure that any court order gives us a clear payment instruction.
- **Continuing negotiations** We will assume that you and the other party have stopped negotiating about the dispute by the time it is referred to us. If negotiations continue and you resolve part or all of the dispute, you should tell us as soon as possible. If we do not hear from you, our awards will reflect only what we have been told.
- **Response by other parties** We will send a copy of the Dispute Application Form to the other parties and invite them to respond. If the other parties fail to respond, the adjudicator may take this into account in the adjudication and may award the disputed amount to the party bringing the dispute. Copies of documents we get from the party bringing the dispute will be available to view in the on-line evidence portal. If you have difficulty using this or need us to send you hard copies of documents, please contact us.
- **The evidence we need** We will ask for more documents or information only if we think they are crucial and have been withheld. If you are bringing the dispute, you must provide evidence to support your claim. If you are responding to the dispute, you should also provide evidence to support your point of view. Remember that the deposit belongs to the tenant unless the landlord or agent can establish a valid claim.
- You should send the documents you want us to see when asked to do so. Documents we receive too late will not be taken into account. We cannot consider any documents after we have passed the case to an adjudicator. The adjudicator needs written evidence, such as a check-in and check-out inventory. We will not accept physical evidence (for example, damaged items). This type of evidence does not show the difference in an item's condition between the start and end of a tenancy in the same way that inventories can. You can provide a professional report from a suitably qualified person who can give an opinion to support your claim if you want to.
- **Counterclaims** The adjudicator can make an award only for amounts claimed by a landlord against a deposit paid by a tenant. If the tenant has a counterclaim against their landlord, they must take it up with the landlord directly and seek independent legal advice if necessary. The adjudicator cannot take account of such issues when deciding how the disputed deposit should be divided.
- **How much we can award** The adjudicator can only award up to the amount of the deposit. If the amount claimed is more than the deposit, the adjudicator will treat the claims in the order set out in the tenancy agreement if it specifies the order. The adjudicator will say who they think should receive an award, and for how much, up to the level of the deposit. A landlord who wishes to pursue the tenant(s) for extra amounts will need to seek further advice.
- **How we make our calculations** If the deposit holder (the landlord or their agent) has passed to TDS less than the disputed amount, the adjudicator will pay the tenant's award in full. If this results in any shortfall in the payment to the landlord, they will have to take that up with any agent that was acting on their behalf. Please see the example below.

Example

- The landlord claims £1,000 of the tenant's deposit.
- The landlord's agent sends us only £700 of the deposit with no explanation.
- We decide the tenant is due £900 and the landlord £100.
- We pay the tenant their £900 in full. Even though we were sent only £700, we always ensure that the tenant gets what they are due, using our insurance to pay the other £200.
- Although the landlord was due £100, we were not sent enough deposit money to pay the amounts due to both landlord and tenant. After paying the tenant's award, we have no deposit money left. We pay the landlord nothing, and they will have to discuss the shortfall with their agent.

- If the deposit holder (the landlord or their agent) has passed to TDS more than the disputed amount, the adjudicator will assume – in the absence of other information – that the amount not in dispute is to be returned to the tenant(s). Please see the example below.

Example

- The landlord claims £600 of the tenant's deposit.
- The deposit was £1,000 and the agent has sent us this amount.
- We find that the claim for £600 is reasonable. As we have no information to show there is any claim against the other £400, we return £400 to the tenant.

- **Reasonable costs only** The adjudicator need not accept the figures for costs claimed or incurred by the landlord. All adjudicators' awards are based on what they consider to be the reasonable cost of making good the damage or loss. In working out the amount, the adjudicator uses publicly available sources of information such as high-street stores, and services and products available on the internet.
- **Age and quality of items** Any award will take account of the age and quality of the item at the start and end of the tenancy as well as fair wear and tear during the tenancy. An award is made to compensate a landlord for an item's loss of value, if the loss of value is caused by the tenant during the tenancy. Landlords should not expect to receive full replacement value.