



Tenancy Deposit Scheme



TDS Review 2009-10



Foreword

Chairman of The Dispute Service

This is my first foreword since having been elected as Chairman of the Board in May 2010. My previous role as Chairman of the Council of TDS served me in good stead in stepping up to this new role.

By any measure 2009-10 was a challenging year for TDS and the Board was forced to take a number of difficult decisions during the year to ensure the continuing success of the company.

This is the third year of the statutory Tenancy Deposit Scheme and the level of activity demonstrates that the Scheme is now much better understood and utilised within the industry. However during 2009-10 we saw a continuing increase in the number of deposit disputes being referred to us with a consequent pressure on our available resources to deal with the administration and adjudication processes. As a result we had to revise our charging structure for 2010-11 to ensure that the Scheme remained on a viable footing.

I acknowledge that we should have communicated better this increase in charges to our members and I have made a commitment to greater transparency and openness with members over the coming year. We are pleased that the overwhelming majority of agents have remained with TDS and I can confirm that the 2010-11 financial position is much more secure.

This Annual Review gives a flavour of our work in 2009-10 and I hope that you find it of interest.

Professor Martin Partington, CBE QC
Chairman





The Tenancy Deposit Scheme

The Housing Act 2004 (Chapter 4, sections 212-5; & Schedule 10) made provision for both the protection of tenancy deposits and the resolution of disputes over their return. The legislation came into effect on 6 April 2007. After that date all deposits taken for Assured Shorthold Tenancies had to be covered by a tenancy deposit protection scheme.

The Tenancy Deposit Scheme is one of three schemes authorised by the Department of Communities and Local Government (CLG). It has been designed primarily for agents, but membership is also open to landlords. Mandatory deposit protection was implemented in April 2007, but The Dispute Service Ltd offered a voluntary scheme to regulated agents for three years before that (the Tenancy Deposit Scheme for Regulated Agents).

The Tenancy Deposit Scheme operates as follows:

- The member agent or member landlord holds the deposit;
- Where there is no dispute at the end of the tenancy, the member will, as normal, pay out the deposit promptly;
- If any of the parties wants to challenge the proposed apportionment of the deposit, they should do so within 20 working days. If there is an agent, they must try to negotiate a settlement between the parties within 10 working days;
- If this cannot be done, any of the parties can refer the dispute to the Independent Case Examiner (ICE) for third party independent adjudication;
- The deposit-holder must transfer the disputed deposit to The Dispute Service. The ICE will carry on with an adjudication and pay out the deposit even if the deposit has not been submitted. The Dispute Service will claim the amount in question from its insurers, and seek to recoup it from the member. Persistent failure to submit disputed deposits may lead to the termination of membership;
- The ICE seeks to make his decision within 28 days of receiving all the necessary information. The deposit is paid out within a further 5-10 working days.

Members join TDS directly, rather than through their membership of another body. Agents pay an annual subscription based on their membership of a relevant regulatory body which requires them to carry Client Money Protection Bonding: the Association of Residential Letting Agents; National Association of Estate Agents; Royal Institution of Chartered Surveyors; National Approved Lettings Scheme; and the Law Society.

The subscription for agents in 2009-10 was based on how many branches they owned. The subscription for 2010-11 was changed to the number of tenancy deposits registered on our database.

It is a matter for members to decide if and how they recover the subscription from landlords or tenants.



Membership of the Scheme is open to regulated Agents (i.e. those with ARLA, NAEA, RICS, NALS, Law Society), together with corporate and other landlords on individual application.

There is no additional fee for adjudication on disputes arising out of assured shorthold tenancies which started after the member joined the scheme.

TDS Methodology for adjudicating disputes

TDS has a clear methodology which is applied to the disputes it receives:

- We identify early in the process those cases which can be resolved without an adjudication – for example, those that can be dealt with summarily by letter, or resolved informally (see below);
- We ‘filter’ cases at the administrative stage to establish that key documentation has been submitted to avoid delays during the adjudication itself;
- Where the amount in dispute is small and the issue straightforward, we contact the parties to suggest that it does not need TDS to resolve, and give a time limit for them to sort it out;
- We vary the extent of the adjudication to match the nature of the dispute;
- We have published *Progress of a dispute* to advise landlords and tenants about how we deal with disputes and the evidence we will need. It is available at the point of dispute, both on the website and for members to hand out;
- We have also produced *Operational procedures and advice* for members to help firms deal with particular issues which may arise from time to time e.g. “What happens with let-only properties?”; “What do we do about changed and replacement tenancies?”; “What evidence will we need to resolve the dispute?”; and so on;
- We have created some guidance articles/documents on our website to answer the most frequently asked questions, in an attempt both to be helpful and to diminish our call centre costs;
- We publish regular digests of cases so members can see how particular disputes were resolved.

We regularly review this material, refining and adding to it as necessary.

Changes to the TDS Subscription charges for 2010-11

Until March 2010 the original TDS business model had a subscription fee based on the number of branches an agent had, regardless of the number of tenancies protected under the Scheme. This meant that a branch with 50 tenancies would pay the same fee as a branch with 1,000 tenancies. However our administrative, financial and



adjudication costs are largely driven by the numbers of disputes and these began to increase in 2008-09 and this continued into 2009-10.

Indeed such was the growth in the workload we had to take urgent action in 2009-10 to both contain our costs and to increase our subscription income. The Board took firm action to reduce costs in the last two quarters of 2009-10 (which unfortunately did impact on our performance) whilst seeking to introduce a new charging structure. The new charging structure was based on a fee per tenancy registered, with discounts based on a number of factors including; the level of regulation faced by the member, the number of disputes raised with TDS and compliance with TDS scheme requirements.

We are pleased that the overwhelming majority of agents have remained with TDS. The financial position of TDS in 2010-11 is now much more secure and we have consistently been meeting the key performance targets set by the government.

Board

Royal Institution of Chartered Surveyors
The National Federation of Property Professionals

John Hornsey

Malcolm Lindo

Martin Partington

Steve Harriott

Jodi Berg

(appointed 5th May 2010)

(appointed 27th October 2010)

(appointed 27th October 2010)

David Gollancz

(resigned 2nd February 2010)

Senior staff

Chief Executive

Finance Director

Head of Adjudication/ICE

Head of Member Relations

Financial Controller

Disputes Operations Manager

IT Manager

Corporate Support Manager

Head of HR

Stephen Harriott

(appointed September 2010)

Malcolm Lindo

Michael Morgan

(appointed November 2010)

Ben Beadle

(appointed December 2010)

Maureen Fitzgibbons

Angela Dickens

Alan Maughan

Kim Twyman

Josanne Leon

(appointed November 2010)

Independent Case Examiner

Operations Manager

Lawrence Greenberg

Debra Rymer

(resigned July 2010)

(resigned August 2010)



Financial performance

Background

The Tenancy Deposit Scheme is a not for profit company.

When the Tenancy Deposit Scheme was established in 2007 the business model was based on a flat rate membership fee calculated on the number of branches a member had. TDS agreed to fix the subscriptions for its first two years as the Scheme established itself. For most members this fee structure was a commercially attractive proposition as tenancy deposit protection could be obtained from the Scheme at a modest cost.

In 2007-08 the Scheme made a surplus of £872,072 as there were relatively few disputes to handle.

In the 2008-09 annual report the Chairman reported that there had been a predicted increase in the number of disputes handled as a consequence of the maturity of the Scheme. This had led to a *“consequent strain on our resources in dealing with the administration and adjudication processes”*.

This was reflected in the annual accounts for 2008-09 where the Scheme made a reduced surplus of £24,529.

The financial year ending March 2010

At the beginning of 2009, the Board was conscious that, over the first two years of the scheme, the subscription income had been in excess of its costs and it decided to maintain the subscriptions for 2009-10 at the same level as the previous year, recognising that it would create a deficit in the year. The Board felt that it was the best way to return to members some of the surplus that had been created.

However 2009-10 was a challenging year for the Tenancy Deposit Scheme. The increase in dispute numbers predicted in the previous financial year materialised, but to a far greater than the Board had anticipated, with the number of disputes increasing from 577 in 2007-08, 6,284 in 2008-9 and to a total of 11,613 in 2009-10.

This led to the organisation having to take rapid action to control all aspects of its costs during the year.



Key steps taken during the year were:

- To review staffing levels across the whole of TDS;
- To significantly reduce the number of disputes adjudicated outside of the in house adjudication team;
- To defer expenditure on capital and revenue projects;
- To freeze recruitment in non-essential areas;
- To bear down on the costs of the Scheme's suppliers.

These steps were effective in reducing costs but nonetheless the Scheme made a loss after tax in 2009-10 of £604,437.

Prospects for 2010-11

As a consequence of the increase in the volume of disputes the Board of TDS decided that the original business model of charging a flat rate membership fee per branch should be changed.

The Board agreed to change the subscription fee to one based on the number of tenancy deposits registered with the Scheme. To reflect the lower risks to the Tenancy Deposit Scheme from member agents who had a lower level of disputes and better met the Scheme's operating regulations a discounting mechanism was introduced to reduce the costs with a maximum discount of 60% being offered.

It is clear from the management accounts in 2010-11 that this change has restored the financial stability of TDS.

Although dispute numbers have continued to rise in 2010-11 the emphasis on cost control has remained and the Board is utilising its resources to deliver service improvements and added value for members as well as building up cash reserves for the future. This strategy has enabled the Board to freeze its base subscription fee for 2011-12.



Table 1: Summary Audited Financial Accounts

Annual Financial Accounts			
		RESTATED	
	2009-10	2008-09	2007-08
TURNOVER	3,187,382.00	3,254,803.00	2,920,271.00
Cost of Sales	1,641,372.00	1,553,734.00	
GROSS PROFIT	1,546,460.00	1,701,069.00	
Administrative costs	2,393,744.00	1,765,921.00	1,873,524.00
	(847,284)	(64,852)	1,046,747.00
Other Operating income	0.00	8,883.00	10,440.00
OPERATING SURPLUS (Loss)	(847,284)	(55,969)	1,057,187.00
Interest receivable	16,522.00	129,816.00	86,664.00
Interest payable	0.00	0.00	779.00
(LOSS)/SURPLUS ON ORDINARY ACTIVITIES BEFORE TAXATION	(830,762)	73,847.00	1,143,072.00
Tax on profit on ordinary activities	226,325.00	(49,318)	(270,000)
(LOSS)/SURPLUS FOR THE FINANCIAL YEAR AFTER TAXATION	(604,437)	24,529.00	873,072.00



Statistical digest

Membership

Table 1: Membership and tenancy statistics as at 31 March

	2007-08	2008-09	2009-10
Landlords registered	361,522	611,861	778,646
Tenancies registered	470,323	786,405	969,817
Tenants registered	731,244	1,215,003	1,488,508
Tenancies renewed	7,877	59,254	174,159
Tenancies made periodic	3,881	14,853	55,631
Tenancies ending in dispute	577	6,284	11,613
Total amount of deposits protected from current tenancies registered	£466,190,677.96	£694,738,318.34	£933,418,946.61

Table 2: Types of Members at 31 March

	As at 31 st March 2008		As at 31 st March 2009		As at 31 st March 2010	
	Firms	Offices	Firms	Offices	Firms	Offices
Regulated agents	2,298	2,783	2,783	4,607	2,402	3,498
Unregulated agents	268	315	21	24	4	3
Corporate landlords	27	37	28	69	29	70
Other landlords	27	28	28	28	26	27
Total	2,620	3,163	2,860	4,728	2,461	3,598

Disputes

Table 3: Tenancies and disputes at 31 March

	Snapshot date	Snapshot date	Snapshot date
	31 st March 2008	31 st March 2009	31 st March 2010
Tenancies registered with TDS	470,323	786,405	969,817
	Year at 31 st March 2008	Year at 31 st March 2009	Year at 31 st March 2010
Tenancies ended during the year	41,261	224,731	412,488
Disputes received during the year	577	6,284	11,613
Dispute rate	1.40%	2.80%	2.82%



Table 4: Disputes

This table shows the numbers of cases received and closed as at 31st March. Whilst the number of cases received in a given year is fixed, the number resolved will include cases submitted in the previous time period.

	2007-08		2008-09		2009-10	
	Received	Closed	Received	Closed	Received	Closed
TDSRA	1,324	1,341	600	907	551	550
TDS	577	423	6,284	5,584	11,613	11,449
Total deposit disputes	1,901	1,764	6,884	6,491	12,164	11,999
ARLA	109	88	113	132	56	61
OEA	93	63	71	106	0	0
Total disputes	2,103	1,915	7,068	6,729	12,220	12,060

Types of disputes

TDS sees a wide variety of issues referred to its free alternative dispute resolution service. The table below shows that the main causes of disputes have remained similar to that experienced in previous years with the following consistently being referred to in disputes:

- Cleaning
- Damage
- Redecoration

Table 5: Types of disputes

	2007	%	2008	%	2009	%	2010	%
Cleaning	67	50%	1,405	52%	5,996	49%	4,053	46%
Damage	49	36%	1,206	45%	5,256	43%	3,416	39%
Redecoration	24	18%	678	25%	3,178	26%	2,089	24%
Gardening	19	14%	343	13%	1,641	13%	1,030	12%
Rent Arrears	30	22%	479	18%	2,024	16%	1,320	15%
Other	63	47%	1,280	48%	6,122	50%	4,841	55%

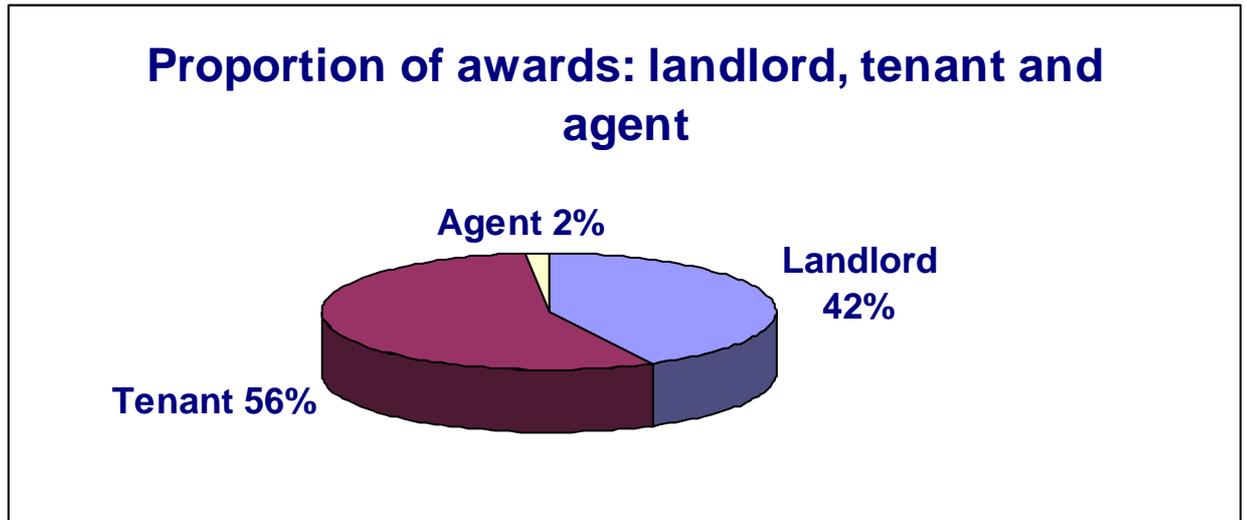
Clearly, the best way to demonstrate that the property has deteriorated over the course of the tenancy is through the submission of a comprehensive check in and check out inventory, supported with an invoice or estimate from a cleaning company. Despite this, some landlords are still choosing not to present these essential documents when making a claim from the tenant's deposit.



Awards

The diagram below shows the proportion of disputed deposits awarded to tenants, landlords and agents from 2007-2010. This diagram shows that there is an relatively even split of disputed deposits between landlords and agents over time.

Diagram 1: Proportion of awards of disputed deposits





Contact details

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