



Tenancy Deposit Scheme

## What happens when the Court is involved in a tenancy deposit dispute?

- Here are some pointers from TDS about choosing between sending a dispute to us or using the Court instead.
- Please read this document together with our guide to *Deposits Disputes and Damages*.
- Some cases may be better dealt with by the Courts due to their complex nature or because they involve more issues than just the deposit. If you are unsure about whether to use the Court or TDS to resolve your dispute, we recommend that you seek legal advice to ensure that the dispute is considered in the most appropriate arena.

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## **Is my dispute about the deposit?**

TDS can only resolve disputes about deductions claimed from a deposit covered by TDS, when a tenancy ends. You can check if your deposit is covered by looking at our website [www.tenancydepositscheme.com](http://www.tenancydepositscheme.com) and going to the page *Is my deposit registered?* or telephoning us on 0300 037 1000.

## **How much is in dispute?**

TDS will deal with any deposit dispute, however small the sum – although our approach may vary if only a little money is involved. However, we can only award up to the amount of the deposit that is in dispute. If a landlord wants to claim much more than the amount of the deposit, they may prefer to take their dispute to Court so that it can deal with the full amount of their claim.

## **Do I want TDS to resolve my dispute, or would I rather go to Court?**

Either the landlord or the tenant can take their deposit dispute to Court if they prefer. TDS can only resolve the dispute if both tenant and landlord agree to alternative dispute resolution (ADR) - except where the landlord refuses to make any decision, in which case we can deal with the dispute in any event.

Most people prefer to use TDS because they feel that this way of resolving disputes will be quicker, cheaper and less stressful than going to Court. Like the Courts, TDS is also independent and authoritative.

## **What disputes can't TDS deal with?**

Landlords and tenants sometimes forget that TDS' role is to resolve disputes about the deposit when a tenancy ends. This means that TDS can decide how much of the deposit should be paid to landlord, tenant and agent under the terms of the tenancy agreement.

We are not able to deal with other areas of dispute, even where they relate to the tenancy. Those sorts of disputes may be better taken to Court, where all these issues can be dealt with together. Examples of disputes that TDS cannot deal with include:

- 'counterclaims' by the tenant against the landlord or agent. This is where a tenant faced with a claim against their deposit, may feel that the landlord's claim against the deposit should be reduced because of what they regard as a failure on the landlord's part. They may, for example, want to claim compensation for disrepair in the property, or for something they have had to pay for which they feel should have been dealt with by the landlord. TDS cannot deal with these issues. If they are important to their case, tenants may prefer this type of dispute to be resolved in the Court.
- claims or complaints by the landlord against their agent or inventory clerk on the basis that they have not managed the property correctly or have missed something on the inventory. Disputes between landlords and their agents/contractors are not ones that TDS can deal with.
- disputes between landlords, or between tenants themselves.

## **So what if my dispute is not about the deposit?**

We can only resolve disputes about deductions that a landlord or agent wants to take from a deposit when a tenancy ends. The tenancy itself must be registered with TDS.

We cannot resolve disputes between tenants, complaints about the conduct of letting agents, managing agents or landlords, or other disputes that are not about deductions from the deposit. So if your dispute is about any of these things, you could use one of the following routes:

- **Professional body:** If your dispute is with an agent that is a member of a professional body, you may wish to contact them. The professional bodies include the Association of Residential Letting Agents (ARLA), the Royal Institution of Chartered Surveyors (RICS), the National Association of Estate Agents (NAEA), the National Approved Lettings Scheme (NALS), and the Property Ombudsman.
- **Adviser:** If your dispute is about an agent who is *not* a member of a professional body or if it is about a landlord, please ask for help from your local Citizens Advice Bureau, housing advice centre, law centre or other advice organisation.
- **Court:** You could use the court to make a counterclaim against your landlord or if you think the landlord's claim should be lower because of a failure by the landlord. You may want to speak to one of the above advisers first, or contact a solicitor.

## **Is there a time limit for sending a deposit dispute to TDS?**

There is a deadline by which you have to send your dispute to TDS to adjudicate, which is three months from the end of the tenancy. After this time limit has elapsed, it will normally be too late for TDS to adjudicate (although we have discretion to extend the limits where there is good reason for us to do so. For more information on when this can happen, please our Rules for the Independent Resolution of Tenancy Deposit Disputes.)

## **Where a dispute is being resolved through the Courts**

TDS is not able to adjudicate where the Court has made an order setting out where the deposit should go. Once the Court has made a final order affecting the deposit, TDS cannot change it.

Where one of the parties tells us that the dispute is being resolved through the Courts, we will not be able to resolve it (unless the Court refers the dispute back to us). The dispute will need to be resolved by the Court, and TDS informed of the outcome of the proceedings:

- When a Court order has become final, TDS will pay the disputed deposit in accordance with the Court order.
- Where proceedings do not lead to a judgement, we will use our discretion to decide whether there are any remaining aspects of the dispute that we can deal with.

TDS cannot deal with matters that have been resolved through litigation and will generally refuse to adjudicate on new issues or evidence where the parties had the opportunity to raise these in Court, and failed to. However, if an application for adjudication is made in these circumstances, TDS will consider if there is any part of the dispute which it can adjudicate under the Rules of the Scheme.

TDS will normally only adjudicate after legal proceedings have been started if:

- the Court orders that the case should be sent to adjudication; OR
- the proceedings have been discontinued or otherwise prevented from ending with a judgement and the case is sent to TDS to adjudicate within three months of the end of the tenancy.

### **What happens to the deposit while a case goes to Court?**

If TDS is told about the deposit dispute, we have to tell the deposit holder to send the disputed deposit to us within 10 days, if we have not already received it. Once the dispute process has been started, the Housing Act obliges us to hold the disputed deposit until the dispute is resolved, even if we are not carrying out the dispute resolution itself. We will then either:

- adjudicate on the dispute, where we are able to; or
- pay out the disputed deposit in accordance with an agreement reached between the landlord and tenant; or
- where TDS has been told by one party that they intend to go to Court, wait to see a suitable Court order which sets out how the deposit should be paid.

### **But what happens if someone says they want to go to Court, but never do?**

When we receive a deposit dispute, we will check that both landlord and tenant consent to TDS dealing with it. If a landlord or tenant refuses to use ADR, we will not be able to resolve the dispute. We will tell both parties to the dispute when this happens. We will explain to them that they have up to three months from the end of the tenancy in which to change their mind. Once this deadline has elapsed, they will not normally be able to use our ADR service.

Although TDS will not usually accept a dispute for ADR after the expiry of the three month deadline, we will expect to see evidence showing Court proceedings or any agreement reached between the parties within 6 months of the date on which we were informed that one party wanted to withdraw consent to ADR or go to Court.

Where that evidence is not produced, TDS shall have discretion to repay to the other party the deposit amount which it holds. TDS will only exercise this discretion where:

- A deposit amount has been paid to TDS, and
- The TDS member or tenant was advised by TDS of this possibility when they confirmed that they did not consent to use ADR.

### **We've been to Court and got a Court Order. How do we get the deposit from TDS?**

Where a party does go to Court to resolve their dispute, we need any Court order which results from that process to make a specific statement about what is to happen to the disputed deposit held by TDS and who it should be paid to.

Before we can pay a deposit under a Court Order, we need to know:

- **the Court Order issued is specific;**

This means that it must clearly set out what the judgement was for e.g. rent arrears or

damage to the property. Ideally, it should also direct TDS to make payment from the deposit.

If a Court Order merely states that an award is made, without being specific about what this is for, the parties will need to obtain a direction from the Court specifying the outcome of the proceedings and directing how the deposit is to be used and distributed.

If the Court Order/Judgment is not specific, giving us a copy of the Court Claim Form can help us decide whether payment can be made.

- **and that the Court Order is final;**

This means that either the time limit for any appeal has passed without an appeal being filed or, if an appeal was made, the appeal has been dealt with.

- **and whether any payments have already been made under the Court Order.**

We need to know this is because it can affect who we pay the deposit to, and how much of it we pay them. So for example, a tenant may claim they have already paid a landlord part of the money referred to in the Court Order. We will need to see evidence of this so we can pay the right amount of the disputed deposit to the right person.

If the Court has already agreed a payment schedule for the amount of money due in the Court Order, we will not be able to pay the disputed deposit to the landlord unless the Court Order is changed to allow us to. This is because the Court has agreed a 'payment plan' for the debt already

Unlike some other tenancy deposit schemes TDS tries, where possible, to take a flexible and common sense approach to Court Orders. We can still consider releasing a deposit in accordance with a Court order that does not contain a specific direction to pay out the deposit provided the following criteria are met:

- As a minimum the Court Order will need to name the landlord and tenant and tell us what the award is for.
- We will then need to be satisfied that the tenancy agreement allows the deposit to be used for that award. For example, a Court order making reference to payment of rent arrears by the tenant to the landlord would usually be acceptable for the deposit to be released to satisfy that judgement.

## Some case studies

A landlord submits part of their claim to TDS for adjudication at the same time as submitting the rest of their claim to the Court.

In these circumstances, TDS will have to wait the outcome of the Court action before considering the case further. We are unable to deal with cases where one party has chosen to go to Court and those Court proceedings have not yet been finished. This is because the Court may deal with the case as a whole to include the return of the deposit, any claim for rent arrears, damage and/or any counterclaim issues.

A landlord has got a Court Order for an amount of money due from the tenant, which deals with the full amount of the deposit. The deposit was being held by TDS pending the outcome of the Court proceedings.

The landlord needs to present the Court Order to TDS, and ask TDS to pay the deposit in accordance with the Court Order. Please refer to **We've already been to Court and got a Court Order. How do we get the deposit?** above for guidance on the information we need the Court Order to contain.

A landlord is faced with a claim for rent arrears that exceeds the deposit, as well as a claim for damage. The landlord takes their claim for rent arrears to Court first, in order to get a Court order for the full amount of any rent arrears due (remember that TDS can only award up to the amount of the deposit). The landlord then wants to take the balance of their claim for damage to TDS.

Please refer to **Where a dispute is being resolved through the Courts** above, for guidance on whether TDS can also deal with the dispute. If TDS can and were to decide that the claim for damage was not upheld in full, we will consider whether we can pay any remaining deposit balance in accordance with the Court Order already obtained in respect of rent arrears. But you would need to tell us when raising your claim with us that Court proceedings had already taken place, and send us a copy of the claim made in the Court and the Court Order that resulted.

## Ten top tips.....

1	Using TDS to resolve your dispute will normally be quicker and cheaper than the Court. But it may not be able to deal with all the issues- for example, if your dispute concerns issues other than the deposit, or if you want to claim more than the deposit itself.
2	Remember the time limit for deciding whether you want your dispute to come to TDS or go to Court. If you decide to use our ADR service, you agree to our decision being final and are unlikely to be successful in asking a Court to reconsider their dispute.
3	Tell us as soon if you are aware of any Court action that might affect the deposit. Tell us what you know about any proceedings that are taking place, or have already finished or been withdrawn.
4	Give us the Court Claim Number, and a copy of the Claim Form for our records. Send us a copy of any Court Orders or Judgements issued by the Court as soon as possible.
5	If TDS is aware of the deposit dispute, send us the disputed deposit amount, even if the dispute is going to Court.
6	Make sure the Court knows we are holding the disputed deposit amount. Remind the Court of the need for any Order to be specific and to include a direction for TDS to make payment from the deposit. Where we are aware of the Court dealing with the case and the Claim Number, we will also write to the Court to confirm the amount of the deposit we are holding – but we won't contact them for any other information about the case. Even if we were to ask the Court for this, they would not tell us as we are not a party to the Court proceedings.
7	In the event any Court Order/Judgment issued is not specific, give us a copy of the Court Claim Form as this can assist us in deciding whether payment can be made.
8	Tell us whether any payment has been made in either full or partial settlement of the Court Order/Judgement issued or whether any payment plan has been agreed by the Court. Give the Court details of any sums received either in full or partial payment of the Court Order/Judgement. We will also tell the Court if we make a payment from the deposit.
9	Tell us if you are aware that any Court Order/Judgement made is being appealed by any party.
10	Don't forget to ask us if we can make payment from the deposit if the Order/Judgement made by the Court is not specific or doesn't contain a direction – we take a practical view on what the Court Order says, the claim made, and how this is covered by the tenancy agreement.