



Case Studies

Who should read this?

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Tenants	Agents	Landlords

Insured / Custodial

Adjudication Digest April 2012

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.

Amount of deposit in dispute: £1,050. Dispute initiated by: Agent.

Award made:	£0.00
Tenant	£0.00
Landlord	£0.00
Agent	£1,050.00

This month's case is a rather delicate one and was referred to TDS by the agent. It involved a deceased tenant, and showed how what was done with the best of intentions thereafter did not, in fact, make life easier for the landlords.

The original tenancy agreement was with a sole tenant who unfortunately passed away before the contractual term of his tenancy was reached. As a result of dealing with the tenant's affairs, it became apparent that his partner lived at the property with him – but she was not included on the tenancy agreement as a joint tenant or indeed a permitted occupier.

After the death of the tenant, the landlords had agreed that his partner could stay in the property for as long as she wanted, even up to the end of the fixed term if she so wished. The landlords claimed that it had been agreed that notice would be given to end the arrangement, and that a suggested 4-6 week period of notice was discussed. The agreement was not confirmed in writing and a new tenancy agreement was not drawn up.

The landlords then found that after almost 5 months the property was vacated within 48 hours and with no notice being given. The landlords claimed one month's rent in lieu of notice.

Regrettably, no award could be made to the landlords.

The tenancy agreement originally entered into was created between the landlords and the

deceased tenant only. It had been protected correctly with TDS. When the tenant passed away his interest in the tenancy then passed to his estate. However when the landlords entered into new terms with the occupier giving her permission to stay at property, they accepted that the original tenancy agreement had then come to an end.

Whilst the adjudicator accepted that an informal agreement may well have been reached between the parties there was no evidence that the original tenancy had been assigned to the new occupier. Neither did the evidence show that this arrangement constituted a new tenancy agreement to protect all parties. Instead, the evidence pointed to the landlords resuming responsibility for the property when the tenant died, by agreeing terms with his partner and allowing her to stay in occupation. There was no evidence of any objection to this arrangement from the tenant's personal representatives, which led the adjudicator to conclude that the landlords had in effect surrendered the tenancy.

Sadly, this left the landlords in a vulnerable position. It meant that if they wanted to pursue their claim against the occupier they would have to do so by other means. TDS was only able to adjudicate on the dispute about the deposit that was originally protected by the scheme. That tenancy had ended with no claim having been made against the deposit. The current dispute was about a third party occupier and did not relate to a tenancy covered by the scheme.

So what are the key points here?

- Ask yourself whether it would be better to issue a new tenancy agreement when there are any changes during the fixed term of a tenancy.
- Protect all deposits in the normal way. Where there are any minor changes during the tenancy, you can make amendments to the original Deposit Protection Certificate. If in doubt re-register.
- Take care when dealing with sensitive issues such as a death of a tenant – the legal implications can sometimes work against you.

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