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Tenants	Agents	Landlords

Insured / Custodial

Adjudication Digest January 2013

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: £2000.00. Dispute initiated by: Landlord.

Award made:	£2000.00
Tenant	£2000.00
Landlord	£0.00
Agent	£0.00

In this month's case a landlord claimed the deposit in full for unpaid rent. The landlord provided copies of two tenancy agreements. The first was stated to be for a term of 01 March 2012 to 31 August 2012 ('Tenancy Agreement 1'). The second agreement was dated in August 2012 and was stated to be for a term of 01 September 2012 to 28 February 2013 ('Tenancy Agreement 2'). Two (but not all) of the tenants who signed Tenancy Agreement 1 also signed Tenancy Agreement 2.

The tenants moved out of the property on 31 August 2012. The first tenancy therefore came to an end on that date. No periodic tenancy arose because the tenants moved out when the fixed term of the tenancy ended. The tenants therefore had no liability for rent under Tenancy Agreement 1 for any period after 31 August 2012.

The two tenants who signed Tenancy Agreement 2 claimed that their signatures were obtained by deception. They did not submit any evidence to substantiate this assertion, so the adjudicator reached no conclusion in this respect. However the adjudicator did consider that two more tenants were intended to sign the agreement, as there was space on the agreement for two further names to be added. The adjudicator took the view therefore that Tenancy Agreement 2 had not been concluded.

The landlord provided a copy email from one of tenants stating that the tenants were not going to stay in the property and that the tenants would like the landlord to keep their deposit. However the evidence showed that this was not the tenants' last word on the matter, nor was it a statement made by all of them. The adjudicator did not consider that this email constituted a legally binding agreement by all tenants to the retention of their deposit.

The deposit from Tenancy Agreement 1 could be used as stated in Tenancy Agreement 1. However, the landlord did not provide evidence to satisfy the adjudicator that there was a breach of that particular tenancy. Neither was there enough evidence to show that all the tenants from Tenancy Agreement 1 agreed that the deposit could be carried forward to Tenancy Agreement 2. Furthermore, the adjudicator was not persuaded that Tenancy Agreement 2 became unconditionally binding. In those circumstances the adjudicator was unable to make an award from the deposit relating to Tenancy Agreement 1 for alleged breaches of Tenancy Agreement 2. Any claim that the landlord believed he had against the two tenants who signed Tenancy Agreement 2 would have to be pursued by other means.

So what are the key points here?

- Agreements from joint tenants for a landlord to keep a deposit need to be given in writing by all joint tenants. In this case the email was from one joint tenant only.
- Contractual documents – such as tenancy agreements – need to be correctly entered into. In this case the second tenancy agreement did not appear to be signed by all the intended tenants.

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