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Tenants	Agents	Landlords

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Adjudication Digest November 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: £120.00. Dispute initiated by: Landlord.

Award made:	£120.00
Tenant	£60.00
Landlord	£60.00
Agent	£0.00

This case concerned a claim for gardening where the tenants felt that the check in report was inaccurate, and the check out report could not be relied on as it was not produced until a week after the tenancy ended.

The check-out report noted the back garden to be “slightly overgrown with rubbish and clutter” at tenancy end and included photographs showing large weeds and rubbish. It was recorded as being “clear and maintained” at check-in. The tenants argued that the yard was “fine when we left it”. The agent confirmed that the tenancy ended on 31st July 2014 and that the check-out report was completed on 6th August 2014 due to a shortage of inventory clerks.

The tenants had been given a copy of the check in report and asked to sign and return it, or raise any discrepancies, within 7 days of the tenancy starting. The tenants produced an email to the agents dated 11 days after the tenancy started, with a copy of their amendments to the check in report. The only amendment to the gardens referred to the front garden needing tidying up. The agents denied having received the email or the amended copy of the check in report.

The first issue that the adjudicator had to consider was the garden’s condition at check in. This was a difficult case where the tenants had what they considered to be good evidence to show that

they had returned an amended check in report to the agents, and where the agents believed that no amendments to the check in report had been made. The adjudicator dealt with the various competing arguments as follows:

- even if it were accepted that the agents received the amended check in report, it did not specifically challenge the condition of the back garden;
- although the tenants had argued that various amendments they had made to the check in report meant it was inaccurate, the comments they had made were specific and limited in number. The adjudicator did not consider that the discrepancies raised were sufficient to doubt the quality or accuracy of the report overall;
- in any event, the check in report was returned later than allowed for in the tenancy agreement. There was an argument for saying that any comments made by the tenants could not then be relied upon as representative of the property’s condition when they first moved in.

The adjudicator concluded that the back garden was in good condition at the start of the tenancy.

The next issue that the adjudicator had to deal with was the condition of the property at tenancy end. The adjudicator considered that the time of year and the delay between the tenants leaving

and the check-out report being completed, would have resulted in some further weed growth. That said, considering the size of the weeds shown at checkout, the adjudicator was not satisfied that the garden was weed-free when the tenants left. However it was unreasonable for the landlord to claim the full cost of making good as some of the work needed related to growth in the period after the tenants left.

The agent submitted a quotation for clearing the garden at a cost of £120.00. The adjudicator could not establish the exact condition of the back garden on the day the tenants left, and considered an award of £60.00 to be a reasonable compromise in these circumstances.

So what are the key points here?

- Giving tenants a reasonable opportunity to consider and return the check-in report is a workable alternative to physically checking tenants in. However agents should make sure that they have an audit trail to show when the check-in report was given or sent to the tenants. They should also be able to show what instructions tenants are given about what to do if they are unhappy about the report's contents. In this case, it might have assisted had the agents contacted the tenants after 7 days to confirm that no amendments to the check in report had been received, and that its content was therefore taken as agreed.
- This case also highlights the importance of the timely completion of a check out report at tenancy end. Although in this case the adjudicator was able to take a pragmatic view about the condition of the property on the last day of the tenancy, the landlord's claim was not helped by the delay in completing the check out inspection.

 **0300 037 1000**

 **www.tenancydepositscheme.com**

 **Tenancy Deposit Scheme
1 The Progression Centre,
42 Mark Road, Hemel Hempstead,
Herts, HP2 7DW**