WHO SHOULD READ THIS?

Tenants Agents Landlords

RULES FOR THE INDEPENDENT RESOLUTION OF TENANCY DEPOSIT DISPUTES

TENANCY DEPOSIT SCHEME

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On 1 April 2024, TDS updated its Rules for the Independent Resolution of Tenancy Deposit Disputes.

In our ongoing effort to improve the experience and efficient resolution of disputes for landlords, agents, and tenants, we have clarified certain current procedural aspects of how we adjudicate disputes.

For your ease of reference, we have highlighted all sections that have been updated.

1. INTRODUCTION

1.1 This document sets out the rules relating to the independent resolution of tenancy deposit disputes by TDS. These rules should be read in conjunction with the main scheme rules of TDS Insured.

1.2 These rules apply to landlords, any agents acting on their behalf, and tenants involved in a dispute relating to a deposit that is protected by TDS Insured.

1.3 Disputes over the return of a deposit cannot be considered until after the tenancy has lawfully ended.

1.4 The deposit that is in dispute cannot be returned until:

- the tenant and landlord reach agreement; or
- there is a final court order authorising payment; or
- the dispute is resolved by an adjudication decision being made.

1.5 At the end of the tenancy, the landlord, any agent acting on their behalf, and the tenant must make every reasonable effort to resolve the dispute by negotiation between themselves. The parties must be able to show, that they have tried to negotiate a resolution to any dispute before referring it to adjudication. Failure to do so may result in the dispute being returned to the parties to attempt resolution.

2. KEY RESOLUTION PRINCIPLES - GENERAL

Forms of Alternative Dispute Resolution (ADR)

2.1 ADR offers a range of methods for resolving disputes without the need to go to court. The main types of ADR are mediation, conciliation, adjudication and arbitration. TDS aims to deal with disputes proportionately and to encourage resolution at as early a stage as possible and will determine the most appropriate type of ADR for each case. TDS may contact the parties to help them reach an agreed solution without the need for the case to be referred to an adjudicator. All customers are expected to act reasonably and co-operate fully with TDS to ensure that disputes are resolved efficiently and effectively.

Consent to ADR

2.2 The parties are not obliged to use the ADR service offered by TDS. The party applying for ADR must confirm that they agree to the dispute being resolved through the ADR process. The party responding to the dispute will also be asked to confirm that they agree to resolution through TDS' ADR process.

2.3 TDS cannot by law refer a case for ADR if either party objects to using this process. If either party indicates that they intend to take the dispute to court TDS will assume that they do not consent to the use of ADR. If either party fails to respond to indicate whether or not they consent to ADR, TDS will be able to infer their agreement to the use of ADR as long as we are satisfied that they have received the request to give consent and no objection has been given. This clause will also apply where conditional consent is provided.

2.4 If either party does not consent to the use of ADR, they will have up to 3 months from the end of the tenancy to change their mind. After that, they will no longer be able to use the ADR service. In exceptional circumstances, TDS may exercise its discretion to extend the deadline.

2.5 If a party does not consent to the use of ADR, they will need to obtain a court order specifying how the deposit should be repaid or reach agreement with the other party. The deposit holder is still required to send to TDS the disputed deposit within 10 working days of TDS requesting this. TDS will expect to see evidence that agreement has been reached, or that court proceedings have been started within 6 months of the date of consent to ADR having been withheld. If no evidence of these actions is provided, TDS has the discretion to repay to the other party the deposit amount it holds. At the end of the 6-month period, it will be for the parties to notify TDS that either they have a court order or they are unaware of ongoing court action or subsequent agreement has been reached.

2.6 TDS will only exercise this discretion where the deposit amount has been paid to TDS and the parties were advised of this rule when consent to use ADR was withheld, and following a period of 7 days after writing to the non-consenting party, and TDS receiving either no response or no evidence of a court order, appeal or court proceedings.

How claims are treated

2.7 TDS can only make awards up to the amount of the disputed deposit. If the sum claimed exceeds the deposit (or any remaining deposit after agreed deductions), TDS will consider the extent to which the landlord's claim is justified based on the evidence submitted.

2.8 TDS is not bound to consider the claims in any particular order and may, at its discretion, deal first with any claims:

- which have been agreed by the tenant.
- for which a court order has been obtained.
- which accounts for a significant part of the disputed deposit.

2.9 If a court order or tenant agreement accounts for all the disputed deposit, the case is likely to be resolved without the need for adjudication.

Costs of dealing with a dispute

2.10 TDS does not charge the parties for dispute resolution where the deposit is legally required to be protected. However, each party to a dispute will be responsible for their own costs in preparing and submitting the case. TDS will not award costs or expenses incurred in preparing a dispute, or during negotiations.

Joint tenants

2.11 Where there are joint tenants, TDS will require one tenant to be appointed as lead tenant. The lead tenant must be authorised to act for and on behalf of all joint tenants in relation to a deposit dispute. TDS will not arrange dispute resolution for disputes between tenants. When making payments to tenants at the end of a dispute, TDS will divide any award equally between all the tenants named on the tenancy agreement unless there is clear written authorisation from the tenants for the payment to be treated differently. Further information about how TDS deals with tenancies involving more than one tenant can be found here.

Representation

2.12 TDS may allow a nominated representative to act on behalf of a landlord or tenant. The representative must provide written authority from the landlord or tenant consenting to them acting on their behalf. TDS will only make a payment to the nominated representative with the landlord's or tenant's written consent. You must tell TDS where a party to the tenancy has died and provide evidence in the form of a copy death certificate, Will or Grant of Probate. TDS will only accept applications/responses from an authorised representative. TDS needs to ensure that we have contacted all relevant parties, to progress with the dispute. If we are unable to make contact with an authorised representative we will not be able to progress the dispute.

2.13 TDS will assume that letting agent customers are acting within their landlord's authority in their dealings with TDS. We will write only to our registered member and it will be their responsibility to forward any relevant information/communication onto their Landlord if required. TDS will not be liable to a landlord or agent if the agent acts outside their authority or fails to carry out their client's instructions.

Counter-claims and claims for set-off

2.14 TDS can only deal with claims by a landlord or agent against a deposit paid by a tenant. The claims must relate to losses incurred by a landlord arising from a breach of the tenant's obligations under the tenancy agreement. If the tenant raises issues which are intended to be a counterclaim against their landlord, they must pursue them with the landlord directly and seek independent legal advice should this be necessary. TDS is unable to take account of any issues raised in a possible counterclaim when deciding how the disputed deposit should be allocated.

2.15 TDS will not deal with disputes which seek to justify a set-off e.g., where the tenant claims rent was withheld because repairs were not carried out. Tenants must take up such issues with the landlord directly, as for counterclaims.

Failure to protect a deposit or to return an excess deposit

2.16 TDS cannot consider compensation claims against a landlord or agent for failing to protect a deposit or give prescribed information properly. These claims will need to be dealt with in court. TDS is also unable to deal with claims for the return of, or the failure of the agent or landlord to return, any part of a deposit which is in excess of the maximum permitted under the Tenant Fees Act 2019. These claims will need to be dealt with by the relevant local authority or Trading Standards.

3 KEY RESOLUTION PRINCIPLES - ADJUDICATION

3.1 Where it has not been possible to resolve the dispute by agreement between the parties, TDS may refer the case to an adjudicator. In consenting to have the dispute resolved through TDS' ADR process, the parties agree that any decision made by an adjudicator about the dispute will be final and binding. The decision cannot be appealed except by applying to the court. There is no right of appeal to TDS or the Department of Levelling Up, Housing and Communities.

3.2 The adjudication process is not investigative, and the adjudicator will make their decision based on the documentary evidence submitted by the parties. It is the responsibility of the parties to ensure that the evidence they wish the adjudicator to consider is submitted to TDS within the required timescales.

3.3 The adjudicator will not visit the property, there is no hearing, and the parties should not assume that the adjudicator will contact them to ask for any information they may have omitted.

3.4 TDS will not normally seek further evidence, including asking for any evidence which is stated to be "available on request". TDS will not be liable for failing to consider any evidence if that evidence was not submitted, or if it was submitted late.

3.5 The adjudicator will consider the dispute within the framework of the law applying in England and Wales in a manner that is fair and proportionate to what is in dispute. The adjudicator's starting point is that the deposit belongs to the tenant, and it is for the agent or landlord to establish a claim to some or all of the deposit and to provide sufficient evidence to support that claim.

3.6 The adjudicator will make their decision on the balance of probability and according to what they consider to be fair in the circumstances of the dispute. TDS' adjudicators are trained, experienced and have the skills necessary to make fair and reasoned decisions. They operate in accordance with TDS' Adjudicators' Code of Conduct.

3.7 The adjudicator will consider, but is not obliged to accept, the landlord's evidence of sums claimed or incurred. The adjudicator will only award what they consider to be the reasonable cost of making good and may use publicly available sources of information such as high street and online stores and services.

3.8 The adjudicator's award is intended to compensate the landlord for the loss in value of an item where that loss has been caused by the tenant during the tenancy. Any awards will take account of the age and quality of the item concerned and the length of the tenancy. An allowance will be made for fair wear and tear, taking account of a number of factors including the length of the tenancy and the number of occupants. Landlords cannot expect to receive the full replacement value of an item or be in a better position as a result of the tenant's (in) actions.

3.9 TDS will not adjudicate on matters which have already been agreed between the parties. It is the responsibility of the parties to inform TDS of any agreement reached about the deposit prior to the case being considered by the adjudicator. TDS will not be liable for any award which conflicts with a previous agreement where the parties fail to make the agreement clear to the adjudicator. Where the tenant has agreed for their deposit to be released to the landlord in full, TDS will resolve the case in respect of that claim. No further claims will be considered for adjudication.

3.10 The adjudicator may take into account offers made by either party where no agreement has been reached, unless the offer was made on a Without Prejudice basis. Any award made by an adjudicator cannot be challenged solely on the grounds that one party was previously prepared to make an offer higher than the awarded amount.

3.11 If an agent or landlord sends TDS an amount which is more that the disputed deposit, the adjudicator will assume that the surplus should be returned to the tenant. It is the responsibility of the agent or landlord to make it clear to TDS if the surplus deposit should be treated in any other way.

4 HOW DISPUTE RESOLUTION WORKS

Timescales

4.1 The parties must make reasonable attempts to resolve a dispute about a tenancy deposit between themselves before approaching TDS. This should include agreeing and paying any undisputed part of the deposit, identifying the issues and amounts in dispute and sharing any relevant documentation. Any dispute must be submitted to TDS:

- No sooner that 10 days after the tenancy lawfully ended and
- No later than 3 months after the tenancy lawfully ended. For example, if your tenancy ended on 20 March, a satisfactory and complete application must be submitted to TDS by 19 June.

4.2 TDS will deal with the dispute within the timescales set by the Housing Act 2004 and the service concession agreement between TDS and the Department of Levelling Up, Housing and Communities and these rules. TDS has the discretion to adjust deadlines in these rules in individual cases where it is, in TDS' opinion, in the interests of justice to do so.

Disputes submitted by agents or landlords

4.3 The Housing Act 2004 as amended requires TDS to allow tenants to raise disputes. In addition, TDS has the discretion to allow agents or landlords to submit disputes about deposits they have protected with TDS. An agent can submit a dispute about a deposit they have protected to TDS in accordance with the timescales set out in rule 4.1 as long as:

- They are not using the TDS Direct service.
- They have received confirmation from the tenant that they disagree with the proposed deductions from the deposit.

4.4 A landlord can submit a dispute about a deposit protected by TDS in accordance with the timescales set out in rule 4.1 as long as:

- They have protected the deposit directly under the TDS for Landlords scheme.
- They are a landlord of a tenancy agreement associated with an agent using the TDS Let Only service.
- They have agreed with any agent who protected the deposit on their behalf that they will deal with the dispute in place of the agent.
- Any agent who protected the deposit with TDS is not using the TDS Direct service.

Disputes submitted by tenants.

4.5 A tenant can submit a dispute about a deposit protected by TDS in accordance with the timescales set out in rule 4.1 as long as:

- They have requested that the agent or landlord pay the whole or any part of the deposit to them and the payment has not been made within 10 days of requesting it.
- In the case of joint tenants, the tenant submitting the dispute to TDS is the lead tenant in accordance with rule 2.11.

4.6 TDS may refuse ADR in cases which are, in its opinion:

- Being pursued unreasonably
- Frivolous
- Vexatious
- Seek to raise again matters which have already been determined by litigation, TDS adjudication or another similar dispute resolution process.

Submitting an application to TDS

4.7 Evidence and details of the deposit dispute can be submitted online through TDS' evidence portal. Where possible TDS recommends that the parties should submit the details of their dispute and their evidence online and not via email. Disputes may also be submitted by post. Further details are available by contacting deposits@tenancydepositscheme.com or 0300 037 1000. Information about assistance for any customers who may need to TDS to change the way in which we would normally deliver our service can be found here.

4.8 An agent or landlord submitting a claim to TDS will be asked to provide details of the matters in dispute and supporting evidence when they make their submission. When a tenant approaches TDS about a potential deposit dispute, TDS will ask the agent or landlord to provide details of the claim against the deposit first. The details and evidence will be shared

with the tenant using the TDS evidence portal, and the tenant will be asked to respond to it with their evidence.

4.9 The TDS evidence portal requires the parties to detail what is in dispute and to answer a number of questions about the dispute. The parties should answer the questions accurately and fully and provide relevant supporting evidence. It is the responsibility of the person submitting the evidence to make sure that their evidence does not contain anything that they do not want the other party to see and that they have complied with the Data Protection Act 1998 (as amended) and General Data protection Regulation in relation to any personal data which they transfer to TDS.

4.10 When TDS asks an agent/landlord or tenant to provide details of a claim or respond to a dispute, they will be asked to do so within 10 working days. It will be the responsibility of the agent/landlord to ensure that all evidence is uploaded within their 10 working day timescale. If any party has difficulty providing the information within this timescale they should contact TDS to explain their reasons. TDS may, at its discretion, consider an extension to the time allowed. If an extension is agreed, TDS will inform the other party of the delay.

4.11 TDS may return any submissions which are incomplete or incoherent or where the evidence submitted is excessive. TDS will delete any incomplete submissions if they are not completed within 10 working days.

Early resolution of deposit disputes

4.12 TDS will consider the information provided by the parties and determine the most appropriate form of ADR to deal with the resolution of the dispute. All parties are expected to engage fully with TDS in order to resolve the dispute by agreement where possible. Where an agreement is reached, TDS will confirm the terms in writing to the parties.

4.13 Where it has not been possible to resolve the dispute by agreement, TDS will check that the documentation submitted by the parties is in order and that the case is suitable for adjudication before allocating it to an adjudicator.

Adjudication of deposit disputes

4.14 The adjudicator will consider all the evidence submitted by the parties, and decide how the disputed deposit should be allocated between them. The adjudication report will state the reasoning behind the allocation and the amount to be paid to each party. The report will usually only comment on those aspects of the evidence that are relevant and material to the allocation of the deposit.

4.15 TDS and the adjudicator will not be liable for any error or omission arising because the parties' submissions were incomplete, illegible, confusing, contradictory or misleading as long as TDS and the adjudicator have taken reasonable care.

4.16 The adjudication report will normally be completed within 28 days of TDS receiving all the evidence from the parties and their agreement to use ADR and following the checks set out in Rule 4.13.

4.17 An adjudicator may consider a dispute where only one party has submitted evidence as long as the period for the other party to provide evidence has expired and TDS is reasonably satisfied that they have had the opportunity to respond. In these cases, the adjudicator is likely to award the disputed deposit to the party who has participated in the dispute.

4.18 TDS will send a copy of the adjudication report to the agent or landlord and the tenant by email or post and pay the amounts due within 10 days or less. Payments will generally be made by BACS. Where the deposit has been protected by an agent, amounts due to an agent or landlord will be paid to the agent.

4.19 It is the responsibility of the parties to ensure that TDS has the correct information to enable payments to be made quickly and smoothly. TDS will make a reasonable second attempt to contact an intended payee if a BACS payment or cheque is returned. TDS will have no liability to an intended payee for delayed payment or interest in these circumstances and may charge a reasonable administration fee for arranging second or subsequent payments where the first payment was made in accordance with the information provided by the parties.

4.20 Evidence submitted by the parties will be retained electronically for a period of 7 years from the date of issue of the adjudication report. This includes evidence submitted by paper. Paper submissions will not be returned and the parties should retain the original version of any evidence submitted by paper.

5 PAYMENT OF THE DISPUTED AMOUNT TO TDS

5.1 When an agent or landlord applies to TDS for ADR they must send the disputed deposit to TDS at the same time. If a tenant submits the dispute, the agent or landlord must send the disputed deposit to TDS when they respond to the dispute. In either case, the agent or landlord holding the deposit should also ensure that any undisputed part of the deposit is sent to the party(ies) entitled to it.

5.2 In any case, the agent or landlord must send TDS so much of the deposit as TDS directs within 10 days of receiving the direction from TDS. This includes cases where TDS is notified that one of the parties intends to take the deposit dispute to court or that one of the parties has withdrawn consent to ADR.

5.3 Failure to make payment as required will not delay ADR in any dispute submitted by a tenant. TDS may delay ADR in cases raised by agents or landlords until such time as the disputed deposit is paid to TDS.

5.4 If an agent or landlord does not pay the full amount directed by TDS, when requested, TDS will:

- pay the tenant the full amount of any adjudication award due to them
- if held, pay any remaining award to the agent or landlord

5.5 The agent or landlord will be liable to pay TDS the shortfall in any award made to the tenant. The agent will be responsible to their landlord client for any shortfall in the award made to the landlord. Where TDS pays a disputed deposit amount to the tenant, due to the failure of the agent or landlord notifying TDS that the deposit has already been returned to the tenant, the agent or landlord will remain responsible to send the disputed deposit to TDS.

5.6 TDS will take appropriate action to recover any unpaid sum due from the agent or landlord. TDS' membership rules require the agent or landlord to indemnify TDS for any costs associated with such failures to pay, including all legal costs and disbursements incurred in debt recovery and its subsequent enforcement.

5.7 TDS may take into account an agent's or landlord's failure to pay deposits as directed by TDS when considering terminating their access to the scheme.

6. DISPUTE RESOLUTION THROUGH THE COURTS

6.1 The parties are not obliged to use the ADR process and can choose to go to court to resolve a dispute about a deposit. TDS will assume that the party taking the case to court does not consent to ADR and will suspend the ADR process. If the party does not start court action within 3 months of the end of the tenancy, TDS can still consider ADR.

6.2 The party applying to the court will need to obtain an order specifying the basis on which the deposit is to be repaid, or otherwise reach agreement with the other party about its return. It is the responsibility of the parties in the court proceedings to secure a clear instruction from the court about the payment of the deposit. TDS will not accept responsibility for any additional costs incurred by the parties if they have not obtained a court order which clearly and unambiguously directs TDS to make a specified payment from the deposit.

6.3 The order should stipulate:

- the amount awarded and to whom, and that the judgement debt may be paid from the deposit.
- that the judgement debt may be paid from the deposit;

6.4 TDS will pay the disputed amount in accordance with a court order containing the information in rule 6.3 within 10 days beginning from the date on which TDS receives confirmation that the court decision is final. TDS will issue communications to all parties to confirm the order is final and binding. Once satisfied, TDS will release the deposit held in line with the court order.

6.5 The onus is on the party claiming payment to demonstrate that a court decision has become final.

6.6 Further information about how TDS deals with cases involving court action can be found here.

7. GENERAL

7.1 It is the responsibility of the person submitting a dispute to TDS to ensure that, as far as they are aware, the contact details provided for each party are current and correct. TDS will assume that when a tenant leaves a property, they will make proper arrangements for post to be forwarded to them at their new address. TDS does not accept any liability for loss suffered or expense incurred by anyone as a result of TDS being unable to contact a party with an interest in the deposit.

7.2 By participating in the ADR process that parties agree that TDS may hold and process their personal data for the purposes of resolving their dispute and for compiling statistical information.

7.3 TDS will only accept one application for ADR per tenancy agreement.

7.4 TDS may, at its discretion, award the whole of the disputed deposit to the tenant without formal adjudication if:

- the agent or landlord has not complied with any scheme rule;
- the tenancy is not subject to a written tenancy agreement; or
- in its opinion the agent or landlord has unreasonably sought to delay the repayment of the deposit or the ability of the tenant to bring the dispute to TDS

7.5 There is no provision for "appeal" against an adjudication outcome. The money is distributed once the decision is made and TDS has no authority to reclaim or redistribute it. However, TDS provides a procedure for reviewing concerns that a party to an adjudication may have about the way that decisions are made, or the service received. The procedure is available here.

7.6 These rules for the independent resolution of deposit disputes may be amended by TDS from time to time and all such amendments shall be deemed to be incorporated into these rules and shall take effect on the next working day after TDS notifies agent and landlord customers of such changes, or at any later date specified by TDS.

7.7 For further information, please visit the TDS website www.tenancydepositscheme.com

or contact:

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