



WHO SHOULD READ THIS?



Tenants



Agents



Landlords

RULES FOR THE INDEPENDENT RESOLUTION OF TENANCY DEPOSIT DISPUTES [CUSTODIAL SCHEME]



Contents

INTRODUCTION	03
DISPUTE RESOLUTION BY TDS CUSTODIAL	03
HOW ADJUDICATION WORKS	04
KEY ADJUDICATION PRINCIPLES	04
SUBMITTING EVIDENCE TO TDS CUSTODIAL	05
THE ADJUDICATOR'S DECISION	06
IF THE LANDLORD FAILED TO PROTECT THE DEPOSIT OR PROVIDE THE PRESCRIBED INFORMATION	06
GENERAL	07

1. INTRODUCTION

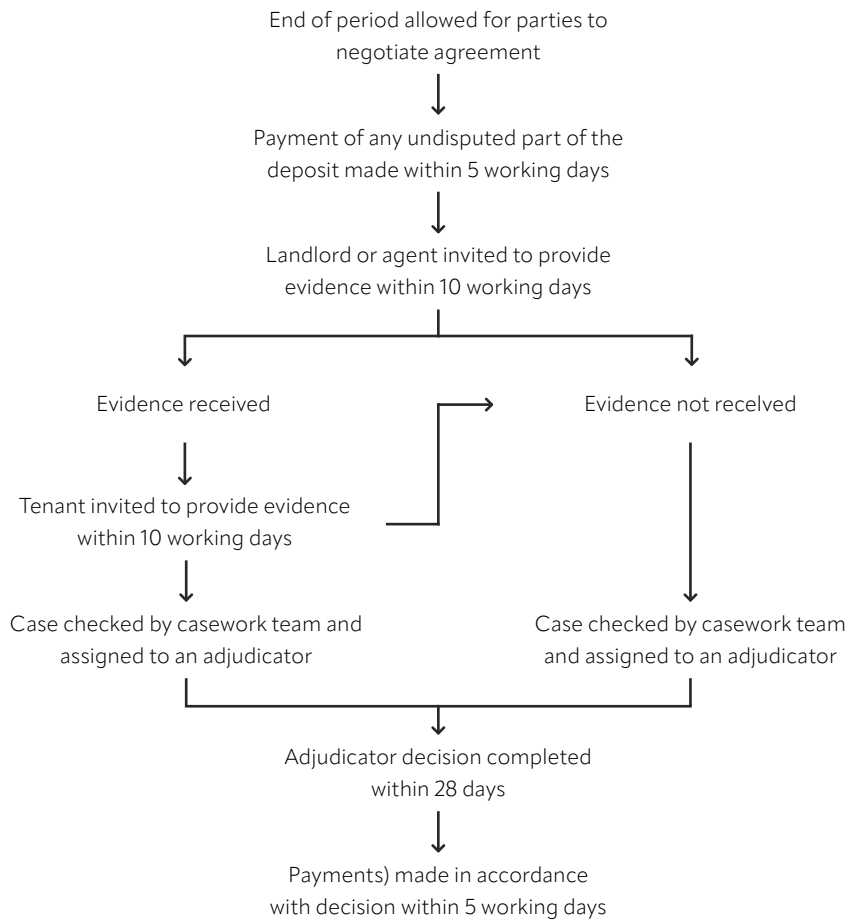
- 1.1 This document sets out the rules relating to the independent resolution of tenancy deposit disputes by TDS Custodial. These rules should be read in conjunction with the main scheme rules of TDS Custodial.
- 1.2 These rules apply to landlords, any agents acting on their behalf, and tenants involved in a dispute relating to a deposit that is protected by TDS Custodial.
- 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 dispute is resolved by an adjudication decision being made; or
 - there is a final court order authorising payment; or
 - the tenant and landlord reach agreement.
 - scheme rules. The rules in this document do not apply to any other schemes which have been authorised to protect tenancy deposits.
- 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 landlord, any agent acting on their behalf, and the tenant 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.

Dispute resolution by TDS Custodial

- 2.1 The landlord and the tenant are not obliged to use the ADR process. They must confirm that they consent to the dispute being resolved through the ADR process.
- 2.2 TDS Custodial will accept valid disputes about the deposit for adjudication regardless of the value of the dispute. about the deposit. The scheme rules explain what happens if a lead tenant needs to be replaced.
- 2.3 TDS Custodial will only accept one application for dispute resolution per tenancy deposit.

- 2.4 By law, if the landlord or tenant objects to the dispute being resolved through the dispute resolution process, TDS Custodial cannot refer the case for dispute resolution. If they cannot reach agreement, the parties will need to resolve the dispute through the court, (unless the court refers the dispute back to the dispute resolution process).
- 2.5 Where TDS Custodial is made aware that a party to a dispute intends to take, or has taken, the dispute to court, TDS Custodial will assume that the party in question does not consent to dispute resolution and will not refer the case to an adjudicator.
- 2.6 If the landlord or tenant does not consent to use ADR they will need to obtain a Court Order specifying the basis on which the deposit is to be repaid, or reach their own agreement about its return. TDS will expect to see evidence showing Court proceedings or any agreement reached within 6 months from the date on which the landlord or tenant confirmed that they did not consent to use ADR. Where this evidence has not been produced TDS shall have discretion to repay to the other party the remaining deposit amount which it holds. TDS will only exercise this discretion where the landlord or tenant was advised by TDS of the operation of this rule when they confirmed that they did not consent to use ADR.
- 2.7 TDS Custodial may refuse dispute resolution in cases which are, in its opinion:
 - being pursued unreasonably;
 - frivolous;
 - vexatious;
 - seeking to raise again matters which:
 - (a) have already been agreed as part of the repayment process;
 - (b) have already been determined by another similar dispute resolution process;
 - (c) have been determined by litigation.
- 2.8 TDS Custodial has the discretion to use any kind of dispute resolution, such as mediation, where it believes that method to be appropriate, but in most cases dispute resolution will usually involve an independent review by an adjudicator.

How adjudication works



3.1 TDS Custodial adjudicators are trained, experienced and have the skills necessary to make fair and reasoned decisions. They operate in accordance with TDS Custodial Adjudicators' Code of Conduct. TDS Custodial encourages a consistent approach to certain commonly recurring types of dispute. However, the facts in cases may differ and disputes may be more complex than the parties themselves realise. This can mean that two seemingly similar cases will not necessarily produce similar outcomes.

3.2 The parties do not attend any hearing and the adjudicator will not visit the property. All the evidence which a party to a dispute wishes to be considered by the adjudicator should be submitted with their case. Parties should not assume that the adjudicator will raise any enquiries with them or ask for any evidence they may have omitted. The burden of proof will be on the landlord to justify any claim to the deposit.

3.3 The dispute resolution process is not investigative. It is for the party bringing the dispute to provide documentary evidence to support their allegations, and it is for the respondent to provide documentary evidence to refute those allegations. Material which is received too late will be returned and will not be taken into account. No additional documentation will be considered after TDS Custodial has referred the case for dispute resolution.

3.4 TDS Custodial will not normally seek further evidence and will not normally request or take into account evidence which is referred to in a submission as being 'available on request'. TDS Custodial will not be liable for failing to consider any evidence if that evidence was not submitted, or if it was submitted late. Where TDS Custodial does make further enquiries, it will tell the parties and allow parties to give comments on the findings.

- 3.5 TDS Custodial will deal with the dispute promptly and within the timescales set by Housing Act 2004, the service concession agreement between TDS Custodial and the Department for Communities and Local Government and these rules. TDS Custodial shall have discretion to adjust the deadlines stated in these rules in individual cases where (in the opinion of TDS Custodial) it is in the interests of justice to do so.
- 3.6 In accepting adjudication by TDS Custodial, the landlord, any agent acting on their behalf, and the tenant agree that the adjudicator's decision is final.
- 3.7 TDS Custodial does not charge landlords, agents, tenants or relevant persons for using the dispute resolution service. TDS Custodial will not meet any costs incurred by any party to a dispute, or award one party to pay another's costs incurred as a result of using the service.
- 3.8 TDS Custodial may allow an 'interested party' to act on behalf of a landlord or tenant. That party will need to submit written authority from the landlord or tenant consenting to them acting on their behalf.
- 3.9 TDS Custodial will not arrange dispute resolution for disputes between tenants. The adjudicator will only allocate the deposit between the landlord and the tenants (and sometimes the agent, where they also have a claim against the deposit).

Key adjudication principles

- 4.1 The adjudicator will consider the dispute submitted to him/her 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 will :
 - start from the presumption that the deposit belongs to the tenant unless and until the landlord, or agent acting on their behalf, can establish a valid claim to some or all of the deposit;
 - assess the evidence submitted by the parties;
 - determine how the disputed amount should be allocated between the parties;
 - make their decision on the balance of probability and according to what they consider fair in the circumstances of the dispute.

- 4.2 TDS Custodial can only make an award in respect of sums claimed by a landlord or any agent acting on their behalf against a deposit paid by a tenant. 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 Custodial is unable to take account of any issues raised in a possible counterclaim when deciding how the disputed deposit should be allocated.
- 4.3 TDS Custodial 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 counter-claims.
- 4.4 TDS Custodial is not able to make awards above the amount of the disputed deposit. If the sum claimed is in excess of the deposit it will treat the claims in the order set out in the tenancy agreement, where this has been specified. This may simply be the order in which the tenancy agreement lists the purposes for which the deposit may be used. TDS Custodial will indicate where it believes an award would be appropriate; and if so, how much, up to the extent of the disputed deposit.
- 4.5 TDS Custodial is not obliged to pay the costs claimed or incurred by a landlord. Any awards TDS Custodial makes are based on what it considers to be the reasonable cost of making good. In determining the amount, TDS Custodial has regard to publicly available sources of information such as high street stores, and services and products available on the internet.
- 4.6 Any awards made 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 during the tenancy (taking into account the permitted number of occupants and other terms of the tenancy agreement). An award, if appropriate, is made to compensate a landlord for the loss in value of an item where that loss in value is caused by the tenant during the tenancy. Landlords cannot expect to receive full replacement value or in any other way be better off than they would have been if the tenant had complied with their obligations in the tenancy agreement.

4.7 TDS Custodial will not adjudicate on any matters that have been agreed between the parties. TDS Custodial will take into account offers made by either party, where no agreement has been made, unless they were made on a Without Prejudice basis. Once an award has been made, it cannot be challenged by one of the parties purely on the grounds that the other party was previously prepared to make a higher offer than the amount that was awarded.

Submitting evidence to TDS Custodial

5.1 The dispute resolution mechanism requires evidence to be submitted by the parties to the dispute setting out the issues they wish the adjudicator to consider. Evidence can be submitted online at [website] or by post to [address]. Further assistance is available via the Customer Contact Centre.

Landlord (or agent) evidence

5.2 Once TDS Custodial has accepted a request to refer a dispute to adjudication, it will ask the landlord, or any agent acting on their behalf, to complete a summary of the dispute and to return it to TDS Custodial within 10 working days.

5.3 The landlord, or any agent acting on their behalf, will also be asked to provide a range of detailed information in support of their claim, including a copy of the tenancy agreement.

5.4 If the landlord, or any agent acting on their behalf, fails to make any response to the invitation to complete a dispute summary and submit any accompanying evidence before the time limit for them to do so has expired, the case will be passed to the adjudicator who is likely to conclude that the disputed deposit should be returned to the tenant. Tenant evidence

Tenant evidence

5.5 The tenant will be able to view the details of the landlord’s claim and the evidence to support it. They will be asked to provide their response and any evidence they wish the adjudicator to consider within 10 working days.

5.6 If the tenant fails to make any response to the invitation to complete a dispute summary and submit any accompanying evidence before the time limit for them to do so has expired, the case will be passed to the adjudicator who is likely to conclude that the disputed deposit should be returned to the landlord, or any agent acting on their behalf.

5.7 Where possible, TDS Custodial recommends that the parties should submit their evidence online.

5.8 Where TDS Custodial has an email address for any of the parties to a dispute, TDS Custodial will send them an email to explain:

- that the repayment request and any evidence so far submitted is available for them to view online at www.tdscustodial.gb.com;
- that they will be able to complete a dispute summary and submit their evidence online;
- the deadline for them to complete and submit their evidence.

5.9 Where TDS Custodial does not have an email address for any of the parties to a dispute, TDS Custodial will attempt to contact them by SMS.

5.10 Where TDS Custodial does not have an email address or mobile telephone number for any of the parties to a dispute, TDS Custodial will contact them by post to explain:

- that the repayment request and any evidence so far submitted is available for them to view online at www.tdscustodial.gb.com;
- that they will be able to complete a dispute summary and submit their evidence online;
- the deadline for them to complete and submit their evidence;
- how to complete their dispute summary and submit their evidence by post, should they be unable to do this online.

5.11 All evidence submitted in respect of a dispute will be destroyed six months after the date of adjudication unless further action is still in progress e.g. consideration of a complaint. It is the responsibility of the parties to the dispute to inform TDS Custodial within that time if they want any of their evidence returned.

5.12 TDS Custodial will only return evidence when the tenant, landlord or agent submitting it asks TDS Custodial to do so in writing, and upon prior payment of any reasonable costs it incurs in recovering and returning the information requested. The parties to a dispute should keep their own copies of any evidence submitted to TDS Custodial.

5.13 If a party to a dispute for any reason finds it difficult to return the dispute summary or any of the accompanying evidence within the required timescales they should contact TDS Custodial explaining the reasons. TDS Custodial will determine if any extension of time should be given.

The adjudicator’s decision

6.1 When TDS Custodial has the forms and evidence relating to the dispute and the relevant deadlines have passed the adjudicator will review all of the documentation, including all evidence, supplied by the parties concerning the dispute and come to a decision about it.

6.2 TDS Custodial will send the adjudication decision to the landlord, or any agent acting on their behalf, and the tenant, explaining:

- the facts on which the adjudication decision is based;
- the reasons for the adjudication decision; and
- the amounts of the disputed deposit to be repaid by TDS Custodial to the landlord, or agent acting on their behalf, and tenant.

6.3 The adjudicator will also explain to the landlord, any agent acting on their behalf, and the tenant, that the adjudication decision is final.

If the landlord failed to protect the deposit or provide the prescribed information

7.1 The adjudicator cannot consider compensation claims against a landlord or agent for failing to protecting a deposit or give prescribed information properly. If a tenant or a relevant person wishes to claim against the landlord or the agent for such failures, the tenant or relevant person will need to proceed through the courts.

7.2 A claim through the courts for failure to protect the deposit or provide Prescribed Information would not prevent the parties from having the dispute about the deposit resolved on its merits through dispute resolution, as long as:


- both parties consent to dispute resolution by TDS Custodial; and
- the court has not made an order under section 213(3) of the Housing Act 2004 (to repay the deposit or protect it under an authorised custodial scheme).


General

8.1 It is the responsibility of each person with an interest in the deposit to ensure that they provide their correct contact details and notify TDS Custodial and the parties to the tenancy agreement of any change. It is the responsibility of the person submitting a dispute to TDS Custodial to ensure that, as far as they are aware, the contact details provided for each party are current and correct. TDS Custodial 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 Custodial does not accept any liability for loss suffered or expense incurred by anyone as a result of TDS Custodial being unable to contact a party with an interest in the deposit.


8.2 TDS Custodial may dispense with the need for notification, authority, consent or agreement, from any party to be in writing where there is other evidence (reasonably satisfactory to TDS Custodial) that the party is unable to communicate easily in writing for reasons relating to a disability. In such cases, authority etc. will still need to be given, albeit in some form other than writing.



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