

Tenancy Deposit Protection Adjudication Case Study Bulletin Eighteen: 20th October 2009

Case Study One:

The total sum of £750.00 paid to the Landlord as Deposit at the commencement of the tenancy, is currently in dispute. The Landlord submit that they are entitled to retain £560.00 from the total amount in dispute to compensate towards losses arising as a result of the Tenant's breaches of the Tenancy Agreement, relating mainly to dilapidations of the Property.

The Tenant submits that she is prepared to make some contribution towards the costs allegedly, but denies most of the Landlord's allegations. The Adjudicator awards to return the total sum of £720.00 to the Tenant and £30.00 to the Landlord.

Case Study Two:

The Landlord claimed to be entitled to retain the whole of the deposit of £900 for the following reasons: (i) The Tenant quit and vacated the flat on about 15th July 1009 and failed to pay the monthly rent of £900 for the remainder of the fixed term of 6 months of the tenancy; (ii) The Tenant was not entitled to treat the tenancy agreement as terminated, and the allegations about the condition of the flat made by the Tenant were denied.

The Tenant claimed that the Landlord interfered with the Tenant's occupation and enjoyment of the flat by maintaining scaffolding around the building, and entering the flat over a period of more than 2 weeks to change the windows, and by creating dust and disturbance. He was therefore entitled to treat the tenancy agreement as terminated and to quit and vacate without paying rent.

The Adjudicator directed that the Deposit Protection Service return the whole deposit of £900 to the Tenant.

Case Study Three:

The Landlord claimed to be entitled to retain £585 out of the deposit for the following reasons: (i)The Tenant left the property in unclean and damaged condition; (ii)The Landlord was obliged to incur the cost of cleaning, removing rubbish and partial redecoration, and also restoring the front and rear gardens.

The Tenant denied that he caused any damage to the property and claimed that he cleaned it and left the property including the front and rear garden in good and tidy condition, and that in any event the condition of the property was no worse at the end of the tenancy than it had been at the commencement. He also complained that the Landlord failed to carry out necessary repairs that were the Landlord's responsibility, and that the Tenant and his family suffered resultant inconvenience and discomfort during the tenancy.

The Adjudicator directed that the Deposit Protection Service return the whole deposit of £1,800 to the Tenant.

Case Study Four:

The Landlord was seeking to retain the £1,800.00, but had only provided statements for a) £200.00 for cleaning, b) £126.00 for 18 new light bulbs, c) £140.00 bank charges, and d) £180.00 for a key and fob.

The £1,800.00 was refunded to the Tenant because the Landlord's submissions merely comprised two emails and a copy of the tenancy agreement. There was no evidence to substantiate anything.

Case Study Five:

The landlord sought to retain the whole of the deposit to cover the costs of cleaning, repairs, replacing a table and other items, and damage to the downstairs flat as a result of a leak. The Tenants reject the whole of the landlord's claim and said that they left the flat clean and caused no damage. Where the inventory and photographs supported the landlord's claim it was allowed by the Adjudicator. On a number of issues the landlord failed to substantiate his case due to a lack of evidence. Some items of damage were not photographed, and there was no check out report.

Case Study Six:

The issue in dispute was the payment of rent. The Tenant said his rent had been paid by housing benefit, whilst the landlord claimed the deposit should be applied to unpaid rent. Both parties produced correspondence from the local authority dealing with the payment of the Tenant's housing benefit. The Adjudicator found that there were arrears of rent that exceeded the deposit and directed that it be paid to the landlord.

Case Study Seven:

One of three Tenants did not pay her contribution to the rent. As the obligation to pay the rent was joint and several the Adjudicator found that the landlord was entitled to apply the deposit to the arrears, even if it was paid by the Tenants who contributed to the rent.

Case Study Eight:

The Landlord was seeking to retain the £1,535.85 for a) £500.00 for cleaning, b) £113.85 for check-out charges, c) £500.00 for a new carpet, d) £50.00 for a plug, e) £12.00 for light bulbs, f) £250.00 for a new mattress, g) £10.00 for new light shades and h) £100.00 for gardening work.

Directing that £1,400.00 be refunded to the Tenant and £135.85 to the Landlord, the Adjudicator found that there was only sufficient evidence to justify the cost for the light bulbs, shade and check-out charges. The remainder of the claims failed because a) some of the descriptions in the Check-in and Checkout reports and/or photographs had not changed that much, or b) the items required replacement in any event. By way of a clause in the agreement, the Tenant had to accept the Check-out report. The Adjudicator found that there was therefore an implied duty on the Landlord to advise the Tenant when that inspection was due to take place and this he had failed to do.

Case Study Nine:

In this case, the Tenant had, due to an episode of mental illness, left his belongings in it and had not cleaned. The Agents claimed for a number of items, including the costs of removal of the Tenant's possessions and storage, cleaning, cost of checking the Inventory, administration fees due to the Agents for having to write some letters regarding late payment of rent, cost of a hotel because the Landlord was unable to stay at the Property as a result of the Tenant's possessions, reconnecting the telephone line and for changing the locks because the Landlord felt intimidated by the Tenant's conduct when he was ill. The Adjudicator found that, although the Tenant admitted not having cleaned, the Tenancy Agreement involved a comparison of the state of the Property at the start of the letting with its condition at the end and this could not be undertaken because no Inventory, check-in report or check-out report was available. Similarly, the Landlord had not proved that any check of the Inventory had been carried out nor that the telephone line had in fact been reconnected. The costs of storage of the Tenant's possession and for administration fees fell outside the scope of the Deposit dispute and the Adjudicator found that there was no basis for the claim for changing the locks. As vacant possession had not been given on the agreed day because of the Tenant's belongings the Adjudicator found in favour of the Landlord in respect of the cost of their removal and of the Landlord's staying in a hotel.

The Adjudicator therefore directed that £424 be paid to the Landlord and the balance of the protected sum, (£1445.83) returned to the Tenant.

Case Study Ten:

The Landlord was seeking to retain £1,154.21 for a) £187.56 for outstanding rent, b) £24.65 for electricity c) £350.00 for redecoration, d) £130.00 for cleaning, e) £24.00 for light bulbs, f) £5.00 for a new radiator valve, g) £5.00 for a new shower curtain, h) £10.00 for a new door handle, i) £25.99 for a new toilet seat, j) £145.00 for a carpet clean, k) £98.04 for a new kitchen drawer, and l) £150.00 for new kitchen and bathroom tiles.

Directing that £81.99 be refunded to the Tenant and £1,072.22 to the Landlord, the Adjudicator found that there was sufficient evidence by way of the Check-in and Check-out reports as well as photos and invoices etc to prove the majority of the items. Two costs were adjusted for want of cost proof and the toilet seat claim failed as this was not noted on the Check-out report but evidenced further to a complaint by a new Tenant to the Property.

Case Study Eleven:

The Landlord was seeking to retain the £1,800.00, but had only provided statements for a) £200.00 for cleaning, b) £126.00 for 18 new light bulbs, c) £140.00 bank charges, and d) £180.00 for a key and fob.

The £1,800.00 was refunded to the Tenant because the Landlord's submissions merely comprised two emails and a copy of the tenancy agreement. There was no evidence to substantiate anything.

Case Study Twelve:

The Landlord claimed against the Deposit for the cost of carrying out the Inventory check at a meeting to which the Tenant had not been invited, damage to the curtains, damage to the bathroom panel and wall by the affixing of brown tape and for the rusting of the rail in the bedroom wardrobe through a failure to ventilate and the use of electrical equipment that she described as “steamers”. The Tenant said that he had tried to arrange the Inventory check for a different day and should not therefore be liable for an event in which he did not participate, that there had been no damage to the curtains when he left and that the bathroom panel had been loose and required to be affixed more securely to the wall. In respect of the damage to the wardrobe rail he stated that the Property was damp and he had had to purchase mould inhibitors. The Adjudicator found that the Tenancy Agreement provided that the Tenant should pay for the Inventory check even if he did not attend but that in respect of the other claims, the Landlord had put forward no documents which showed that she had in fact suffered any financial loss. In respect of the wardrobe rail, the Landlord had not proved that the Tenant had failed to ventilate nor had she given sufficient information about the “steamers” to enable the Adjudicator to conclude that there had been any inappropriate use of the Property.

The Adjudicator therefore directed that £113.85 should be paid to the Landlord and the balance of £586.15 be paid to the Tenant.

Case Study Thirteen:

The Landlord was seeking to retain the deposit of £595.00 for a) £70.00 for cleaning, b) £175.00 for redecorating c) £60.00 for cleaning rugs, d) £60.00 for rubbish removal, e) £60.00 for tidying the garden, f) £49.96 for replacing plants, g) £78.48 for replacing curtains, h) £60.00 for replacing a wheelie bin, i) 28.75 for the Check-out report, and, j) £79.00 for a new bathroom cabinet’ all of which totalled more than the sum protected.

Directing that £435.04 be refunded to the Tenant and £159.96 to the Landlord, the Adjudicator found that the descriptions on the Check-out inventory bore little resemblance to the video and photos taken by the Tenant taken the day before. Apart from the items for the garden, plants and rubbish, the remainder of the claim failed.

Furthermore, the wheelie bins were not even listed on the Check-in Inventory.

Case Study Fourteen:

The Landlord was seeking to retain £735.00 for a) £275.00 for general cleaning, b) £270.00 for repairs and redecorating c) £85.00 for cleaning carpets, d) £220.00 for a new kitchen worktop, and e) £6.00 for one light bulb, all of which totalled more than the sum protected.

Directing that £445.50 be refunded to the Tenant and £289.50 to the Landlord, the Adjudicator found that the Landlord had failed to substantiate the costs being claimed, merely providing budgets. Cleaning, redecorating and damage to the worktop succeeded in principle, but the claims were reduced to a) lack of proof of cost, and b) comments in the Check-in report showing some dirt and damage already present.

Case Study Fifteen:

The Landlord was seeking to retain £481.00 for a) £90.00 for cleaning, b) £115.00 for Inventory Inspection, c) £113.97 for outstanding rent, and d) £162.15 for damage to fixtures and fittings, all of which totalled more than the sum protected.

Directing that £241.37 be refunded to the Tenant and £239.63 to the Landlord, the Adjudicator found that the Landlord had failed to substantiate that anything was due for extra rent and a damaged microwave. Furthermore, due to the lack of a Check-in report, the cleaning claim was reduced.

Case Study Sixteen:

The Landlord was seeking to retain £645.00 for cleaning, redecorating and administration repairs following the Tenant's early departure.

Directing that £545.00 be refunded to the Tenant and £100.00 to the Landlord, the Adjudicator found that the Landlord had only shown that the cleaning was justified.

Case Study Seventeen:

The Landlord was seeking to retain half the deposit (£693.00) in lieu of one month's notice, but was happy to return the other half to the Tenant.

Directing that £693.00 be refunded to each party, the Adjudicator found that the Tenant had not given the required one month's notice.

Case Study Eighteen:

The Landlord made reference in correspondence to certain matters which suggested that the Landlord might have had a possible claim against the Deposit, such as for want of repair or cleaning at the end of the tenancy, unpaid rent, costs incurred in "removing" the Tenant from the Property or failure to return the keys at the end of the letting resulting in a change of locks. However, no proper evidence or explanation was given about these allegations. No invoices, quotations or receipts which might have proved that the Landlord had suffered a loss as a result of a breach of the Tenancy Agreement had been provided to the Adjudicator. The Adjudicator was, as a result of the Landlord's failure to explain the claim, unable to reach any conclusion other than that the Tenant should be repaid the Deposit. The Adjudicator directed that the Deposit of £450 should be paid to the Tenant.

Case Study Nineteen:

The Landlord claimed against the Tenant for 5 additional days rent in which the Tenant had held over, want of cleaning, certain breakages at the end of the tenancy and failure to return all the keys as well as for damage caused to the Property as a result of the Tenant's failure to comply with the contractor's instructions to let the sealant dry, deliberate damage to plumbing repairs and causing or failing to report a new bathroom leak such that the kitchen ceiling fell down. The Landlord supported his case with a number of contractors' reports but no photographs. The Tenant said that they had followed the instructions that they were given and that they had not deliberately damaged the plumbing. He argued that the ceiling fell down because the kitchen leak had been long standing and not properly repaired. The Adjudicator found that the Landlord had not proved his case as to this. In relation particularly to the allegation that the Tenant had deliberately damaged the sealant and waste disposal, the Adjudicator took into account that this was inherently improbable and that the evidence in support was produced by the Landlord's contractors in a conflict situation and no photographs had been supplied to the Adjudicator. The Adjudicator also found against the Landlord in respect of a claim by the Agents for damages for defamation of character and the costs of attendance with a substitute contractor following words exchanged at the Property between Agents and Tenant. The Landlord had claimed these under a clause prohibiting harassment and hindrance of his contractors and Agents. It was not clear that the loss claimed had followed from the inaccurate words used and the legal costs were of a type with the parties would not have contemplated. The Adjudicator found that the Landlord was entitled to retain £468.21 from the protected sum for cleaning, breakages, failure to return the keys and rent for the days for which the Tenant had remained and directed that the balance of £1047.79 be paid to the Tenant.

Case Study Twenty:

The Landlords were seeking to retain £866.00 for replacing a vinyl floor.

Directing that the £866.00 be refunded to the Tenant the Adjudicator decided that there was not enough evidence to justify charging the Tenant: No Check-in report had been provided. Nothing was noted at Check-out by the agent. The damage was only noted when the Landlords walked round some two weeks later. The photos provided did not give the impression that the whole floor needed to be replaced. Nothing had been provided to prove that the vinyl was brand new when the Tenant moved in i.e. some adjustment should have been made for fair wear and tear both before the Tenant moved in as well as the period of the tenancy. No proof was provided that the Landlords actually had the vinyl replaced.

Case Study Twenty-one:

The Landlord was seeking to retain £806.12 out of a deposit of £995.00 for 14 items comprising plants, lights, garden related items, flooring and a bathroom cabinet.

Directing that the £995.00 be refunded to the Tenant the Adjudicator decided that there was no evidence to justify charging the Tenant for anything. All the Landlord had provided was a letter with a list of items for which reimbursement was being sought.

Case Study Twenty-two:

The Landlords were seeking to retain £643.00 for a) £150.00 for redecoration, b) £65.00 for an oven clean c) £40.00 for a miscellaneous clean, d) £34.00 for a Check-out fee, e) £29.00 for a re-inspection fee, f) £230.00 for a Contractors arrangement fee, and g) £95.00 for a carpet clean.

Directing that £438.00 be refunded to the Tenant and £205.00 to the Landlords, the Adjudicator found the Landlords had failed to substantiate that anything was due for the fees which were based on a standard list which bore no link to the Agreement. The Adjudicator also considered that the standard list fell foul of the “Unfair Terms in Consumer Contracts Regulation 1999” and directed the Landlords to the OFT publication entitled “Guidance on unfair terms in tenancy agreements”.

The Landlords succeeded for some of the cleaning and redecorating charges but adjustments were made as the Tenant had been in residence for four years.

Case Study Twenty-three:

The Landlord was seeking to retain £500.00 to reinstate the Property further to mould which the Tenant had failed to deal with.

Directing that £400.00 be refunded to the Tenant and £100.00 to the Landlord, the Adjudicator found that the descriptions on the Check-in Inventory indicated that there was an inherent damp problem within the Property. However, the Tenant had failed to help remedy the situation, nor clean up when he departed.

Case Study Twenty-four:

The Landlord was seeking to retain £500.00 for a) replacing/recovering a leather settee, b) a front door lock, c) 2 potted plants, and d) a sky light blind.

Directing that £340.00 be refunded to the Tenant and £160.00 to the Landlord, the Adjudicator found that the Landlord had failed to provide much evidence including proof of cost to substantiate the claims. The Adjudicator therefore allowed contributions for a) the damaged settee which he decided had been torn during the tenancy, and b) the potted plants due to an acknowledgement from the Tenant.

Case Study Twenty-five:

The landlord sought to retain the whole of the deposit to cover rent and the costs of cleaning, repairs, and the replacement of some items. The Tenants did not respond to the issues raised by the landlord. Where the landlord's evidence was not contested by the Tenants and was supported by a rent account and invoices the Adjudicator accepted it, and made findings accordingly with the result that he directed that whole of the deposit should be paid to her.

Case Study Twenty-six:

The Tenant was seeking return of the deposit of £800.00

The Adjudicator directed that £800.00 be refunded to the Tenant because the Landlord did not submit any documents to substantiate retaining anything.

Case Study Twenty-seven:

The Landlord claimed to be entitled to make deductions from the Deposit in respect of cleaning, missing items and broken or damaged items. He also claimed to be entitled to recover one day's Council tax for which he had been billed by the Council. The Tenant denied liability and said that he had paid the requisite amount for the full period of his occupation of the property. The Adjudicator found that the Landlord had not proved his loss in respect of cleaning because he had produced no evidence of the difference in the condition of the property between the start of the letting and at its end. This was also the case in relation to a carpet which was said to have been damaged. With regard to two other items which were damaged the Landlord had not proved that he had replaced them and the Adjudicator found that the Landlord had not proved a loss. The Adjudicator found for the Landlord in respect of items shown as missing on a check-out Inventory where invoices had been provided to show that replacements had been bought. In relation to the claim for Council tax, the Landlord had not proved that the Tenant had not paid the Council. The Adjudicator directed that £34.14 be paid to the Landlord and the balance of £768.57 be paid to the Tenant.

Case Study Twenty-eight:

The total amount of £808.00 paid to the Landlord as Deposit at the commencement of the tenancy, is currently in dispute.

The Tenant submits that he is entitled to be returned the total amount in dispute and denies any liability towards the Landlord and /or Agents. The Agents submit that they are entitled to retain £417.50 from the amount in dispute to compensate towards losses arising as a result of the Tenant's breaches of the Tenancy Agreement, relating mainly to (i) outstanding rent; (ii) dilapidations and (iii) cleaning of the Property.

The Adjudicator decides to return the total sum of £693.00 to the Tenant and £115.00 to the Agents.

Case Study Twenty-nine:

The Landlord was seeking to retain £500.00 for cleaning and replacing some items.

Directing that £330.37 be refunded to the Tenant and £169.63 to the Landlord, the Adjudicator found that although the items being claimed were listed on the Check-out Report prepared by an independent specialist company, no evidence had been provided to substantiate a) the sums claimed, and b) that the work required and replacement of missing items had been done. Reductions were therefore applied to amounts being claimed.

Case Study Thirty

The total sum of £750.00 paid to the Landlord as Deposit at the commencement of the tenancy, is currently in dispute.

The Landlord submit that they are entitled to retain £560.00 from the total amount in dispute to compensate towards losses arising as a result of the Tenant's breaches of the Tenancy Agreement, relating mainly to dilapidations of the Property. The Tenant submits that she is prepared to make some contribution towards the costs allegedly, but denies most of the Landlord's allegations.

The Adjudicator decides to return the total sum of £720.00 to the Tenant and £30.00 to the Landlord, in as much as the Landlord has failed to demonstrate that the Tenant was liable for the alleged dilapidations.

Case Study Thirty-one:

The Landlord claimed to be entitled to retain the whole of the deposit of £900 for the following reasons (i) The Tenant quit and vacated the flat on about 15th July 1009 and failed to pay the monthly rent of £900 for the remainder of the fixed term of 6 months of the tenancy; (ii)The Tenant was not entitled to treat the tenancy agreement as terminated, and the allegations about the condition of the flat made by the Tenant were denied.

The Tenant claimed that the Landlord interfered with the Tenant's occupation and enjoyment of the flat by maintaining scaffolding around the building, and entering the flat over a period of more than 2 weeks to change the windows, and by creating dust and disturbance. He was therefore entitled to treat the tenancy agreement as terminated and to quit and vacate without paying rent.

The Adjudicator accepted the evidence of the Tenant, which was not contradicted by any evidence produced by the Landlord. He found that the condition of the premises was such that the Tenant was entitled to treat the tenancy agreement as terminated and to quit without payment of further rent. The Adjudicator directed to return the whole deposit of £900 to the Tenant.

Case Study Thirty-two:

The Landlord claimed to be entitled to retain £585 out of the deposit for the following reasons:(i) The Tenant left the property in unclean and damaged condition;(ii) The Landlord was obliged to incur the cost of cleaning, removing rubbish and partial redecoration, and also restoring the front and rear gardens. The Tenant denied that he caused any damage to the property and claimed that he cleaned it and left the property including the front and rear garden in good and tidy condition, and that in any event the condition of the property was no worse at the end of the tenancy than it had been at the commencement. He also complained that the Landlord failed to carry out necessary repairs that were the Landlord's responsibility, and that the Tenant and his family suffered resultant inconvenience and discomfort during the tenancy.

The Adjudicator preferred the evidence of the Tenant, which was substantially supported by photographs, and rejected all the Landlord's claims. He held that the Tenant would have been entitled to a set-off of damages for failure to carry out repairs of as much as the Landlord's claim.

The Adjudicator directed that the whole deposit of £1,800 is to be returned to the Tenant.

Case Study Thirty-three:

The total amount of £850.00 paid to the Landlord as Deposit at the commencement of the tenancy is currently in dispute. The Tenant denies any liability under the Tenancy Agreement towards the Landlord and submits that he is entitled to be returned the whole amount in dispute.

The Agents submit that they are entitled to retain £229.65 to compensate towards losses arising as a result of the Tenant's breaches of the Tenancy Agreement, relating mainly to (i) the cost of a locksmith; and (ii) the cost of travelling and time spent to remedy the problems at the Property.

The Adjudicator awards the total sum of £850.00 to the Tenant, in as much as the Landlord has failed to demonstrate that the Tenant is liable for the items claimed.

Case Study Thirty-four:

The total sum of £925.00 paid to the Agents as Deposit at the commencement of the tenancy, is currently in dispute. The Landlord submits that she is entitled to retain the full amount of the Deposit to compensate towards losses arising as a result of the Tenant's breaches of the Tenancy Agreement, relating mainly to: (i) invalid service of the notice to quit; (ii) professional cleaning of the carpets; (iii) cost of preparation of the Statutory Periodic Tenancy and (iv) damage to the fridge salad bin.

The Tenant denies any liability towards the Landlord and submits that she is entitled to be returned the whole amount in dispute.

The Adjudicator awards the total sum of £925.00 to the Tenant in as much as the Landlord has failed to demonstrate that the Tenant is liable for her allegations.

Case Study Thirty-five:

The Landlord claimed for 1 month's rent because between the time when notice was served and the time when the Tenant left, a further month's rent would have fallen due. The Adjudicator found that the Tenant had left because of a breach by the Landlord of repairing obligations and the Landlord had agreed that the Tenant should leave on that date. The Landlord was not entitled to claim rent for a period after the date when the Landlord had agreed the tenancy could expire. The Adjudicator also found that the Tenant could not set off any sum for distress and inconvenience for disrepair because the Landlord had already agreed a reduction in the rent to address the poor condition of the Property. The Adjudicator directed that £213.70 should be paid to the Landlord and £286.30 to the Tenant.

Case Study Thirty-six:

The Landlords claimed to be entitled to retain £260 out of the deposit on the ground that the Tenant left the property in unclean and damaged condition and the Landlords suffered loss and damage and incurred expense in respect of redecoration, cleaning, repairs and replacements. The Tenant admitted having caused some minor damage to the decoration of the bathroom, but otherwise denied the Landlords' claims, and alleged that he left the property in as good condition as it was at the commencement of the tenancy.

The Adjudicator found that the photographs taken by the Tenant at the beginning and the end of the tenancy conclusively established that the property was in the same condition at the beginning

and the end of the tenancy. With the exception of minor items of damage, the Landlord's claim failed.

The Adjudicator directed to return the sum of £31.50 to the Landlord, and the balance of the Tenant's deposit of £895, namely £863.50, to the Tenant.