

## Tenancy Deposit Protection Adjudication Case Study Bulletin Thirteen: 5<sup>th</sup> January 2009

### ***Case Study One:***

The Landlord sought to retain the entire amount of the deposit to compensate towards damage caused by the Tenant's misuse of the property by failing to adequately ventilate the same. The Tenant sought the return of the deposit, and alleged that the problems with the property arose as a result of a defect.

The Adjudicator found that the Tenant was entitled to the entire amount of the deposit. He was not satisfied that the problems caused were as a result of the Tenant's misuse, as opposed to disrepair. The documents contained some evidence of a breach of the covenant to repair expressly provided for in the tenancy agreement, as well as implied by s11 Landlord and Tenant Act 1985.

Further, there were a number of other factors that weighed heavily against the Landlord including, the absence of an accurate description of the alleged damage/loss; the absence of invoices, receipts, and quotations for work; the absence of a check-out inventory; as well as no details of how the claim was quantified.

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### ***Case Study Two:***

The Landlord was seeking to retain the sum of £250.00 for damage to a lift following a stop between floors necessitating calling out the fire brigade to release the Tenant and his colleagues.

The Adjudicator found that the Landlord was responsible for events leading to some inevitable damage being caused. However, this did not explain the extent of the damage actually caused.

The Adjudicator assessed the damage on a 50/50 split and directed that TDSL refund £125.00 to each party.

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### ***Case Study Three:***

The tenancy agreement required the Tenants to keep the property and contents in the condition they were in at the start of the tenancy. The Landlord claimed for cleaning, replacing carpets and redecorating. To succeed the Landlord needed to establish the condition of the property at the start of the tenancy. He did not produce an inventory or any other evidence, such as photographs, and the Tenants disputed his account. The Adjudicator found that the Landlord had not proved his case to the required standard and could not award him a payment from the deposit.

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### ***Case Study Four:***

The tenancy agreement required the Tenants to keep the property and contents in the condition they were in at the start of the tenancy. The Landlords claimed for cleaning, replacing a sofa bed and repairing a kitchen cupboard. To succeed the Landlords needed to establish the condition of the property at the start of the tenancy. They did not produce an inventory or any other evidence, such as photographs, and the Tenant disputed their account. The Adjudicator found that the Landlords had not proved their case to the required standard and could not award them a payment from the deposit.

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### ***Case Study Five:***

The Landlord produced an inventory, the letter he sent following an interim inspection and a check out letter countersigned by the Tenants. Each of these was supported by photographs. There was also a claim for arrears of rent. The Landlord was able to establish an entitlement to the whole of the deposit as a payment towards the arrears of rent, and the cost of replacing carpets and a dining table. The Tenants did not produce any evidence in support of their assertion that the Landlord had agreed to accept significantly less than the full value of his claim, and this defence therefore failed.

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### ***Case Study Six:***

The Landlord was seeking to retain the sum of £235.00 for a) cleaning and b) work to the garden throughout the tenancy.

The Adjudicator directed that the deposit be returned to the Tenant because the Landlord had not provided anything to substantiate his case.

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#### ***Case Study Seven:***

The tenancy agreement required the Tenants to pay a share of the cost of the check out report, without specifying the proportion they were to pay. The Landlords did the check out report themselves and sought to recover a payment.

The Adjudicator decided that the tenancy agreement did not cover the payment claimed, and that as it was not possible to calculate the amount payable from the clause relied on nothing was payable. The Landlords were entitled to a contribution to the cost of repairing a balcony door. The Tenants failed to report they had damaged the door and continued using it, which the Adjudicator found increased the cost of the eventual repair.

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#### ***Case Study Eight:***

The tenancy agreement required the Tenants to pay for professional cleaning at the end of the tenancy. Towards the end of the tenancy the letting agents reminded them about this obligation. As the Tenants did not arrange for the flat to be professionally cleaned the Landlord was able to recover the cost. The Landlord was also able to recover a reasonable amount for the cost of repainting walls scuffed and marked by the Tenants.

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#### ***Case Study Nine:***

The Landlord was seeking to retain the sum of £1,245.00 for a) repairs to damaged Parquet flooring £1,100.00 b) replacement of stained sofa cover £25.00, c) decorating £120.00.

The Adjudicator directed that the deposit be returned to the Tenant because the Landlord had not provided any invoices to demonstrate that the work had been done. Furthermore, receipted invoices allegedly proving the cost for doing the flooring all pre-dated the start of the Tenancy.

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### ***Case Study Ten:***

The Landlord was seeking to retain the full deposit of £450.00 to cover an outstanding month's rent.

The Adjudicator found that the Tenant should have given two month's notice as called for in the Agreement. As the Landlord was not able to get a new Tenant during the second month, the Adjudicator decided that the Landlord was entitled to retain the deposit to cover the one month's shortfall.

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### ***Case Study Eleven:***

The Landlord sought to retain the entire deposit, to compensate towards losses arising as a result of the Tenants departure from the property, in breach of contract. The Landlord asserted that the Tenant failed to give 1 months notice as required by the tenancy agreement. The Tenant simply stated that she did not owe any money to the Landlord.

The Adjudicator found that the Landlord was entitled to the entire amount of the deposit. The Tenant did not dispute what the Landlord had said about her departure, and an undated note produced by the Tenant assisted the Landlord.

In the circumstances, the Landlord was awarded the entire amount of the deposit, the same being equivalent to one months rent.

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### ***Case Study Twelve:***

The Landlord's Agent advised that the Landlord was seeking to retain the deposit of £385.00 for a) damaged washing machine b) repainting, c) cleaning, d) damage and e) food left in the fridge.

The Landlord's Agent's submissions merely comprised some undated photographs.

The Adjudicator directed that the deposit be returned to the Tenant because the Landlord and/or her Agent had not provided a) a Check-in or Check-out inventory, b) photos taken at the start of the Tenancy to compare against the undated photographs which did show some damage and dirt,

c) any indication as to how the cost of the damage related to the £385.00 deposit being claimed and d) no evidence of any cost being incurred.

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***Case Study Thirteen:***

The check out schedule recorded the work the Tenants had agreed to do. Having reached an agreement the Landlord was not entitled to claim for additional items. The Landlord's claim for additional rent, based on the length of notice given by the Tenants, failed because the Tenants moved out at the end of the agreed tenancy.

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***Case Study Fourteen:***

The Landlord sought to retain the sum of £350.00 consisting of (i) damage to a sofa- £250.00, and (ii) damage to walls- £125.00. The Tenants sought the return of the deposit.

The Adjudicator found that the Tenant was entitled to the entire amount in dispute.

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***Case Study Fifteen:***

The Landlord was seeking to retain the sum of £500.00 for a) outstanding rent £300.00 b) cleaning charge £50.00, c) advertising charge for early release from contract £150.00.

The Adjudicator directed that £450.00 be returned to the Landlord because he found that the Tenant vacated early and the Landlord was therefore entitled to the two weeks outstanding rent claimed (to the date when a new Tenant was installed) and the Landlord's reasonable costs of advertising.

There was no evidence to support the £50 claimed for cleaning which was therefore returned to the Tenant.

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### **Case Study Sixteen:**

The Landlord sought to retain the sum of £1055.85 consisting of (i) the supply of heating and hot water- £605.85, and (ii) dilapidations- £450. The Tenant sought the return of the deposit.

The Adjudicator found that the Tenant was entitled to the entire amount in dispute.

The claim relating to the supply of gas, heating and hot water did not relate to usage (which the Tenant had paid) but the costs of supplying and maintaining the same at the property. Firstly, the Adjudicator was not satisfied that the manuscript clause endorsed on the Tenancy Agreement was incorporated into the agreement, bearing in mind the opposing submissions regarding the same. (ii) Alternatively if the clause was incorporated it would appear to void/unenforceable under the Unfair Terms in Consumer Contract Regulations SI 1999/2083, as it would constitute a transfer of the Landlords statutory/repairing obligations. (iii) Finally, if neither of the above applied, the ambiguity arising as a result of the opposing clauses contained in the agreement should be construed against the person seeking to derive benefit i.e. the Landlord.

The claim for dilapidations failed due to the absence of a condition report; check in inventory; check out inventory; photographic evidence; an estimate of the works; receipts, invoices, and quotations.

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### **Case Study Seventeen:**

The Landlord sought to retain the deposit to contribute towards losses arising in respect of various dilapidations. The Tenant sought the return of the deposit.

The Adjudicator found that the Tenant was entitled to the entire amount in dispute.

The claim failed taking into account the Tenants response to the Landlords allegations, and in particular the existence of an agreement signed by the Landlords partner, purportedly acting as his agent, and confirming the condition of the property. The claim for dilapidations also failed due to the absence of a condition report; check in inventory; check out inventory; photographic evidence; an estimate of the works; receipts, invoices, and quotations.

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### ***Case Study Eighteen:***

The Landlord sought to retain the deposit to contribute towards losses arising in respect of various dilapidations. The Tenant sought the return of the deposit.

The Adjudicator found that the Landlord's claim succeeded in part, and awarded £100.00 out of the claimed £495.00.

Apart from the sum of £100.00 conceded by the Tenant, the Landlords claim failed. The claim failed taking into account the Tenants response to the Landlords allegations, and in particular the absence of a condition report; check in inventory; check out inventory; and photographic evidence.

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### ***Case Study Nineteen:***

The Landlord sought to retain the deposit to contribute towards losses arising in respect of outstanding rent, agents' fees, and various dilapidations. The Tenant sought the return of the deposit.

The Adjudicator found that the Landlord's claim succeeded in part, and awarded £1896.74 to the Landlord.

The claim for loss of rent and fees succeeded. The Adjudicator found that the Landlord had agreed to release the Tenant on condition that such fees were paid. This was consistent with the clauses contained in the tenancy agreement. Having regard to the check in and check out report, the claim for dilapidations succeeded in part

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### ***Case Study Twenty:***

The Landlord sought to retain the sum of £650.00 to cover one months worth of rent arrears. The Tenant sought the return of the deposit.

The Adjudicator found that the Landlord's claim succeeded. The Tenant had in excess of one months rent, when she left the property. The fact that the Landlord had purported to serve a

notice requiring the Tenant to leave did not, as the Tenant appear to assert, change the contractual position. The sum of £100.00 was returned to the Tenant, but only as a result of a concession by the Landlord.

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#### ***Case Study Twenty-one:***

The Landlord sought to retain the deposit to contribute toward losses arising as a result of (i) £1500 arrears of rent and (ii) 156.28 for changing of lock. The Tenant sought the return of the deposit.

The Adjudicator found that the Landlord's claim succeeded. Having reviewed the documents, the Adjudicator was satisfied that the Tenant was in arrears as asserted by the Landlord and that the Landlord was entitled to the entire deposit in the sum of £500.00 to contribute towards the arrears.

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#### ***Case Study Twenty-two:***

The Landlord was seeking to retain £420.65 for damage to a kitchen worktop. A directed that the £420.65 be returned to the Tenant as he found that the Landlord had not proved his case.

The Landlord had not provided a Check-in or Check-out Inventory. Furthermore, the two undated photos provided merely showed a small slight burn on the Kitchen worktop which the Adjudicator decided constituted fair wear and tear. Finally, although the Landlord had provided a quote for the work, there was no evidence provided to show that the work had actually been done.

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#### ***Case Study Twenty-three:***

The Landlord was seeking to retain £440.00 for items that need replacing and cleaning in the bathroom, hallway, lounge, bedroom and kitchen.

A directed that the £440.00 be returned to the Tenant (who had been a Tenant for seven years) as he found that the Landlord had not proved his case. The Landlord had provided a Check-in Inventory dated 25 May 1999. As this Tenancy started on 01 June 2007, it could not be considered. There was also no Check-out Inventory provided.

There were many undated photos taken at Check-out. The Adjudicator commented that if these were the result of a seven year Tenancy, many of the items would be considered fair wear and tear. There were also no Check-in photos.

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***Case Study Twenty-four:***

The Tenant did not dispute the Landlord's claim for arrears of rent, and once this had been paid only a small amount of the deposit was left.

The Adjudicator found that two of the items in the Landlord's claim for cleaning, missing items and damage were sufficient to account for the remaining deposit, and that as his jurisdiction was limited to deciding who received the deposit he was unable to make further findings.

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***Case Study Twenty-five:***

The Tenant was seeking a refund of £1,250.00 out of a total deposit of £1,800.00 being retained by the Landlord.

Finding for the Tenant, the Adjudicator found that the parties were in agreement over all items except the cost of cleaning, which the Landlord's Agent argued could be charged according to the Tenancy Agreement.

The Adjudicator agreed with this argument had evidence been provided that cleaning actually been carried out. As there was none, the Adjudicator accepted the Tenant's compromise figure.

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***Case Study Twenty-six:***

The Landlord sought to retain the sum of £450 in respect of dilapidations. The Tenant sought the return of the deposit.

The Adjudicator found that the Tenant was entitled to the entire amount, in view of the absence of inventories and schedules of condition, as well as the absence of invoices, receipts and quotations.

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***Case Study Twenty-seven:***

The Landlord was retaining the sum of £622.50 for a) Renewal fee £70.50, b) Admin and Renewal fee £52.00, c) Painting and windows £500.00.

Returning the whole sum to the Tenant, the Adjudicator found as follows:

There was no Inventory or photos. Bearing in mind the Tenant had been in the Property for 3 ½ years, much of the alleged work could be considered fair wear and tear.

There was nothing in the Tenancy Agreement that allowed the Tenant to be charged for renewing the Agreement and the credit card admin fee. The Landlord's Agent sought to rely on their 'Application for a Tenancy' form which clearly stated the payment was to be made to them. The Adjudicator decided that this did not come under the TDSL Rules.

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***Case Study Twenty-eight:***

The Tenant was seeking a refund of the deposit of £589.00 being retained by the Landlord's Agent out of a total deposit of £750.00.

The Adjudicator awarded the Tenant the sum of £539.25 because the Agent had, in many cases, ignored the Check-in Inventory which noted many of the items the Tenant was being charged for. Furthermore, the charge for cleaning the whole flat was reduced because the Check-out Inventory noted that only one room needed cleaning.

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***Case Study Twenty-nine:***

The Tenant moved out before the end of the fixed term of the tenancy, and the Landlord was able to claim rent to the end of the fixed term, but not the costs of re-letting. The Landlord was in breach of his statutory obligation to provide hot water for nine months. This entitled the Tenant to

compensation, which the Adjudicator set off against the arrears of rent, reducing them to nil. The deposit was repaid to the Tenant.

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### ***Case Study Thirty***

The Landlord is not able to recover the cost of repairs carried out under a statutory notice, even if he feels that the Tenants were unreasonable when they involved the local authority. Although the Tenants should allow reasonable access for repairs it was not unreasonable for them to ask the Landlords contractor to return another day when one of them was unwell.

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### ***Case Study Thirty-one:***

The Landlord's Agent was seeking to retain £1,222.19 out of a total deposit of £2,160 for a) Refund of Commission to Landlord £652.63, b) Cleaning the Property £430.00, c) Inventory Check-out charge £88.13, and d) One day's rent £51.43.

The Adjudicator found that the Check-in inventory noted many areas that required cleaning. As a result, he directed that £430.00 be returned to the Tenant.

The balance was returned to the Landlord because the Adjudicator held that the remaining costs were legitimate expenses incurred by the Landlord as a result of the Tenant giving notice some 4 months early.

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### ***Case Study Thirty-two:***

The Landlords were seeking to retain the sum of £1,650.00 for a) cleaning, b) skip hire, c) gardening d) outstanding rent e) new Tenant's overnight accommodation, and f) replacement locks.

The Adjudicator found that the Tenant had agreed to a contribution of £250.00 for the skip and cleaning. He also decided that the Tenant was liable for £366.00 outstanding rent that he had tried to offset against alleged personal possessions broken by the Landlords' Agent when clearing the Property.

Directing that the balance of £1,034.00 be returned to the Tenant, the Adjudicator noted that a) there was no signed Check-in inventory and there was no signed Check-out inventory to compare against, b) there were no Check-in photos to compare with the Check-out photographs and c) there was no breakdown of the costs or invoices/receipts etc to substantiate any sums claimed.

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#### ***Case Study Thirty-three:***

The Landlord's Agent was seeking to retain £1,222.19 out of a total deposit of £2,160 for a) Refund of Commission to Landlord £652.63, b) Cleaning the Property £430.00, c) Inventory Check-out charge £88.13, and d) One day's rent £51.43.

The Adjudicator found that the Check-in inventory noted many areas that required cleaning. As a result, he directed that £430.00 be returned to the Tenant. The balance was returned to the Landlord because the Adjudicator held that the remaining costs were legitimate expenses incurred by the Landlord as a result of the Tenant giving notice some 4 months early.

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#### ***Case Study Thirty-four:***

The Landlord sought to retain the sum of £369.00, from a total deposit of £1500.00, in order to contribute towards dilapidations. The Tenant sought the return of the deposit.

The claim failed. This was another case in which the Landlord failed to provide any adequate information in support of the claim. In the particular, there was no 'check-in' or 'check-out' inventory/schedule of condition. Further, no photographic evidence was produced by the Landlord, nor any invoices, receipts, or quotations in support of the claim. Also the Landlord failed to respond to the Tenant's assertion that the Agent had confirmed that the full deposit would be returned, following the conclusion of an inspection at the end of the tenancy.

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#### ***Case Study Thirty-five:***

The Landlord was retaining the deposit of £2,475.00 for a) Rent arrears £2,072.00, and b) Utilities shortfall £303.65, and c) Other charges £975.00.

Directing that the full deposit should be returned to the Tenant, the Adjudicator found that the Landlord had not provided any evidence to prove his reductions.

Furthermore, the Adjudicator held that a clause in the Agreement stating that the Tenant should pay £25 for every late payment was to be considered a penalty under the 'Unfair Terms in Consumer Contract Regulations' and he directed the Landlord to the OFT publication 'Guidance on unfair terms in tenancy agreements'.

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#### ***Case Study Thirty-six:***

The Landlord was retaining the sum of £1,785.00 for a) Lightbulbs £35.00, b) Checkout £100.00, c) Carpet replacement £800.00, d) Repairs to windows £400.00, e) Blinds £150.00, f) Mattress £300.00.

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#### ***Case Study Thirty-seven:***

The Landlord appeared to be retaining the full deposit of £2,475.00. It was not clear from the information provided by the Landlord because in his email dated 31 October 2008 he stated that £1,839.28 was to be returned to the Tenant (£635.72 withheld). However in the undated 'Overview', the Landlord stated that only £195.81 needed to be deducted and the rest returned to the Tenant.

Directing that the full deposit should be returned to the Tenant, the Adjudicator found that the Landlord had not provided any evidence to prove his reductions.

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#### ***Case Study Thirty-eight:***

The Landlord was retaining the sum of £1,170.00 for a) Rent arrears £970.00 by one of the four Tenants, and b) Various small items totalling £100.00.

The Adjudicator directed that £1,030 be returned to the Tenant. The Adjudicator found that although the remaining Tenants were liable for the rent of a Tenant who had left early, the Landlord could not show how the figure of £970.00 had been arrived at. There were no accounts, bank statements etc showing payments made. The remaining small items turned on whether they had been noted on the Inventories or not.

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### ***Case Study Thirty-nine:***

The Landlord claimed for repairs to the en-suite shower, saying that the Tenant ought to have reported that it was leaking.

The Adjudicator did not allow this claim as the repair to the shower was the Landlord's responsibility under s.11 of the Landlord and Tenant Act 1985 and there was no evidence that the repair was made more expensive by a failure to report. The fact that the Landlord's agents had made an inspection without noticing the leak suggested that the Tenants would not have noticed it either.

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### ***Case Study Forty:***

The Landlord claimed a payment from the deposit to cover redecorating and cleaning. The Tenant challenged the need to completely redecorate the property and the Landlord provided no evidence to establish that total redecoration was necessary.

The Adjudicator therefore only allowed part of the Landlord's claim.

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### ***Case Study Forty-one:***

The Landlords were seeking to retain the sum of £620.00 out of the full deposit of £680.00 for a) cleaning, b) missing items, c) broken items, d) new fridge freezer, e) new carpet, f) batteries, g) cooker hood and h) a damaged dresser.

The Adjudicator directed that the £620.00 be returned to the Tenant as there was insufficient evidence to substantiate some of the items and the costs.

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***Case Study Forty -two:***

The Landlord was seeking to retain the full deposit of £862.50 for a) excessively high electricity bills £1,000.00, b) gas invoice £136.92, and c) cost of repairing damage and redecoration £375.00. The Landlord advised that the total amount claimed is £1,511.92 and that she intended to pursue the Tenant for the shortfall of £649.42

Directing that there was no basis for retaining any of the deposit or pursuing the Tenant for the alleged shortfall, the Adjudicator directed that the full deposit be returned to the Tenant.

The Adjudicator found that the Tenancy Agreement included electricity charges and the fact that the Landlord installed gas central heating during the Tenancy did not alter that. In fact she had mitigated her costs as gas is cheaper to use than electricity. The Adjudicator also noted that the Landlord was using an (expensive) economy 7 tariff and that electricity charges had risen substantially during the Tenancy.

The claim for repairs and redecoration failed as there were no Inventories or photographs.

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***Case Study Forty -three:***

The Landlord sought to retain the entire deposit of £845.00 to contribute towards losses in respect of (i) outstanding rent and (ii) various dilapidations. The Tenant sought the return of the deposit, and complained about a number of defects at the property.

The Adjudicator found that the Landlord was entitled to the sum of £338.36 relating to outstanding rent, the Tenant having vacated the property before the earliest date that he was contractually entitled.

The claim for various dilapidations failed. The Landlord failed to produce and 'check-in' and 'check-out' inventory and/or any photographic evidence.

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#### ***Case Study Forty -four:***

The Landlord sought to retain the sum of £1055.00 in respect of outstanding rent and dilapidations. The Tenant sought the return of the deposit.

The claim failed. The most compelling evidence was a document signed by the Tenant and the Agent entitled '*Tenancy Ending Agreement*' which confirmed that the parties had agreed to the tenancy being surrendered. The result being that the claim for rent failed. In relation to the dilapidations claim, the Landlord had failed to produce a check-out report/schedule of condition. Further there was no evidence quantifying the amount claimed, nor was there any photographic evidence. As a result the dilapidations claim failed also.

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#### ***Case Study Forty -five:***

The Landlord sought to retain the sum of £634.00 in respect of dilapidations. The Tenant sought the return of the deposit.

The claim failed. The Landlord had failed to produce a check-in/check-out report/schedule of condition. Further there was no evidence quantifying the amount claimed.

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#### ***Case Study Forty –six***

The Landlord was seeking to retain the full deposit of £550.00 because the Property was in such a poor condition it would cost the Landlord far in excess of the deposit to have the damage repaired. Furthermore, she was unable to re-let as the Property was uninhabitable.

Directing that £231.96 be returned to the Landlord, the Adjudicator found that the cost for two of the items complained about was agreed between the parties and a third was proven by the Landlord. The remainder of the items failed because a) there was no financial evidence submitted and b) the Tenant had complained about the damp issues and the Landlord had done little to resolve them.

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### ***Case Study Forty -seven:***

The Landlord sought to retain the sum of £310.80, consisting of (i) replacement light fitting- £65.08 and (ii) various dilapidations- £245.00.

The Tenant sought the return of the deposit, but conceded that he should pay a reasonable amount towards the light fitting, which was accidentally damaged. He claimed that the other items were reasonable wear and tear.

The claim for the light fitting succeeded in the amount claimed. The claim for dilapidations succeeded, but not to the extent claimed. Taking into account all relevant matters, the Adjudicator found that the Landlord was entitled to have returned to him a contribution of 50% of the invoice i.e. £122.50. The total amount to the Landlord being £188.30.

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### ***Case Study Forty -eight:***

The check out report established the Landlords entitlement to a payment from the deposit for redecorating and the replacement of a sofa, but the Adjudicator found that the cost of repairing the toilet and replacing the refrigerator were the Landlord's responsibility under the tenancy agreement. The Tenants left after several weeks without hot water. The Adjudicator found that the Landlord's failure to repair the boiler providing the hot water was a sufficiently serious breach of the tenancy agreement to entitle the Tenants to end the tenancy and claim both a refund of rent, for the unexpired portion of the month paid for, and compensation.

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### ***Case Study Forty -nine:***

The Landlord was retaining the sum of £1,785.00 for a) Lightbulbs £35.00, b) Checkout £100.00, c) Carpet replacement £800.00, d) Repairs to windows £400.00, e) Blinds £150.00, f) Mattress £300.00.

The Adjudicator directed that the £1,785 be returned to the Tenant because the Landlord had not provided any information to justify withholding the deposit despite having been given three weeks to do so.

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### ***Case Study Fifty:***

The Landlord was retaining the sum of £1,740.00 but conceded that he was willing to refund £1,140.00. He was withholding the balance of £600.00 for painting and cleaning which he considered are beyond general fair wear and tear.

The Adjudicator directed that the full deposit be returned to the Tenant because the Landlord had failed to provide any substantiation.

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### ***Case Study Fifty –one:***

The schedule to the tenancy agreement provided that the Tenants would reimburse the cost of employing a gardener, and the Landlord was entitled to recover this expense. As the tenancy agreement required the Tenants to return the property in no worse condition than it was at the start, and both parties were agreed that it was in a poor state of cleanliness at the start, the Landlord could not recover cleaning costs. The Tenants photographs proved that they had left the mattresses the Landlord wished to charge for replacing. There was a counterclaim from the Tenants as the Landlord had failed to repair the boiler for two and a half months. The Adjudicator allowed the Tenants £200 for this, which was set off against the amount due to the Landlord.

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### ***Case Study Fifty -two:***

As the tenancy was for a fixed term of six months the Adjudicator allowed the Landlord to recover rent to the end of the term when the Tenants moved out early. The Landlord was also allowed the balance of the deposit towards the cost of redecorating the dining room and a new carpet.

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### ***Case Study Fifty -three:***

The tenancy agreement prohibited the Tenant from smoking indoors. The Adjudicator accepted that as a result of the Tenant smoking in the property it needed redecorating, and that the carpets needed replacing as a result of cigarette burns. The Tenant accepted that the property needed cleaning. The Adjudicator's jurisdiction was limited to the deposit, although the Landlord's expenditure exceeded this amount.

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***Case Study Fifty -four:***

The Landlord was retaining the £450.00 for repairs and redecoration caused by mould.

The Adjudicator found that there was no mention of mould on the Check-in Inventory. However, the photos clearly demonstrated the extent of the problem at Check-out. The quote and invoice reflected the extent of work required. As a result, the Adjudicator directed that the £450.00 be returned to the Landlord.

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***Case Study Fifty -three:***

The Landlord sought to retain the sum of £283.50, consisting of (i) late rent payment charges- £120.00 and (ii) compensation for breach of an agreement to stay on at the property- £163.50. The Tenant sought the return of the deposit.

The claim for rent payment charges succeeded. Consideration was given as to whether the same were unfair terms, but on balance, the Adjudicator held that the relevant clauses were enforceable.

The claim relating to the decision of one of the Tenant's to go back on an agreement to stay on at the end of the tenancy failed. The Adjudicator found that this was a separate agreement, that did not bind the Tenant's and was not enforceable against them.

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***Case Study Fifty -four:***

The Landlord the entire deposit to cover various dilapidations. The Tenant sought the return of the deposit.

Apart for a small amount of rent, the claim failed. This was another matter in which the Landlord had failed to produce a 'check-in' and/or 'check-out' inventory/schedule of condition. Further, the Landlord has in fact granted a fresh tenancy to some of the Tenants after the matter complained of, in respect of the same property. The claim for dilapidations therefore failed.

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### ***Case Study Fifty -five:***

The Landlord was seeking to retain the full deposit of £600.00 for a) labour cleaning £250.00, b) carpet cleaning £50, c) materials £50.00, d) damage to fixtures and fittings £150.00 - £200.00, e) labour repairs to wall & kitchen cupboard £240.00, f) Landlord travel costs related to above £120.00, and g) damage to neighbouring flat estimated at £250.00. These sums exceed the deposit being retained.

The Adjudicator directed that £341.00 be returned to the Landlord and £259.00 to the Tenant.

The Adjudicator found that although there were different versions of the Inventories, the photos and short videos provided by the Landlord helped her case. However, many of the sums being claimed were based on estimates.

Arriving at the sums above, the Adjudicator found that the Landlord travel costs were to be considered an overhead and therefore factored into the rent. Also, the damage to the neighbours flat caused by flooding should be covered by the Landlord's insurance.

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### ***Case Study Fifty -six:***

The tenancy agreement required the Landlord to return the deposit within 28day of the end of the tenancy or give reasons for withholding it. The Landlord withheld the deposit, but did not give reasons. The Adjudicator directed the return of the deposit.

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### ***Case Study Fifty -seven:***

The Landlord claimed to the entire deposit, in order to contribute towards various losses arising at the end of the tenancy. The Landlords claim exceeded the amount of the deposit protected.

The Tenant sought the return of the deposit, alleging that any damage was (i) fair wear and tear, (ii) caused by a leak that was the Landlords responsibility, (iii) the responsibility of the other Tenants.

The Adjudicator allowed the Landlords claim for the entire amount of the deposit to contribute towards his losses.

The Adjudicator found that the dilapidations were not caused by wear and tear. The property had been treated in an appalling fashion e.g broken fixture/window, The 'check-in' and 'check-out' reports, which were signed and agreed by one of the Tenant's clearly evidenced this, as did the photographic evidence and copy invoices/receipts. The Landlord had kept careful records throughout, and had dealt with the Tenant's fairly. All of the evidence favoured the Landlord's claim.

The evidence suggested that the water penetration was caused as a result of Tenant's misuse, as opposed to a breach of any implied/express repairing covenant. This was supported by an expert report.

The Tenant's were jointly and severally liable under the terms of the tenancy agreement, and it was a matter for them how they apportioned liability. Such matters being outside of the scope of the scheme.

NOTE: This is a good example of a responsible Landlord keeping careful and accurate records.

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#### ***Case Study Fifty -eight:***

The Landlord was retaining the £639.27 for a) Professional clean £293.75, b) Arrears letter £47.00, c) Maintenance charges £90.00, and d) Lock change £208.52.

Apart from the £90.00 which the Adjudicator found that the Tenant had agreed to, the remainder of the items failed as there were no Check-in and Check-out Inventories and there was no evidence to substantiate the costs being claimed.

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#### ***Case Study Fifty -nine:***

The Tenants admitted part of the Landlord's claim, but disputed the cleaning and redecorating costs. The Adjudicator allowed some of the Landlord's expense, but not all of it. He decided that the tenancy agreement required a domestic level of cleanliness, and that allowances had to be made for the evidence that said that part of the property needed redecorating at the start of the tenancy.

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### ***Case Study Sixty***

The Landlord claimed the cost of cleaning and a contribution to the cost of replacing carpets and other items. The Adjudicator allowed the Landlord's claim as it was supported by check in and check out reports that were independently prepared.

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#### ***Case Study Sixty -one:***

The Landlords claimed for damage to a patio door leading from the Tenant's room to a conservatory. The explanations put forward by the Tenant for the damage were not credible and the Adjudicator concluded that, on balance, the Tenant was liable to pay for the cost of the repair under the tenancy agreement. The Landlords also recovered charges due under the tenancy agreement, but not the cost of advertising for a new Tenant.

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#### ***Case Study Sixty -two:***

The Landlord sought to retain the sum of £200.00 for cleaning £178.08 for rent. The Tenant sought the return of the deposit.

The Adjudicator allowed the Landlords claim for the rent as claimed. The rent schedule supported the amount claimed.

The Adjudicator dismissed the claim for the cleaning. All of the documents supported the Tenant's submission, that the property was left in a far better state than at the commencement of the tenancy.

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#### ***Case Study Sixty -three:***

The Landlord sought to retain various sums for (i) check-out fee; (ii) rent; and (iii) dilapidations. The Tenant sought the return of the deposit.

The Landlord's claim failed. The Landlord/Agent had simply failed to provide sufficient evidence to support the claim. The Landlord had failed to produce a check-in report and pay for the same, as

he was contractually entitled to do. This affected the Tenant's liability to pay for such a report to be checked at the end of the tenancy. The absence of the check in report/schedule of condition also undermined the claim for dilapidations, as did the absence of any invoice/receipt for the alleged works. The claim for rent failed due to a disagreement over the relevant dates and the fact that the Agents submission clearly referred to dates that could not have been relevant in all of the circumstances.

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#### ***Case Study Sixty -four:***

The Landlord was seeking to retain £601.64 for a) Outstanding rent £99.73, b) Missing items £66.00, c) Replacement dimmer switch £45.00, d) Broken door knob £51.98, e) Repairs £28.93, f) Labour disposing of rubbish £117.50, g) Garden maintenance £75.00, and i) Carpet stains £117.50.

Apart from the £99.73 which the Adjudicator found was owed, the remainder of the items failed as there was no evidence to substantiate the costs being claimed. As the Tenant had acknowledged he had packed the missing items by accident, the Adjudicator directed that he return them as he had offered.

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#### ***Case Study Sixty -five:***

The Tenants gave notice to end their tenancy and paid rent to the end of their notice period. The Landlord tried to charge rent for a further month.

The Adjudicator found that the statutory notice period of four weeks applied and disallowed the Landlord's claim. A charge of £47 for an arrears letter was disallowed as unfair and therefore void under the Unfair Terms in Consumer Contracts Regulations 1999. Where the Tenant had obtained an estimate for the cost of repairs and the Landlord had not objectively justified selecting a more expensive contractor he could only recover the lower quote.

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### ***Case Study Sixty -six:***

When an extension to the tenancy was agreed the increase in rent was made subject to the Landlord carrying out some work.

The Adjudicator held that the increase in rent was not due until all the work had been done and part of the rent arrears claim by the Landlord was remitted as a result. The Adjudicator also found that it was unreasonable for the Landlord to charge for a second arrears letter sent a week after the first when payments were made via bank accounts. More time should have been allowed. The Adjudicator did not allow the Tenant to set off a charge for his own correspondence with the Landlord over the dispute, as the claim had no basis in law.

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### ***Case Study Sixty -seven:***

The Tenant was seeking a refund of £420.00 being retained by the Landlord.

The Adjudicator directed that the £420.00 be returned to the Tenant as the Landlord had not provided any evidence to substantiate his deduction.

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### ***Case Study Sixty -eight:***

Substantive Issue Considered was whether the Tenant had caused the damage alleged.

The Landlord claimed to be entitled to retain £233.30 out of the deposit of £400 because of damage alleged to have been done by the Tenant during the tenancy, partly to furniture in the Tenant's own room, and partly to other parts of the premises shared with Tenants of other rooms let individually. The Tenant denied that he caused the principal items of damage alleged by the Landlord. He claimed the return of the whole of his deposit.

The Adjudicator found, on the balance of probabilities, that the Tenant, who had been described in writing as a good Tenant by a joint Landlord, had not caused the principal damage complained of, which might well have occurred after he had vacated his room, and that the other items were no more than fair wear and tear for which the Tenant was not liable. The Adjudicator directed the return of the whole of the deposit to the Tenant.

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### ***Case Study Sixty -nine:***

The substantive issue considered was whether the Landlord had proved the costs claimed. The Landlord claimed to be entitled to retain £750 out of the deposit of £1,050 because the Tenant left the property in such a condition that certain carpets had to be replaced and others cleaned, curtains had to be dry cleaned, and other cleaning, repairs and replacements were necessary at a cost exceeding £750. The Tenant denied that the property was left in such a condition that the Landlord incurred expense of as much as £750, but conceded that the Landlord should be entitled to retain £300 out of the deposit.

The Adjudicator rejected the Landlord's claim for the cost of replacing carpets but allowed the Landlord's expense of hiring a carpet cleaning machine, and materials, totalling £35. The Adjudicator accepted the Landlord's evidence that she had curtains dry cleaned at a cost of £70 to remove the smell of cigarette smoke which resulted from breach of the tenancy agreement which prohibited smoking in the premises. The Adjudicator was satisfied that repair to the sink and the replacement of a light switch were the result of fair wear and tear. The Tenant accepted liability for replacing linoleum at a cost of £97.81. The Tenant was held to be liable in the amount of £35 for the cost of removing rubbish, and £200 for labour in cleaning etc. The Adjudicator therefore directed the return of the sum of £437.81 to the Landlord, and the balance of £612.19 to the Tenant.

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### ***Case Study Seventy:***

The substantive issues considered were (i) whether the Landlord was entitled to make any deduction from the deposit where he had not notified his intention to make a claim against the deposit with 10 days of the end of the tenancy; and (ii) whether the Tenant was liable for damage to a door and door frame caused when the door jammed and she had to break it open.

The Adjudicator found: (i) In the Tenancy Deposit Scheme in Schedule 10 to the Housing Act 2004 and in the scheme rules of Tenancy Deposit Solutions Limited trading as My Deposits there

is no statutory or contractual duty on a Landlord to notify his intention to make a deduction from the deposit within 10 days of the end of the tenancy. Even if there were a breach of such a statutory or contractual requirement, that breach would not entitle a Tenant to automatic repayment of the full deposit; (ii) The door latch jammed early one morning, and the Tenant notified the Landlord, and was told that he would come to the property to assist that evening. The Landlord subsequently caused the Tenant to be told that he was not in fact going to come to the property to assist. The Tenant acted reasonably in breaking the door and frame and was not in breach of covenant in doing so. Although door furniture is a Tenant's repairing obligation, a door and door frame are part of the structure of the property, and are the Landlord's repairing obligation by reason of Section 11 of the Landlord and Tenant Act 1985. The Landlord was not entitled to recover the cost of repair of the door and door frame from the Tenant.