

Tenancy Deposit Protection Adjudication Case Study Bulletin Seven 14th April 2008

Case Study One:

The Landlord sought to retain all of the deposit to cover arrears of rent and repairs. The arrears and some repairs were not disputed, but the majority of the repairs were in dispute. One of the issues was whether repairs were for damage or fair wear and tear. As the Tenant is paying for the use of the property fair wear and tear should be allowed for. The photographic evidence produced by the Landlord established that the Tenant was liable for some of the repairs, although repairs to the sanitary installations (shower and toilet) were the Landlord's responsibility under s.11 of the Landlord and Tenant Act 1985, and allowance had to be made for betterment as the Landlord ended up with new carpets.

Case Study Two:

The Managing Agents were seeking to retain the sum of £413.42 out of a total deposit of £650.00, because the Landlord is claiming for damage to a wooden floor in the hall. The Tenant argued that she should not be held liable for the cost of the floor as it was already damaged when she moved in.

The Adjudicator decided that the Managing Agents had failed to provide enough evidence to demonstrate that the Tenant was liable for the damage and directed the full sum of £413.42 be refunded to the Tenant. The adjudicator was also critical of the Tenancy Agreement (such as it was).

Case Study Three:

The Landlord was seeking to retain the sum of £250.00 out of a total deposit of £700.00 for damage to the wooden work surface surrounding a kitchen sink. The Tenant argued that he

should not be held liable for the cost of replacing the disputed item and argued that the cost was unreasonable as it was for a completely new work surface.

The Adjudicator decided that the Tenant had a duty to report the damage so that the Landlord could carry out any repair sooner. However, the Landlord gave incorrect advice at the start of the Tenancy regarding the period for maintenance.

The Adjudicator decided that the Landlord had not proven that complete replacement was necessary and directed that £75 should be withheld from the deposit as a contribution for a repair only.

Case Study Four:

The Landlord was seeking to retain the sum of £303.00 out of a total deposit of £575.00, for outstanding rent. The Tenant argued that he was not liable to pay the outstanding rent as he moved out on 11 November 2007 as agreed.

The Tenancy Agreement ran from the 28th of each month. The Adjudicator found that with the Tenant's notice being given by letter dated 30 September 2007 and franked on 08 October 2007 (both dates after 28 September 2007), not less than one month's notice of the monthly anniversary of the commencement date of the tenancy ran from 28 October 2007 to 27 November 2007.

The adjudicator therefore decided that the Landlord was entitled to retain the sum of £303.00.

Case Study Five:

The Landlord was seeking to retain the sum of £700.00 out of a total deposit of £700.00, for 14 listed items relating to damage and lack of cleaning etc. The Tenant argued that she should not have to pay and that many of the items were already damaged before she moved in.

The Landlord's Agent had provided several photos showing the property before and after. However, the Adjudicator noted that some of the photos were dated some 2 and 3 months before the tenancy started and were therefore of little use. That aside, whilst claiming the full £700.00,

the Landlord had made no attempt to justify the cost. There was nothing by way of estimates, quotes, invoices etc to demonstrate the validity of the sum claimed, or proving that the work had been done.

As a result the claim failed and the Adjudicator decided that the Tenant was entitled to a full refund of £700.00.

Case Study Six:

The Landlord seeking payment of entire protected Deposit amounting to £420.00 on the basis that the Tenant, in breach of the Tenancy Agreement, had vacated the property before expiration of the fixed term, and failed to find a suitable replacement Tenant. The Landlord agreed to the Tenant vacating the property earlier and that the Deposit would be refunded later on. The Landlord asserted that she had been advised that the Tenant was not entitled to the Deposit, in the light of her early departure and release from the Tenancy Agreement.

The Adjudicator found that there was no stipulation in the Tenancy Agreement that the Tenant must find a suitable replacement Tenant before vacating property prior to end of fixed term. The Adjudicator also found there was no evidence of the Legal Advice sought and obtained by the Landlord.

The Adjudicator relied inter alia on the strength of an email emanating from the Landlord agreeing to the Tenant's early departure and refund of her Deposit to find that that the Tenant was entitled to a refund of her entire Deposit.
