

Tenancy Deposit Protection Adjudication Case Study Bulletin Nine 6th June 2008

Case Study One:

The Landlord in this case sought various amounts to be deducted from the Deposit relating to various items of cleaning. In particular, the Landlord claimed various sums on the basis that the Tenant had not arranged for items to be 'professionally' cleaned as required by the Tenancy Agreement. The Tenant submitted that the cleaning in dispute had been undertaken to a reasonable standard, and that he was not aware that 'professional' cleaning was required.

The Adjudicator found the Landlord was entitled to deduct part of the sum claimed. The Adjudicator was not satisfied that the Landlord was entitled to the full amount claimed, not least because of the lack of photographic evidence and/or invoices/receipts for the professional cleaning/work purportedly undertaking.

Further, the Adjudicator found that there were two conflicting clauses in the tenancy agreement. Broadly speaking, one clause provided for professional cleaning and the other did not. That being so, the Adjudicator found that the Tenant was not bound to have the premises professionally cleaned.

Case Study Two:

The Landlord in this case sought to retain the entire deposit in the sum of £850.00, representing the cost of replacing a bathroom suite and ancillary repairs arising from a flood from an overflow pipe, as well as cleaning charges. The Landlord also submitted that items were damaged/missing following the Tenant's departure.

The Adjudicator found the Landlord was not entitled to deduct any sum in relation to the leak. Firstly, it appeared that the damage to the pipe fell within the Landlord's own repairing covenant contained in the tenancy agreement, as well as under s11 Landlord and Tenant Act 1985. The second problem in relation to leak, was the fact that following the incident the Landlord had

granted the Tenant a fresh tenancy in respect of the same property suggesting that if the Tenant was liable, any such breach had been waived by the Landlord.

Having viewed both the photographic evidence and invoice submitted by the Landlord, the Adjudicator was satisfied that the Landlord was entitled to the sum claimed in the invoice for cleaning charges. As to the balance, it was not clear whether the Landlord intended to make a claim, in view of the fact that the submission made was ambiguous in that regard. Notwithstanding the above, the Adjudicator was not satisfied on the evidence that such a deduction would be appropriate in any event.

Case Study Three:

When the Tenants left the property after five months of the six month term, the Landlord sought to withhold the whole deposit to pay the sixth month's unpaid rent. The Tenants said they had felt compelled to leave because the Landlord was having financial difficulties which, coupled with unannounced visits to view the property and telephone calls discussing its sale, caused the Tenants to fear for their security of tenure. The Tenants also said that the Landlord had agreed to vary the tenancy to a five month term. The Landlord's Agent confirmed that the Landlord had given agreement to the earlier departure of the Tenants, but only because he made a mistake with the dates and only verbally. The Landlord's Agent said that for the variation in term to be effective, it would have had to be in writing.

The Adjudicator found that the Tenants had not demonstrated that the actions of the Landlord were such as to justify early termination by the Tenants of the tenancy. However, it was not disputed that the Landlord had agreed to the Tenants' earlier departure. No evidence was provided to support the Landlord's Agent's assertion that agreed variations to the tenancy agreement had to be in writing. On the limited evidence available, the Adjudicator found that there was no valid reason for confusion by the Landlord over the dates so that, if he had made such a mistake, he had to live with the consequences.

The term of the tenancy had been varied by agreement to five months and the Tenants had paid five months rent so they were entitled to the repayment of the deposit.

Case Study Four:

The Landlord in this case sought to retain the entire Deposit of £750.00 on the grounds that the Tenants failed to pay the rent for the final month of the Tenancy.

The Tenants gave several reasons as to why the Deposit should not be paid to the Landlords amongst which were the fact that they received threatening letters from the Landlord's mortgage providers and that there were a number of unresolved maintenance issues.

The Adjudicator had no hesitation in finding that on the reason adduced by the Agents on behalf of the Landlord, the Landlord was entitled to the Deposit as claimed, particularly as there was overwhelming evidence that the Tenants deliberately withheld the final month's rent on the misconceived basis that they the Tenants, had a number of unresolved complaints.

Case Study Five:

The Landlord in this case sought to retain part of the Deposit of £640.00 on the grounds that the Tenants failed to pay rent as and when due, failed to clean the carpets after vacating the property, failed to pay for accrued utility bills and failed to pay for an agreed rent for a partner sharing the premises.

The Tenants main objection to the Landlord's claims was that the Landlord failed to issue receipts for payments made.

The Adjudicator had no hesitation in finding that on the strength of the overwhelming evidence presented by the Landlord, the Landlord was entitled to have the amounts claimed for unpaid rent, cleaning the carpets, and unpaid utility bills deducted from the Deposit. The Adjudicator took into account that the Landlord had produced a rent book which reflected payments which the Tenant had made throughout the period of the Tenant's Tenancy. Therefore the Landlord was awarded the sum of £323.69 to be deducted from the Deposit and the balance of £316. 31 to be returned to the Tenant.

There was also sufficient evidence to indicate that the Tenant was in breach of his obligations in the Tenancy Agreement signed by both parties.

Case Study Six:

The Landlord was seeking to retain the sum of £181.00 out of a total deposit of £1,275.00, for replacement mats and damage to some driveway blocks.

The Tenant argued that he did not agree to pay.

The Landlord's case failed because the adjudicator found that there was no evidence regarding the state of the mats and driveway at the time the Tenant moved in. It was in effect, the Landlord's word against that of the Tenant. The adjudicator therefore decided that the Tenant was entitled to a refund of £181.00.

Case Study Seven:

The Landlord sought payment of £47.00 from the deposit for cleaning the property after the Tenant left after a seven month tenancy. The Landlord said this was necessary because of the condition in which the Tenant left the property saying that parts seemed not to have been cleaned at all during the tenancy. The Tenant disputed this saying that the property had been properly cleaned prior to departure and that the fact that the Landlord carried out the check-out inspection without the Tenant or Landlord's Agent in attendance made it unfair.

The Adjudicator found that the Landlord carrying out the check-out inspection did not necessarily make it unfair as the Tenant contended. However, the Adjudicator found that the Inspection Report prepared by the Landlord's Agent just a month prior to check-out seemed more to support the Tenant's description of the condition of the property than that of the Landlord. In the absence of other evidence, the Landlord had not demonstrated that the property needed cleaning and was not entitled to be paid for it. The disputed sum was to be paid to the Tenant.

Case Study Eight:

The Landlord wished to retain £470.30 to cover outstanding rent. This sum included £40.00 for checking out the tenant.

The Adjudicator dismissed the claim noting that a) the Agreement expired on 08 March 2008 so the Landlord should only have been expecting rent to that date, b) the Tenant gave 6 weeks written notice to vacate on 16 March 2008, an extra week, to which the Landlord did not comment, c) the Tenant paid her rent to 16 March 2008, d) the Landlord accepted part payment for the three weeks of September 2007 when the Agreement started, so accepting 2 weeks to 16 March 2008 was no different, e) retaining the deposit and charging for check out were not reasons for which the Deposit as set out in the Agreement was envisaged.

Case Study Nine:

The Landlord in this case sought to retain the sum of £923.21 from the deposit in relation to charges arising from the Tenant's early departure. The Tenant submitted that it had been agreed between the parties that she would be released from the terms of the tenancy agreement without penalty.

Having reviewed all of the documents and submissions the Adjudicator found, on balance, that the Tenant was entitled to the return of the full amount in dispute. He noted that there was a lack of documentary evidence confirming the agreement relating to the Tenants release, but taking into account that the Landlord was a limited company and its agent a professional letting agent, coupled with the other documents submitted, on balance the Tenant's version of event were to be favoured.

Case Study Ten:

The Landlords were not entitled to deduct from the deposit the cost of a new net curtain when the curtain was not included in the inventory, and having inspected the property at the end of the tenancy the Landlords could not make deductions for cleaning items passed as in an acceptable condition during the inspection.

Case Study Eleven:

The Landlord wished to retain the £400.00 deposit to cover damage that required a replacement carpet.

The Adjudicator decided that the damage caused by a hot pan on the floor was, by itself, not a reason to replace the whole carpet. He assessed a contribution at £50.00 and directed that the balance of £350.00 be returned to the Tenant.

Case Study Twelve:

Where a Tenant leaves before the end of the fixed term of the tenancy rent continues to be payable until the landlord re-lets, and any unpaid rent can be deducted from the deposit. If the Landlord wishes to retain part of the deposit to cover the costs of cleaning inventories and photographs are important aspects of the evidence a Landlord should produce. Without sufficient evidence an Adjudicator will not be able to find for the landlord who has to justify the deduction. Similarly invoices for costs incurred are essential if they are to be recovered in full.

Case Study Thirteen:

The Landlord was allowed entitled to receive part of the deposit to cover arrears of rent and the cost of removing rubbish, cleaning and decorating, but not an insurance excess when the tenancy agreement was silent on that point. The repair of the vandalism, which caused in the insurance claim, may have been within the tenant's obligations to keep the interior of the property in good repair, but there was no evidence on which a decision of that kind could be made. The Tenant was not entitled to set off gas and electricity bills when the tenancy agreement clearly required her to pay for those services.

Case Study Fourteen:

The Landlord was retaining £807.07 to cover outstanding rent for the period 08 – 27 January 2008.

The Tenant submitted that she was not given a copy of the Tenancy Agreement after signing. Therefore, when she was served with the Section 21 notice asking her to vacate on the last day on the Tenancy, she did not know what to do. She eventually moved on 07 January 2008 and does not think she should have to pay to 27 January, the last date of her Tenancy.

Finding for the Landlord, the Adjudicator found that the Tenant freely signed and had a witness sign the Tenancy Agreement. Although the Tenant was not sent a copy of the Agreement, she did not ask for one either.

Case Study Fifteen:

The Landlord's Agent was seeking to retain the total deposit of £600.00 for a month's outstanding rent. The Tenant argued that all rent had been paid in full.

It was merely the word of the Landlord's Agent against that of the Tenant. Without any evidence being provided to support the claim the Adjudicator decided that the Tenant was entitled to a full refund of the £600.00 deposit.

Case Study Sixteen:

The Landlord in this case sought to retain the entire deposit in the sum of £495.00, in relation to the Tenant's departure from the premises, without providing relevant notice in compliance with the Tenancy Agreement.

The Tenant referred to a number of problems during the course of the tenancy, including problems with a leak, electrical problems, and problems with an unauthorised occupier in the flat below.

Having reviewed all of the documents and submissions the Adjudicator found, on balance, that the Landlord was entitled to retain the entire amount. The Tenant had not given adequate notice in accordance with the Tenancy Agreement and/or paid the full rent.

The Adjudicator was not satisfied, on balance, that the issues that the tenant complained of fell within the Landlords contractual responsibility and/or arose as a result of his negligence.

Case Study Seventeen:

One of three tenants who are jointly responsible for the payment of the rent does not discharge his liability to the Landlord by giving his share of the rent to a co-tenant. The whole of the deposit

is available to the Landlord to discharge arrears of rent whatever its source, and the innocent tenant cannot ask the landlord to repay his share of it.

Case Study Eighteen:

The Landlord in this case sought to retain the entire deposit in the sum of £625.00. It appeared from the agent's submission that the Landlord sought to retain the deposit in relation to concerns relating to the condition of the property, following the Tenant's departure. Somewhat unusually, the agent supported the Tenant's submissions, and despite the scheme operator chasing the Landlord, no further submissions were received.

The Tenant maintained that she had complied with the terms of the Tenancy throughout, and sought the return of the entire deposit.

Having reviewed all of the documents and submissions the Adjudicator found that the Tenant was entitled to have her deposit returned in full. The Tenant had fully explained her position. Further, in the absence of any further information from the Landlord, coupled with the agent's compelling corroborative evidence, the only decision that could be reached in the circumstances was one that the deposit should be returned to the Tenant in full.

Case Study Nineteen:

The Landlord was seeking to retain the total deposit of £450.00 for a) one month's rent in lieu of notice, b) cleaning an oven, c) part cost of heating engineer for landlord's certificate, and d) cost of preparing and swearing a declaration.

The Tenant argued that the whole sum should be returned.

The Adjudicator found that the Tenant had not given the minimum one month's written notice as stated in the Tenancy Agreement and the Landlord was therefore entitled to retain £350.00.

The Adjudicator directed that the balance of £100.00 be returned to the Tenant as the Landlord had not provided any substantiation of cost for the other items.

Case Study Twenty:

The Landlord in this case sought to retain the entire deposit in the sum of £425.00, in order to contribute towards his losses arising out of the Tenant's premature departure from the property, in breach of contract.

The Tenant submitted that he was forced to leave the property due to the Landlords failure to comply with the terms of the Tenancy, and due to the fact that the property was not fit for human habitation.

Having reviewed all of the documents and submissions the Adjudicator found that the Landlord was entitled to retain the deposit, in order to contribute towards his losses. The Adjudicator was not satisfied, on balance, that the Landlord was in breach of any express/implied repairing covenant, and that the Landlord had investigated any complaints promptly. On balance, the Adjudicator was not satisfied that the Tenant was justified in seeking to unilaterally bring the Tenancy to an end.

Case Study Twenty-one:

The Landlord was seeking to retain the whole deposit because the Tenant left early. The Tenant argued that she should not have to pay anything as the house was uninhabitable.

The Adjudicator directed that DPS return the deposit to the Landlord's Agent because at least he had provided some substantiation to the claim by way of a letter written at the time the Tenant left.
