



How does the Independent Case Examiner decide how to divide a disputed deposit?

This document sets out the general approach of the Independent Case Examiner (ICE) when deciding whether and in what proportions a disputed deposit should be returned to the tenant or the landlord at the end of the tenancy.

It is an independent review and adjudication process. The ICE reviews the evidence received and decides how the amount in dispute should be split between the parties.





Tenancy Deposit Scheme



- The ICE cannot consider any dispute that a court has already dealt with.
- If one of the parties says they intend to take the matter to court, and the disputed deposit has been sent to us, we will keep the deposit until we receive clear instructions from the court. If you are taking the dispute to court, you should ensure that any court order gives us a clear payment instruction.
- We will assume that you and the other party have stopped negotiating about the dispute by the time it is referred to us. If negotiations continue and you resolve part or all of the dispute, you should tell us as soon as possible. If we do not hear from you, our awards will reflect only what we have been told so far.
- We will send a copy of the 'Notification of a deposit dispute' form to the other parties and invite them to respond. We will not normally send them copies of any other document we get from the party bringing the dispute.
- The ICE will not normally go looking for evidence.
- We will ask for more documents or information only if we think they are critical and have been withheld. If you are bringing the dispute, you must provide evidence to support your allegations. If you are responding to the dispute, you should also provide evidence to support your point of view. Remember that the deposit belongs to the tenant unless the landlord or agent can establish a valid claim.
- You should send the documents you want us to see when asked to do so. Material we receive too late will be returned to you and will not be taken into account. We cannot consider any material after the case is passed to an adjudicator. The ICE needs written evidence, such as a check-in and check-out inventory. We will not accept physical evidence (for example, damaged items). This type of evidence does not show the difference in an item's condition between the start and end of a tenancy, in the same way that inventories can do. However, you may provide a professional report from a suitably qualified person who can give an opinion to support your claim.
- After one party brings a dispute, we will invite the other party to respond. If they fail to do so, the ICE may take this into account in the adjudication and may award the disputed amount to the party bringing the dispute, by default.



- The ICE can make an award only for amounts claimed by a landlord against a deposit paid by a tenant. If the tenant has a counter-claim against their landlord, they must take it up with the landlord directly and seek independent legal advice if necessary. The ICE cannot take account of such issues when deciding how the disputed deposit should be split.
- The ICE can only award up to the amount of the deposit. If the amount claimed is more than the deposit, the ICE will treat the claims in the order set out in the tenancy agreement, where this has been specified. The ICE will say who they think should receive an award; and for how much, up to the extent of the deposit. A landlord who wishes to pursue the tenant(s) for extra amounts will need to seek further advice.
- If the deposit holder (the landlord or their agent) has passed on to TDS less than the sum in dispute, the ICE will tell them to pay the tenant's award in full. If this results in any shortfall in the payment to the landlord, they will have to take that up with any agent that was acting on their behalf.
- If the deposit holder has passed on to TDS more than is disputed, the ICE will assume – in the absence of any information to the contrary – that the balance is not in dispute, and will return it to the tenant(s).
- The ICE need not accept the costs claimed or incurred by the landlord. Any award by the ICE is based on what they consider to be the reasonable cost of making good. In working out the amount, the ICE uses publicly available sources of information such as high-street stores, and services and products available on the internet.
- Any award will take account of the age and quality of the item and the length of the tenancy. An award is made to compensate a landlord for the loss in value of an item, if the loss in value is caused by the tenant during the tenancy. Landlords should not expect to receive full replacement value. The ICE will take into account the age and quality of the item at the start of the tenancy and fair wear and tear during the tenancy.



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