



Adjudication Digest

No 1/2011

The Adjudication Digest takes a recent decision by a TDS Adjudicator and sets out the reasoning behind the decision. The aim of these Digest reports is to help tenants, landlords and agents better understand how we make our adjudication decisions. The names of the landlords and tenants involved have been removed and this is only a brief summary of the dispute.

Amount of deposit in dispute: £1,882.35 in respect of a refund of agent's commission and inventory fee

Dispute initiated by: Tenant

Award made:

Tenant	£1,160.91
Landlord	£ 0.00
Agent	£ 721.44

It's all in the small print...

We see a number of cases where tenancy agreements may not proceed as planned, causing expense and inconvenience to both landlord and tenant.

In a recent case a tenant left the property 3 months after the start of a 12 month tenancy, due to medical reasons. The agent claimed the balance of 9 months commission which they had refunded to the landlord. The agents produced evidence to show how their fees had been calculated, and the amount incurred by, and refunded to, the landlord. They also claimed the cost of the inventory completed at the start of the tenancy.

Whilst at first sight this seemed a reasonable approach, it's important to check the detail. The tenancy agreement provided that *"if the Tenant shall terminate the tenancy hereby created prior to the completion or expiry of the agreed term, then the Tenants shall on demand pay to the Landlord a proportion of the legal costs and or letting agents commission from the commencement of the term to the date at which the notice of determination takes effect"*.



The tenancy agreement also allowed the tenant to give notice to terminate the tenancy at the end of 6 months. We did not consider it reasonable to uphold the agent's claim for 9 months commission, on the basis that this was the balance of the original 12 month term. The tenancy agreement allowed the tenant to terminate the tenancy early at the end of 6 months, which they had done by giving notice to leave early. This meant that the tenant had to pay the fees incurred by the landlord from the start of the tenancy to when it ended – in this case 6 months, as this was the earliest date by which it could be brought to a legitimate end.

As far as the inventory was concerned, the tenant argued that the landlord had agreed to pay for it at the start of the tenancy. Quite true, but the tenancy agreement also required the tenant to pay this cost if they terminated the tenancy before the end of the original term. The tenant was, therefore, responsible for the fee in full.

So what are the key points here?

- Make sure you are familiar with the terms of the tenancy agreement.
- Check that 'standard' tenancy agreements say what you intend them to say – do they cover specific circumstances or special events?
- The adjudication decision interpreted the tenancy agreement in favour of the tenant as far as the agents' commission was concerned. Recognising the effect of the agreement at an earlier stage may have resolved the dispute.

This document is for guidance only – it is not intended to guarantee when an award will be made. Each dispute is different and the actual award made will be based on our interpretation of the specific evidence presented to us.

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