



Adjudication Digest

No 9/2011

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: £ 500.00

Dispute initiated by: Tenant

Award made:

Tenant	£ 500.00
Landlord	£ 0.00
Agent	£ 0.00

Moving the goalposts....

In this case, a tenant raised the dispute with TDS for their half share of the deposit after leaving part way through a 12 month joint tenancy. The departing tenant had paid their rent until the end of the tenancy, recognising that they still had obligations under the terms of their agreement.

When the fixed term tenancy ended, no deductions were proposed from the deposit. The remaining tenant refused to return the departing tenant's share of the deposit, explaining that they had entered into a new tenancy agreement with a replacement tenant. However that new tenant had not paid any amount of deposit. The agents argued that the deposit dispute was between the departing tenant and his replacement.

The original tenants had signed a form at the start of their tenancy, confirming that should they vacate leaving a joint tenant remaining they would no longer have a claim on the deposit, provided the new tenant had passed the re-referencing process. No evidence was produced to show whether they had.

It was also discovered that although a new tenancy agreement had been entered into with the new tenant, this had not been signed nor had its deposit been protected on the TDS tenancy database. Furthermore, the existing tenancy remained registered on the database.



Although it was easy to see how the situation had occurred the adjudicator concluded that although a new tenancy agreement had apparently been entered into, this did not appear to meet the conditions in which the departing tenant waived their claim against their share of the deposit. As no deductions had been claimed under the original tenancy agreement, the original tenants were entitled to have their deposit returned to them in full. The agents/landlord should then have used the half share of the remaining tenant, and obtained an equivalent amount from the new tenant, when concluding the new tenancy agreement.

So what are the key points here?

- When there are any changes to a tenancy agreement within the fixed term, make sure that these changes are registered on the TDS tenancy database. The deposit record needs to be accurate to ensure that protection is given to the correct tenants in occupation.
- In an ideal world a formal check in/check out should be carried out for the change of tenant, although this can be difficult with multiple sharers. However a signed document can suffice confirming the new tenant's acceptance of the property's condition on the date they move in, which can also include confirmation of their share of the deposit. Once the incoming tenant has accepted the condition of the property and paid their share of the deposit the landlord/agent can refund the out-going tenant.
- For more detailed guidance on how best to deal with a change of tenants, see our [Guidance for a change of sharers mid-tenancy](#).

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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