



Adjudication Digest

No 4/2011

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: £1,500.00

Dispute initiated by: Agent

Award made:

Tenant £750.00

Landlord £750.00

Agent

The devil is in the detail....

In last month's case study we talked about how the meaning of tenancy clauses may not be the same as was intended. This month we show that a claim for rent arrears is not always straightforward, if tenancy agreements are not entirely clear.

In a recent case a landlord had served a Section 21 Notice on the tenants. The tenants moved out before the expiry date on the Notice and stopped paying rent. The landlord claimed he was entitled to rent until the end of the Notice period. The tenants argued that the landlord agreed to them leaving early and did not tell them they would have to pay any more rent. They also argued that the property was sold before the Notice ended, meaning no loss to the landlord.

The evidence sent to TDS included copies of text messages between the landlord and tenants, the tenancy agreement, Section 21 Notice and the agent's letter setting out the requirements for leaving the property. There was no dispute that the house was sold with vacant possession before the end of the Notice period. Although both landlord and tenants agreed that rent had not been paid after the tenants left, no rent statement was provided. The tenancy agreement was also problematic – it referred to being an initial term of one year but also gave an expiry date at the end of six months. It also contained a break clause allowing the landlord to end the tenancy at any time by serving two months' notice on the tenants. The landlord's Notice expired before this date.



A landlord would not normally be entitled to end a fixed term tenancy before the end of the fixed term. The adjudicator was not satisfied the landlord served notice in a manner that was binding on the tenant. However it might be argued that, given the anomalies in the tenancy agreement, the landlord had sought to invoke the break clause - albeit incorrectly.

The evidence presented showed that completion of the property's sale was subject to vacant possession. If the tenant's had not left early, completion would have been delayed. On this basis, the adjudicator found that it was not reasonable of the landlord to have served notice for the tenants to vacate during what was the fixed term period of an AST, seeking to dictate the exact terms under which they left when their early vacation assisted him in the sale of the property. Having said that, the tenants' arguments were largely emotive. They produced no evidence to substantiate they had been told they could vacate early without remaining liable for rent. That said, the adjudicator had not been given details of the actual date the tenants left, the date the house sale completed, or a rent statement to verify the landlord's claim. In the absence of further evidence the adjudicator considered it a reasonable compromise to award the landlord 50% of the sum claimed.

So what are the key points here?

- Serve proper notices
- Be clear in setting out the exact terms on which an early end to a tenancy is agreed
- Provide rent statements

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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