

Adjudication Digest No 04/2014

I gave the correct notice.

- **The Adjudication Digest takes a recent decision by a SafeDeposits adjudicator and sets out the reasons behind it. We hope that you will find these digests informative in understanding how we reach our adjudication decisions.**
- **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.**



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 parties involved have been removed and this is only a brief summary of the dispute.

I gave the correct notice.

This month's case looks at how notice periods work when the parties wish to bring the tenancy to an end.

Amount of deposit in dispute	£432.50
Award to tenant	£ 0.00
Award to agent (on behalf of landlord)	£432.50

The lease in this case ran for a period of 12 months from 30 January 2012 up to and including 30 January 2013. The lease included the following provision:

'Tacit relocation shall not apply to this tenancy and after the expiry of the fixed term the tenancy shall continue on a two monthly basis until terminated by either party giving no less than two months' notice in writing to the other party.'

Neither party brought the original tenancy to an end at the ish date (the tenancy end date). As such, the parties entered into a series of two month tenancies. In March 2013, the tenant secured a new job and needed to make arrangements to move. He wrote to the agent and landlord on 4 April 2013, giving 2 months' notice of his intention to leave the property on 4 June 2013. The agent responded to accept the tenant's notice, but stated that the notice could only be regarded as effective in bringing the tenancy to an end at the end of July 2013.

The tenant did not regard this as reasonable as he felt he had given the required notice of two months. The agent undertook to find a new tenant able to take on a new tenancy before the end of July. In the event, a new tenancy was concluded from 3 July 2013.

The tenant moved out of the property on 4 June and paid rent up to that point. The landlord's claim was for outstanding rent to 2 July 2013.

Although the adjudicator understood why a tenant might regard two calendar months' notice as adequate, the adjudicator agreed with the agent's assessment of the tenant's obligations. The tenant needs to give a minimum of two months' notice to bring the tenancy to an end on the ish date. In this case, the two month contracts ran:

February and March;
April and May;
June and July.

Notice given on 3 April would not therefore become effective until the end of the following two month contract. The landlord had taken appropriate action to mitigate his loss by securing a new tenant earlier and the rent claimed was awarded to the landlord.

So what are the key points here?

The agent or landlord in this case would of course have been entitled to accept the tenant's notice as valid for ending the tenancy on 4 June. It may be that this arrangement would suit the landlord. The issue was whether they wished to hold the tenant to a later date.

If the agent or landlord had not responded promptly to the tenant's correspondence, the adjudicator may have taken the view that the tenant could rely on the notice having been accepted to end the tenancy on 4 June. The agent or landlord should ensure that the tenant is aware of the relevant ish date.

If the agent or landlord had conducted a check out of the property shortly after the tenant vacated, this may also have had an effect on the adjudicator's decision. The tenant is entitled to access the property until the ish date in order to present the property in the same condition as at the start of the tenancy. Alternative arrangements should be agreed in writing between the parties.

The same issue may arise if the agent or landlord is able to secure a new tenant and bring forward the ish date. The tenant needs to be given adequate notice of the new ish date to give them the opportunity to meet their obligations under the tenancy agreement.



SafeDeposits Scotland
Lower Ground
250 West George Street
Glasgow
G2 4QY

E: info@safedepositsscotland.com
W: www.safedepositsscotland.com
T: 03333 213 136