

Adjudication Digest No 04/2013

Sorry, I need to leave...

- **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.

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This month's case looks at a claim relating to the early termination of the lease at the tenant's request.

Amount of deposit in dispute £975.00

Award to tenant £461.30

Award to agent (on behalf of landlord) £513.70

This dispute arose when the tenant explained to the agent that they had received a new job offer and intended to move away from the area. The tenant asked to be released from the tenancy only 5 months into a 12 month term with no break clause. The landlord said that they were prepared to let the tenant leave, subject to a satisfactory new tenant being found and payment by the tenant of the costs of re-advertising the property and referencing the new tenant.

The agent provided a copy of a letter they had sent to the tenant stating that the tenant would be released early subject to a new tenant being found and the payment of the landlord's costs in re-advertising the property.

The agent subsequently wrote to the tenant to confirm that a new tenant had been found for the property, with a move in date of 27 September. The agent proposed a check out appointment for the existing tenant of 26 September and the tenant arranged to pay rent due to 26 September. On 20 September the agent contacted the tenant again to explain that the proposed tenant had failed their referencing checks and it was necessary to seek an alternative. A replacement tenant was found from 7 October and a new check out appointment arranged.

The agent submitted a final statement of account to the tenant to include outstanding rent of £213.70 from 27 September until 6 October and a cleaning charge of £125. The agent stated that the remainder of the deposit (£636.30) was being claimed for property management fees and re-letting and referencing costs. The breakdown of the balance of the claim indicated that it included £386.30 for management fees for the unexpired portion of the lease. The agent explained that the landlord had asked for this to be added to the claim when the final statement was being prepared on the basis that the agent had charged the full term management fees to him from the first month's rent.

The tenant agreed to meet the cleaning costs but objected to the claim for additional rent on the basis that it was not his fault that the first tenant had been unsuitable. The tenant also objected to the use of part of the deposit for management fees for the remainder of the tenancy.

The adjudicator was satisfied that the tenant had been forewarned that the obligation to pay rent was subject to a satisfactory new tenant being found. It was therefore reasonable for an award of additional rent to be made to the landlord.

In relation to the referencing fees, the adjudicator noted that the landlord had expected the tenant to meet these costs. However, the letter sent to the tenant to confirm the terms of the

release did not refer to such fees. As a result, it was not reasonable for the tenant to meet these costs.

A similar argument applied to the claim made by the agent for the unpaid management fees for the remaining months of the lease. It was unfortunate that the landlord had not recalled the arrangement for the payment of their management fees when determining the terms for releasing the tenant early from their obligations. However, the tenant had agreed to the terms set out to them in good faith and it was not reasonable for additional costs to be charged retrospectively.

So what are the key points here?

In the absence of a break clause, a landlord is not obliged to release a tenant early from a tenancy agreement. They need to consider carefully the costs involved in finding a new tenant as well as ensuring that the departing tenant remains liable for the rent until a new tenant is found.

The outgoing tenant needs to be made aware of the costs he will be asked to meet in return for ceasing to pay rent. These should be set out in as much detail as possible so the tenant can make a properly informed decision.

If a landlord wishes to claim for management fees paid to an agent for the remainder of the tenancy, he will need to be able to demonstrate that he paid these charges upfront and has therefore suffered a loss.

Although the possibility of a cleaning charge had not been included in the negotiations between the parties about ending the lease, in this event the tenant was happy to pay the charge. This was the basis on which the award was made.

Of course, an agent or landlord is sometimes faced with a situation where the tenant leaves the property without the landlord's agreement. The landlord will need to make a decision to accept the tenancy is at an end before approaching SafeDeposits. It is not possible to claim for future outstanding rent.

In these circumstances, the landlord or agent needs to make clear the basis on which the claim is being made. If it is a claim for unpaid rent, you will need to provide a rent statement demonstrating outstanding rent up to the point the tenancy was accepted to be at an end.

Remember, the landlord or agent's actions may result in the tenancy being regarded as at an end earlier than intended. If the parties have agreed an end date, the landlord or agent should wait until that point before conducting a check out, even if the tenant has already left. Conducting a check out in advance of the agreed end date may imply acceptance of an earlier surrender.



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