

Adjudication Digest No 6/2015

Agreeing or negotiating?

- **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.

Agreeing or negotiating?

In this month's issue of the digest, we look at the situation of a tenant who appears to agree with a landlord's proposed deductions, but then changes their mind when the proposal is presented to SafeDeposits.

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| Amount of deposit in dispute | £255.00 |
| Award to tenant | £175.00 |
| Award to agent (on behalf of landlord) | £ 80.00 |

The landlord submitted a Proposal for Deposit Repayment, having had a number of discussions with the tenants about issues at the property at the end of the tenancy. It was the landlord's understanding that he had reached agreement with the tenants about the share of the deposit each was to receive.

The lead tenant responded to the landlord's proposal and agreed with some, but not all, of it. Both parties were invited to submit evidence about the items in dispute (i.e. removal of belongings, damage to a sofa, cleaning). The landlord provided limited evidence in the form of a tenancy agreement and a copy of email and text correspondence with the lead tenant. He argued that the tenants had agreed to certain payments during their discussions with him and should not be allowed to change their minds when the case went to SafeDeposits.

The correspondence evidence included the tenant's agreement that a number of items had been left behind in one of the bedrooms, which one of the tenants who moved out early had been due to remove. As they had not done so, and there was clear agreement from the lead tenant that the items were in the property at the end of the tenancy, the adjudicator made an award for the reasonable cost of their removal.

In relation to the sofa and the cleaning, the tenant said:

'As we discussed last week, there was a hole in the sofa cover at the start of the tenancy and this developed into a larger tear during the time we were there. I still don't see how this could have been avoided – we certainly did nothing deliberate to make it worse. We also talked about the cleaning. We think we left the flat in the same condition, although perhaps the oven could have done with a bit more work. I am disappointed you want to make us pay for these items as we have been good tenants. I don't want this to drag on though, so we are prepared to meet you halfway on these things as well as paying for the light fitting and the damage to the door.'

The adjudicator considered that an award should be made for additional cleaning to the oven, although the absence of any further evidence about how clean the oven was at the start and end of the tenancy, meant that the award was a nominal one. As there was no inventory and no check out report or other evidence to consider in relation to the sofa, the adjudicator made no award for this item because it was not possible to determine how extensive any further damage might have been and whether the tenants were responsible for it.

So what are the key points here?

When negotiating about issues at the end of the tenancy, it is important to keep a clear written record of your discussions.

In the event that either party appears to have changed their mind, remember to submit all relevant evidence to the adjudicator. It may be important for the adjudicator to see evidence of the condition of the property at the start and end of the tenancy in order to supplement their understanding of what the parties were discussing. In the example above, the adjudicator would have benefited from a greater understanding of the condition of the oven and sofa.

When considering what the parties have said during their discussions, the adjudicator will look to understand their intention. Sometimes it is clear from what is said that the tenant is admitting liability for an item (although they may still subsequently dispute how much is being claimed). On other occasions, the tenant will be negotiating with the landlord or agent to try to achieve a mutually acceptable solution, but without admitting liability.

Sometimes negotiations may have been on a more formal footing and the parties will have used language to show that their correspondence was 'without prejudice'. An adjudicator will normally disregard the contents of such correspondence unless the parties specifically agree for it to be included, or it contains a clear admission of liability or statement of fact.



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