

Adjudication Digest No 06/2014

Damp strikes back.

- **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.

Damp strikes back.

This month's case looks at a dispute over who is responsible for damp in the property.

Amount of deposit in dispute	£300.00
Award to tenant	£200.00
Award to agent (on behalf of landlord)	£100.00

This dispute concerned mould growth in the property during the tenancy. The parties were in agreement that the condition of the property had changed; the issue was whether the mould was caused by the way the tenant used the property, or was due to a defect in its construction or capacity for heating and ventilation.

The check in report from the start of the tenancy described the décor in the reception room and bedroom as 'neutral, reasonable condition, with slight patchy effect'. At check out, there was mould growth beneath the windows and extensively in the corners of both rooms at a low level and at the top of the walls.

The agent claimed that the tenant had allowed the problem to arise by failing to ventilate the property. The tenant had been provided with advice when they first brought the problem to the agent's attention. On an interim inspection visit, the tenant appeared to have treated the areas and had not subsequently alerted the agents or landlord that the problem had resurfaced.

The tenant said that the mould started to appear as soon as the weather became colder. They were concerned about the costs of putting additional heating in the property and, as it was a ground floor flat, did not want to leave the windows open when they were not in.

The tenant confirmed that they had washed the walls with a solution as instructed by the agents, but the problem soon re-appeared. They provided an email, apparently from former tenants, that they had encountered the same problem but that the landlord had painted over the affected areas. The tenant also provided a link to an advice website about the pros and cons of storage heaters. The inventory confirmed that the heating to the property was provided through electric storage heaters.

In this case the adjudicator took the view that both parties bore some responsibility for the problem. Although the evidence was relatively limited, the patchy effect of the walls tended to support the tenant's assertion that previous problems had been painted over. In addition, the type of heating in the property can cause problems in terms of adequacy in cold weather.

On the other hand, the tenant, having attended to the problem once, did not repeat the exercise or alert the agent to the continuing problem. This meant that the agent/landlord did not have the opportunity to investigate further and attempt to mitigate their loss. The damage at the end of the tenancy was therefore more extensive than it would otherwise have been and cost more to put right.

The agent/landlord had not submitted an invoice or estimate in support of the claim but had referred to treatment including the application of stain block and repainting of both rooms.

The adjudicator considered that it was reasonable for the tenant to contribute £100 towards the costs.

So what are the key points here?

It is helpful in disputes of this nature for the adjudicator to see a report from a contractor setting out the likely cause of mould growth in a property. Either party could submit such a report.

Problems with mould often arise in a bathroom. Remember to include in the inventory details of the ventilation available, notably windows and extractor fans. The adjudicator cannot assume they exist if they are not detailed.

Tenants can reasonably be expected to use available heating and ventilation to prevent problems with condensation and mould. However, a landlord should also ensure that heating sources are adequate. It is generally not reasonable to expect a tenant to leave windows in a ground floor property open for ventilation purposes if the property is regularly unoccupied during the day.

As with other issues arising during a tenancy, the landlord is entitled to expect that the tenant will notify them of a problem with mould growth to allow the cause of the problem to be investigated.

It is helpful to tenants to bring the tenant's attention to the possibility of condensation arising, particularly if the property does not contain a tumble dryer, and to provide written guidance on the steps they should take to avoid or deal with it.



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