

# **Adjudication Digest No 03/2014**

## **Is the proposed charge avoidable?**

- **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.**

## **Is the proposed charge avoidable?**

This month's case considers how an adjudicator will approach claims for administrative charges.

<b>Amount of deposit in dispute</b>	<b>£175</b>
<b>Award to tenant</b>	<b>£150</b>
<b>Award to agent (on behalf of landlord)</b>	<b>£25</b>

When the tenancy came to an end, the agent carried out a check out inspection at which the tenant was present. A report was then sent to the tenant, notifying them of the deduction of £75 for cleaning. The agent proposed additional charges of £125 for the inventory re-check, £25 to arrange for a cleaning contractor and £25 for a letter the agent said they had sent the tenant during the tenancy chasing for a late rent payment.

The terms of the lease provided that the landlord would pay for the preparation of the inventory at the start of the tenancy, and the tenant would meet the costs of checking the inventory at the end. The lease also included provision for an administrative charge of £25 to arrange for work to be undertaken when the tenant had not met their obligations under the lease, and also for a charge of £25 if the agent or landlord had to contact the tenant about the late payment of rent during the tenancy.

The tenant did not dispute the need for cleaning and was prepared to accept the charge proposed. They explained that they had arranged for a contractor to clean on the final day of the tenancy, but they had cancelled the appointment and the tenant did not have the time to undertake the work themselves. However, they objected to the additional administrative charges on the basis that they were disproportionate to work required.

The adjudicator considered that it was reasonable for the agent to charge for arranging a contractor to carry out cleaning at the end of the term. It was accepted that the cleaning was required and the charge was a reasonable reflection of the time involved in booking a contractor, arranging access to the property, inspecting the work and settling the invoice.

The adjudicator made no award for the claim for the late payment letter. Although the proposal itself was not unreasonable, there was no evidence to demonstrate that rent had been paid late at any point and no evidence of communication between the parties about it.

Finally, the adjudicator explained that they were unable to consider a claim for checking the inventory at the end of the tenancy. This charge was being imposed due to a clause in the tenancy agreement, which meant that the tenant was unable to avoid the charge, even if the check-out demonstrated that the tenant had left the property in an acceptable condition.

## **So what are the key points here?**

The adjudicator is not in a position to determine whether a particular charge would be regarded in law as a premium. All three tenancy deposit schemes have agreed an approach to these charges which aims to differentiate between charges which the tenant can avoid, and those which they cannot.

At present, if the tenant fulfils all their obligations under the lease, they should be able to avoid a number of charges – for example for arranging contractors, or the administrative cost of the agent or landlord reminding them of the need to pay their rent on time.

In this type of case, the adjudicator will consider any claim on its merits, based on the evidence presented. If the evidence demonstrates that the tenant has breached their obligations, and the charge being levied is reasonable for the work involved, an award is likely to be made.

The situation with charges to re-check the inventory is rather different. The tenant is not able to avoid a charge such as this even if they meet all their tenancy obligations. The adjudicator will not consider a claim like this, but will return the disputed funds to the tenant. An adjudication decision has not been made and the landlord or agent can decide whether to pursue this charge further if they wish.

This approach represents our current practice and may change depending on the outcome of court cases and further guidance from the Scottish Government on the subject of premium charges.



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

E: [info@safedepositsscotland.com](mailto:info@safedepositsscotland.com)  
W: [www.safedepositsscotland.com](http://www.safedepositsscotland.com)  
T: 03333 213 136