

## **Adjudication Digest No 03/2013**

### **Warning – smoking can damage your property**

- **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.**

## **Warning – smoking can damage your property**

This month's case looks at a claim for damage caused by the tenant smoking in the property during the tenancy.

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| <b>Amount of deposit in dispute</b>           | <b>£500</b> |
| <b>Award to Tenant</b>                        | <b>£325</b> |
| <b>Award to Agent (on behalf of landlord)</b> | <b>£175</b> |

This dispute was about cleaning and redecoration of a reception room due to the tenant smoking in the property. The landlord claimed £300 for a deep clean of the property to include the carpets and dry cleaning of the curtains and sofa covers. According to the landlord, the smell of smoke was obvious when they visited the property a week after the agent had conducted the check out. The landlord claimed an additional £250 to redecorate the reception room due to nicotine stains on the walls.

The agent provided an inventory from the start of the tenancy and an updated inventory from the end of the term. The inventory from the start of the tenancy indicated that the walls in the reception room were in good condition with a number of minor marks. Although the inventory made no reference to cleanliness, the agent provided an invoice for £120 for an 'inventory clean' dated 2 days before the start of the tenancy.

The updated inventory for the end of the tenancy indicated some darker discoloration to the walls. A number of dated photographs showed that areas of the walls which had been covered by pictures now had visible 'outlines' where the frames had previously been. There was no reference to the need for cleaning but a comment had been added to the effect that the downstairs smelt strongly of air freshener from plug in devices which were still in place. Subsequent email correspondence between the landlord and the agent showed that the landlord had complained to the agent about the smell of smoke in the property and that the agent had acknowledged that any smell may have been masked by the tenant when the check-out was conducted.

The agent also provided invoices of £300 for cleaning and £250 for decoration.

The tenant denied smoking in the property during the tenancy, but in any case pointed out that the lease did not specifically prohibit smoking. The tenant said that the property was left at least as clean as when they moved in.

When considering the claim, the adjudicator was faced with a number of issues. It was clear that some cleaning had been undertaken for the start of the tenancy, but the extent of the clean had not been indicated. The obligation in the lease was for the tenant to return the property in clean condition, but there was nothing in the end of tenancy report to indicate the need for cleaning due to smoke or any other cause. In the circumstances, although the adjudicator had noted the reference to air freshener products and the subsequent correspondence between the agent and landlord, they were not able to conclude that cleaning was required at the end of the tenancy.

In relation to redecoration, the inventory from the start and end of the tenancy demonstrated that the condition of the walls had deteriorated and that the damage was beyond fair wear

and tear. The tenant had not provided any explanation for the deterioration in the condition of the walls. After considering the extent of the discoloration in the photographs, the adjudicator awarded £175 as a contribution towards redecoration.

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

Although it is common to see a clause in a lease prohibiting smoking in the property, the landlord's cleaning claim did not fail because such a clause was missing. The general obligations in the lease in relation to cleaning would have been sufficient, if the supporting evidence had been available.

It is difficult to demonstrate a smell in a property other than through the written word in the check-out report. If the person conducting the check-out had been able to detect the smell of smoke, it would have been sufficient to note the extent of it in the inventory for the end of the tenancy.

Comments added during a subsequent visit are generally less persuasive as evidence because the adjudicator will not know what has happened in the property in the intervening period.

The claim for redecoration was successful because the evidence was sufficient to demonstrate a deterioration in condition. The adjudicator did not have to speculate as to whether smoking was the cause of the deterioration and it would have been inappropriate to make an assumption that it was and then apply that to the claim for cleaning.



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