



**SafeDeposits
Scotland**

Adjudication digest No 06/2016

Hop in the shower

- **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.**



03333 213 136
safedepositsscotland.com

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.

Hop in the shower

In this month's issue of the digest, we look at an adjudicator's approach to a claim for damage to a shower.

Amount of deposit in dispute	£300.00
Award to tenant	£300.00
Award to landlord	£0.00

The check-in report confirmed the shower was in good condition when the tenant moved in, while the check-out report noted the shower casing as cracked at the end of the tenancy. In his evidence, the landlord also stated that the tenant had not explained how the shower had become damaged.

The tenancy agreement required the tenant to take "reasonable care of the property leaving it as in good a state of repair as it had been at the start of the tenancy". This included making good any damage to the property that she had caused.

The tenant stated the damage had been brought to her attention by the landlord's electrician who was carrying out a survey for an Electrical Installation Condition Report (EICR). She claimed she reported the damage to the landlord in an email and provided a transcript of the email as evidence.

The landlord submitted an email from the electrician which confirmed the shower casing was "cracked at the top and bottom and needs to be replaced". The electrician also confirmed in his email that the shower was nearly fifteen years old and he was unable to find the replacement parts for the 2001 model. He estimated the cost of supplying and fitting a new shower at more than £500.

While satisfied that the shower unit was in a worse state at the end of the tenancy than it had been at the start, the adjudicator considered, on the balance of probabilities, that it was nearing the end of its expected lifespan because of fair wear and tear alone. The adjudicator stated they would not usually expect an electronic shower of this model to last for more than ten years. In these circumstances, the adjudicator felt that no award to the landlord was appropriate as the shower unit was at the end of its useful life.

So what are the key points here?

Some landlords believe that a property should be returned to them in exactly the same condition as at the start of the tenancy. However, the law recognises that change will happen in a property over time which falls short of intentional damage or neglect. This is referred to as fair wear and tear, and has been defined by the courts as the "reasonable use of the premises by the tenant and the ordinary operation of natural forces".

The important thing for landlords to recognise is that a tenant is not responsible for changes in the property arising through normal usage. The adjudicator will make a judgement, based on the evidence, about whether any change in the condition of the property was above what would be expected. A number of factors will be considered, including the length of the tenancy, the number of occupants, the age and condition of the item at the start of the tenancy and its likely lifespan.

The adjudicator will also need to ensure that the landlord does not benefit from betterment at the tenant's expense. This usually arises when a landlord claims for the full replacement cost of an item which has been damaged or is missing. If the landlord receives the full cost of a new item, they will be in a more favourable position than they would have been if the damage had not occurred because they will have a new item rather than a functioning used item.

Any award for damage will therefore take account of these two principles.

As the shower was coming to the end of its natural life, putting it back to the condition it was at the start of the tenancy or replacing it "new for old" would have put the landlord in a better position at the tenant's expense, which would be unreasonable.



**SafeDeposits
Scotland**

**SafeDeposits Scotland
Lower Ground
250 West George Street**

**Glasgow
G2 4QY**

E: info@safedepositsscotland.com

W: safedepositsscotland.com

T: 03333 213 136