



Landlord Information Pack



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Who Are We?

The Lettings Centre was established in late August 1995. In February of 2010 we moved, to 16 West Street to combine our knowledge with that of Bassant and Company Financial Services and have since opened Bassant and Company Estate Agents.

The Lettings Centre Ltd is owned by Barry Pike who has been working in estate agency and lettings since 1986, working for both corporate and independent agencies. Barry is assisted by Moya Taylor. We have 3 part time members of staff, Natalie Melloy who works on Mondays, Thursdays and Saturdays, Wendy Godmon who works on a Tuesday and brings with her over 40 years of experience working in property related fields in the local area. Kerry Edwards works on Saturdays and Emma Vidler works fulltime as our Receptionist and arranging viewings for potential tenants.

We are absolutely committed to raising the level of professionalism within the lettings industry. We are members of National Approved Letting Scheme and also the Ombudsman for Estate Agents Scheme. We have professional indemnity insurance and client's money protection insurance.

We pride ourselves on keeping up to date with changes in legislation which affect our industry as these can have profound financial consequences for our clients if the correct procedures are not followed. We are compliant with the regulations introduced by The Housing Act 2004 and as such are members of the Tenancy Deposit Scheme and registered to administer and hold tenants deposits. We are also one of only 2 agents in Sittingbourne with the experience to administer pre Housing Act 1988 tenancies.

Our Ethos

We aim to treat every Landlord and tenant with care and respect providing a professional and efficient service, but maintaining a friendly and approachable attitude. We understand that your property is important to you and we endeavour to treat every property as if it were our own.

THE LETTINGS CENTRE

Terms and Conditions

Subject to your confirmation and instructions in the letting and management of the above property, we will-

1. Take full details of your property and provide a comprehensive presentation of the property to let, in order to promote the property to best advantage;
2. Provide, where required, advice on the legal aspects of letting, the correct form of tenancy, rent expectation and the preparation required of the property to let;
3. Provide marketing support for your property, which may include, where required, and at our discretion, newspaper advertisements, internet advertising and a 'To Let' board in order to secure a satisfactory tenant;
4. Negotiate and agree with your approval the terms of the letting;
5. Carry out a credit search of any applicant in order to establish the applicants financial standing and, where necessary, secure a guarantor. Carry out status enquiries with the applicants employer and any prior landlord and report to you;
6. With your authority prepare the appropriate Tenancy Agreement and other legal notices and documents in order to comply with current legislation, taking into account your specific requirements and instructions;
7. Accept and hold a Tenants deposit against dilapidations in accordance with the regulations as prescribed by the Housing Act 2004 and the Tenants Deposit Scheme;
8. Organise for an Inventory and/or Statement of Condition to be prepared, as appropriate, and provide a copy of this to the tenant to be returned within 7 days
9. Wherever possible oversee the transfer of utilities to the tenant subject to the utility companies interpretation of the Data Protection Act 1998 and establish the Council Tax or subsequent replacement tax in the occupiers name(except in the case of houses in multiple occupation);
10. Collect rents and account to you on a monthly basis (usually within 7 days after the due rent day) subject to receipt;
11. Make authorised payments from your account where requested;
12. Receive reports from tenants with regard to maintenance and repairs for which you are responsible and instruct tradesmen to effect such maintenance and repair. (our duties in this respect are subject to being made aware of any problem arising.);
13. Confirm that maintenance and repair tasks are carried out, verify tradesmen's invoices and make payment on your behalf from rental income received, subject to a maximum of £150.00;

NOTE:

Should a repair or maintenance task exceed your authorised limit of £150.00 we will seek your instructions.

In the event of an emergency, however, we undertake to have carried out all precautions necessary to safeguard your property with the resultant expenses incurred deemed to be with your authority and on your behalf.

14. Make periodic visits to the property and advise you on the results including, where necessary, any maintenance or repair which we consider should be brought to your attention. Such inspections, should not be regarded as anything more than a check to ensure that the tenants are observing the conditions of the agreement and that in all respects the property appears to be well cared for by the tenant;
15. At the end of the tenancy, organise for a independent dilapidations assessment where required and negotiate such deductions as are necessary from the tenants deposit in order to compensate you for such dilapidations. (Fair wear and tear and the rules of the Tenants Deposit Scheme obviously being taken into account.); Further information on fair wear and tear assessment can be found on the TDS website.
16. Seek new tenants where applicable in order to ensure continuity of occupancy prior to your return to take up residency. Where the property remains unoccupied between letting periods it must be distinctly understood that our management does not include supervision of the property. However we are able to offer a fortnightly inspection service, a charge of £10 per visit is payable;
17. Where there is a breach of the tenancy agreement by a tenant, take all reasonable steps to resolve the breach and report to you on such an event and on the progress being made to resolve the problem;
18. Advise on Tax liability - non resident landlords. If it is your intention to reside abroad during the period in which your property is let, i.e. you will become non-resident in the UK for Tax purposes, we as your agent will be held responsible by the Inland Revenue for the payment of any liability which may arise from the rents collected on your behalf. Landlords living outside the UK must inform us of their Accountants details. We will require an application to be made to the Inland Revenue so that you can receive United Kingdom rental income with no tax deducted. Alternatively we would retain 24% of the rental after deductions. This would be held in our Client Account and once we receive the relevant assessment from the Inland Revenue we would send them payment and any balance would be forwarded to the Landlord. If you require any further information the Inland Revenue provide a leaflet **IR140** on this subject.

OUR FEES

FEES: - On finding a tenant who is acceptable to you, or who you have given us authority to accept on your behalf, and who enters into a contract to rent, our fees will be as follows:-

Management Commission;

We charge commission at a flat rate of 10% of the rents received plus VAT. The service we provide is agreed with each landlord according to their requirements and can include all or any of the numbered points above. For a tenant find only service we charge 10% of the first 6 months rent plus VAT.

Tenancy Agreement Fee;

An administration charge of £90.00 is made for all agreements.

Inventory & Schedule of Condition;

These are carried out by an independent Inventory Company who provide extremely comprehensive, unbiased, inventory documents. The inventory fee is normally around £100.

Deposit Registration Fee

All of the deposits we receive have to be registered with a Government approved scheme. We are member of TDS. We are charged an annual fee for each deposit we hold. We only pass this fee on and do not charge any administration costs for holding your tenants deposit.

For managed properties the fee is £12 per annum.

For unmanaged properties the fee is £24 per annum

Rent Insurance

We have a block policy with Rent 4 Sure, underwritten by Brit Insurance, who will cover the costs, and carry out the legal work of eviction, in the event of a tenant not paying rents due. We can claim as soon as the tenant is 8 weeks in arrears. They will also provide the rents due on a monthly basis during the eviction process (with a 1 months rent excess amount)

This is provided FREE for the first 6 months then a fee of £9.00 per month per property. This is only available on properties which are fully managed. If you do not wish to have the insurance please let us know at the commencement of the tenancy.

These charges are all include VAT

**LEGAL REQUIREMENTS ON
RESIDENTIAL RENTED PROPERTIES
FOR LANDLORDS AND LETTING AGENTS**

THE REGULATIONS ON ELECTRICAL APPLIANCES

The Electrical Equipment (Safety) Regulations 1994, mandatory since 1 January 1997. State that all electrical Appliances supplied with let accommodation must be safe. This applies to both new and second-hand appliances and covers all electrical items supplied for the intended use of the tenant only sure method of ensuring that these appliances are safe, is to have them tested by a trained competent person using the appropriate calibrated portable appliance testing equipment (PAT).

The regulations also cover fixed appliances such as cookers, showers, immersion heaters and the fixed wiring within the property which must also be safe. Tests and inspections should be made at reasonable and regular intervals, bearing in mind the rate of use of both portable and fixed appliances. The Electrical Safety Council recommend the following:

For rented accommodation the ESC recommends that periodic inspection and testing is carried out at least every 5 years or on the change of tenancy. Housing organisations that keep an up-to-date record of the condition of their housing stock and work to a written maintenance programme and periodic testing regime may be in position to justify a longer period between periodic inspection and tests.

Where a change of tenancy occurs after a short period (for example less than 6 months) of letting, a full periodic inspection and test may not be always be required. However, it is imperative that the landlord or a person acting on their behalf carries out an electrical safety inspection, prior to the property being re-let. This inspection should include checks to ensure there are no broken or missing accessories, no accessible live parts, no signs of burning at accessories or electrical equipment and a manual test of any residual current devices.

Full advice can be found at:

<http://www.esc.org.uk/industry/industry-guidance/other-downloads/guidance-for-landlords/>

Failure to comply with the Electrical Regulations may constitute a criminal offence under the Consumer Protection Act 1987 which carries a maximum penalty on summary conviction of a £5000-00 fine and/or 6 months imprisonment.

Landlords and/or letting agents could also, in addition, be sued in Civil Law under THE DUTY OF CARE for failure to ensure the tenants safety and face punitive damages.

THE LAW ON GAS APPLIANCES

- All gas appliances in rented accommodation must be checked every year by a GAS SAFE Registered Gas Installer. This is compulsory under the Gas Safety (Installation and Use) Regulations 1994 (as amended).
- It is the responsibility of the landlord or his agent to arrange for these checks to be carried out. Both the landlord and the tenant should each have a written report on the condition of each appliance.
- Landlords or their agents must keep records of the safety checks and issue a copy of them to new and existing tenants.
- All traders who carry out work on gas appliances must be GAS SAFE registered. Do it yourself work on gas appliances may be illegal and could be very dangerous.
- These regulations are enforced by the Health and Safety Executive. For further advice on these Regulations please ring the free HSE Gas Safety Advice Line on 0800 300 363.

THE REGULATIONS ON FURNITURE

- From 1 January 1997 all upholstered furniture in almost all rented accommodation must comply with the fire resistance requirements of the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended).
- All upholstered or part-upholstered furniture is covered by the regulations including beds and mattresses, pillows, cushions. Bed clothes carpets and curtains are not included; neither is genuine antique furniture made before 1950.
- Each piece of furniture which complies with these Regulations (except beds and mattresses) should have a rectangular label permanently attached to it with the heading "Carelessness Causes Fire"
- If the furniture does not have this label or was made before 1988 it will probably not comply with the regulations.
- The regulations apply to suppliers of furniture who sell or hire furniture and include landlords, letting agents, property managers or other agents of a similar nature.

Failure to comply with the Furniture and Furnishings Regulations may constitute a criminal Offence under the Consumer Protection Act 1987.

This information was produced in consultation with Trading Standards Hertfordshire.

For Further Information Contact:
Kent Trading Standards
Telephone 01303 850294

ENERGY PERFORMANCE CERTIFICATES

It is a legal requirement that all rental properties to be marketed must have a valid EPC certificate These are valid for 10 years. If you do not have a valid EPC we can arrange getting an assessment performed at a cost of £50 (including VAT).

Information sheet provided by The Lettings Centre Ltd.



The National
Approved
Letting
Scheme

This is to certify that

The Lettings Centre Ltd

is part of the

**NALS Client Money
Protection Scheme**

until 29th February 2016

Isobel Thomson
Chief Executive

Licence No: A4029

*Further information on Client Money Protection can be obtained by
contacting NALS T:01242 581712 or email info@nalscheme.co.uk



The National
Approved
Letting
Scheme

This is to certify that

The Lettings Centre Ltd

is licensed by the

National Approved Letting Scheme

1 February 2015 - 31 January 2016

Firms licensed by the National Approved Letting Scheme have demonstrated that they have met defined letting and/or management standards, offer independent redress and hold Professional Indemnity Insurance as well as belonging to a Client Money Protection Scheme*.

Isobel Thomson
Chief Executive

Licence No: A4029

*Further information on Client Money Protection can be obtained by contacting NALS T: 01242 581712 or email: info@nalscheme.co.uk

Membership Certificate



This is to certify that

The Lettings Centre Ltd

is a member of the

Tenancy Deposit Scheme

Membership number

G01051

Valid to

31 March 2016

A handwritten signature in black ink, appearing to read 'S. Howard', with a large, stylized flourish below it.

Chief Executive Officer
For and on behalf of The Dispute Service Limited

TDS Limited, PO Box 1255, Hemel Hempstead HP1 9GN
T: 0845 2267837 F: 01442 253 193
E: deposits@tds.gb.com www.thedisputeservice.co.uk





MEMBERSHIP CERTIFICATE

This is to certify that

The Lettings Centre Ltd

is a member of the Ombudsman for Estate Agents Scheme

13 October 2006

W A McClintock

W A McClintock
Chairman



protecting
tenancy
deposits

A guide to deposits, disputes and damages



protecting
tenancy
deposits

[my|deposits.co.uk](http://mydeposits.co.uk)



Tenancy Deposit Scheme

www.tds.gb.com

Since the introduction of tenancy deposit protection legislation in 2007, millions of deposits totalling billions of pounds have been protected via the three government approved deposit protection schemes. Each scheme has worked hard to enhance and augment the service it provides to tenants, letting agents and landlords, helping to meet the original aim of the legislation: to raise the standards in the letting industry. These guidelines for dispute resolution are yet another milestone along that path - providing a transparent and consistent approach to dispute resolution by all three schemes, for the benefit of everyone in the private rented sector.

All three deposit protection providers have signed up to the guidelines in this document, and will continue to operate their dispute resolution services using these principles. They will be reviewed and updated as necessary, to reflect current methodology and best practice.

In June 2011, the value of this guide was recognised by the Rt Hon Grant Shapps MP, Minister for Housing and Local Government, who stated in answer to a Parliamentary Question *"We welcome the recently published guidance on the dispute resolution process which the three scheme providers produced to help landlords and tenants understand the process and to ensure consistency in adjudication decisions across the three schemes"*.

Introduction

For many years, residential landlords have taken a financial deposit from a prospective tenant to protect against breaches of the tenancy agreement. These breaches could be for things like cleaning, damage/loss of property, unpaid rent or bills.

The deposit remains the property of the tenant at all times. It is held by the landlord or his agent until the end of the tenancy. The deposit should not be used to subsidise the outgoings or expenditure of the landlord or his agent unless the parties specifically agree to this or the tenancy agreement allows it.

The deposit is regarded as the tenant's money. This means that it should be returned to the tenant at the end of the tenancy, if they have honoured the terms of the tenancy agreement. Since April 2007 tenancy deposits for Assured Shorthold Tenancies in England and Wales have to be protected by an authorised tenancy deposit protection scheme.

If the tenant has broken the terms of the tenancy agreement, then at tenancy end the landlord and tenant should agree on the return of the deposit and any deductions from it. If the tenant is unhappy with the amount the landlord wishes to deduct from the deposit or the landlord/agent refuses to engage in the deposit return process, the tenant is entitled to raise their dispute with the

relevant tenancy deposit protection scheme. They will need to check which scheme protects their deposit.

The procedures that the tenant or landlord/agent need to take when dealing with a specific tenancy deposit dispute differ slightly depending on the Scheme protecting the deposit. For example, the Deposit Protection Service (The DPS) operates a custodial scheme. This means that the DPS holds the deposit throughout the tenancy agreement so there is no need to send the disputed amount to them when a dispute is raised. TDS and mydeposits are insurance-backed schemes where the disputed amount of the deposit has to be sent to the scheme for the duration of the dispute.

However, the principles of dealing with a dispute and how the schemes operate their dispute resolution service, including the adjudication service, are common. This document is designed to provide guidance to landlords, tenants and agents when confronted by a dispute, regardless as to which scheme protects the deposit. It should, however, be noted that dispute resolution, by its very nature, is unique to each and every case. Unlike the formal legal system, schemes are not governed by 'precedent' in the same way as the Courts. Decisions are made by the Schemes on the principle of 'balance of probability'. Decisions are made based on the submission of evidence from both parties.

What is Alternative Dispute Resolution (ADR)?

ADR is an alternative way of resolving disputes, other than by using the traditional route of the Courts. It is an evidence based process, where the outcome is decided by an impartial and qualified adjudicator. It is not a process of mediation, arbitration, or counselling and the parties will never be required to meet with the adjudicator. Nor will the adjudicator visit the property subject to the tenancy agreement or dispute. All tenancy deposit protection schemes use the 'adjudication' method to deal with deposit disputes.

The parties in dispute are required to submit their evidence to the adjudicator. They will need to do this within specified timescales laid down by the individual deposit protection scheme. You should check the processes you are required to follow with your particular scheme. The adjudicator will analyse and consider the evidence and make a binding decision as to how the disputed amount of the deposit should be distributed.

Remember that the tenant has no obligation to prove his argument, because the deposit remains his property until successfully claimed for by the landlord. A landlord must prove that he has, on the 'balance of probability', a legitimate claim to retain all or part of the deposit. If he can't, the adjudicator must return the disputed amount to the tenant.

Because participation in this ADR process requires consent by both parties, the final decision of the adjudicator is binding on both the landlord and tenant. It cannot be challenged except through a Court of Law – although the parties should seek their own independent legal advice first. The Schemes are NOT permitted to re-open cases unless it can be shown that the Scheme did not

follow the *processes* laid down in its own rules, or did not take into account all the evidence submitted by the parties.

In extreme circumstances adjudicators may ask for further evidence or clarification on a particular matter from either party. In some cases, the adjudicator may decide that the case would be better dealt with through a formal court process. However, in the majority of cases the adjudicator will make a decision based on the evidence he has in front of him. So:

- make sure you submit the evidence you want taken into account
- make sure you send it to the Scheme within the specified timescales

Who are the Adjudicators?

All three tenancy deposit protection schemes use adjudicators to make binding decisions on the return of the disputed deposit amount. These adjudicators are sometimes employed directly by the Scheme or are independent individuals under contract to the Scheme. Regardless of their employment status, the Schemes are contractually bound to ensure that adjudicators are appropriately qualified and have the skills necessary to make fair and reasoned decisions. It is not compulsory for a Scheme to state the name of a particular adjudicator or to disclose their identity to either the landlord or tenant.

Avoiding Disputes

All Schemes have found that most disputes are resolved simply by the landlord and tenant getting involved in a discussion about the deposit at the end of the tenancy, whether this is through their agent or otherwise. Disputes can also be avoided by both parties - but especially the landlord - having a realistic expectation about what condition the property should be returned in at the end of the tenancy. The most common causes of deposit disputes are, unsurprisingly, cleaning charges and wear and tear.

Adjudicators use established legal principles when considering disputes. Sometimes, these principles do not meet the parties' expectations. And of course, many disputes are unavoidable simply because the tenancy agreement or pre-tenancy procedures were not set up or followed correctly to begin with.

We recommend that in the first instance, landlords and agents take these steps at the end of the tenancy:

- Remind the tenant of their obligations under the tenancy agreement before it ends, preferably in writing. Many tenants stay in the property for a considerable amount of time and may not be familiar with the terms of their original agreement. A gentle reminder about what is expected of them can make discussions over deductions from the deposit easier to bear.

- Wherever possible, ensure that the tenant(s) attend the 'check-out' process. Ensure that their comments are noted if they disagree with anything during the process, and make reference to these comments when responding over deductions.
- The landlord should take into account betterment and fair wear and tear; this will help manage their expectations of what they can claim from the deposit.
- The landlord should talk to the tenant about whether they want to claim anything from the deposit. Communication at an early stage is important when trying to resolve issues.
- If the deposit is protected by an insurance based scheme, the landlord should return to the tenant any portion of the deposit that is not subject to a dispute, immediately. In the case where the deposit is held by the custodial scheme, please refer to their procedures for releasing undisputed amounts.

What evidence will an adjudicator be looking for when considering a dispute?

A common misconception is that the tenancy deposit protection schemes are biased toward either the landlord or the tenant. When a dispute reaches adjudication, an adjudicator's starting position mirrors that of the courts. The deposit is first and foremost the tenant's money; this remains the case until the landlord can justify their claim to it. The onus is on the landlord to show why they are entitled to claim money from the deposit.

The adjudicator must make a binding decision on the basis of the information provided by both tenant and landlord. This process is evidence based. The landlord must support their claim with evidence to show that the tenant has broken the tenancy agreement, and that the landlord has suffered, or is likely to suffer, a loss as a result. The landlord needs to act realistically when assessing the amount they want to claim.

The adjudicator cannot make any assumptions, or construct a claim on behalf of the landlord or tenant. The adjudicator's decision will be based on the evidence presented. The evidence provided should be both robust and reliable in order to support a claim. If a landlord makes submissions which are not supported by evidence the adjudicator may have no option but to disregard them. As a result, when the deposit is returned to the tenant in deposit disputes this is primarily because the landlord has not provided a strong enough case to keep it.

You only need to submit evidence in support of a dispute where you consider it is directly relevant to the dispute. For example, evidence of unpaid utility bills is not required where the dispute concerns the cleanliness of the property at the end of the tenancy. Similarly, where the dispute is in relation to damaged contents, photographic evidence is only needed if it shows the contents affected.

An adjudicator will take into account any admissions of liability by the tenant; however evidence should still be provided to show how the tenant has broken the tenancy agreement, and the loss suffered as a result. Evidence which shows that the landlord tried to reach a compromise, or to keep the amount of their claim to a minimum, is helpful too.

Types of Evidence

1. The Tenancy Agreement

This is a necessity for all disputes. The adjudicator needs to establish the contractual obligations that apply to the landlord and tenant. If this document is not provided it is likely that the landlord's claim will fail because the adjudicator will be unable to establish the obligations agreed between the parties.

2. Inventory Reports & Check-in/Check-out Inspections

The importance of a properly completed inventory cannot be underestimated. It must be robust and defensible if it is to be held up as a proper indicator of the facts and therefore viewed as acceptable by an adjudicator or court.

Tenancy deposit protection schemes *do not* disregard, out of hand, inventories that are not prepared by independent companies or individuals. However, they are likely to place less weight on their contents. It may also be necessary for a landlord to provide more corroborating evidence to show the condition of the property than would normally be required if the process was carried out by qualified and independent inventory clerks. For example, dated photographic evidence is useful to show any change in the property's condition. This is also true of any check-in/check-out document and process.

Many landlords use their agents to conduct their check-in and check-out inspections. Again these will not be disregarded. However there is an added need to show that the process, and the person undertaking the inspection, was impartial. Adjudicators will take into consideration the general circumstances and relationship between the parties in determining what weight to put on the evidence.

Some agents provide "in-house" services to remedy the potential breach (for example cleaning or repairs). Again, care needs to be taken to show that this process is open and transparent and that the costs incurred are justified.

If these documents have not been independently completed a tenant may be sceptical about them; it is beneficial therefore for the tenant to have been offered the opportunity to view, amend, and sign the documents. If they are not signed by the tenant you should explain why. The tenant does not have to be present at the check-out inspection, and mostly they do not attend. However they are entitled to attend if they want to; if they ask to attend the landlord/agent should take reasonable steps to meet this request. It may be

helpful to provide evidence to show that the tenant was provided with details of the check out appointment and invited to attend, but that they did not do so.

Note that where a landlord puts the onus on the tenant to complete their own check in inspection, this type of check in is far less robust than a 'full' check in. Just providing an inventory to the tenant and expecting them to note any discrepancies, or relying on a document that has not been signed, will not be sufficient to convince an adjudicator; the landlord will need to provide other evidence to show that their expectations and the tenant's obligations were fully explained to the tenant.

Where a check-in is challenged by the tenant, a full audit trail of what remedial action has occurred should be provided and a revised check-in agreed and signed.

It is preferable if check-in and check-out inspections are produced in a similar format – where possible by the same person. To enable meaningful comparisons to be made, it is also important that the same measurements of the property's condition are used in both reports.

Many check-out clerks hand write amendments on a copy of the check-in report. This often shows that the check-out was conducted in conjunction with the original. It is however always sensible to provide a separate typed report in addition to the handwritten notes. Remember that handwriting varies and that the adjudicator may not be aware of abbreviations, annotations and acronyms.

The onus is on you to ensure that the adjudicator can establish by whom and when the handwritten notes were added.

If standard descriptions and grades are used, these should be clearly explained. These should be consistent and concise. Terms such as "fair" and "OK" should be avoided and any term used to denote condition qualified and defined.

Avoid relying on standard clauses such as if an item is not mentioned or its condition not commented on then it is assumed to be in good condition. Whilst it need not be possible to note and comment on every item in a property it will be very difficult for an adjudicator to determine between subjective statements by the parties.

It is sensible to carry out periodic inspections of the property during the tenancy. Please note however that these may not be as detailed as check-in and check-out inspections at the start and end of the tenancy.

3. Photographic/Video evidence

Photographic evidence can be used to support, or defend claim against a deposit. Only photos that are relevant should be submitted. Ideally, 'before and after' photos should be submitted with a clear narrative as to what the photo is showing e.g. colours, item description, marks on surfaces etc. Do not assume that the adjudicator is seeing the same

image as you – draw the adjudicator to the part of the photo you want him to focus on. Photos should, ideally, be dated and signed by both parties, or alternatively digitally dated (preferably visible on the photograph). Photographs need to be of a good quality to show clearly the condition of the property at any given time. Photographs are useful as supporting evidence in addition to a check-out inspection.

Video evidence can also be useful where photographic evidence is unclear or unavailable. Again, only submit the relevant part of the video, or direct the adjudicator to view a certain point in the video itself. Support the video with a written explanation to ensure that the adjudicator is drawn to the important points. There is nothing worse for an adjudicator to have to sit through hours of video to get the problem area or to miss the issue entirely.

4. Invoices/receipts/estimates/quotations

These are necessary to illustrate any costs incurred in respect of repair/replacement work being carried out. This evidence should be itemised fully, to enable an accurate breakdown of the costs being charged for each type of work undertaken. Only receipts or invoices corresponding to claims being made against the deposit are necessary. If these cannot be provided, an explanation should be provided indicating why this evidence is not available. Estimates and quotations will not be afforded the same weight as invoices or receipts as they do not demonstrate a cost actually incurred; however they are useful in providing an indication of the extent of charges necessary to rectify any damage or deterioration.

In rare cases, a breach of the contract by the tenant may lead to loss that may be difficult or impossible to rectify by pure replacement or repair. In such cases an adjudicator can assess a compensatory sum, if they are provided with the correct supporting evidence.

It is not usually supportable to claim for the landlord's time and inconvenience however a reasonable claim can be considered if proportionate and supported by comparable examples.

5. Cleaning Charges

Deductions made by landlords in relation to cleaning charges are regularly disputed by tenants. Many claim that the cleanliness of the property at the start of the tenancy was not clear, or that the tenancy agreement did not make clear what was expected of them. Where landlords wish to make deductions for cleaning costs, they will need to be careful to record the cleanliness of the property in sufficient detail, at the start and end of the tenancy. They will also need to ensure any charges they claim are a fair reflection of the property's condition at the start of the tenancy.

The type and size of the property is an important factor when deciding whether cleaning costs are reasonable. For example, a 5 bedroom house would take longer to clean than a 1 bedroom flat. Similarly, the cleaning of a bathroom mirror would not require an equal amount of cleaning as a bath or shower. For this reason 'Standard Charges' are often

considered unreasonable by an adjudicator, unless these are specifically explained to the tenant in writing at the start of the tenancy and agreed to by the tenant in writing.

A landlord can also support their claim by producing invoices or receipts for work carried out by a professional cleaning contractor, as costs are usually balanced against market rates and geographical location. Where landlords charge an hourly rate to clean the property themselves, this can be more problematic for adjudicators because it is harder to justify the rate against the time spent cleaning. Tenants also complain that regardless of their efforts to clean the property themselves deductions are made no matter what the state of the property at the end of the tenancy. It is important to remember that the tenant is only obliged to return the property in the same state of cleanliness as at the start of the tenancy, after allowing for fair wear and tear.

6. Rent Account statements

Where the dispute concerns rent arrears, account statements and/or bank statements which show arrears outstanding are important; without this sort of evidence the adjudicator will struggle to confirm whether there were any arrears. These should clearly show the property and person to whom the account relates. Where arrears have arisen, it is also useful for the adjudicator to see evidence that the tenant has been told about them, and has been given the chance to comment on them.

7. Standard Agency Charges

While it is accepted that agents can insert standard fees into their Terms of Business, tenants can challenge these. If they are considered to be unreasonable, it may not be possible to claim them. Landlords and agents should be aware that the deposit should only be retained for breaches of the tenancy agreement causing a financial loss and not a failure to pay standard agency fees.

However, standard agency fees can be inserted into the agent's own terms and conditions which accompany the signing of the tenancy agreement, on the agent's website and, increasingly, in the tenancy agreement itself.

We accept that these standard fees are put in place to deter tenants from breaking the terms of their contract. But if the agent seeks to retain these fees without question, then it is arguable that they should be kept distinct from the deposit and separate invoices raised to the tenant. Alternatively, the fees would have to be explicitly explained to, and agreed by, the tenant when he signs the contract.

If a tenant disputes the fees deducted from his deposit, an adjudicator will consider several factors.

For example, the Office of Fair Trading provides guidance on unfair terms in tenancy agreements (Unfair Contract Terms Act 1977). A clause which is inserted into a contract

will not automatically be deemed to be fair clause just by virtue of its presence. The adjudicator needs to consider the merits of each case in order to decide whether the clause is reasonable.

An adjudicator can also consider when and how the tenant was made aware of his potential liability. For example, it could be considered unreasonable for a tenant to have to read a website to understand further costs which are applicable at the end of the tenancy without assessing whether the tenant has access to the internet or not. A further example could be where an agent expects a potential tenant to sign an agreement containing the charges without explanation, where their first language is not English.

Where a fee has not been paid, the adjudicator will also want to see evidence to confirm this, and to show the extent of any loss to an agent. For example, an adjudicator will often find against a standard fee for a check-in process if the tenant never moved into the property and the check-in appointment was not required.

In summary, standard agency fees that are automatically deducted from the deposit should be reasonable and fully explained to the tenant.

8. Utility bills/Council Tax

Tenancy agreements often require the tenant to pay the charges they incur when they live in the property. For example, tenants are often required to register their details with the local authority or utility provider, and bills are therefore issued in the tenant's name. Where these bills are unpaid at the end of the tenancy, the adjudicator is likely to take the view that the liability for the outstanding accounts is between the tenant and the local authority/utility provider, rather than with the landlord. Therefore, unless the landlord can show that the bills were not transferred into the tenant's name, or that the landlord has been required to pay any outstanding accounts, the adjudicator is unlikely to make an award to the landlord.

It is acknowledged that some utility companies do attempt to pursue landlords for "outstanding" bills and those clauses are written into many ASTs to "protect" the landlord. However there is no liability on the landlord especially if they can ensure that they have informed the utility provider that the tenant has vacated the property, they have provided the company with the final meter reading and a forwarding address for the tenant has been supplied.

9 Witness statements/other evidence

Sometimes the parties to a dispute feel that there are other witnesses to the case who may have useful information for the adjudicator to consider (such as neighbours, friends/associates who visited the property, or independent contractors). Witness statements, or letters in support, can be obtained from those individuals and provided for the adjudicator's consideration. The adjudicator will not contact such potential witnesses to obtain further evidence. The adjudicator will not cross-examine witnesses, or take evidence

under oath. Similarly, submissions such as "I have other evidence which I can provide if it is needed" are not helpful to the adjudicator. The parties must themselves submit all evidence which they wish to be considered by the adjudicator.

Wear & Tear

Many landlords believe that the property should be returned to them in the same condition as at the start of the tenancy. Deductions are often claimed from the deposit for minor damage that should be expected in any normal use of the property. Similarly, some landlords seize the opportunity to 'replace' items in the property which are coming to the end of their natural life e.g. redecorating an entire room when minor scuff marks have been caused by the tenant.

The House of Lords defined fair wear and tear as "reasonable use of the premises by the tenant and the ordinary operation of natural forces". The word 'reasonable' can be interpreted differently, depending on the type of property and who occupies it. In addition, it is an established legal principle that a landlord is not entitled to charge his tenants the full cost for having any part of his property, or any fixture or fitting, ".....put back to the condition it was at the start of the tenancy." Landlords should therefore keep in mind that the tenant's deposit is not to be used like an insurance policy where you might get "full replacement value" or "new for old".

The landlord also has a duty to act reasonably and not claim more than is necessary to make good any loss. For example:

- Replacement of a damaged item may be justified where it is either severely and extensively damaged beyond economic repair or, its condition makes it unusable;
- Repair or cleaning is a more likely award where replacement cannot be justified;
- In cases where an item has had its value reduced or its lifespan shortened, for example by damage, an award of compensation may be appropriate;

In addition to seeking the most appropriate remedy, the landlord should not end up, either financially or materially, in a better position than he was at start of the tenancy, or than he would have otherwise been at the end of the tenancy after having allowed for fair wear and tear.

In order to avoid allegations of betterment by the tenant, any award for damage must take into account fair wear and tear, the most appropriate remedy, and that the landlord should not end up either financially or materially in a better position than he was at commencement of the tenancy or as he would expect to be at the end of the tenancy having considered (a) and exercised (b).

It is very difficult for tenancy deposit protection schemes to provide guidance on the levels of deductions landlords and agents expect to be able to claim from the deposit. The nature of adjudication is that each case is considered on its own merits and no two cases are ever the same. However, adjudicators will consider the following factors when coming to a particular decision:

- **Length of tenancy** - the longer the tenancy, the more natural wear. Common sense, but think, for example, how much wear a carpet in your own home shows after one, two or three years.

Also consider what the item's condition was when the tenancy started; was it brand new or has it already seen a few tenancies come and go?

- **Number and age of occupiers** - the more bedrooms and occupants, the higher the wear and tear that should be expected in all the common parts e.g. sitting room, passages, stairs, bathrooms and kitchen. If you are letting to a family with children, factor that in too. Scuffs and scrapes are unavoidable in normal family life. A property occupied by a single person should see far less wear than a family of four, so bear this in mind when it's time for tenants to check out.
- **Wear and tear vs. actual damage** - when is it no longer normal wear? Damage i.e. breaking something is not wear and tear - meaning either replacement or repair. Light marks on a carpet might have to be viewed as unavoidable. On the other hand, damage such as nail varnish spills on the floor or iron burns that have occurred due to negligence could see the tenant liable for repair. Consider whether the item has been damaged or worn out through natural use versus negligence when making a judgement call.
- **Quality and Condition** – consider the original quality of the item at the start of the tenancy and what it originally cost to provide. It would be unreasonable for a landlord to provide a cheap and flimsy set of bedroom furniture and then blame the tenant if the items are damaged through normal usage. Adjudicators may expect to see receipts or other evidence to confirm an item's age, or its cost and quality when new. . Another consideration is the quality or fabric of the property itself. Many new builds tend not to be quite as robust as older properties or conversions. Walls, partitions and internal painted surfaces tend to be thinner and therefore likely to suffer more stress, particularly in higher footfall areas of the property. This inevitably means that there is a greater need for redecoration at the end of the tenancy period. An adjudicator may therefore consider more than a simple contribution to the cost of redecoration from the tenant to be unreasonable.

In considering whether cleaning/repair is necessary versus complete replacement at the end of the tenancy, an adjudicator will examine the check-in/out reports, any statements of condition and any photos/videos in order to compare the condition of the property at the start and end of the tenancy. . In some cases, the damage may not be so extensive as to require the complete replacement of an item at the tenant's expense (such as a kitchen worktop or carpet); however the adjudicator will award sums in recognition of any damage which has occurred. Whilst the landlord may wish to replace a damaged item, it is not always the case, even where the damage is admitted by the tenant, that the extent of the damage is such that the tenant should automatically bear the full replacement cost.

In the rare circumstances where damage (to the worktop/carpet/mattress/item etc) is so extensive or severe as to affect the achievable rent level or market quality of the property, the most appropriate remedy might be replacement and to apportion costs according to the age and useful lifespan of the item. An example of how this might be calculated is set out below:

- a) Cost of similar replacement carpet/item - £500.00
- b) Actual age of existing carpet/item – 2 years
- c) Average useful lifespan of that type of carpet/item – 10 years
- d) Residual lifespan of carpet/item calculated as c) less b) – 8 years
- e) Depreciation of value rate calculated as a) divided by c) - £50 per year
- f) Reasonable apportionment cost to tenant calculated as d) times e) - £400.00

In Summary

It is impossible for any guide to guarantee what the outcome to a tenancy deposit dispute might be. By their very nature, disputes are contentious and one party is likely to feel aggrieved at the end of the process. Adjudicators are looking for a fair and reasonable outcome.

Follow this simple step by step guide :

- When taking a deposit, landlords should protect it within 14 days from receipt from the tenant – either lodge it with the custodial scheme or arrange protection through an insurance scheme.
- Landlords need to consider carefully any deductions they wish to make from the deposit and ask themselves ‘is this fair?’ or ‘how would I feel if I was the tenant?’. Landlords should discuss their concerns with the tenant. Open communication prevents a large number of potential disputes.
- When dealing with a tenancy deposit scheme, familiarise yourself with their processes and follow them. Schemes are allowed to make awards to tenants where landlords break their scheme rules.
- Try to view the evidence you are submitting from the point of view an independent third party who does not know the property. Will your evidence convince them of your case?
- If you agree to adjudication then remember that you cannot appeal against the final decision unless you challenge it through the courts.

Contact details

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