


Your TDS guide to:



Making realistic claims against a deposit

 0300 037 1000

 www.tenancydepositscheme.com

 TDS, Unit 1, The Progression Centre,
42 Mark Road, Hemel Hempstead,
Herts, HP2 7DW

Introduction


This guidance has been produced by TDS to help our landlords understand how claims against a deposit should be quantified and, where a dispute arises, how adjudication decisions are made and the factors which may influence the success of a claim. Where the dispute is over part of the deposit, the undisputed sum must be returned to the tenant.

You can find more extensive guidance on the TDS website at www.tenancydepositscheme.com

What do I need to show?

As a landlord, you need to be able to show that:

- The condition of your property/its contents have changed between the start and end of the tenancy;
- The tenant is responsible for that change; and
- The charge to rectify any deterioration is fair and reasonable, taking into account fair wear and tear and betterment.

 You need to make the case for a deduction from the deposit. If you do not do so, the deposit will be returned to the tenant.

How do I demonstrate these points?

TDS, like most adjudication services, relies on the documents you are able to send them and the likely lifespan of an item. The adjudicator will base their decision on these key documents:

- The tenancy agreement;
- A comprehensive inventory or check in report from the start of the tenancy;
- An updated inventory or check out report from the end of the tenancy;
- Invoices, quotes or estimates to remedy or to evidence the quality of the item when it was purchased;
- Dated and annotated photographs;
- A detailed rent statement.

If you do not have some of these documents, particularly the tenancy agreement and a check in/check out report, your chances of success are likely to be very low. You are encouraged to reach a compromise with your tenant.

If I can show I have spent the money, will I win?

The loss you have suffered is not the same as the money you have spent, or intend to spend, on putting things right. The law (and the adjudicator looking at your case) has to take some other factors into account when looking at most claims involving damage.

Fair wear and tear

When there is a claim for damage, redecoration or missing items, the law is clear that an allowance must be made for the normal level of change in an item during the course of a tenancy. This is known as fair wear and tear. You cannot charge the tenant for this. An adjudicator will only make an award if they can see from the evidence that the damage went beyond what would normally be expected.

How does the adjudicator work out fair wear and tear?

There is no black and white answer to that question – the level of damage through normal usage will depend on a number of factors including:

- The number of tenants in the property – generally speaking, each tenant will create fair wear and tear
- The length of the tenancy – the longer the tenancy, the higher the level of normal usage
- The condition of the item when the tenant moved in and its expected lifespan – some things wear out over time and need to be replaced
- The location of the damage within the property – some areas of a property will attract more fair wear and tear (a hallway for example).

Betterment

As a landlord, you cannot find yourself in an improved situation at the tenant's expense. So, if you were to receive the full replacement cost of a carpet, when the carpet in the property was 3 years old at the end of the tenancy, you have a new carpet instead of a used, 3 year old carpet. This would be betterment. The adjudicator's role is to put you in the same position as you should have been if the damage had not occurred and no better.

The most appropriate remedy

Although there will be times when it is realistic to claim for the replacement of an item, you need to consider whether the best course of action is to have an item repaired, or to leave it in place and claim compensation for loss of value. An adjudicator will need to be able to see that an item is so badly damaged as to be unusable, or beyond economic repair before replacement will be considered.



In summary

- Don't assume that a deposit can be used in the same way as an insurance policy to replace old with new – it can't.
- Remember that items in your property have a natural lifespan – things will wear out and need to be replaced and redecoration will be required. Landlords need to factor this in.
- Be realistic in making your claim. An adjudicator will not accept that it is reasonable to charge the tenant to replace an entire bathroom suite because there is damage to a basin and a direct replacement is no longer available.
- If you need to claim against the tenants' deposit, your property manager will give you an indication of the costs they consider reasonable taking into account these factors. They work closely with TDS and therefore it is unlikely TDS will award a higher amount in adjudication. We recommend you consider the recommendations of your property manager carefully.