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Inventory *Insights*

ADDRESSING THE REPORTING REQUIREMENTS
OF LETTING AGENTS AND LANDLORDS

Inventory clerks are often asked by landlords and agents to make judgements in relation to dilapidations ...the judgements they can make may constitute no more than subjective opinions.

Making assessments of fair wear and tear

Inventory clerks are often asked by landlords and agents to make judgements in relation to dilapidations occurring between the point of check-in and check-out and to assign monetary sums in consideration of this damage.

Two considerations are often overlooked when making this request.

Firstly, that the role of an inventory clerk is to provide an independent report which accurately details the contents and condition of a property at a specified point in time.

Secondly, that the TDS is an evidence-based scheme and therefore, without having read the tenancy agreement and without holding all the receipts relevant to work undertaken on the property, the judgements they can make constitute no more than subjective opinions. Their role is therefore only to accurately document the property at given points in time to facilitate comparison.

For example, a smoker may be resident in a property, permitted under the terms of the tenancy agreement.

An inventory clerk may note white emulsion walls on the inventory and yellow staining on the same walls at check-out. Not being privy to the tenancy agreement, if asked to make a judgement, they could consider the staining to constitute deterioration in excess of fair wear and tear when, in fact, landlords should expect a certain level of associated deterioration when permitting smokers into their property.

Assessments of fair wear and tear take into account the quality, age, life expectancy and condition of items in relation to the facts of occupancy and any extenuating circumstances.

An inventory clerk does not, in the vast majority of cases, have access to this information and, in the absence of the information, cannot make any valid assessment regarding fair wear and tear.

Don't take a deposit without an inventory

Landlords are generally keen to ensure they hold a deposit in case they need to claim against it for damage to their property in excess of fair wear and tear. However, it seems there are still landlords who take a deposit but wish to avoid the expense of an inventory. The fact is that landlords who take a deposit without a fit-for-purpose inventory (with check-in and check-out) may as well not take a deposit as, under the evidence-based TDPS, any claim they make may fail. Landlords wishing to take a deposit but concerned by costs could consider having the tenant pay for the check-in (after all, the scheme is protecting the tenants' money), whilst they pay for the check-out (which they will rely upon in the event of a claim).





Tenancy Deposit Protection

Tessa Shepperson.

Tessa is a solicitor and editor of the popular Landlord Law site at www.landlordlaw.co.uk.

As a lawyer this area is very interesting as new problems and situations keep arising! Here are a few which I have come across recently:

1. You need to be careful about taking an additional months rent instead of a deposit. If this is not offset against rent immediately, it may be treated (for example if your tenant takes you to court) as a deposit. If you take a deposit and do not protect it, section 21 notices will be invalid (so you will have to re-serve after you have protected the deposit) and your tenant can claim a 'fine' of three times the deposit sum.

2. If an agent is holding the deposit under one of the insurance based schemes and goes insolvent so that the deposit is lost, the tenant will be all right as the scheme will pay out. However this does not

protect you, the landlord, as the scheme will then seek re-imburement from you (which it is entitled to do!). In this context the custodial scheme provided by the DPS may be best as there the money is actually handed over to the scheme administrators, so there is no question of it being lost by the agent.

Tessa regularly does posts on the tenancy deposit scheme (and other landlord and tenant related matters) in her blog at landlordlaw.blogspot.com

3. If you are using the free arbitration scheme, it is important that you comply with the scheme time limits, e.g. for providing documents and other evidence, or you may find that the arbitration has gone ahead and you have lost!

4. If you do not use the free arbitration service and go to court instead, if you want the scheme to make a payment to you (e.g. if you are claiming all or part of the deposit for damage), the court order needs to specifically say this or the DPS will refuse to pay.

TDS WATCH Claims are rising

"The number of tenancies registered with the scheme and ending in a deposit dispute rose dramatically from 1,901 in 2007-08, the first year of mandatory operation, to 6,491 in the year to March 09. The Annual Report warns that the number of these disputes is expected to continue to rise dramatically to not less than 10,000 disputes in the current year. Since the report was written, this estimate for the number of disputes during the current year has risen to 12,000."

Source: www.thedisputeservice.co.uk (28/10/09)

Lack of Lettings Industry Regulation

Jonathan Alsford
Jonathan is a Director of Realty Property Solutions Ltd and a Fellow of ARLA

The Lettings Industry desperately needs regulating. Since I began working in the Lettings industry 15 years ago, it has undergone dramatic changes, with most of those changes being legislative. Remarkably, before the gas safety regulations came in, Landlords did not even have to produce a safety certificate. Clearly, the new gas safety legislation was essential for the health and safety of all individuals renting properties. However, the job of a Letting Agent and a Landlord has become much more difficult as a consequence of a lot of the legislation, both because the legislation is complex and because many Lettings agents do not know about it or adhere to it. For example, the introduction of registering deposits and Energy Performance certificates are required before a property can be advertised. Both require a thorough knowledge of the legislation in order to discuss it with clients and implement. Also, in the current economical climate, there are a number of 'new' letting agents and/or estate agents diversifying into lettings. Many of those individuals are not fully aware of the correct and 'legal' way of doing things. In addition to this, 'novice' Landlords may find this more attractive as they decide to use the 'simpler' agent who is charging ridiculously low 'introductory fees'. I do believe, however, that most clients will return to the qualified experts in the long-term, usually following bad experiences with other agents. You get what you pay for...even in the Lettings Industry!

If the general public were educated about the rules and regulations, we would have a much fairer playing field. The Association of Residential Letting Agents have just launched a new 'licensing scheme' (you must be qualified and have relevant experience) for their members and I believe that unless you hold an A.R.L.A. licence you should not be able to trade as a letting agent. It is my ambition as a local Lettings Agent to publicise the above points and to continue modelling high-quality, **legal** practice in our area. We live in hope that we can change the face of the industry!

Inventories - it's a 3-step process

Having an inventory, no matter how good, without it being followed by check-in and check-out, is futile in terms of substantiating a landlords' claim against a tenant deposit.

The inventory should be agreed with the tenant prior to occupation (and signed to confirm agreement) and a copy given to the tenant for their records.

At the end of the tenancy, a check-out should be undertaken to identify whether the condition and/or contents of the property have changed in any way from that listed on the original inventory. From this, an assessment can be made as to whether a dilapidation claim against the tenant deposit is warranted.

The sums attributable to each item claimed for will be determined with consideration to fair wear and tear and will need to be substantiated by evidence from the Landlord to

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demonstrate that betterment is not sought and claims are in relation to actual loss. Again, if this is not done, the claim may be reduced or dismissed, as was the case in the case study shown :

"Case Study Twenty-nine:

The Landlord was seeking to retain £500.00 for cleaning and replacing some items.

Directing that £330.37 be refunded to the Tenant and £169.63 to the Landlord, the Adjudicator found that although the items being claimed were listed on the Check-out Report prepared by an independent specialist company, no evidence had been provided to substantiate a) the sums claimed, and b) that the work required and replacement of missing items had been done. Reductions were therefore applied to amounts being claimed."

Source: <http://www.idrs.ltd.uk/Exit/documents/TDSCaseBulletin18October.pdf> (28/10/09)

Why professional, independent inventories?

Where landlords utilise the adjudication services of the DPS to justify their requests to withhold part or all of a tenant deposit, the outcome of cases is usually reliant upon the validity and integrity of inventory, check-in, and check-out reports.

Cases cited by the DPS highlight the importance of independent inventories by illustrating landlord claims that have failed/ been reduced as a result of biased and/or inadequate documentation. An example is shown below:

"Example case 2

<i>Complaint brought by:</i>	<i>Landlord</i>
<i>Amount of deposit:</i>	<i>£875.00</i>
<i>Amount in dispute:</i>	<i>£875.00</i>
<i>Amount awarded to:</i>	
<i>landlord:</i>	<i>£219.02</i>
<i>agent:</i>	<i>£N/A</i>
<i>tenant:</i>	<i>£655.98</i>

The settlement of this dispute was problematic due to the absence of a Check-In inventory and a Check-Out report. The correspondence between the landlord and the tenant had become rather emotive, but through the intervention of The Dispute Service matters were handled in a fair and efficient manner, despite complications.

The issue of greatest concern was the removal of the hob and oven by the tenant from the property which were returned by the tenant at the end of the tenancy. However, the landlord considered them "unusable" as they had been left outside for a period of time. As a result, he was forced to pay for their replacement even though they were only 3 years old. The tenant responded that she had complained about the quality of the appliances to the landlord in the period at the beginning of her tenancy. However, there is no documentation of such a correspondence taking place and with the lack of a Check-In Inventory it was difficult to date or establish the quality of the kitchen appliances. The adjudicator considered it was reasonable that the tenant should pay half the total costs of replacement and electrical services. The second issue was the spoiling of 6 lampshades, 4 curtains, a carpet and the removal of a light bulb. It was clearly stated within the tenancy agreement that any furniture and households implements that did not meet the tenants' satisfaction should be brought to the attention of the landlord within 7 days. This was not done but the tenant denied accusations of

damages made by the landlord. Again, in the absence of a signed Check-In Inventory it was not possible to confirm whose account was correct.

We also recommended to the Agency that they review their procedures, with explicit reference to Check-In and Check-Out Reports, to avoid future disputes of this nature."

Source: www.thedisputeservice.co.uk (27/10/09)

Whilst most agents and landlords accept that an electrician is required to undertake electrical work and a corgi registered gas engineer is needed to deal with gas issues in a property, many still have not internalised the requirement for a professional, independent inventory clerk to undertake a fit-for-purpose inventory where a deposit is being taken against an AST.

The result of this is that landlords who lodge deposits in line with the requirements of TDPS, are then disgruntled to find their claims fail based on their having inadequate inventory (check-in and check-out) to provide a clear comparison between the contents and condition of the property at the start and end of a tenancy.