



**EXPERT ADVICE**

# An adjudicator's glossary of terms

A list of legal terms which are commonly used by an adjudicator in the event of a formal deposit dispute.

# AN ADJUDICATOR'S GLOSSARY OF TERMS



Adjudicators in deposits dispute cases often use a number of specific terms, some of which might benefit from further explanation.

Head of Dispute Resolution, Suzy Hershman has compiled a selection of the key words and phrases that might be used during the process.

## 1. “Balance of Probabilities”

This is a flexible test which allows the adjudicator to be satisfied by the evidence provided that the event, inactivity or activity of the tenant or landlord, was more likely to have happened than not. To find ‘on a balance of probabilities’, the evidence must show that it is more probable than not that the alleged version of events occurred.

## 2. “Burden of Proof”

A legal rule requiring that a fact be proved. As the deposit legally belongs to the tenant, it is for the agent to prove that they are entitled to retain some or all of the deposit due to some action or inaction by the tenant. The burden of proof in a case lies with the agent to prove their claim unless the tenant makes a specific assertion based on the allegation; in effect, accepting the issue raised by the agent but disputing it on the facts. The burden of proof will also lie with the tenant in the case of a dispute involving outstanding rent where the tenant will be required to prove that they have paid all rent as required.

## 3. “Fair wear and tear and betterment”

At the end of the tenancy a landlord should not end up in a better position than they were in at the start of the tenancy and, when looking for a deduction or compensation from the deposit, must make some allowance for fair wear and tear. Fair wear and tear is the depreciation of the property due to the normal use on a day to day basis, over the entirety of the tenancy.

Read our guide to [Fair Wear and Tear](#)

## 4. “Mitigating losses”

In contract law, the mitigation of damages refers to the claimant’s conduct which, although may not strictly be wrong, may lead to a reduction in the damages they can claim. In other words, if the agent’s action or inaction helped to make the situation worse, they may find themselves at a disadvantage in the event of a dispute.

## 5. “Proportionate”

This would refer to the penalty awarded in the event of a breach of the Tenancy contract. The award made by the adjudicator must be relative to the extent of the breach of contract and the must not exceed the actual value of the severity of the breach.

## 6. “Reasonable”

Similar to proportionate, this is a standard used to decide what is fair and appropriate as a deposit deduction under usual and ordinary circumstances.

## 7. “Unfair Contract terms”

Regulations which are put in place to protect consumers, in this case the tenant, from being at a disadvantage when signing contracts, terms and conditions or the ‘small print’ over which they have no power to negotiate or change.

These regulations mean that a tenant cannot be bound by a contract term if a ‘standard’ term in the contract is unfair. A standard term will be considered to be unfair if it creates a significant detriment to the tenant and goes against the requirement of good faith. The regulations require, amongst other things, that the contract contains plain and intelligible language. However, an unfair standard clause will only invalidate the term in question, not the whole tenancy agreement.

These regulations are underpinned by the Office of Fair Trading Guidance on Unfair Terms in Tenancy Agreements 2005 and should be considered when drafting tenancy agreements.

For the Guide please follow: [http://www.oft.gov.uk/shared\\_oftr/reports/unfair\\_contract\\_terms/oft356.pdf](http://www.oft.gov.uk/shared_oftr/reports/unfair_contract_terms/oft356.pdf)

## 8. “Weighting” [of evidence]

Involves assigning relevance to the tenant and agent’s evidence and assessing and measuring the credible proof on one side of a dispute as compared with the credible proof on the other.



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