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deposits

DEPOSIT PROTECTION

Government authorised deposit protection



**DISPUTE RESOLUTION AT A GLANCE**

# Rules of Claiming for Deposit Deductions

A guide for landlords and businesses on making successful and fair claims.

# RULES OF CLAIMING FOR DEPOSIT DEDUCTIONS



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## A foreword from the adjudicator

It's common practice for landlords and letting agents to protect their rental investment by taking a deposit from the tenant.

By law, the deposit remains the tenant's money throughout. At the end of the tenancy, the tenant is entitled to a full refund UNLESS the landlord can show, with evidence that they have a claim and may then propose deductions.

A claim can be due to the tenant breaching the terms of the Tenancy Agreement or failing to maintain the property for the duration of the term.

If you need to propose deductions to the deposit and, despite your best efforts at negotiation, cannot come to an agreement with the tenant, you may need to use an alternative dispute resolution (ADR) service in order to resolve the issue.

The following guidance is designed to help landlords and letting agents understand the underlying rules and required approach to a formal dispute, explaining the circumstances under which a claim can be made and what is required to support any deductions at the end of the tenancy.



For specific criteria and terms relating to a deposit dispute, please see 'Conditions of Deposit Disputes' on our website.

# Contents

A Foreword from the Adjudicator	2
Negotiation is key	4
Why you might use the ADR process	4
What you can't claim for	5
What you can claim for	6
Evidence required to make a claim	6
Evidence checklist	7
Common issues and case study examples	8
Common errors	11
Further information	11

## About mydeposits

By law all landlords and letting agents must protect their tenant's deposit with a government authorised tenancy deposit protection scheme, such as mydeposits. You can choose to protect your tenant's deposits with our insurance or custodial based deposit protection products. If you can't agree on any proposed deposit deductions when the tenant moves out, mydeposits offers a free and impartial dispute resolution service for our members and their tenants to resolve the issue.

# Negotiation is key

It is never too late to negotiate, but you should always aim to begin your negotiations at the earliest opportunity following the tenant disagreeing with the amount you wish to deduct. This is the best opportunity to resolve any issues speedily and reduce the need to use the formal dispute resolution service.

- The best way to negotiate is face to face.
- Allow the tenant to have their say and show that you have listened and considered their reasons.
- Be open and honest with your reasoning and see if there is room on either side for some concession.
- Remember your claim is based on your entitlement for compensation and not betterment.



Further advice on negotiation techniques can be found on our website.

# Why you might use the ADR process

There will be certain circumstances where you need to use an alternative dispute resolution service to resolve any issues with your tenants over proposed deposit deductions. Some of these circumstances include:

- ✓ Negotiations between yourself and the tenant have not reached a settlement.
- ✓ The landlord or tenant fail to communicate after the tenant's initial request for the deposit and the landlord's subsequent list of proposed deductions.
- ✓ The tenant and landlord have fallen out and refuse to consider negotiating.

# What you can't claim for

To ensure that the tenant is not at an unfair financial disadvantage, you will not be able to claim for the following through the ADR process:

- ✓ **More than the deposit amount**  
As the scheme's remit is limited to the amount of the deposit, in these circumstances you would need to go through the court system.
- ✓ **Costs related to the preparation of a deposit dispute**  
Each party is responsible for their own costs in evidence gathering and submitting their claim.
- ✓ **Betterment**  
A landlord must make allowance for the condition of the property to deteriorate with normal use over time and can only deduct an amount from the tenant which would put the property back in the same, and not better, condition than it would otherwise have been.
- ✓ **Fair wear and tear**  
Your calculations must take into account the length of the tenancy, the age and quality of the item/area as well as its condition at the start, the number and type of occupants.

NB: This is a general overview and not an exclusive list.



The House of Lords defines fair wear and tear as: 'Reasonable use of the premises by the tenant and the ordinary operation of natural forces'.

Each party is responsible for their own costs in evidence gathering and submitting their claim.

# What you can claim for



The circumstances in which all or part of the deposit may be retained by the landlord should be clearly explained in the Tenancy Agreement, referenced in the Prescribed Information that you pass to the tenant at the start of the tenancy.

This broadly covers:

- Outstanding rent.
- General maintenance.
- Repairs required to the property (including garden, if any) which is in excess of what is normal deterioration over the length of the tenancy.

# Evidence required to make a claim

Ensure you have all the necessary evidence you need to support any claim in a formal dispute.

Begin to gather this documentation at the start of each tenancy and ensure it is detailed and thorough. If you are involved in a dispute over the deposit, you should submit any relevant information from the following list in order to support your claim.

You should begin to gather this documentation at the start of each tenancy and ensure that it is detailed and thorough.

# Evidence checklist



## Tenancy Agreement

- Makes the tenant aware of how the property should be looked after and informs the tenant how it has to be returned.
- Remember clauses must be fair to be enforceable.



## Check-in and check-out reports

- Detailed check-in Inventory and Schedule of Condition for the start of the tenancy (a list of the contents is not sufficient).
- Take photographs and embed them in the reports to support the written detail.
- The tenant must be given the opportunity to see and comment on the Inventory, especially if it is prepared by a landlord or agent.
- A comparative final inspection should be carried out, using the original report and highlighting all the differences from the start.

NB: The tenant can only be responsible for deterioration in excess of fair wear and tear.



## Photographs

- If not embedded into the inventories, should be of good quality and digitally dated.
- They should be clearly referenced to the areas detailed in the inventories at the start and end.



## Emails/letter correspondence

- Follow up any occurrence in the property during the tenancy in writing, so you will have supporting evidence if it becomes an issue at the end.



## Estimates/quotations/invoices/receipts

- All this documentation is useful at the end, and if you have evidence of the original cost paid then include this as it will show the market comparison and like for like quality.
- Ask contractors to clearly break down what is being done for the cost so an independent adjudicator can see the value is reasonable.

# Common issues and case study examples



When claiming an amount from the deposit which may be for more than one issue, we recommend filling in the claim forms in detail. Members of mydeposits can find the forms online in your member account. These forms help adjudicators to fully understand and approach each of your claims with clarity.

Below are some case study examples and top tips for common issues dealt with by the formal dispute process.

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## NATURE OF PROPOSED DEDUCTION: CLEANING

### Typical example/analysis

A landlord claimed the property was left in a dirty condition. The tenant asserted they had paid to have it cleaned and it was left much cleaner than when they moved in.

From the evidence provided, the comparison of the check-in and check-out reports demonstrated only some areas needed further cleaning and the adjudicator was satisfied there was a breach of the Tenancy Agreement.

The loss claimed by the landlord must be proportionate to the breach and not for a full clean where it is not required, so a percentage award here would be reasonable.

NB. Around 30% of all cases deal with an aspect of cleaning.



### Top Tips

- ✓ The tenant is only obliged to return the property to the same standard it was in at the start, e.g. domestic or professional 'standard'.
- ✓ Cleanliness and condition are two different things. Your inventory should make notes on cleanliness separately.
- ✓ Contractor's invoices should breakdown the areas cleaned.
- ✓ If the comparison of the check-in and check-out inventories only show part of the property needs further cleaning, any award will be a proportion of a full clean.



## NATURE OF PROPOSED DEDUCTION: CARPET CLEANING

### Typical example/analysis

A landlord claimed that carpets were professionally cleaned at the start of the term but were left with stains at the end and sought replacement costs.

The tenant asserted that the stains were fair wear and tear; however fair wear and tear does not extend to cleaning.

The comparison of the check-in and check-out reports demonstrated deterioration but there was no evidence provided by the landlord explaining why the carpets could not be cleaned and why replacement was the only option.

No evidence of loss was provided and while a breach was established and the landlord was entitled to be compensated a 'reasonable' award was only a percentage of the total claimed.



### Top Tips

- ✓ Detail/description and photographs in the check-in Inventory can be critical when assessing the extent of any deterioration to carpets.
- ✓ Any replacement invoices/estimates should be on a like for like basis.
- ✓ Remember to take into account fair wear and tear, and betterment – as claiming 100% would be considered betterment.
- ✓ Furniture indents, shading, fraying etc are all fair wear and tear; however stains are 'damage'.

## NATURE OF PROPOSED DEDUCTION: REDECORATION

### Typical example/analysis

A landlord claimed that there were marks on the walls which were recorded in good condition at the start of the tenancy, therefore full redecoration was required.

The tenant said the marks are due to fair wear and tear over the one year term.

The comparison of the check-in and check-out reports demonstrated light usage marks in some rooms and more extensive marks in others. Light usage marks are generally considered fair wear and tear while heavier marks are generally found in excess of fair wear and tear and indicate a breach.

The contractor's invoice was one line stating 'supply materials and redecorate 2 bed flat'. The adjudicator had to factor in the areas where a breach was established and take into account fair wear and tear before awarding a reasonable amount.



### Top Tips

- ✓ If the property was repainted at the start, make sure it is recorded in the check-in Inventory and provide invoice/estimates in support, in the event of a dispute.
- ✓ Invoices should clearly breakdown the areas and work carried out for the cost.
- ✓ Remember to take into account fair wear and tear. The tenant has had use of the property for the length of the tenancy and the décor would not be new by the end.
- ✓ Redecoration is usually split into 3 main areas:
  - Light usage marks (fair wear and tear) = no breach.
  - Heavy marks/damage = breach.
  - Redecoration done without permission = breach.

## NATURE OF PROPOSED DEDUCTION: REPAIRS

### Typical example/analysis

A landlord claimed damage to the lounge ceiling caused by a leak from the bathroom during the tenancy.

The tenant asserted he notified the landlord as soon as it happened and provided evidence of this.

At the end of the tenancy the comparison of the check-in and check-out reports clearly demonstrated the water damage had occurred during the tenancy.

The contractor's report stated the problem was caused by an old pipe and not due to any negligence on the part of the tenant.



### Top Tips

- ✓ The tenant has a duty to report any damage that can affect the structure of the property as soon as possible; the onus is then on the landlord to take action within a reasonable time.
- ✓ Deal with issues that arise during the tenancy as soon as practically possible.
- ✓ The tenant can only be liable for negligent acts or allowing an issue to get worse as a result of not reporting it when becoming aware.

## NATURE OF PROPOSED DEDUCTION: GARDEN MAINTENANCE

### Typical example/analysis

A landlord claimed that the garden was in excellent condition at the start and returned overgrown.

The tenant asserted that there was no check-in Inventory and the garden was returned in the same condition as at the start.

The landlord provided the Tenancy Agreement detailing a clause relating to the tenant's responsibility for maintaining the garden, dated photographs and an invoice for the work done at the start and a check-out inventory showing the deterioration over the term, therefore demonstrating a breach.

The loss claimed by the landlord was supported by a detailed invoice of the work carried out and a comparable cost to the work done at the start of the term – full amount awarded.

### Top Tips

- ✓ Bear in mind seasonal growth – what is the appropriate condition for the start and end of the tenancy especially if they are at different times of the year.
- ✓ Photographs of gardens make good supporting evidence for negotiating/disputes.



# NATURE OF PROPOSED DEDUCTION: MISSING AND REPLACEMENT ITEMS

## Typical example/analysis

A tenant disputed a landlord's claim for missing and damaged items in the property including cutlery, vases, keys, fridge drawers and kitchen equipment.

The adjudicator had to determine whether the items were missing or damaged.

Photographs in the inventory were provided as evidence to show the quality of the missing and damaged items.

- Breaches of the tenancy agreement was established for items removed by the tenant and damage to other items in excess of fair wear and tear.
- Awards were made taking into account the items' condition at the start, their quality and length of tenancy; resulting in a percentage award to avoid betterment.

## Top Tips

- ✓ It's important for the Inventory to note exact numbers of items at the start e.g. 'six cushions', so that accurate comparisons can be made at the end.
- ✓ Photographs can be of great value showing quality and condition.
- ✓ Allowance for fair wear and tear must be made – age, condition at start, quality, length of tenancy, lifespan of such an item.
- ✓ Invoices/estimates must be on a like for like basis.



## Suzy's tips - on avoiding common errors

In some instances, landlord and agents are losing disputes due to a lack of robust and relevant evidence.

It is always important to ensure that you can paint a picture for an adjudicator so that they can establish a breach and a loss. To be successful in a claim you should aim to avoid making the following common errors:

- Failure to produce comparative inventories.
- Failure to create robust inventories.
- Presenting invoices which are not sufficiently detailed to show the work undertaken or are not evidently on a like for like basis.
- Failure to understand, and make allowance for, betterment and fair wear and tear.

It is always important to ensure that you can paint a picture for an adjudicator so that they can establish a breach and a loss.



### Further information

For more information on dealing with deposit disputes including a series of useful case studies, factsheets and advice on fair wear and tear information visit the Resource Centre on our website [www.mydeposits.co.uk](http://www.mydeposits.co.uk)

# TENANCY DEPOSIT PROTECTION AND YOU



## Have you protected your tenant's deposit?

If you're a residential landlord and you take a deposit from your tenant on an Assured Shorthold Tenancy (AST) you are legally required to protect the deposit with a government authorised scheme.

**Tenancy Deposit Protection (TDP)** was introduced in England and Wales in 2007 (and more recently in both Scotland and Northern Ireland) to ensure that tenants get their deposit back at the end of their stay, provided they've met the terms of their tenancy agreement.

## What you have to do

To comply with the law you must complete these two actions within 30 calendar days of receiving the deposit from your tenant:

1. Protect the deposit in a government authorised scheme, such as mydeposits
2. Provide the tenant with key information (called the Prescribed Information) relating to the scheme you have used

Landlords that fail to comply with their legal obligations can face substantial fines and may encounter problems should they seek to regain possession of the property if the need arises.

NB. there are different laws and timescales for landlords and letting agents in Scotland, Northern Ireland and Jersey. See the relevant websites below for details.

## Your Deposit Protection options

mydeposits is a government authorised scheme which exists to ensure you comply with the law across the UK.

Simply visit the website, join mydeposits to set up your membership and then use your personal online account to protect each deposit you take from your tenant(s).

It takes under five minutes to protect a deposit and your legal Prescribed Information documents are created ready for your tenant once the deposit is protected.

We offer a free, awarding winning dispute resolution service to resolve any issues between you and your tenant over proposed deductions to the deposit.

For more information visit [www.mydeposits.co.uk](http://www.mydeposits.co.uk)



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