



## Case Studies

### Who should read this?



Tenants



Agents



Landlords

Insured

Custodial

# Irreparable damage

Adjudication Digest September 2019

The Adjudication Digest takes a recent decision by a TDS Adjudicator and sets out the reasoning behind the decision. The aim of these Digest reports is to help tenants, landlords and agents better understand how we make our adjudication decisions. The names of the landlords and tenants involved have been removed and this is only a brief summary of the dispute.

**Amount of deposit in dispute:** £442.49

**Dispute initiated by:** Tenant

<b>Award made:</b>	<b>£442.49</b>
<b>Tenant</b>	<b>£242.49</b>
<b>Landlord</b>	<b>£200.00</b>
<b>Agent</b>	<b>£0.00</b>

The landlord claimed £442.49 for a replacement kitchen sink including the fitting charge. The landlord said that the sink had cracked during the tenancy and therefore a replacement was required at the tenant's expense.

The tenant disputed the claim arguing the landlord was aware of the crack to the left-hand side of the sink at the start of the tenancy and chose not to repair it resulting in the crack appearing to the right-hand side of the sink during the tenancy.

The adjudicator was provided with check-in and check-out reports which were compiled at the start and end of the tenancy. The sink was recorded in good, although not new condition, at check-in. At check-out the sink was heavily cracked and was noted by the inventory clerk as requiring replacement.

The landlord had submitted an invoice to support the claim which was based on a site visit by a third-party contractor. The contractor confirmed that a repair was not possible, and replacement was the only remedy.

The tenant was obligated by the terms of the tenancy agreement to return the landlord's fixtures and fittings in good condition, subject to any fair wear and tear. The adjudicator concluded that the sink had deteriorated beyond reasonable use and therefore an award to the landlord was justified, but not the full replacement cost. The adjudicator awarded a contribution of £200.00 to the landlord for replacement including a contribution towards the fitting charge.

## **So what are the key points here?**

It is essential that a landlord provides objective evidence showing the condition of the item at the start and end of the tenancy. For replacement to be considered as a remedy it is important to ensure that a third-party contractor's report is provided to support both the fact that the damage was irreparable, and that replacement is the only option. Without such a report it is unlikely that the adjudicator would have been able to justify replacement and find that a contribution towards repair may have been more suitable. Similarly, a tenant is required to provide evidence to support any statements upon which they wish to rely. For example, a photograph to show the sink had a pre-existing crack or that this was reported to the landlord/agent shortly after the start of the tenancy.

When an award for replacement is justified, the landlord is not entitled to charge the tenant the full cost of returning items to the condition at the start of the tenancy, or to replace items on a 'new for old' basis, as this would be betterment. Allowance must be made for fair wear and tear during the tenancy and the age and condition of the item at the start of the tenancy.