



# How the dispute resolution mechanism works

A guide for agents, landlords and tenants

Tel: **08450 940 740**

E-mail: [info@tdsnorthernireland.com](mailto:info@tdsnorthernireland.com)

[www.tdsnorthernireland.com](http://www.tdsnorthernireland.com)

TDS Northern Ireland, PO Box 2105, Belfast BT1 9RD

## How the adjudication process works

TDS Northern Ireland offers a **Dispute Resolution Mechanism** for tenants and landlords who are unable to reach agreement about how the deposit should be divided at the end of the tenancy. The service is free to members of TDS Northern Ireland and their tenants.

Use of the Dispute Resolution Mechanism is not compulsory. However, if the tenant chooses to use the service, the landlord **must** also do so.

The way you access the dispute resolution mechanism depends on how your deposit is held *i.e. whether TDS Northern Ireland holds your deposit (custodial scheme) or whether your landlord or agent does (insurance scheme)*. Check your tenancy agreement for more information or ask your letting agent.

### □ **STEP 1 - Starting the Dispute Resolution Mechanism**

#### **Custodial Scheme**

If your deposit is registered with our custodial scheme, this means that **TDS Northern Ireland holds your deposit**.

After the lead tenant and member have completed the repayment process, any cases where there has not been full agreement will pass to the TDS Northern Ireland adjudication team. The only exceptions will be cases where the tenant has opted to take the dispute to court, or has failed to give their consent to the TDS Northern Ireland Dispute Resolution Mechanism.

TDS Northern Ireland will check whether there is agreement over any of the deposit. If it is clear that part of the deposit is not in dispute, we will notify the parties before adjudication, and arrange for payment to be made, as soon as is practicable.

#### **Insurance Scheme**

If your deposit is registered with our insured scheme, this means that **your letting agent or landlord holds your deposit**, not TDS Northern Ireland.

The return of the deposit is discussed directly between the tenant and the landlord, without further reference to TDS Northern Ireland.

If however, you are unable to reach agreement, the Lead Tenant may refer a dispute to TDS Northern Ireland, but must do so not later than three months from the lawful end of the tenancy.

To do this, you should telephone our customer contact centre to notify us of a dispute. The details will be passed to our adjudication team to start the Dispute Resolution Mechanism.

### □ **STEP 2 – Requesting evidence from the landlord or agent (the ‘Member’)**

From here on, the Dispute Resolution Mechanism is the same, irrespective as to whether your deposit is held by TDS Northern Ireland or your landlord.

We will ask the landlord or letting agent (whoever is a ‘member’ of TDS Northern Ireland) to complete a Dispute Resolution form and submit evidence in support of their claim. The member has 10 working days to provide this information. If the member holds the deposit, the disputed amount must be sent to TDS Northern Ireland within 5 working days.

Evidence can be provided in the following ways:

- ✓ By post to: TDS Northern Ireland, PO Box 2105, Belfast BT1 9RD
- ✓ Or by email to: [info@tdsnorthernireland.com](mailto:info@tdsnorthernireland.com)

### □ **STEP 3 - Inviting the tenant to review the claim and submit their evidence**

Once we have received the member's response, we will provide a copy of it to the tenant and ask the tenant to complete a **Dispute Resolution form** and send their evidence. Again, the tenant will be asked to respond within 10 working days.

If there is more than one tenant, the **lead tenant** registered with TDS Northern Ireland will be responsible for responding on behalf of all joint tenants.

### □ **STEP 4: Checking the evidence**

The adjudication process is not investigative, so we will not routinely contact the parties to ask for additional evidence. It is up to the parties to decide what they wish to send to us.

However, we will make best efforts to check whether all the evidence you say you have sent us has been received and is legible. If it is obvious that something is missing we may contact one of the parties to give them the opportunity to provide that evidence again.

We will also check that reasonable efforts have been made by the parties to resolve the dispute before adjudication. We may send back the dispute if no efforts have been made to resolve it.

### □ **STEP 5: The adjudication decision**

Once the adjudicator has reached a decision, TDS Northern Ireland will send a copy of it to the parties to the dispute. The decision will indicate the proposed award and the reasons for the decision. No payments will be made at this point.

The parties will be asked whether they wish to request a review of the decision. This must be received within 10 working days and it is not possible for extensions of time to be granted.

It is not possible to request a review because you do not agree with the outcome of the decision, but you can make a request if you think that:

1. The adjudicator has made an **error in law**, which you will need to specify, and/or;
2. There is a **factual error** in the decision. Any factual error must be based on the evidence which was available to the adjudicator. **The review process cannot be used to submit further evidence to strengthen a case.**

A member of the adjudication management team will look at any review requests. We will let you know if we do not accept the request and we will give our reasons.

### □ **STEP 6: request a review**

If we are likely to accept a review request, we will let the other party know and offer them the opportunity to comment.

The case will then be passed to another adjudicator who will look at the evidence again. If the second adjudicator reaches a different decision, this will be the final decision. If the adjudicator decides that the first decision should stand, then that will become the final decision. It is not possible for the same party to ask for another review. Payment will be made to the parties within 5 working days of the issue of the final decision.

### **Continuing negotiations**

TDS Northern Ireland recognises that the parties may continue to correspond about the dispute even after it has been accepted for adjudication. The parties can ask TDS Northern Ireland to suspend the adjudication process or ask for it to be withdrawn at any point before the adjudicator makes a decision. Suspension or withdrawal can only take place with the consent of both parties.

If adjudication is suspended or withdrawn, payment will be made to the parties in accordance with any agreement they have reached between them. Where no agreement has been reached about payment, payment will be made in accordance with the Member's Proposal for Deposit Repayment.

### **What the parties need to know about the adjudicator's approach**

The file of evidence will be passed to one of TDS Northern Ireland's adjudicators, who will make an independent decision based on the information provided. The adjudicator has 20 working days to reach a decision. You should bear in mind the following points:

- You will not be asked to meet with the adjudicator and the adjudicator will not contact the parties to ask questions or seek further information;
- The adjudicator will not visit the property;
- The adjudicator can only award up to the value of the deposit or amount identified as being in dispute, although it is still advisable to let TDS Northern Ireland know if the total value of the claim exceeds the deposit as this can still affect the final outcome;
- The adjudicator can only deal with a member's claim against the deposit. The adjudicator will not look at complaints about the conduct of the parties, or any issues of set-off or counterclaim made by a tenant;
- The adjudicator's starting point is that the deposit is the tenant's money and it is for the landlord to state their claim clearly and support it with evidence;
- The adjudicator considers the evidence on the 'balance of probabilities';
- If a landlord does not provide any details of the claim or any evidence to support it, it is likely that the disputed deposit will be returned to the tenant without formal adjudication. If the tenant fails to provide any evidence, the adjudicator will still consider the merits of the landlord's claim;
- An adjudicator is not able to look again at any matters which have already been considered by a court.