

Unwelcome ‘visitors’

- The Adjudication Digest takes a recent decision by an Adjudicator and sets out the reasons behind it. We hope that you will find these digests informative in understanding how we reach our adjudication decisions.
- This document is for guidance only – it is not intended to guarantee when an award will be made.
- Each dispute is different and the actual award made will be based on our interpretation of the specific evidence presented to us

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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 parties involved have been removed and this is only a brief summary of the dispute.

Unwelcome ‘visitors’

This month’s case looks at the problem of infestations in a property.

Amount of deposit in dispute	£500.00
Award to Tenant	£500.00
Award to Agent (on behalf of landlord)	£000.00

The landlord’s claim in this case was for specialist treatment to deal with a moth infestation (£180.00), damage to carpets caused by the moths (£250.00) and for compensation to the new tenants (£80.00). The new tenants reported damage to the landlord’s carpet and to their own belongings (clothes) 2 weeks after they moved in.

The outgoing tenants denied any knowledge of a problem with moths when they were in the property. The lease contained a general obligation for the tenants to report any problems to the landlord/agent during the tenancy. Nothing had been reported by the tenants or noted by the agent during periodic inspections. Although the check out report noted a number of items for which the tenants were responsible, there was no reference to any damage, for example to carpets, which might have been attributable to an infestation.

The landlord commissioned a report from a specialist treatment company. According to the contractor’s report, the extent of the damage suggested that the moths were well established and that this must have been a long-term problem.

Based on the evidence, the adjudicator was unable to conclude that the tenants had breached the terms of the lease. There was no evidence to suggest that they had failed to report a problem during the tenancy and no indication from the check out that there was an issue at the end of the tenancy. Although the contractor’s report indicated a relatively long-term problem, there were a number of possible scenarios. It was possible, for example, that larvae in the property had predated the tenancy in dispute but had been dormant until disturbed by the tenants moving out; it was equally possible that the new tenants had brought the problem with them from their previous property.

So what are the key points here?

Moth damage is particularly difficult to deal with in a dispute, unless the problem is evident either during or at the end of the tenancy. It may be difficult in most cases to establish that a tenant was responsible for the presence of the moths. However, if damage was noticeable, the tenant will generally have a duty to report it and allow the landlord to address it and mitigate his loss.

If the tenant has not reported damage which was obvious at the end of the tenancy, it is likely that the adjudicator will conclude that they were responsible at least for allowing the problem to worsen and the loss to the landlord to increase.

The person conducting a periodic or check out inspection should be aware of the possibility of a moth infestation arising and the features to check for.

Other sources of infestation, such as fleas, may not be any easier to prevent. However, it may be possible to predict the increased possibility of a flea infestation if a pet is allowed during the tenancy.

In these circumstances, a landlord may wish to consider negotiating a special condition/clause with the tenant that a pet will be allowed on condition that the tenant arranges to have the property treated by a professional fumigation contractor at the end of the tenancy and that a receipt is provided for this work.