

The Adjudicator takes a recent decision by a [Tenancy Deposit Scheme \(TDS\)](#) Adjudicator and sets out the reasoning for the possible deduction of tenancy deposits. The aim of these case studies are to help agents better understand how we make our adjudication decisions and what can be learnt from them. The names of the landlords and tenants involved have been removed and this is only a summary of the dispute in question.

## Irreparable damages

In this case, the landlord claimed 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 and said that 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 worsening during the tenancy from ordinary everyday use and with time, had extended to the right-hand side of the sink.

The check-in report for the start of the tenancy recorded the sink as in good condition, although not new. At check-out the sink was heavily damaged, noted by the inventory clerk as requiring a 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 it would not be possible to repair the sink and obtaining a replacement was the only remedy.

## The Adjudicator's decision

The tenant was required by the terms of the tenancy agreement to return the sink in the same condition as at the start of the tenancy, subject to any fair wear and tear. As the check-in report did not support the tenants argument that a crack was present at the start of the tenancy, nor was there any evidence to show that the tenant either amended the check-in report to reflect a crack or reported the worsening condition of the sink during the tenancy, the adjudicator was satisfied that an award was justified. This was due to the content of the contractor's report that replacement was the most appropriate remedy. However, an award for the full replacement was not made as the adjudicator had to consider the pre-tenancy condition of the sink i.e. it was not recorded as new, the length of the tenancy, and that the sinks age, original cost and quality was not known. A contribution to the landlord towards a replacement sink including a contribution towards the fitting charge, was awarded.

## Key points to take away?

- Remember to provide objective evidence showing the condition of the item at the start and end of the tenancy and where possible the items, age, cost and quality of the item.
- For replacements to be considered as a remedy it is important to ensure that a third-party contractor report is provided to support both the fact that the damage caused by the tenant was beyond repair and that replacement is the only option.
- Even if replacement of an item is found to be justified it is unlikely that the full replacement cost would be awarded. This is because a 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 amount to betterment; placing the landlord in either a materially or financially better position than at the start of the tenancy.
- 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.
- A tenant should 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.

If you would like to learn more about this topic [Tenancy Deposit Scheme \(TDS\)](#) run valuable training courses in both tenancy deposit protection and tenancy deposit disputes in our brand new virtual [TDS Academy](#). Additionally, all course attendees will receive a certificate which can be used to gain CDP points.

Please [click here](#) to find out all the TDS Academy courses that are currently available to you.