

The Adjudicator takes a recent decision by a [Tenancy Deposit Scheme \(TDS\)](#) Adjudicator and sets out the reasoning behind the decision. The aim of these [case studies](#) 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.

The Landlord/Tenants Claim

In this case, the landlord claimed the full deposit, £750.00, for a number of different items with varying levels of evidence to support each deduction. The adjudicator was faced with a complex combination of factors to consider in deciding responsibility.

In the first claim, the landlord claimed £50.00 towards the repair of a damaged garden gate. It was claimed that the catch to the gate had broken during the tenancy and that the tenants had allowed it to repeatedly swing open and shut in high winds, eventually causing the wooden gate to smash.

In the second claim, the landlord had replaced a recessed spotlight in the hallway ceiling and found that there was a leak from the shower tray in the bathroom above the hallway for which he claimed £200.00 to remedy. There was no obvious defect noted to the shower tray or hallway ceiling in the check-in or check-out report. Worried about the effect of the leak on the electrics, the landlord had also obtained and provided a report from a plumber and electrician.

Finally, the landlord claimed £500.00 for severe mould damage to the bedroom window. The landlord referred to a surveyor's report which claimed this was due to the tenants lifestyle, but the report was not provided as evidence.

The Adjudication Approach

In reference to the first claim, the check-in and check-out reports did not refer to the gate or its condition. The tenants acknowledged that the gate catch had broken and that they did not report it to the agents even though the banging of the gate had disturbed them regularly during the tenancy.

Regarding the second claim, the adjudicator was able to reference the electrical report which stated there was no immediate danger from the leak. The plumber's report found that there was a 'concealed' leak in the waste pipe beneath the shower tray. The landlord claimed that this was caused by too much weight being placed in the shower. There was no comment as to the cause of the leak in the plumber's report.

Lastly, when addressing the claim for mould the adjudicator considered the check-in report to see if there was any sign of pre-existing mould, damp or condensation to the windows at the start of the tenancy. The bedroom curtains were noted to be mouldy at check-out, together with a build-up of black mould around the window reveals.

The Adjudicators Decision

In the first claim, in the absence of evidence recording the condition of the gate at the start of the tenancy, or the extent of the damage at the end of the tenancy, the adjudicator awarded a compensatory amount. Although the tenants could not be held responsible for bad weather, they ought to have reported the broken gate catch to the landlord as soon as they became aware of it, at which point steps could have been taken by the landlord to reduce any further damage.

For the second claim, the third party independent electrical report identified that there was no immediate danger from the concealed leak. As the contractors report did not go to the cause of the leak, the adjudicator was not able to make any award to the landlord. Given that the leak was concealed, it would not have been reasonable to expect the tenant to report a matter that they could not reasonably have been aware of. Further to this, there was no evidence of any misuse by the tenant.

Without evidence as to the cause of the mould, which was not provided by the landlord, the adjudicator was unable to find the tenants responsible. However, the adjudicator accepted that the tenant should have taken steps to regularly wipe down the windows, howsoever such moisture was caused. This would have reduced any staining to the curtains and deterioration to the adjacent window reveals. The adjudicator awarded the landlord a contribution towards the making good of the area claimed.

Key Pointers to Take Away?

- Check-in and check-out reports are key documents in enabling an adjudicator to compare the condition of the property at the start and end of the tenancy. In the first case, the [check-in and check-out reports](#) did not record all items, which undermined the landlord's claim. Make sure check-in and check-out reports are detailed and properly completed.
- Most tenancy agreements contain an obligation on the part of a tenant to report issues as and when they know, or should have known, about a problem. In the first case, the tenant was responsible for reporting the broken catch to the gate which may have prevented any further damage. The tenants could not have done so in relation to the leak in the second case. Make sure tenants know when they need to report problems to their landlords.
- Contractor/expert reports can be very helpful in establishing the cause of any damage. The more specific they are, the more helpful they are likely to be in supporting or defending a claim. In the second case, the contractor's report did not establish the tenants liability and it was evident that the tenant could not have known there was a leak to report. If you have third-party reports, or any other evidence in support of a claim or to defend a claim, make sure that you submit them as evidence.

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