

## Landlord Factsheet: Deposits — Disputes & Damages

### Introduction

Since 2007 tenant deposits have had to be protected with one of the three Government approved schemes. However, the deposit remains the property of the tenant at all times. This means that it should be returned to the tenant at the end of the tenancy if they have honoured the terms of the tenancy agreement.

If the tenant has broken the terms of the tenancy agreement, then at the tenancy end the landlord and tenant should agree on the return of the deposit and any deductions from it. If the tenant is unhappy with the amount the landlord wishes to deduct from the deposit or the landlord refuses to engage in the deposit return process, the tenant is entitled to raise their dispute with the relevant tenancy deposit protection scheme.

It should be noted that dispute resolution, by its very nature, is unique to each and every case. Unlike the formal legal system, schemes are not governed by “precedent” in the same way as the Courts. Decisions are made on the principle of “balance of probability” and from the submission of evidence from both parties.

Landlords should note that preparing a case for arbitration is a lengthy and time consuming process and an agent will charge for their time to carry out this work. It is always advisable for a landlord and tenant to do their utmost to resolve any disputes between them (with or without the assistance of the agent) to avoid arbitration.

### Wear and Tear

Many landlords believe that the property should be returned to them in the same condition as at the start of the tenancy. Deductions are often claimed from the deposit for minor damage that should be expected in any normal use of the property. Similarly, some landlords seize the opportunity to “replace” items in the property which are coming to the end of their natural life e.g redecorating an entire room when minor scuff marks have been caused by the tenant.

The House of Lords defined fair wear and tear as “reasonable use of the premises by the tenant and the ordinary operation of natural forces”. The word “reasonable” can be interpreted differently, depending on the type of property and who occupies it. In addition, it is an established legal principle that a landlord is not entitled to charge his tenants the full cost for having any part of his property, or any fixture or fitting “...put back to the condition it was at the start of tenancy”. ([See our Landlord Factsheet on Betterment for more information on this](#)).



Landlords should therefore keep in mind that the tenant's deposit is not to be used like an insurance policy where you might be getting "full replacement value" or "new for old"

The landlord also has a duty to act reasonably and not claim more than is necessary to make good any loss. For example:-

- Replacement of a damaged item may be justified where it is either severely and extensively damaged beyond economic repair or its condition makes it unusable.
- Repair or cleaning is a more likely award where replacement cannot be justified.
- In cases where an item has had its value reduced or its lifespan shortened, for example by damage, an award of compensation may be appropriate.

In addition to seeking the best remedy, the landlord should not end up either financially or materially in a better position than he was at the start of the tenancy, or than he would otherwise have been at the end of the tenancy after having allowed for fair wear and tear.

In order to avoid allegations of betterment by the tenant, any award for damage must take into account fair wear and tear. Adjudicators will also take into account the following factors when coming to a decision:-

## Length of Tenancy

The longer the tenancy, the more wear and tear. Think for example, how much wear a carpet in your own home shows after two or three years. Also consider what the item's condition was when the tenancy started. Was it brand new or had it already seen a few tenancies come and go?

## Number and age of occupiers

The more bedrooms and occupants, the higher the wear and tear and that should be expected in all common parts e.g hallways, reception, kitchen, bathroom, stairs etc. If you are letting to a family with children factor that in too. Scuffs and scrapes are unavoidable in normal family life. A property occupied by a single person will see far less wear and tear than a family of four or a group of sharers, so bear this in mind when its time for the tenants to check out.

## Wear and Tear v Actual Damage

When is it no longer normal wear and tear? Damage i.e breaking something, is not wear and tear – meaning either replacement or repair. Light marks on a carpet might have to be viewed as unavoidable. On the other hand damage, such as nail varnish, spills or iron



burns that have occurred due to negligence could see the tenant liable for repair. Consider whether the item has been damaged or worn out through natural use versus negligence when making a judgement call.

## Quality & Condition

Consider the original quality of the item at the start of the tenancy and what it cost to provide. It would be unreasonable for a landlord to provide a cheap and flimsy set of bedroom furniture and then blame the tenant if the items are damaged through normal use. Adjudicators may expect to see receipts or other evidence to confirm an item's age, or its cost and quality when new. Another consideration is the quality or fabric of the property itself. Many new builds tend not to be quite as robust as older properties or conversions. Walls, partitions and internal painted surfaces tend to be thinner and therefore likely to suffer more stress, particularly in higher footfall areas. This inevitably means there is a greater need for redecoration at the end of the tenancy. An adjudicator may consider more than a simple contribution to the cost of redecoration from the tenant to be unreasonable.

In considering whether cleaning/repair is necessary versus complete replacement at the end of the tenancy, an adjudicator will examine the check in/out reports, any statements of condition and any photos/videos in order to compare the condition of the property at the start and end of the tenancy. In some cases the damage may not be so extensive as to require the complete replacement of an item at the tenant's expense (such as a kitchen worktop or carpet). However, the adjudicator will award sums in recognition of any damage which has occurred. Whilst the landlord may wish to replace a damaged item, it is not always the case, even where the damage is admitted by the tenant, that the extent of the damage is such that the tenant should automatically bear the full replacement cost.

In the rare circumstances where damage is so extensive or severe as to affect the achievable rent level or market quality of the property, the most appropriate remedy might be replacement and to apportion costs according to the age and useful lifespan of the item. An example of how this might be calculated is set out below.

Using a damaged carpet in this example:-

- a) Cost of similar replacement - £500
- b) Actual age of existing carpet – 2 years
- c) Average useful lifespan of that type of carpet – 10 years
- d) Residual lifespan of carpet calculated as (c) less (b) = 8 years.
- e) Depreciation of value rate calculated as (a) divided by (c) - £50 per year



f) Reasonable apportionment cost to tenant calculated as (d) times (e) = £400

It is impossible for any Guide to guarantee what the outcome to a tenancy deposit dispute might be. By their very nature, disputes are contentious and one party is likely to feel aggrieved at the end of the process. Adjudicators are looking for a fair and reasonable outcome.

## Further Tips For Landlords

Landlords need to consider carefully any deductions they wish to make and ask themselves “is this fair?” or “how would I feel if I was the tenant?”. Landlords should discuss their concerns with the tenant. Open communication prevents a large number of potential disputes.

Try to view the evidence you are submitting from the point of view of an independent third party who does not know the property. Will your evidence convince them of your case?

If you agree to adjudication remember that you cannot appeal against the final decision unless you challenge it through the courts.

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