

# General approach of the ICE when deciding allocation of disputed deposit



**This document sets out the general approach taken by the Independent Case Examiner (ICE) when deciding how the *disputed* deposit should be allocated at the end of the tenancy.**

**This is an independent review and adjudication process.** The role of the ICE is to review the evidence submitted and determine how the amount in dispute should be allocated between the parties.

**The ICE is unable to consider any dispute which has been dealt with by a court.**

Where one of the parties says that (s)he intends to take the matter to court, and the disputed deposit has been sent to TDS, we shall continue to hold the deposit until we receive express instructions from the court. If you are taking the dispute to court, you should ensure that a clear instruction for payment is given to TDS.

**The ICE will assume that the parties have stopped negotiating about the dispute when it is submitted to TDS.** If negotiations continue and part or all of the dispute is resolved, you should tell us as soon as possible. If we do not hear from you our awards will reflect what we have been told.

**A copy of the *Notification of Dispute form (TDS2)* will be sent to the other parties and they will be invited to respond.** We will not normally send copies of any other documentation submitted by the party bringing the dispute to the other parties.

**The review process is not investigative and the ICE will not normally go looking for evidence.** We will only ask for additional documents or information if we consider they are critical and have been withheld. The party bringing the dispute must provide evidence to support their allegations. The party responding to the dispute should also provide evidence to support their position. The parties should bear in mind that the deposit belongs to the tenant unless a valid claim can be established by the landlord or the agent.

**You should send the documentation you need the ICE to see when requested.**

Material which is received too late will be returned to you and will not be taken into account. No material can be considered after the case is passed to an adjudicator.

**The party against whom the dispute is brought is invited to respond.** If they fail to do so, the ICE may take this into account in his adjudication; and may award the disputed amount to the party bringing the dispute by default.

**The ICE can only make an award in respect of sums claimed by a landlord against a deposit paid by a tenant.** If the tenant has a counter-claim against his/her landlord, (s)he must pursue it with the landlord directly and seek independent legal advice should this be necessary. The ICE is unable to take account of such issues when deciding how the disputed deposit should be allocated.

**The ICE is only able to award up to the amount of the deposit.** If the amount claimed is in excess of the deposit the ICE will treat the claims in the order set out in the tenancy agreement, where this has been specified. He will indicate where he believes an award would be appropriate; and if so, how much, up to the extent of the deposit. If the landlord wishes to pursue the tenant(s) for additional sums, s/he will need to seek further advice.

**If the amount submitted by the deposit holder is less than the sum in dispute** the ICE will instruct the tenant's award to be paid in full. If there is any shortfall in the payment to the landlord, s/he will have to take that up with the agent.

**If the amount submitted by the deposit holder is more than the sum in dispute** the ICE will assume that the balance is not in dispute and return it to the tenant(s).

**The ICE is not obliged to accept the costs claimed or incurred by the landlord.** Any awards the ICE makes are based on what he considers to be the reasonable cost of making good. In determining the amount, the ICE has regard to publicly available sources of information such as high street stores, and services and products available on the internet.

**Any awards made will take account of the age and quality of the item and the length of the tenancy.** An award, if appropriate, is made to compensate a landlord for the loss in value of an item where the loss in value is caused by the tenant during the tenancy. Landlords should not expect to receive full replacement value. Account will be taken of the age and quality of the item at the start of the tenancy and fair wear and tear during the course of the tenancy.