



## The progress of a dispute

### I want to bring a dispute

You have reached the end of the tenancy but you can't agree about what should happen to the deposit. What should you do now?

This document explains:

- how you bring your dispute to us;
- how we will deal with it;
- what information you will have to give us;
- what the timescales are.



## First things first Is the dispute about the deposit?

If it isn't, you will need to take it down a different route:

- If your dispute is with an agent, please consult one of the professional bodies concerned e.g. the Association of Residential Letting Agents (ARLA), the Royal Institution of Chartered Surveyors (RICS), National Association of Estate Agents (NAEA) or the National Approved Lettings Scheme (NALS).
- If it is about a landlord, or an agent who is not a member of one of these bodies, please ask for assistance from your local Citizens' Advice Bureau, Housing Advice Centre, Law Centre or other advice organisation.
- Tenants may feel that they have a counterclaim against the landlord, or may think that the landlord's claim should be reduced because of what they regard as a failure on the landlord's part. We cannot deal with these issues in our adjudication. If they are important to their case, tenants may wish such a dispute to be resolved in the County Court.

## Is your tenancy covered by the Tenancy Deposit Scheme?

When a tenant paid over their deposit, they should by law have been given certain Prescribed Information, which would have included the name of the Deposit Holder – usually the landlord or the agent through whom they rented the property. By looking at our website [www.tds.gb.com](http://www.tds.gb.com) tenants can check to see if their Deposit Holder is a member of the Scheme.

If a tenant was not given the Prescribed Information, they should look in their tenancy agreement for the name of their landlord/agent and check to see if they are listed as members of the Scheme.

If the deposit is not held by a TDS member, we will not be able to deal with the dispute. Landlords and tenants will need to see if the Deposit Holder is a member of one of the other tenancy deposit protection schemes by checking with them, or asking the Deposit Holder.

We may be able to deal with the dispute even if the tenancy has not been registered with us. But the tenant may be better advised to take action in a County Court. This is because, under the Housing Act 2004, Section 214, a tenant may – depending on the circumstances of the case - be awarded the whole of the deposit plus three times its amount by way of compensation for failure to register the tenancy. The Independent Case Examiner (ICE) can award



no more than the amount of the deposit.

## Has the landlord/agent had the opportunity to resolve the dispute?

If not, tenants must let them try to do so. We may return a dispute if we feel the landlord/agent hasn't tried to deal with it before it was sent to us.

## How much is in dispute?

We will deal with any dispute, however small the sum – although our approach may vary if only a little money is involved. However, the parties to the dispute should consider whether the amount involved is enough to justify the time and effort they will have to put in to completing the TDS **Notification of a deposit dispute** form and gathering evidence to support their case. We do not award sums in addition to the actual amount claimed.

## Do you want the Independent Case Examiner to resolve your dispute, or would you rather go to court?

Either party may go to court if they prefer, and the ICE can only deal with their dispute if both tenant and landlord agree that they want the ICE to do so (except where the landlord refuses to make any decision, in which case we will deal with dispute in any event). Most people prefer to use TDS because they feel that this way of resolving disputes will be quicker, cheaper and less stressful. Like the courts, the ICE is also independent and authoritative.

## How do I submit a dispute?

Please complete the TDS **Notification of a deposit dispute** form. You can download it from our website [www.tds.gb.com](http://www.tds.gb.com). This will tell us what the dispute is about, and who is involved. We need it in writing because we have to copy it to the other party or parties for their response. If you have difficulty with completing the form, e.g. if English is not your first language, please ask someone to help you.

Send the form to us with the evidence you want the ICE to take into account when dealing with the dispute. You will find a check-list on the form to help you. It is important that you send the information you feel is necessary to support your case. The ICE will adjudicate on the basis of what the parties send us. We will not normally ask the parties for additional information.

You will not be able to submit additional material after your case has been sent to an Adjudicator.



Nor will we be able to accept new evidence after we have made an adjudication decision. So it is important that you send all your evidence with your **Notification of a deposit dispute** or with your **Response to dispute** as appropriate.

However, we are unable to accept physical evidence (for example, damaged items). This type of evidence does not compare an item's condition between the start and end of a tenancy, in the same way that check in and check out inventories can do. You may however wish to submit a professional report from a suitably qualified person who can give an opinion to support your claim.

If you send any photographs or videos you must sign them, show the date on which they were taken and indicate which part of the dispute they relate to. Two copies must be provided, one for us and one for the other party.

In signing the **Notification of a deposit dispute** or **Response to dispute** you agree that our adjudication is final and binding. There is no appeal against it within the rules of the Scheme, but you are entitled to complain about the way your case was handled should you feel this is necessary (please see **Complaining about how TDS handled your case**).

## What happens then?

If you want, we will acknowledge receipt of your papers before we do anything with them. Please complete the tear-off strip in the **Notification of a deposit dispute** or **Response to dispute** form as appropriate.

We will check that the dispute is one we can deal with, and that it falls within the time limits set in our Rules (see *What are the timescales* below). We will also check that you have filled in the form properly. If not, we will return it to you to complete it. If everything is okay, we will acknowledge receipt of your dispute and send it to the other party(ies) for their response. We will ask the deposit holder to send us the amount of money in dispute - even if it has been decided that the dispute is to go to court.

We will send the other party(ies) to the dispute a **Response to dispute** form and ask them to put their side of the story. It is important that they send us their evidence too. In particular, where a landlord/agent wants to withhold all or part of the deposit because they say the property is damaged, dirty, in need of decoration, or that things are missing, they must be able to demonstrate this. If they say that a tenant was behind with the rent, we will need to see a copy of the rent account, and the tenancy agreement must allow the deposit to be used to settle rent arrears.

It sometimes happens that a tenant who raises a dispute does not present the full



or correct picture.

Occasionally in their response, a landlord/agent will raise new matters to justify withholding the deposit. If they do, we will give the tenant the opportunity to comment on them before we proceed with the adjudication.

In signing the **Response to dispute** form, you agree that our adjudication is final and binding.

## Will consideration of the dispute be delayed if any of the parties refuses to co-operate or the deposit has not been sent to TDS?

No. We will continue with the adjudication regardless. If TDS has not received the deposit, we will make a claim from our insurers and pursue the landlord/agent for reimbursement. If one party does not give a response to evidence submitted by the other party raising the dispute, we will continue with the adjudication without it.

It can also happen that the deposit holder only sends in part of the deposit. Again, we will continue with the adjudication regardless. If we make an award to a tenant, they will be paid first. There may therefore be a shortfall in the amount available to settle an award to a landlord or agent. We would expect them to resolve this between themselves.



## How is the dispute resolved?

First of all we will establish the following:

- Have the parties sent all the documents we need?
- Has the deposit holder paid in full their TDS membership subscription?
- Has the deposit holder sent the correct sum in dispute?
- How much is in dispute?
- How many issues are in dispute?
- Would this matter be better resolved by formal adjudication or other means e.g. by the ICE or one of his colleagues talking to both you and the landlord/agent to see if we can help you reach agreement without a formal adjudication?

The ICE may reject a case if, in his opinion it is:

- being pursued in an unreasonable manner;
- frivolous;
- vexatious;
- seeking to raise again and, unreasonably in our view, matters which:
  - a) we have already adjudicated upon;
  - b) have already been settled by another similar dispute resolution process; or
  - c) have been determined by the courts.

The ICE may *at his discretion* award a tenant the disputed amount without adjudication where:

- the deposit holder has not paid in full their TDS membership subscription
- the full disputed amount has not been submitted within the required time
- the tenant was not given a written tenancy agreement
- there is a written tenancy agreement but it does not contain appropriate reference to TDS as prescribed in the [Tenancy Deposit Scheme: Rules of](#)



## Membership

- there is either no check-in or no check-out inventory report
- in the ICE's opinion the landlord/agent has unreasonably sought to delay the repayment of the deposit or the referral of the dispute
- the Prescribed Information has not been given to the tenant.

## What happens in a TDS adjudication?

The ICE appoints an adjudicator to consider the evidence submitted by the parties, and decide how the disputed amount should be paid. In determining awards, the adjudicator may have regard to publicly available sources of information such as high street stores and services and products on the internet.

If it is obvious that a key document is missing e.g. the page in the tenancy agreement which contains the clauses relevant to the dispute, the adjudicator may ask for them. But as a general rule, we will adjudicate on the basis of what the parties send us. We will not normally ask the parties for additional information.

## When will TDS pay out the disputed amount?

We normally pay any award within 5-10 working days of publishing the adjudication report. We can pay by bank transfer or cheque. Only in the most exceptional circumstances will we be able to pay out in cash.

## What are the timescales?

Within 14 days of receiving a deposit (or within 14 days of the tenancy becoming an Assured Shorthold Tenancy, if this occurred after the deposit was received) the deposit holder should have registered it on the TDS database.

The tenant will have been sent a **Certificate of registration** which contained a code which enables them to check that the details of their tenancy have been properly recorded.

A tenant can register a dispute with their landlord/agent at any time after either of them has given notice to end the tenancy, but should try to inform the landlord/agent of this within 20 working days\* after the tenancy has finished.

A landlord/agent must tell the tenant within 10 working days\* of the end of the tenancy if they propose to make any deductions from the deposit.

The landlord/agent should attempt to resolve the dispute within 10 working days\*. If they cannot do so, or the tenant remains dissatisfied, the dispute should be



referred promptly for resolution by the ICE or by the courts.

*\*These time scales can be changed by agreement with the tenant in individual cases or by the contract used as standard by the agent.*

We recognise that it is in everyone's interests to resolve a dispute as quickly as possible. Where possible, we seek to complete the whole process in about 40 working days. In summary, we aim to work to the following timetable:

Action	Day
• Dispute received (and deposit, if referred by landlord/agent)	1
• We acknowledge receipt of papers if requested	2
• We establish that TDS can deal with the dispute	2
• We inform and copy the papers to the other party(ies)	3
• The other party(ies)submit their response and their agreement to our adjudication (and deposit, if not initially referred by Member)	13
• We send all the papers to the adjudicator	16
• The adjudicator submits their report	26
• We publish the adjudication decision	35
• We pay out the deposit as specified in our decision	40



# Tenancy Deposit Scheme



*The ICE will not normally accept disputes submitted to TDS:*

- *six months or more after the end of the tenancy (for tenancies which began before 6<sup>th</sup> April 2011); or*
- *three months or more after the end of the tenancy (for tenancies which began on or after 6<sup>th</sup> April 2011).*



## Summary

### For the tenant

- Is your dispute one which falls within TDS' remit?
- Do you want to take the time and trouble to pursue it?
- Do you want the ICE to adjudicate, or would you prefer to go to court?
- If so, are you willing to accept our adjudication as final and binding?
- Have you completed the [Notification of a deposit dispute](#) or [Response to dispute](#) form, and sent us all the evidence you want to be taken into account?
- Are you within the time limits?

### For the landlord/agent

- Have you paid your TDS membership subscription in full?
- Does the tenant have a written tenancy agreement, which makes proper reference to TDS?
- Did you give the tenant the Prescribed Information?
- Do you have a check-in inventory and a check-out inventory or report?
- Do you want to take the time and trouble to pursue this dispute?
- Do you want the ICE to adjudicate, or would you prefer to go to court?
- If so, are you willing to accept our adjudication as final and binding?
- Have you completed a [Notification of a deposit dispute](#) or [Response to dispute form](#), and sent us the disputed deposit and all the evidence you want to be taken into account?
- Are you within the time limits?



## Contact details

Tenancy Deposit Scheme  
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