

**IN THE MATTER OF AN ADJUDICATION BETWEEN:**

Mr

**Tenant**

**and**

Mrs

**Landlord**

**Property:** Loughborough, Leicestershire, LE11

**In summary:**

**The Assured Shorthold Tenancy Agreement** was entered into by the Tenant and the Landlord. The initial tenancy was for a fixed period of 12 months from 27<sup>th</sup> September 2013 to 26<sup>th</sup> September 2014.

**The Deposit** of £750.00 was protected by

The amount held by is £346.00. The Tenant submits that the sum of £346.00 is currently in dispute.

**Adjudication** under the Terms and Conditions of

A dispute has arisen between the parties, over the amount of the Deposit to be refunded at the end of the tenancy, which they have both agreed to refer to adjudication.

For the reasons given below I find that from the £346.00 held by :

- i. The sum of £0.00 should be paid to the Landlord.
- ii. The sum of £346.00 should be paid to the Tenant.

## **Dispute, evidence and findings**

1. The Landlord claims the following:
  - i. £197.00 in respect of cleaning and rubbish clearance
  - ii. 54.00 in respect of replacing a patio door lock
  - iii. £35.00 in respect of changing a cooker hood filter
  - iv. £40.00 in respect of unblocking drains
  - v. £20.00 in respect of treating weeds on the front drive
  
2. For the Landlord to be entitled to any sum in respect of the proposed deductions, it must be shown, by way of supporting evidence, that any damage and deterioration in question has occurred during the term of the tenancy, is in excess of fair wear and tear and can be considered the Tenant's liability. Furthermore, any costs claimed must be fair, reasonable and proportionate to the financial loss which has been incurred by the Landlord in respect of any breach of the Tenancy Agreement.
  
3. Neither party has submitted to me a copy of the check-in or check-out inspections of the Property. This evidence is critical to my decision as it allows me to assess whether any deterioration in condition of the Property has occurred during the tenancy; in its absence I am unable to make an informed and objective comparison of the condition of the Property at the commencement and at the end of the tenancy, and consequently cannot ascertain whether the Tenant has breached his obligations under the Tenancy Agreement.
  
4. Both parties have provided me with copies of photographs in support of their submissions, however, I note these photographs do not contain verifiable digital dates indicating when they were taken. I am therefore only able to rely upon the photographs as providing an accurate account of the condition of the Property where supported by further substantive evidence.
  
5. The Tenant disputes liability for all of the proposed deductions claimed by the Landlord. It is therefore for the Landlord to establish that the Tenant breached the terms of the Tenancy Agreement and that this breach resulted in a financial loss. I have not been provided with copies of any invoices, receipts or any other documentation indicating a financial loss was incurred in respect of remedial works having been carried out at the end of the tenancy.

6. I acknowledge the Landlord's submission regarding the date of the photographs provided, however, for the reasons stated above I am unable to rely upon the photographs provided alone. In the absence of further substantive evidence indicating the Tenant breached the terms of the Tenancy Agreement I am unable to make any award to the Landlord.

**Dated 8 January 2015**

A handwritten signature is written over a black rectangular redaction box.A black rectangular redaction box covering the name of the adjudicator.

**Adjudicator**

## General conditions

7. Both parties are conversant with the facts of this case and the issues in dispute. The parties should be reassured that all the documents and points made have been considered in reaching this decision but the Decision itself only refers to the relevant evidence and not necessarily all the information provided.
8. It is for the Landlord to establish by evidence that, on the balance of probabilities, the Tenant was in breach of their obligations under the Tenancy Agreement, and that any expenditure claimed is reasonable and proportionate. Unless the Landlord can establish an entitlement to a payment from the Deposit it belongs to the Tenant.
9. The decisions and comments in this Adjudication only relate to the Deposit Dispute. If any comments are made on any other matters aside from the Deposit Dispute, they are not intended to have any authority and will not have any judicial or binding sanction.
10. Where the dispute relates to the 'condition' of the Property, it is appropriate to consider fair wear and tear when making any award. Fair wear and tear is defined by the Home Letting Service as 'damage that has taken place over time through normal use' and by the House of Lords as 'reasonable use of the premises by the Tenant and the ordinary operation of natural forces'.
11. The *Office of Fair Trading (Guidance on Unfair Terms in Tenancy Agreements)* is very clear on the subject of unfair standard terms. A term will not necessarily be fair just because it appears in the Agreement and can be found to be unfair and unenforceable if it fails to meet the tests of transparency and fairness.

## Glossary

**“Balance of Probabilities”** – This is a flexible test which allows the adjudicator to be satisfied on the evidence that the event was more likely to have happened than not. To find ‘on a balance of probabilities’, the evidence provided in its favour must show that it is more probable than not that the alleged event occurred.

**“Burden of Proof”** – is a legal rule requiring a fact to be proved. It is the legal obligation of one party to prove the allegation made by him against another party. The burden of proof in a case lies with the claimant (Landlord/Agent) unless the defendant counters with a factual claim based on the allegation; in effect, accepting the issue but disputing it on the facts.

**“Fair wear and tear” and “betterment”** – a Landlord should not end up in a better position than he was in at the start of the tenancy and, when looking for a deduction or compensation from the deposit, must make some allowance for fair wear and tear. Fair wear and tear is the depreciation of the property due to the normal use of the property, on a day to day basis, over the entirety of the tenancy.

**“Mitigating losses”** - In contract law, the mitigation of damages refers to the Landlord/Agent’s conduct, which although not wrong itself, may lead to a reduction in damages. If the Landlord/Agent’s action or inaction helped to make the situation worse, he may find he has put himself at a disadvantage.

**“Proportionate”** – The name given to the penalty awarded for a breach of the Tenancy contract which must be relative in size to the severity of the breach.

**“Reasonable”** – A standard used to decide what is fair and appropriate under usual and ordinary circumstances, i.e. according to reason.

**“Unfair Contract terms”** – a set of regulations put in place to protect consumers (people acting for personal and not for business purposes). Intended to prevent consumers from being at a disadvantage when signing contracts, Terms and Conditions or the ‘small print’ over which he has no power to negotiate or change.

These regulations mean that a consumer may not be bound by a contract term if a ‘standard’ term is unfair. A ‘standard’ term will be unfair if it creates a significant detriment to the consumer and goes against the requirement of good faith. The regulations require, amongst other things, that plain intelligible language is used but an unfair standard clause will not invalidate the whole contract; just that particular term.

These regulations are underpinned by the Office of Fair Trading Guidance on Unfair Terms in Tenancy Agreements 2005 and should be considered when drafting tenancy agreements.

For the Guide please follow:

[http://www.offt.gov.uk/shared\\_offt/reports/unfair\\_contract\\_terms/oft356.pdf](http://www.offt.gov.uk/shared_offt/reports/unfair_contract_terms/oft356.pdf)

**“Weighting”** [of evidence] – assigning relevance to each party’s evidence and assessing/measuring the credible proof on one side of a dispute as compared with the credible proof on the other.