

Key Matters

Opening the door to tenancy deposit protection in Scotland

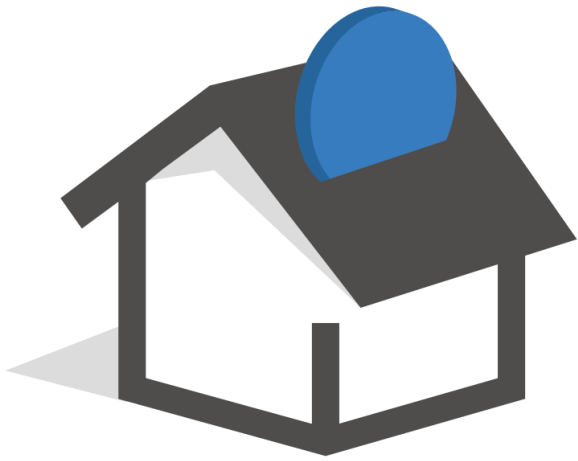
ISSUE 6 - AUGUST 2021

ADJUDICATION SPECIAL

NEWS - STATISTICS - ADVICE



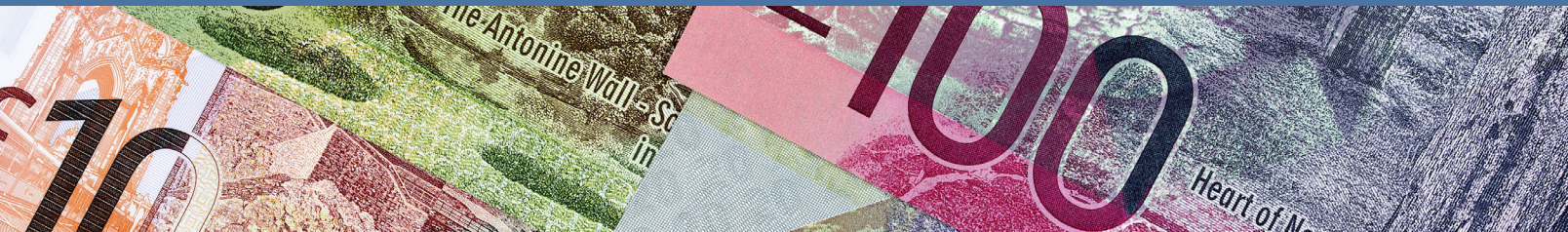
SafeDeposits
Scotland



SDS Resolution

Now handling cases
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Rent Arrears



Property Standards

Repairs

Entry Rights



Threatened
Evictions



Breaches of
Tenancy Terms



Noise/Anti-Social
Behaviour*



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our interactive resolution referral form at
www.sdsresolution.com

*Except serious anti-social activity

Come on in...



WELCOME

Welcome to this Adjudication Special issue of Key Matters.

We wanted to devote some more pages than normal to the processes, principles and trends of all things adjudication and ADR, hence this slightly different format to the magazine.

Only a very small minority of tenancies end with some kind of dispute over the repayment of a deposit, but for the parties involved it is a serious matter so we will always do everything we can to inform and educate people on the ins and outs – from helping to avoid disputes in the first place, to making things as smooth as possible for all parties if a dispute is unavoidable.

Interestingly, over the course of the past year we have seen a decrease in adjudications requested and an increase in disagreements resolved early through self-resolution – a sign that landlords, agents and tenants are willing to talk to each other. We hope that this issue of Key Matters will help readers to have these conversations more comfortably should they arise, and please remember that we are always here to help with any queries.

Mike Smith
Operations Manager
SafeDeposits Scotland

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SafeDeposits
Scotland

CUSTOMER
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Published in Glasgow by SafeDeposits Scotland

Meet the Team

If you need to discuss a dispute or potential dispute surrounding a tenancy deposit protected by SafeDeposits Scotland, you will speak to a member of our Glasgow-based Alternative Dispute Resolution (ADR) team – perhaps you have already spoken to Paula, Cameron or Samantha in the past. Here is a little introduction to the team...



Paula Guthrie
Resolution Manager

Having joined SafeDeposits in 2013, just six months after the scheme's launch, Paula is the longest serving member of the team. As an Associate member of the Chartered Institute of Arbitrators and possessing the Level 6 award in Residential Letting & Property Management – Scotland, combined with her years of experience at SafeDeposits, she is well versed on all matters relating to tenancy deposits and ADR.

Following earlier roles working for the army, for an IT company and for a global shopping outlet group, Paula has – no pun intended – found her home in the PRS as she nears a decade of service at SafeDeposits.

Away from the office she has a passion for the outdoors and can often be found heading to the Highlands with a backpack and tent.

Cameron Smith
Resolution Service Advisor

Cameron has been part of the SafeDeposits team for just over three years, having started in the customer service team before moving to ADR. His day to day duties are to advise on potential disputes – via the end of tenancy phone line – and assist with deposits that are in dispute.

Prior to joining the scheme, Cameron studied Law at the University of Strathclyde, where he took a particular interest in his final year classes in mediation and ADR.

Outside of work he is a connoisseur of music – both listening to and playing. He is in a heavy metal band who have recently released their first singles.



Samantha Gardner
Adjudication Advisor

Samantha joined SafeDeposits in October 2019 and assists landlords, letting agents and tenants on a daily basis, guiding them on the dispute process and helping them to avoid entering into disputes in the first place where possible.

Another legal eagle, she originally studied and has a BA (Hons) degree in Criminal Justice.

Samantha is very active, enjoying spending time in the gym, walking (she aims for 10,000 steps a day) and hillwalking. She is a keen reader too, with books on mindset and crime mysteries being her preferred choices.

The Benefits of Self-Resolution



In line with tenancy deposit schemes regulations, SafeDeposits Scotland will only refer dispute cases to adjudication where the scheme is satisfied that the landlord (and any agent acting on their behalf) and tenant have attempted to resolve the dispute but without success.

Besides this being a requirement, there are a number of benefits to all parties of engaging in early self-resolution, which Cameron Smith explores here...

Self-resolution is when two parties in a disagreement open up a direct line of communication between each other, with a view to finding a mutually agreeable solution. While the full ADR process will of course be a necessity in many cases, there is much to be gained from self-resolution – in particular the all important commodity of time.

The ADR process takes around eight to twelve weeks, taking into account evidence submissions, reviews and decisions. For a matter that could have otherwise been settled through an amicable conversation between parties, that is a lengthy period of time. When a dispute enters ADR the disputed monies are not accessible to either party until the conclusion of the dispute process. These are funds that a tenant may require for a new deposit, or that a landlord may want to use towards rectifying the cause of the dispute – for example having damage fixed ahead of a new tenant arriving.

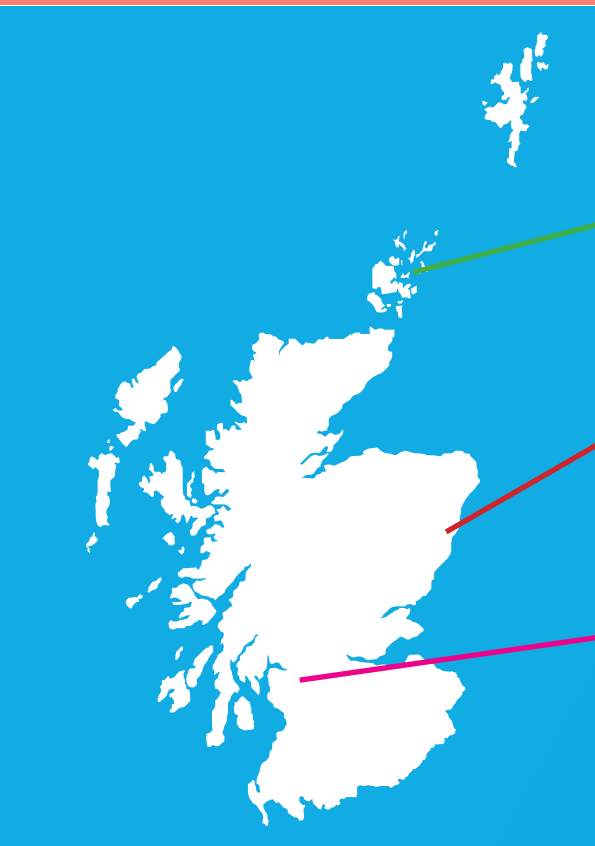
Self-resolution also gives parties a greater degree of control over the outcome of their disagreement. The idea of "meeting half way" becomes an option and while they may have had to give some ground in their initial stance, parties are less likely to feel aggrieved if they have been part of the decision making process. Through the other route of ADR our independent adjudicators can only make decisions based on the evidence made available to them, which varies in quality and quantity from case to case and can sometimes result in surprise for those whose evidence has not been as compelling as they perhaps might have believed.

Statistics here at SafeDeposits Scotland point to an embracing of self-resolution. Between 2019–20 and 2020–21, the number of disputes handled by our ADR team reduced by over 460 cases. Of ADR cases requested we estimate that around 40% do not proceed when parties are asked to provide information on prior efforts to come to an agreement. This would suggest that the parties have started to talk independently and the result for them is deposit monies being paid out within five working days of reaching their agreement – rather than waiting for up to 12 weeks for a decision.

Our end of tenancy helpline (call 03333 213 136 and select option 5) can help parties establish whether any potential disagreement can be resolved through self-resolution or might require ADR, prior to submitting a deposit repayment proposal.



Dispute Trends



Where?

Where are tenancy deposit disputes most commonplace in Scotland, and where are they more of a rarity? Splitting the country into its 16 postcode areas, we found the following trends...

Lowest dispute rate
A lone dispute in the Orkney Islands secured the KW postcode the lowest dispute rate in Scotland during 2020-21. The ZE area covering the Shetland Islands also had only one dispute, but was pipped at the post for second lowest dispute rate by the DG postcode area.

Highest dispute rate
Disputes in locations including Aberdeen, Ellon and Inverurie earned the AB postcode area the highest dispute rate in 2020-21. The postcode areas home to Scotland's three other biggest cities - G, EH and DD - had the next highest rates respectively.

Notable by its absence...
In 2020-21, Bishopbriggs (population 23,540) in East Dunbartonshire was the largest town in Scotland to have had no tenancy deposit disputes recorded by SafeDeposits Scotland.

Why?

Key Matters has featured the most common reasons for disputes before, but it is always information worth repeating to help landlords, letting agents and tenants see where problems arise most often - and help them avoid entering similar disputes.

The SafeDeposits Scotland website at www.safedepositsscotland.com contains a range of guidance content on how these different types of claim are handled by adjudicators, along with case studies.

With a reminder that there can be more than one type of claim made against a deposit, here are the most common types of dispute claim made in 2020-21, as a percentage of all disputes handled by SafeDeposits Scotland.

CLEANING	70%	
DAMAGE	43%	
REDECORATING	21%	
RENT ARREARS	15%	
GARDENING	8%	
OTHER	46%	

How much?

In 2020-21 the average amount for disputed claims against tenancy deposits held by SafeDeposits Scotland was £323.

The type of claim with the highest average disputed amount was rent arrears at £349. Claims relating to gardening had the lowest average disputed amount, which was £139.

Common Mistakes in Disputes

Landlords will typically have a compelling reason for why they wish to claim a deduction from a tenancy deposit, yet lack of certain details, misuse of evidence or omissions from inventories and tenancy agreements will often result in a reduced award or even no award to the landlord. Here [Samantha Gardner](#) highlights common mistakes made in evidence submissions and how to avoid these.

Photographs missing details



If submitting photographs as evidence, make sure these are dated, labelled and provide context to your claim.

Length of time between inventory being produced and tenancy starting

An inventory should be contemporaneous. The inventory should be dated within three days before the tenancy start date.



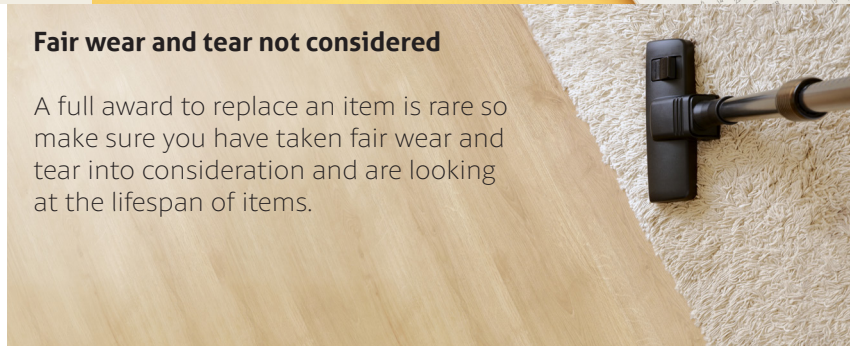
Lack of detail on inventory

It is not enough to list an item. You should make sure that the cleanliness, condition and age of the item are noted in your inventory.



Fair wear and tear not considered

A full award to replace an item is rare so make sure you have taken fair wear and tear into consideration and are looking at the lifespan of items.



Tenant admissions do not guarantee a full award

Whilst a tenant may admit to something, the adjudicator still needs to take into account factors like fair wear and tear. Therefore a full award for a "new for old" claim will be unlikely.



No reference to smells in inventory

Always remember to note smells (or absence of them) in an inventory at the start of a tenancy. It is often something that is missed but can be helpful if, for example, you find your tenant has been smoking in breach of the tenancy agreement and this has left an odour not previously present.



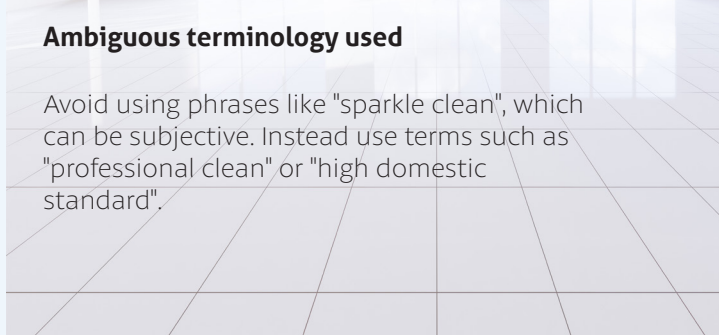
Contractor statements not provided

If contractor statements show the problem, the cause and how it was resolved, these can be really helpful. If the contractor cannot say what caused a problem, a helpful alternative is for them to state what did not cause it.



Ambiguous terminology used

Avoid using phrases like "sparkle clean", which can be subjective. Instead use terms such as "professional clean" or "high domestic standard".



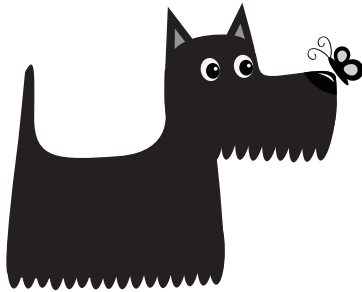
The 8 Stages of a Dispute



START

REPAYMENT DISPUTED - ADR REQUESTED

Once a case falls into dispute, we will write to both the Landlord/Agent and the Tenant to confirm that the case has reached the resolution team, and that there will now be a period of time for parties to reconsider/negotiate.



CASE ASSIGNED TO AN ADJUDICATOR

This is when the case has been assigned to a specific Adjudicator who will review all provided evidence, and who will make a decision on how the disputed amount should be returned.

**Time allocated 25 WORKING DAYS
(20 working days to reach a decision + 5 working days to issue the report)**

DECISION ISSUED: AWAITING REQUESTS FOR REVIEW

This is when parties can apply for a review/appeal of the adjudication decision – a review will not be accepted simply on the basis that the landlord, agent or tenant disagrees with the outcome. SafeDeposits can only accept a request for the review of the decision if the adjudicator has erred in law and/or fact.

**Time allocated 15 WORKING DAYS
(10 working days for party to request a review + 5 working days for adjudicator to accept/decline review request)**



DECISION UNDER REVIEW: REVIEW IN PROGRESS

This is only applicable if a review request has been accepted. A new Adjudicator will be assigned to re-assess the case. This does not mean that the outcome will necessarily change.

Time allocated 10 WORKING DAYS



If there is a disagreement about the repayment of a deposit at the end of a tenancy and this cannot be resolved via self-resolution, parties have the option to enter into a formal dispute – provided they have shown evidence of their attempts to resolve the matter. The subsequent adjudication process would be carried out at no cost to either party by an independent adjudicator.

The journey of a dispute, including the timescales involved, is shown here. All timescales are in line with The Tenancy Deposit Schemes (Scotland) Regulations 2011.

**AWAITING LANDLORD/AGENT EVIDENCE
(CASE ACCEPTED)**

We will then email the Landlord/Agent and invite them to submit evidence in support of their claim. Undisputed repayments will be instructed.

Time allocated 10 WORKING DAYS

AWAITING TENANT EVIDENCE

The following day we will check the Landlord/Agent evidence, and invite the Tenant(s) to view their submission and to provide evidence of their own.

Time allocated 10 WORKING DAYS

AWAITING PRE-ADJUDICATION REVIEW

This is when both sets of evidence, plus the Landlord/Agent comments have been received, a case manager will give both submissions a final check before being assigned to an Adjudicator.

There is no set timescale for this stage, which is dependent on the volume of provided evidence. Does not normally take longer than 5 working days.



**FINAL DECISION ISSUED -
DEPOSIT TO BE REPAYED**

There are two possible outcomes:
The initial decision will now be finalised if no reviews were requested/review request has been declined.

Or

Upon the review being accepted, the new decision is issued.

**Repayment will be made within
5 WORKING DAYS**



Adjudication Digest

This issue's case studies have been prepared by Resolution Manager [Paula Guthrie](#)

Regular readers of Key Matters will be familiar with the Adjudication Digest section, in which we share a couple of case studies to show how adjudicators have reached decisions with disputes of different types. In this Adjudication Special we share a further selection of examples – hopefully you will find the additional content on adjudication elsewhere in the magazine provides further context to the types of cases we deal with, the decisions made and how these are reached.

Case Study: An Open-and-Shut Case

There are two interesting points to take away from this case relating to a property in Uddington. The first is that not every proposed deposit deduction results in either complete agreement or complete disagreement from the tenant. In this instance the tenants accepted the majority of the claim (over £600 in total) that the landlord had made against the deposit, however they felt that part of the claim for cleaning was excessive and disputed £107 in relation to this.

Among the issues that the letting agent had raised were that the oven and the fridge, which had been left with food and spilled juice in it, needed cleaning. There was also dust throughout the property and issues with grime and mould in the bathroom.

The cast iron nature of the evidence provided by the agent to back their claim is the second point to take away from this case. Throughout their report the adjudicator was able to cite a number of factors that could be considered best practice for an evidence submission, namely:

- The inventory for the start of the tenancy was provided and this stated that the property had been professionally cleaned;
- A series of clear, timestamped photographs from both the beginning and the end of the tenancy – and therefore providing a clear comparison between conditions at either end – was provided.

The visual and written evidence of the differences in the property between beginning and end of tenancy, combined with detailed invoices, satisfied the adjudicator that the sum requested was reasonable and awarded the agent the full amount that had been disputed.



Case Study: Not Quite a Clean-Cut Case

This case from Falkirk incorporates claims for a variety of reasons, as well as featuring two regular topics when discussing adjudication – evidence quality and betterment.

As with the case opposite, the adjudicator for this case found the cleaning element of the claim made by the letting agent to be fair – in evidence a quotation reflecting the amount claimed and details of works carried out, along with a clear inventory, check-out reports and photographs were provided. The tenant on the other hand was unable to provide evidence supporting their statement in response to the proposal that they had left the property in the same clean condition detailed in the inventory. The adjudicator awarded the full amount claimed for cleaning (£160) to the letting agent.

Another area of the claim where the agent was awarded the full amount (£450) was redecoration. The original inventory had shown the walls were freshly painted at the start of the tenancy, and the adjudicator noted that the findings in the check-out report showed decor had sustained considerable markings in excess of fair wear and tear.

Fair wear and tear did however play a part in the outcome of the damage element of the claim. The disputed amount here was £80 for the replacement of a glass shower screen which had been removed during the tenancy. That the screen had been removed was not in question, however the adjudicator considered that charging the tenant for the full replacement of such an item would constitute betterment accounting for fair wear and tear expected during a tenancy lasting just over two years. A reduced amount of £50 was awarded here.

The final part of the claim came under the category of "other" and related to costs for clearing the garden, garage and garden shed. In this instance no quotations were provided to support the £145 claim, and the check-out report also verified the tenant's statement that an agreement had been made for them to return and clear the highlighted areas after lockdown restrictions had eased. No award was made to the agent for this part of the claim.



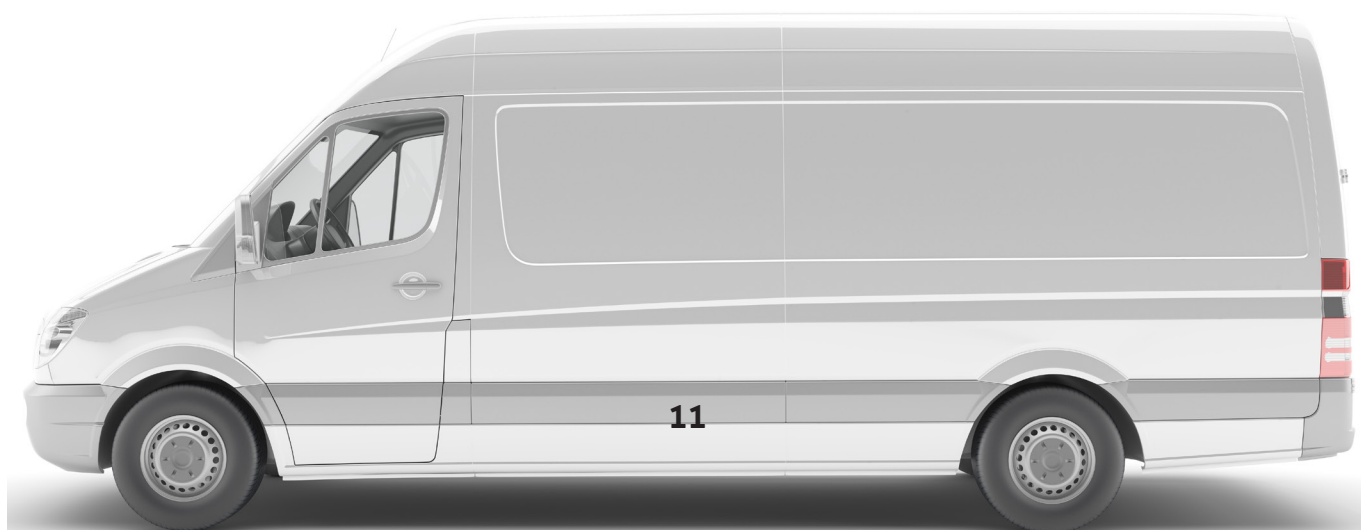
Case Study: Left Behind

Tenants can sometimes leave items behind in a property when a tenancy ends, and for a variety of reasons. In some instances there is a well intended misconception that the landlord or a future tenant might benefit from the item they have left, but the reality is that landlords will want the property to be returned as it was found and there are time and costs involved in disposing of items big and small that were not originally features of the property.

In this case from Aberdeen, a fairly significant selection of belongings had been left by the tenant after they moved out. This included a sofa, two televisions, bed frames, mattresses and large rugs. The adjudicator could clearly see on the inventory that none of these items had been in the property prior to the tenant moving in, and saw the £80 claimed for their removal as fair thanks to an invoice of this amount from the removal contractor that was also provided with the evidence.

This part of the claim was awarded in full to the letting agent.

Elsewhere in the claim the tenant had disputed part but not all of an initial £90 claimed for damage. The letting agent subsequently reduced the disputed part of the claim to £30, which was reflected in an invoice provided for repair and the adjudicator was satisfied in awarding the £30 to the agent based on this evidence.



Further Support

We hope that you have found this Adjudication Special issue of Key Matters helpful. Within these pages we've covered common mistakes and how to avoid them, what is involved in the dispute process, case studies featuring a variety of scenarios and the increasingly popular avenue of self-resolution. SafeDeposits Scotland also offers a variety of further resources to help landlords, letting agents and tenants alike should they find themselves in or even heading towards a dispute – here is how we can help...

End of Tenancy Line

If a tenancy is still live but you have an indication that there will be a disagreement when it ends, we can provide advice on our end of tenancy line – just select option 5 when calling our main telephone number 03333 213 136. Here we can discuss what your options might be when the tenancy ends, and ideally help you from entering into a dispute.

Intermediator

While we strongly champion the concept of self-resolution, we appreciate that not everybody is comfortable having the types of conversations that might be involved in negotiating an agreeable solution to a problem – particularly if there has been a "falling out" between parties. A breakdown in communications between parties however should not completely rule out the possibility of negotiation. Our ADR team will be happy to act as a go-between for both parties, with a view to helping negotiate an amicable resolution and avoiding a lengthy dispute.



Online Resources



The resource centre within our website contains a host of guidance documents including detailed descriptions on how the adjudication process works, how SafeDeposits Scotland approaches different types of cases and how parties should present their case to an adjudicator.

We run regular online training sessions, many of which focus on resolution and adjudication, for landlords, agents and tenants. All of these sessions are free and we advertise them on our social media channels, as well as via e-newsletter to those who are subscribed to the newsletter. You can find recordings of previous sessions on our YouTube channel.

Bespoke Training

Through our ADR and Customer Relations teams we can arrange bespoke training on adjudication for letting agents. We know that agents have many processes to deal with across the whole rental spectrum and can often have new staff joining, so we are always more than happy to sit down with teams large and small to provide refresher training on ADR.

Feedback

Are you having little success in disputes and encountering the same issue(s) in each case? We can speak to you on a one to one basis about your evidence submissions – in particular inventories – and how you might go about making a more robust case should you find yourself in a future dispute.

Have You Heard?

The latest news from SafeDeposits Scotland and the wider private rented sector

News from the SafeDeposits Scotland Charitable Trust

Under One Roof, which promotes the management, maintenance, improvement, sustainability and preservation of tenements and tenement communities in Scotland by means of education and promoting good practice, has been awarded a funding grant of £35,985 by the SafeDeposits Scotland Charitable Trust. With the grant, the charity will develop and conduct a series of webinars for private landlords and letting agents to support their management of tenements, covering a range of subjects including: energy efficiency; raising money to pay for repairs; dealing with noise in flats. SafeDeposits Scotland will share booking links for webinars via its usual channels when these are available, and you can read more about Under One Roof at www.underoneroof.scot

In other news, the UK Collaborative Centre for Housing Evidence (CaCHE) has published the latest report in its body of work on Raising Standards in the UK Private Rented Sector, with funding from the SafeDeposits Scotland Charitable Trust and TDS Charitable Foundation. The study – Health and wellbeing in the UK private rented sector – carried out interviews with 53 tenants from across the UK to explore the human face behind statistics indicating that more people, particularly private renters, are feeling lonely and experiencing deteriorations in wellbeing since COVID-19. CaCHE's work to date can be found at www.housingevidence.ac.uk

Climate Emergency Theme for Scottish Housing Day

Scottish Housing Day, which annually raises awareness of challenges and successes in the housing sector, returns on 15th September and will this year focus on housing and the climate emergency.

With Glasgow hosting the United Nations climate conference COP26 in November and the Scottish Government having introduced targets to reach net zero carbon emissions by 2045, Scottish Housing Day 2021 will encourage people to think about the role that they and their homes will play in tackling the climate emergency and signpost them to sources of advice and information to help them reduce their energy use, move to low carbon heating and to access other sources of support.

SafeDeposits Scotland will get behind Scottish Housing Day by working with partners to help share information and resources that will aid those living and working in the private rented sector. Keep an eye on our social media channels.

We're supporting



Scottish Housing Day

15 September 2021
www.scottishhousingday.co.uk

NOT-FOR-PROFIT BODY'S

TOP 5

BEST ORGANISATIONS

TO WORK FOR

2021
cert.b.co.uk

SafeDeposits and Partners Celebrate Achievements

The Dispute Service, which comprises SafeDeposits Scotland and its sister tenancy deposit schemes TDS (England and Wales) and TDS Northern Ireland has been ranked number 3 in the UK's Best 10 Not for Profit companies to work for in the Best Companies Awards 2021.

The Dispute Service CEO Steve Harriott said "Of all the awards, this one means so much because it comes directly from our teams across the UK. A happy workplace equates to great service. Our customers continuously feedback how friendly our staff are; that level of service can only come from people who genuinely enjoy their job. To be voted number 3 in the Not-for-Profit list is a stunning achievement."

Meanwhile SafeDeposits Scotland, TDS and TDS Northern Ireland have all been shortlisted individually in the Supplier of the Year category for the 2021 ESTAS awards taking place in October.

Calendar of Events

Online and in-person events coming up in Scotland's private rented sector

On this page you will find information on a selection of PRS related events taking place in Scotland during the coming months. Please note that all events – particularly in-person engagements – remain subject to change due to the fluid nature of lockdown restrictions and other variables. Places at all events are subject to availability and booking details are provided below.

SafeDeposits Scotland Online Training Sessions - ONLINE, VARIOUS DATES

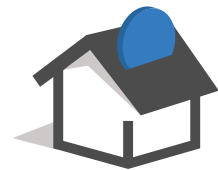
AVOIDING DISPUTES THROUGH SELF-RESOLUTION

Self-resolution is when two parties in a disagreement open up a direct line of communication between each other, with a view to finding a mutually agreeable solution. Benefits can include time saved for all parties, quicker repayment of funds and a greater control over the outcome of the disagreement for all concerned. In these sessions we will explore the concept in more detail.

Tuesday 10th August – 11.30am

Tuesday 24th August – 11.30am

Booking links via
www.safedepositsscotland.com



**SafeDeposits
Scotland**

Our online sessions are free to attend and we regularly update our website with details of forthcoming training.

Talking Deposits with SafeDeposits Scotland and SAL* - ONLINE, THURSDAY 2ND SEPTEMBER

Thursday 2nd September – 11.30am

Booking via
www.scottishlandlords.com/events

*Available to SAL members only. Details on how to join can be found on the SAL website.



Informal online session for SAL members to ask questions or chat in general about deposits with John Blackwood and Paula Guthrie.

Scottish Housing Day - WEDNESDAY 15TH SEPTEMBER

The annual sector-wide day of raising awareness of challenges and successes in housing, this year focusing on housing and the climate emergency. Supporters will host a variety of events and engagements across Scotland on the day. Visit www.scottishhousingday.co.uk for further information and see page 13 for SafeDeposits Scotland's Scottish Housing Day plans.

ARLA Propertymark Scottish National Conference - EDINBURGH, TUESDAY 21ST SEPTEMBER

Tuesday 21st September – 8.30am – 4.30pm

Venue: Edinburgh International Conference Centre – EICC

When available, booking information will appear at
www.arla.co.uk/events



Tailored for agents of all levels, the conference is set to provide updates on legislative changes and the latest thinking on best practices for the industry.

Meet Our Partners

SafeDeposits Scotland is an innovative partnership in the private sector. We're governed by people who understand and have a wealth of experience in the Scottish private rented sector. Our partners are:



The over-arching aim of ARLA Propertymark is to promote the highest standards of professionalism and integrity among those working within the property industry and to encourage members of the public to proactively seek out their members when involved in any kind of property transaction. ARLA Propertymark also runs some 250 short courses each year covering a wide range of property and industry related subjects, as well as holding a number of specialist conferences and forums throughout the year.



The Royal Institution of Chartered Surveyors (RICS) provides the world's leading professional qualification in land, property, construction and the associated environmental issues. An independent organisation, RICS acts in the public interest: setting and regulating the highest standards of competence and integrity among their members; and providing impartial, authoritative advice on key issues for business, society and governments worldwide.



The Scottish Association of Landlords (SAL) represents the interests of all landlords and letting agents throughout Scotland. Working with various Holyrood and Westminster government departments, plus Scotland's local authorities, SAL campaigns for recognition of their interests as a profession and provides information, training and advice to their members nationally, and through their local branch network.



SAL provides a comprehensive package of membership services, advice support and policy work for Scotland's registered letting agents via its Council of Letting Agents (CLA) membership plan. The CLA represents Scotland's leading letting agents and leads the lettings industry in Scotland.



The Dispute Service (TDS) is an independent, not-for-profit company established in 2003 to resolve tenancy deposit disputes in the private rented sector in England and Wales. The company has achieved the UK Government Standard for Customer Service Excellence.



safedepositsscotland.com

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