



SafeDeposits
Scotland

A guide for tenants, landlords and agents with pre-July 2012 tenancies



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- This guidance from SafeDeposits is intended to assist tenants, landlords and agents in relation to tenancies which were already in existence on 2nd July 2012;
- It should be read in conjunction with [A guide to deposits, disputes and damages](#) and [A guide to inventories, check-in and check-out reports and schedules of condition](#);
- This document is for guidance only – it is not intended to guarantee when an award may be made;
- Each dispute is different and any award will be based on our interpretation of the specific evidence presented to us at the time.

Because the deposit protection regulations in Scotland apply to tenancies which were already underway on 2nd July 2012, we appreciate that the tenancy documentation was not necessarily drawn up with the possibility of it being considered by an adjudicator in the event of a dispute at the end of the tenancy. This will apply in particular to tenancies which were already long standing in July 2012. For example, landlords and agents may be wondering whether they need to make any amendments to deposit clauses in tenancy agreements, or landlords and tenants may be concerned that information about the condition of the property at the start of the tenancy is not as complete as it might be.

In most cases, it is unlikely that the clock can be turned back completely. However, there are some steps that can be taken to allow a fuller picture to be presented to an adjudicator at the end of the tenancy. Even if the case does not require the intervention of an adjudicator, greater clarity about the property's condition should help the parties reach a fair solution themselves at the end of the tenancy.

What can we do if there is no inventory or check in for the start of the tenancy?

An adjudicator normally relies on a comprehensive inventory or check-in report as the best evidence of the condition of the property at the start of the tenancy. The adjudicator compares this with the evidence available about the property at the end of the tenancy to determine whether the condition has changed, whether the tenant is responsible for the change and whether it is beyond what might be expected as a result of normal occupation of the property. Particularly in long standing tenancies, an inventory for the start of the tenancy may not be available. Here are some options for the parties to consider to provide additional information about the property at the start of the tenancy.

If the tenancy is relatively new, it may be possible for the parties to agree in general terms about the condition of the property and its contents at the start of the tenancy. It is important to understand that this will not be a substitute for a full inventory/check in report. How useful it may be will depend on how close to the start of the tenancy it is, how much detail can be provided and how much can be agreed between the landlord and the tenant. An example is shown below:

Property address:

Tenant
Landlord
Agent

Tenancy start date

Description of property – 2 bed, first floor flat with 1 reception, kitchen and bathroom. Part furnished by landlord.

The parties agree that the property and its contents were in good, clean and tidy condition at the start of the tenancy, subject to the following:

	Landlord comments	Tenant comments
Standard of cleanliness	Freshly cleaned throughout by landlord	Agreed, except for carpets and fridge
Standard of decor	Was last painted 2 years ago	Lots of marks in hall and lounge, rest of rooms were fine
Flooring	Laminate throughout except bedrooms. Some scratches/marks in hall. Carpets around 5 years old. Unmarked	One burn mark on carpet in bedroom 1 when I moved in. Laminate fine.
Condition of garden	Grass cut, beds tidy	Agreed

Signed: Landlord Tenant
Date:

It is important that both landlord and tenant sign and date a document like this to demonstrate that it has been completed jointly. Otherwise, it is likely to have very limited value as evidence in any dispute.

Conduct an interim inspection now and agree an inventory or report

While there are practical difficulties in carrying out a full inventory when a tenant is living in the property, the parties could opt to produce a report on the condition of the property and its contents during the tenancy. Although this is likely to be of little help in relation to any earlier periods of the tenancy, it should assist in discussions about any change in condition between the report date and the end of the tenancy. As is the case with any inventory or report on condition, it is important to include as much relevant detail as possible. The report will carry more weight if it is signed by the parties to the tenancy to demonstrate that they are in agreement. It could be completed by the landlord and tenant together, by the agent or by an independent inventory company.

If it is not possible to produce an agreed document, the parties should keep copies of any correspondence between them detailing points of disagreement at the time, as one of them may wish to produce the report as evidence to an adjudicator at the end of the tenancy. If the report has been undertaken when the tenant was not present, it is important to be able to demonstrate that the tenant has been provided with a copy and offered the opportunity to comment on it.

Is other evidence from the start of the tenancy likely to be useful?

Sometimes a landlord will have employed a contractor to undertake work at the start of the tenancy. If he has kept invoices for the work, they can be useful evidence. Typical examples would include invoices for cleaning or decorating, or perhaps for the supply of new carpets, furniture or white goods. As with all invoices, the more detailed, the better.

The landlord or agent may also have some photographs of the property, possibly including

marketing material. The limitations of photographic evidence are discussed more fully in [A guide to inventories, check-in and check-out reports and schedules of condition](#). However, they may be of some assistance, particularly if the parties are able to agree that the images are generally accurate in terms of showing individual items or general condition at the start of the tenancy.

When a property is managed by an agent, it is often the case that periodic inspections are carried out during the tenancy. These inspections are intended to inform a landlord of any problems with the property at a point in time, whether or not they are the tenant's responsibility. Typically, a tenant is also informed if there are actions they need to take to fulfil their obligations under the tenancy agreement at that time. Although an adjudicator will consider any documentary evidence provided, in our experience, these reports are fairly brief and are rarely helpful in isolation.

Amendments to the tenancy agreement

It may be the case that the tenancy agreement signed by the parties does not contain a clause detailing how the deposit may be used at the end of the tenancy, or any existing clause may be vague. An adjudicator will need to be satisfied that any potential award to the landlord can be made from the deposit, depending on the provisions of the tenancy agreement.

It is in the interests of both parties that the deposit clause is clear. However, any changes to the agreement will need to be agreed between the parties, perhaps by way of an addendum to the existing contract.



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