

# Adjudication Digest June 2015

## “Leather Jacket Infestation”

The Adjudication Digest takes a recent decision by a TDS Adjudicator and sets out the reasoning behind the decision. The aim of these Digest reports is to help tenants, landlords and agents better understand how we make our adjudication decisions. The names of the landlords and tenants involved have been removed and this is only a brief summary of the dispute.

<b>Amount of deposit in dispute:</b>	<b>£ 500.00</b>
Dispute initiated by:	
<b>Award made:</b>	
Tenant	£500.00
Landlord	£0.00
Agent	£0.00

This month's case looks at a claim made by the landlord against the deposit for re-turfing a lawn following damage caused by a leatherjacket infestation.

During the tenancy the tenant reported (to the agents) there was an on-going issue with the rear lawn which the tenant eventually addressed by arranging for a leatherjacket infestation to be treated and the lawn reseeded. However the seed failed to germinate and at the end of the tenancy the landlord claimed to have the lawn re-turfed.

The landlord looked to rely upon the tenancy agreement which in addition to obligations requiring the tenant to keep the garden in good condition also placed a responsibility on the tenant to take all reasonable precautions to prevent infestations on the property and to pay to eradicate any infestation caused by 'negligence'.

A report from a lawn expert advised that the seed was failing to germinate due to a lack of sunlight (the garden was heavily shaded) but confirmed there was no presence of the larvae to be found. The check-out comments did not identify any issue with the lawn, reporting only that it had been seeded.

The adjudicator was satisfied the tenant's actions were likely to have eradicated the larvae but that the lawn was left bare as the grass seed did not respond due to a lack of light. The adjudicator considered this was not within the tenant's control and that there was no evidence to show that the infestation which ultimately led to a problem with the lawn had been caused by the tenant's 'negligence'. As the deposit serves to compensate the landlord for breaches of the tenancy agreement by the tenant, the adjudicator made no award to the landlord for re-turfing the lawn.

### **So what are the key points here?**

The evidence showed the lawn deteriorated during the tenancy and the landlord looked to remedy their financial loss by reliance on the provisions of the tenancy agreement. However the tenant tried to deal with the lawn problem in that they took action to eradicate the leatherjacket larvae and attempted to reinstate the lawn by re-seeding it. The evidence showed that the fact the seed did not grow could not be reasonably attributed to the tenant. The adjudicator considered the tenant's actions were reasonable and 'tenant like', with no evidence of any 'negligence' on the tenant's part or clear breach of their obligations under the tenancy agreement.