

THE LETTING PROTECTION SERVICE SCOTLAND

THE ESSENTIAL GUIDE TO DISPUTE RESOLUTION



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The LPS Scotland offers a paper based Alternative Dispute Resolution (ADR) Service. The adjudicator is not therefore required to act as arbitrator or mediator, to liaise between the parties, to chase evidence or to conduct an open hearing.

'Adjudicator' is defined within The LPS Scotland Terms and Conditions as an 'independent, impartial and qualified expert appointed by The LPS Scotland to adjudicate and provide a decision'.

The burden of proof in respect of a claim rests on the landlord or agent as the claimant to establish on a balance of probabilities that the tenant was in breach of the obligations under the agreement, and that the sums claimed are reasonable costs incurred or likely to be incurred as a result of the tenant's breach.

The adjudicator must adjudicate in accordance with the binding provisions of the laws of Scotland. The adjudicator must also be mindful of useful industry guidance and best practice, and in particular the following:

- › Guidance issued by the Association of Residential Letting Agents (ARLA) in respect of fair wear and tear.
- › Office of Fair Trading guidance in respect of Unfair Terms in Tenancy Agreements.
- › Guide to Best Practice for Inventory Providers, jointly issued by ARLA, Asset Skills, National Association of Estate Agents (NAEA) and Royal Institution of Chartered Surveyors (RICS).



The LPS Scotland adjudicators use a standard template for decisions. The document sets out the submissions received from both parties, i.e. landlord's/agents and tenant's Evidence forms and final comments / supporting evidence, and the dates on which the papers are received. The document also summarises all evidence and documentation in support of the parties' submissions which has been provided for the adjudicator's consideration.

TENANCY AGREEMENTS

In accordance with The LPS Scotland Terms and Conditions, it is the landlord's responsibility to provide The LPS Scotland with a complete, signed, valid, written tenancy agreement for the adjudicator's consideration. Without the tenancy agreement, the adjudicator cannot be satisfied as to the full terms of the agreement made between the parties. If the adjudicator cannot confirm the terms agreed, the adjudicator cannot make any findings that the tenant was in breach of those terms and the claim must therefore fail, and the funds will be returned to the tenant.

CHECK IN / CHECK OUT INVENTORIES

In accordance with the best practice guidance, the property inspections should be attended by both parties, and any report should be signed by both parties, in order to show acceptance of the contents of the document as a true record of the condition of the property. The format and content of inventories vary greatly. The adjudicators will decide the evidential weight to attach to any documentation submitted. There is no reason why a landlord cannot provide a complete fair and accurate inventory, however it is industry best practice for the inventory to be produced by an independent third party.

Time is of the essence – so it is advisable that the check in and check out reports are carried out as close to the beginning and end of the tenancy as possible.



VACATING INSTRUCTIONS

It is advisable to supply the tenant with written guidance on how to present the property on vacation for check out. Vacating instructions or evidence that the tenant has been invited and encouraged to attend the check out inspection can be used as evidence in a dispute.

PHOTOGRAPHS / VIDEO EVIDENCE

In accordance with best practice guidance and The LPS Scotland Terms and Conditions, any photographs or digital evidence should be dated, signed by the person who took them, or a statement should be attached by the party providing them confirming the date on which they were taken.



RENT ARREARS

If the claim relates to non-payment of rent, the agent/landlord should submit a copy of the rent account, or letter from the housing benefit department if this is relevant.

ESTIMATES / INVOICES

In accordance with The LPS Scotland Terms and Conditions, the agent/landlord should submit evidence of costs claimed. The claimant is required to evidence the reasonable costs incurred or likely to be incurred as a result of the tenant's breach and therefore invoices, receipts, estimates or quotations will all be persuasive.

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CORRESPONDENCE / EMAILS

The adjudication is evidence based, and therefore copies of any correspondence or emails between the parties may be relevant, and can be submitted for the adjudicator's consideration.

LOCALISED PRICING

The LPS Scotland adjudicators are mindful of regional variations in respect of charges for services and contractors. The burden rests however on the claimant to establish the reasonable local price in respect of the works claimed.

SUBMITTING EVIDENCE

The deadlines set out within The LPS Scotland Terms and Conditions are strict. All evidence must be submitted within the deadlines, or the opportunity to use the free ADR service may be lost and the funds returned to the other party by default. Parties are advised to carefully read the Terms and Conditions before agreeing to use the ADR service. Extensions of time can be agreed by the ADR team during the ADR process, but they must be contacted as soon as possible with any request. No extensions are granted retrospectively.



It is advisable to make evidence submissions by email or recorded delivery to ensure safe receipt within the required time frame. Parties are more than welcome to call or email The LPS Scotland shortly after sending their evidence to check that it has been received.

Users of The LPS Scotland must ensure that their contact details are kept up to date at all times.

The ADR decision can be appealed by either party within 10 working days of it being issued to the parties on the grounds that the Adjudicator has made an error in fact or law. Where a decision has been reviewed and a second decision is issued it is binding and final and cannot be appealed.