



Conditions of Deposit Disputes

Contents	Page
Introduction	3
Section A Best Practice At Actual End Date of Tenancy	4
Section B Deposit Dispute Acceptance Criteria	5
Section C Dispute Process and Timescales	7
Section D Deposit Dispute Evidence	9
Section E Review of Adjudication	11
Section F The Adjudication	12
Section G Miscellaneous Provisions	13

Introduction

These Conditions of Deposit Disputes are an addendum to the **my|deposits Jersey** Scheme Rules and set out the process and practice that will occur when a Deposit Dispute is raised with the Scheme. The definitions from the Scheme Rules follow to these Conditions of Deposit Disputes.

These Conditions of Deposit Disputes set out the legislative requirements related to the raising of a Deposit Dispute, the responsibilities of a Member and Tenant when the Deposit Dispute is raised, and how the Scheme will deal with the Deposit Dispute including its resolution.

The Tenant will be required to agree to comply and abide by these Conditions of Deposit Disputes when raising a Deposit Dispute with the Scheme.

The Scheme offers a free Alternative Dispute Resolution (ADR) mechanism, which is an alternative method to the Tenant and Member resolving the Deposit Dispute through the Court.

The Scheme actively encourages the use of ADR as a method of Deposit Dispute resolution.

By the Tenant accepting to use the Scheme's ADR mechanism (and having the Deposit Dispute accepted by the Scheme) the parties will be given the opportunity to present their case and evidence to a fully trained and qualified Adjudicator. The Adjudicator will analyse the evidence submitted and make a binding decision as to how the Deposit should be distributed.

Section A: Best Practice at the end of the tenancy

A1 At the end of the tenancy the Tenant should ensure that:

- A1.1 They have paid all rent up to date;
- A1.2 The Scheme is provided with their correct contact details and informed the Member of their alternative contact details;
- A1.3 They have tried to contact the Member to discuss and if necessary attempt to negotiate the return of the Deposit;
- A1.4 They check to see if the Member has made a release request;
- A1.5 If necessary, make a release request and then wait for the Member's response.
- A1.6 Only when the above has occurred can the Tenant inform us that there is a Deposit Dispute.

A2 At the end of the tenancy, the Member should:

- A2.1 Arrange for a check out of the Residential Property to be carried out for comparison with the condition report carried out at the beginning of the tenancy (in accordance with the Residential Tenancy (Condition Reports) (Jersey) Order 2014);
- A2.2 Ensure they obtain the forwarding contact details for the Tenant and update the online account at the release request stage;
- A2.3 If necessary, inform the Tenant of any proposed deductions within a reasonable period of time;
- A2.4 Where possible negotiate over any disputed deductions from the Deposit with the Tenant before making a release request;
- A2.5 If the Tenant makes a release request then respond within the 14 Working Days.

A3 If a Member is unable to contact the Tenant at the end of the Tenancy then we recommend that the Member:

- A3.1 Arranges a check out of the Residential Property as usual and makes a note of any deductions that should be made from the Deposit;
- A3.2 Using any contact details the Member holds for the Tenant, attempts to contact them to inform them of the proposed deductions;
- A3.3 Keep a record of all actions taken in relation to the Deposit;
- A3.4 Make a release request as per the findings of the check out.

Section B: Recording a Tenancy with the Scheme

- B1** To raise a Deposit Dispute the Tenant must have:
- B1.1 Vacated the Residential Property;
 - B1.2 Initiated the release of the deposit or responded to the Member's release request and informed us that there is a Deposit Dispute.
- B2** The Scheme may not accept a Deposit Dispute, when after investigation the Scheme discovers the matters are outside its remit because:
- B2.1 The Tenant has not complied with B1;
 - B2.2 The Deposit Dispute relates to matters other than the return of the Protected Deposit;
 - B2.3 Court proceedings have been issued regarding any matter related to the Tenancy Agreement in question (unless they have been withdrawn or are stayed for mediation purposes or the court has subsequently directed that the matter be dealt with by the Scheme's ADR);
 - B2.4 There are allegations of fraud, police involvement, criminal activities, duress or harassment by either party to the Deposit Dispute;
 - B2.5 The Deposit Dispute being raised is vexatious, frivolous or being raised unreasonably by the Tenant;
 - B2.6 It would be more appropriate for the Deposit Dispute to be dealt with through the Courts. The Scheme would rely on this clause if the Deposit Dispute included matters that could not reasonably be decided by an Adjudicator using paper based evidence or the Deposit Dispute contains complex matters of law.
- B3** If the Scheme is not satisfied that the Deposit Dispute is within its remit in accordance with B2 then the Scheme will contact both parties and provide the reasons and state how the Deposit will be released.
- B4** The Scheme will investigate the background to the Deposit Dispute and if at any stage, further information regarding a Deposit Dispute comes to the Scheme's attention that affects the reasons why a Deposit Dispute was either accepted or rejected, the Scheme reserves the right to change the initial decision and will provide full written reasons why the position has changed. The Scheme's decision on accepting or rejecting a Deposit Dispute is always final.
- B5** If the Deposit Dispute is not considered valid by the Scheme, the parties will be informed as soon as is reasonably practicable.

Joint Tenants

- B6** If the Deposit Dispute relates to a Joint Tenancy Agreement then only one Tenant, who must be named on the DPC, may raise the Deposit Dispute. This Tenant does not need to be the Lead Tenant but must confirm the following to the Scheme:
- [a] They will personally conduct all aspects of the Deposit Dispute pursuant to [b] to [e] inclusive;
 - [b] They have authority to act for all the Joint Tenants;
 - [c] They agree to fairly distribute the money which may be returned to him to the other Joint Tenants;
 - [d] They agree to indemnify the Scheme against any claims or loss by the other Joint Tenants; and
 - [e] They will notify all the Joint Tenants that the Scheme cannot resolve any disputes between the Joint Tenants.

Authorised Parties

- B7** At our discretion we may allow a Deposit Dispute to be raised and handled on behalf of a Tenant by an Interested Party as already advised to us or someone acting as an 'authorised representative' of the Tenant.

- B8** To act on their behalf, the Tenant and/or the authorised party must inform us in writing and provide reasons and evidence, which may, but not exclusively, include the:
- Tenant's difficulty with language or understanding the issues;
 - Tenant's disability or sickness or absence from the UK.
- B9** Our decision to accept or acknowledge a third party to take responsibility for the Deposit Dispute is final and we may require submission of identification or other evidence and documentation including any 'enduring power of attorney', 'lasting power of attorney' or other agency agreement.
- B10** If we accept the authorised representative then these Conditions will be interpreted so that the definition of 'Tenant' will extend to the authorised representative.
- B11** If a solicitor or any other professional representative is instructed by a party then the costs must be paid by the instructing party. The Scheme will not make any award for the costs related to the representation.
- B12** We may allow a Deposit Dispute to be handled on behalf of a Private Landlord Member by an authorised representative. The Member and/or the authorised representative must inform us in writing and provide reasons and evidence, which may, but not exclusively include:
- Member's difficulty with language or understanding the issues;
 - Member's disability or sickness.
- B13** We will not allow a Company Landlord or Agent Member to grant authority for another party to act on their behalf in regards to a Deposit Dispute.

Miscellaneous Provisions in Relation to Deposit Disputes

- B14** The ADR mechanism will not resolve any Deposit Dispute in excess of the amount of the held with the Scheme.
- B15** Each party is responsible for any costs and/or expenses incurred as a result of the ADR mechanism. The Scheme cannot make any award of costs related to the preparation of a Deposit Dispute.
- B16** The parties are able and encouraged to settle the Deposit Dispute before the Adjudicator makes a decision. Both parties must provide proof of their agreement to us by way of a written and signed instruction. We may independently check the authenticity of the signed agreement.
- B17** The Member is responsible for clarifying whether and why it has been agreed for any amount of the Deposit to be returned to the Tenant. If it is not clear what the agreed sum relates to then the Adjudicator will either make a request for further information, or using the evidence provided, make a decision as to why any amount has been returned to the Tenant, based on a balance of probabilities.

Section C: Dispute Process and Timescales

Tenant Raising Dispute

- C1** To raise a Deposit Dispute with the Scheme the Tenant is required to:
- C1.1 Reject the Member's release request and submit a Deposit Dispute with the Scheme;
 - C1.2 Inform the Scheme whether they wish for the Deposit Dispute to be resolved using the Scheme's ADR mechanism or through the Petty Debts Court.
 - C1.3 Provide the Scheme with the Tenant Evidence Form setting out their position and enclosing their evidence.
- C2** Should the Tenant wish to raise a Deposit Dispute using the Scheme's paper 'Tenant – Response to Landlord/Agents Application' form, the Deposit Dispute will not be considered as submitted by the Scheme until the form has been fully completed, returned and uploaded by us on to the Scheme's ADR electronic system and the Tenant is informed that the Deposit Dispute has been given a URN.

Tenant Choosing Court

- C3** Tenants have the option to choose to use the Petty Debts Court to resolve the Deposit Dispute.
- C4** If the Tenant wishes to use the Petty Debts Court then the Scheme must be informed when the Tenant submits the Deposit Dispute. Proof of court action being initiated must be received by the Scheme within 7 Working Days of the Scheme being informed that the Tenant wishes for Court to be used as the method of resolution.
- C5** If evidence is provided of the issued Court proceedings within the 7 Working Days then the Scheme will wait for a Court Order before releasing the Deposit money, unless those proceedings are abandoned at which point the Scheme will allow the parties to revert to the ADR process.
- C6** If evidence of issued Court proceedings is not received after the 7 Working Days then the Deposit Dispute will revert to the Scheme's ADR process for resolution.

Tenant Choosing ADR

- C7** The Tenant has the option of choosing to use the Scheme's ADR mechanism to resolve the Deposit Dispute. If the Tenant chooses to use ADR then the Scheme will inform the Member of the Deposit Dispute.
- C8** The Tenant has 10 working days from the date they receive confirmation of the Deposit Dispute from a Case Assessor to provide the scheme with details pertaining to the dispute and supporting evidence.

Member's Response to a Deposit Dispute

- C9** The Member will have 10 Working Days to inform the Scheme whether he also agrees to the matter being dealt with by ADR or whether he wishes for the matter to be dealt with at the Petty Debts Court.
- C10** If on the response in C8 the Member chooses to resolve the matter at Court then the Member must provide the Scheme with evidence of issued court proceedings within 7 Working Days of the date they provide on their Deposit Dispute Response Form.
- C11** If the Member provides evidence of the issued Court proceedings within the 7 Working Days then the Scheme will wait for a Court Order before releasing the Deposit money, unless those proceedings are abandoned at which point the Scheme will allow the parties to revert to the ADR process.
- C12** If evidence of issued Court proceedings is not received after the 7 Working Days then the Deposit Dispute will revert to the Scheme's ADR process for resolution.
- C13** If the Member agrees to use the Scheme's ADR then the Member has the 10 Working Days from the date they are informed of the Deposit Dispute to also provide us with their full reasons for the deductions to the Deposit and evidence as to why they are making the deductions.

Final Comments

- C14** The Scheme will then provide the Tenant with the Member's claim and evidence and provide the Member with the Tenant's claim and evidence.
- C15** The Member and Tenant have a further 5 Working Days to provide comments on each others claim and evidence.
- C16** The Deposit Dispute will continue to proceed to Adjudication even if the Member or Tenant has failed to submit their position and/or evidence within the required timeframe. Late evidence may only be accepted at the discretion of the Scheme.
- C17** The Scheme reserves the right to contact the parties to discuss the Deposit Dispute during the evidence gathering process with the aim of achieving an early resolution through negotiated settlement. If a negotiated settlement is achieved the agreement will be binding on the parties and the Scheme will release the disputed Deposit amounts in accordance with the agreement.

Section D: Deposit Dispute Evidence

- D1** The Deposit remains the property of the Tenant unless the Member proves entitlement; the onus is on the Member to demonstrate and prove that they are entitled to any amount they are claiming. The Member is required to provide the reasons and evidence to support any deductions to the Deposit. The Tenant can then rebut any of the Member's assertions and provide reasons and evidence as to why they are entitled to the return of the Deposit in accordance with their release request.
- D2** Both parties to the Deposit Dispute are responsible for setting out their position clearly. This includes pointing the Adjudicator to relevant evidence to support their position.
- D3** By the Tenant agreeing to use the Scheme's ADR mechanism both parties accept that the Adjudicator acts as an impartial party, and will have total discretion to assess the evidence as such. Whilst the Member will be provided with sufficient information in which to rebut the Tenant's claim, neither party will be entitled to cross examine or be involved in the Adjudication once the initial submissions have been made, unless specifically requested by the Adjudicator.
- D4** All evidence submitted must be relevant and proportional to the issues in dispute. The online ADR system can only upload single files up to a maximum of 20mb in size. The parties can contact the Scheme by telephone or email to discuss how to submit larger files. The Scheme accepts no responsibility for the failure of the system to upload any documents or for the quality of the information. The parties can view their submissions on line and the onus is on them to ensure they are complete and of sufficient quality to support their case. We will seek to remedy any issue informed to us before the relevant deadlines set by the Scheme, however if these deadlines are exceeded we cannot extend these but in exceptional circumstances.
- D5** Tenants are reminded that if the issues are particularly complicated or involve issues unrelated or exceeding the amount of the Deposit or where there is a large or complex amount of evidence then they may obtain a better result if the matter is resolved at Court.
- D6** Neither the Scheme nor an Adjudicator will be liable for any error or omission in an Adjudication if the error or omission arose because the claim or rebuttal or supporting evidence was incomplete, illegible, confusing, contradictory or misleading, as long as the Adjudicator has taken reasonable care with regards to the consideration of the position and evidence particularly when a large amount of evidence has been supplied by a party.
- D7** The Scheme recommends that all Tenants, Members and Landlord Clients of Agent Members read the relevant ADR guide (Tenant or Member), the Deposits, Disputes and Damages guide, and the other specific guidance and case studies available on the Scheme website to learn more about how to set out their claim or rebuttal and how evidence will be considered by an Adjudicator. The guides and case studies can also be posted if a request is made through our call centre or by letter.
- D8** The most important documents in a Deposit Dispute are the tenancy agreement, signed and dated check in and check out condition reports (in accordance with the Residential Tenancy (Condition Reports) (Jersey) Order 2014)) as well as dated photographic/video evidence. All costs incurred by the Member and claimed from the Deposit should be supported by valid invoices, receipts or estimates.
- D9** The guides provided by the Scheme give detailed information on how the evidence is considered by an Adjudicator but as a summary:
- D9.1** The check in/out report will be given more evidential weight by an Adjudicator if it has either been signed by the Tenant or conducted by an independent third party inventory clerk. If there is a doubt as to the independence of the report the party relying on it should set out why they believe it to be independent. If the report has not been signed by the Tenant the Member should explain why not and provide evidence that the Tenant was given the opportunity to do so.
- D9.2** With photographic and video evidence this should be used to support the party's position as set out in the claim or rebuttal. If the photographic or video evidence is not date stamped then the Adjudicator cannot be sure when it was taken. If a party intends to rely on the electronic properties of a photographic or video file the Scheme recommends the files are emailed rather than uploaded.

Returning Evidence

- D10** The Scheme will not return any evidence unless we are informed on submission that the party requires it back. If we have not received any instruction at this time in relation to the evidence, we reserve the right to destroy it. Physical evidence will only be held by the Scheme for two weeks from receipt and will be destroyed or shredded.
- D11** The Scheme cannot be held liable for any loss suffered as a result of us not returning the evidence when we were not informed on submission that it is required back.
- D12** We reserve the right only to return original documentation to you at your written request, and upon prior payment of postage by you.

Section E: The Adjudication

- E1** When the Scheme has received all of the parties evidence the Scheme will forward the following Dispute Papers to the Adjudicator:
- E1.1 The Member's full position and evidence;
 - E1.2 The Tenant's full position and evidence;
 - E1.3 Any other information the Scheme believes is relevant to the Deposit Dispute that has been communicated to us.
- E2** The Adjudicator has 20 Working Days to make a decision from the date of receiving the Dispute Papers from us.
- E3** On receipt of the Adjudication decision we will:
- E3.1 Inform the parties and provide a copy of the decision within 2 Working Days;
 - E3.2 Allow the Parties 10 Working Days to make a review request (see F1).
 - E3.3 After the 10 Working Days in E3.2 make payment to the parties in accordance with the decision within 5 Working Days.
- E4** The Adjudicator may ask for further information from either party should they be unable to reach a decision based upon the evidence initially provided, further clarification is required or they have reason to believe a further piece of evidence exists. However, as the Adjudicator is required to work under tight government monitored timescales, if the Adjudicator can make a decision based on the evidence provided at that point there is no requirement on the Adjudicator to request further evidence.
- E5** If a Member makes submissions which are not supported by evidence, the Adjudicator may have no option but to disregard them and will have to award the amount back to the Tenant as the Member has not persuaded the Adjudicator that they were entitled to make the deduction from the deposit.
- E6** The Adjudicator has to take fair wear and tear of the Residential Property and its contents into account and cannot make an award which would result in the Member receiving new for old, also known as 'betterment'.
- E7** The Scheme's 'Fair Wear and Tear' guide provides further information on how an Adjudicator calculates fair wear and tear but they will take the following into account:
- E7.1 The age of the item (or when decoration last occurred);
 - E7.2 The quality and condition of the item at the start of the tenancy;
 - E7.3 The length of the tenancy;
 - E7.4 The permitted number of occupants (and to a lesser extent the type of occupants).
- E8** Any financial award made by an Adjudicator to the Member is for a breach of the tenancy agreement by the Tenant. This will generally be a breach which has resulted in the Residential Property not being returned in the condition it was in at the beginning of the tenancy (taking fair wear and tear into account).
- E9** All of the Scheme's Adjudicators are independent from the running of the Scheme, experienced, are legally trained and/or hold membership of the Chartered Institute of Arbitration and have the training and ability to deliver Adjudication decisions in accordance with legislative requirements governing the Scheme.
- E10** The Scheme's Adjudicators are trained to follow a consistent approach to regularly occurring issues. This does not however mean that an Adjudicator (or Adjudicators) will find in exactly the same way in different cases. Although cases may seem the same to a Member or Tenant, every case is different and the evidence provided will be slightly different depending on the specific circumstances of that case. Adjudicators have discretion to decide what they believe to be fair in the circumstances. If one Adjudicator considers a certain course of action to be fair in a case, a different Adjudicator may consider a slightly different course to also be fair. Like a Judge in the Courts the Adjudicator has discretion to make a decision based on the evidence submitted. As long as the Adjudicator has followed the correct approach and explained the reason(s) for coming to a decision, then that decision will be correct even if a party is not happy with the decision.

Section F: Review of Adjudication

- F1** Either the Member or the Tenant may apply to the Scheme within 10 Working Days of notification of an Adjudicator's Decision from the Scheme for a Review, but may only do so on the grounds that the Adjudicator has erred in fact or in law (or both).
- F2** If a review request has been received by the 10th Working Day:
- F2.1 The Scheme will invite written representations from the other party to the Deposit Dispute to enable the Scheme to consider whether the Adjudicator may have erred in fact or in law;
 - F2.2. The written representations must be returned by the other party within 3 Working Days of being requested;
 - F2.3. On receipt of the written representations the Scheme will decide whether to accept or reject the application within 5 Working Days.
- F3** Where an application is rejected by the Scheme:
- F3.1 The requesting party may not make a further application for Review of the Adjudicator's Decision.
 - F3.2 The Scheme will release the Deposit as soon as is reasonably practicable in accordance with the original Adjudication Decision, but not before the expiry of time in accordance with F1.
- F4** If the Scheme decides that there is a reasonable ground for believing that the Adjudicator may have erred in fact or in law, the Scheme will accept the application and refer the Adjudication Decision for Review by an Adjudicator who was not involved in deciding the original Adjudication Decision ("Review Adjudicator").
- F5** The Review Adjudicator will:
- F5.1 Affirm the Adjudication Decision; or
 - F5.2 Substitute the Adjudication Decision with a different decision ("Review Decision");
- F6** The Review Adjudicator's decision will set out:
- F6.1 The facts on which the decision is based;
 - F6.2 The reasons for the decision; and
 - F6.3 The amounts of Deposit to be released by the Scheme to the parties.
- F7** The Review Adjudicator will make the decision in accordance with F6 within 10 Working Days of receipt of instructions from the Scheme in F4.
- F8** The decision of the Review Adjudicator is final.
- F9** The parties will receive the Review Adjudicator's decision from the Scheme within 5 Working Days of the Review Adjudicator making his decision.
- F10** The Scheme will repay the Deposit in accordance with the Review Adjudicator's decision within 5 Working Days of sending notification of the decision.

Section G: Miscellaneous Provisions

- G1** Like the Scheme Rules these Conditions of Deposit Disputes may need to be updated from time to time. Notices of any changes will be posted on our website, in newsletters and by email where the Member has provided us with an email address, or direct mail if not.
- G2** If the Scheme makes an incorrect payment to any party to a Deposit Dispute as a result of an administrative error then that party is required to immediately return the amount upon request by the Scheme. Failure to return the amount in accordance with a request is likely to result in legal proceeding being instigated to retrieve the outstanding amount.
- G3** The Scheme's complaints procedure cannot be used to complain against or appeal an Adjudication decision as any party agreeing to use the Scheme's ADR mechanism to resolve a Deposit Dispute means agreeing to be bound by the decision of the Adjudicator.
- G4** The States of Jersey Ministers have responsibility for monitoring all the Tenancy Deposit Protection Schemes but do not have a role in individual cases or complaints.

my|deposits Jersey

my|deposits Jersey

Premiere House
1st Floor
Elstree Way
Borehamwood
Hertfordshire
WD6 1JH
United Kingdom

Tel: 01534 747310

Authorised by:



MYD/CDD (1st ED) v2.07.16_6929

supporting you

Tenancy Deposits (Jersey) Limited trading as my|deposits Jersey, registered in Jersey States No: 119137. Registered Office: PO Box 456, Portman House, Hue Street, St Helier, Jersey JE4 5RP, is authorised to operate a custodial tenancy deposit protection scheme, owned by HFIS plc T/A Hamilton Fraser Insurance (the Scheme Administrator).