

A large, dark red silhouette of a pair of scales of justice is centered in the background. The scales have two pans hanging from a central beam, and a decorative finial on top. The entire background is a solid red color.

# How To Win Deposit Disputes

By

**Tom Derrett**



Your Law Store



depositclaim.com

## How to win deposit disputes

By Tom Derrett

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## About The Author

Tom Derrett is a lawyer specialising in the deposit protection system. In his early career he adjudicated hundreds of deposit protection disputes.

He has since been employed to train deposit protection adjudicators on how to decide claims, to advise on difficult, high-value claims.

Tom has operated a successful deposit protection consultancy, [www.depositclaim.com](http://www.depositclaim.com), for several years, where he helps individual landlords win disputes and trains inventory companies, corporate landlords and letting agents.



## Foreword by Tessa Shepperson

As a solicitor specialising in residential landlord and tenant law, I have had many landlords complain to me that the system is against them and that all the tenancy deposit schemes are biased towards tenants. However as Tom explains, this is not the case. The problem is that landlords simply fail to provide the information the adjudicator needs to decide in their favour. Often the information IS available – the landlord just doesn't realise that it is needed.

I am sure that there are countless decisions that have been made in favour of tenants – wrongly – not because of any bias on the part of the adjudicator, but because they don't have the evidence before them to justify a decision for the landlords.

So I am very excited about this book which I think really meets a need. It explains, clearly and simply, in plain English, how the system works, and what the landlord should do to give himself (or herself) the best possible chance of a favourable decision.

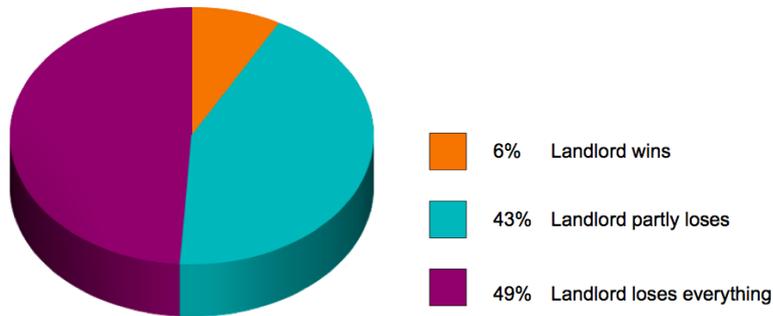
I would advise ALL landlords who are facing a tenancy deposit adjudication to read this book right through before doing anything, and then to keep it by their side throughout the whole process. You will then have a much better chance of getting the decision you deserve.

*Tessa Shepperson is a solicitor and practises online at [www.landlordlaw.co.uk](http://www.landlordlaw.co.uk).*

*She also blogs at [www.landlordlawblog.co.uk](http://www.landlordlawblog.co.uk).*

# 1 Introduction

1.1 Deposit protection has been part of the letting landscape since 2007 and by far the most controversial element of it has been the way disputes over the return of deposits are handled. Landlords and letting agents feel that they are not getting a fair deal and that the dispute resolution is biased in the favour of the tenant. Looking at the figures it is easy to see why. Figures released by My Deposits in Spring 2010 show that the landlord loses money in a whopping 92% of claims, whereas the tenant walks away with the entire deposit in 49% of cases.



## Your chances of winning a deposit dispute

Figures courtesy of My Deposits

When you bear in mind that these figures were trumpeted as heralding a significant improvement in the fortunes of landlords, you can see why people have been getting angry.

1.2 I discovered for myself how unlikely landlords were to win these disputes when, after finishing law school, I took a job as an adjudicator with one of the deposit protection schemes. I had a good understanding of housing law from years working for a large social housing provider and, after four years of intense academic and practical legal training, I was highly trained in the intricacies of interpreting and resolving legal problems. I had a highly sought after title after my name and if anyone was going to give a fair result, it was me. Why then, did I find myself handing out decisions in much the same ratios as the statistics above?

1.3 The problem is not that the system is unfair. If anything, the problem that landlords and letting agents experience is that the system is too fair. The deposit dispute system works like a small, privately run branch of the small claims court and decisions are made to legal standards. They deal with other people's money, potentially your money, and you probably wouldn't want them to make decisions and to hand out money according to their whim. Unfortunately, the legal way that these disputes are handled requires a particular approach when putting together your claim which, although simple to master, is outside the basic training of most landlords and letting agents. This book is intended to bridge that knowledge gap and be a guide to help landlords and letting agents to get a fair result from deposit protection adjudication.

## 2 Why Do Landlords Lose Deposit Disputes?

2.1 In the introduction we touched on the subject of legal standards. This section takes a look at what 'legal standards' means in the context of deposit disputes. A word of warning though: You don't need to know why disputes are decided the way they are. If you find this bit boring, or just want to get straight on to how to win your dispute, feel free to skip this part.

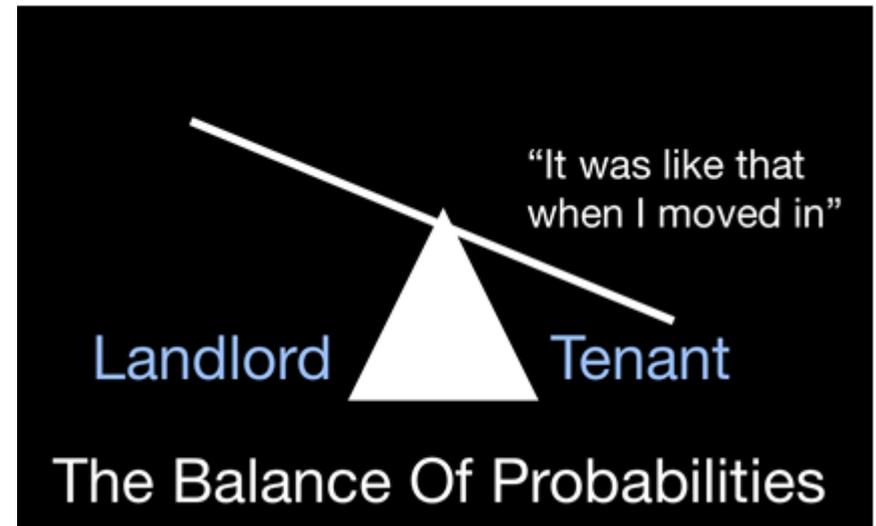
2.2 There are two key legal principles at play which interact with each other. The first is The Standard Of Proof. The standard of proof essentially means how far you have to go to prove you are right. The criminal standard of proof is the one we are all familiar with, Beyond Reasonable Doubt. This does not apply here because a dispute over a deposit is a civil, not a criminal dispute. The appropriate standard of proof is In The Balance Of Probabilities which requires the judge (or adjudicator in this case) to mentally weigh up the evidence to determine which side has the weightier claim. As with any other balance, it only takes a very small amount to tip the scales so, unlike criminal proceedings, a case can be determined by a very small difference in the credibility of the parties.

2.3 The second legal principle that we are concerned with is the Burden Of Proof. The burden of proof is legalese for whose problem it is to prove a particular point. For our purposes, the point at issue is whether the landlord deserves to keep any of the deposit. The money that forms the deposit came from the tenant at the beginning of the tenancy. Legally the money remains the property of the tenant for the duration of the tenancy, held in escrow until required. This means that

it is the landlord's problem to show that they deserve to keep some of it. The burden of proof is said to be on the landlord. This has two important consequences:

Firstly, if the landlord fails to engage in the process, or makes a procedural error and their claim is thrown out, the deposit is returned to the tenant in full.

Secondly, it means that a bare denial from the tenant - "No, it's not my fault, it was like that when I moved in" - is sufficient to tip the balance of probability in the favour of the tenant from the start.



2.4 This is why so many landlords and agents perceive the system as unfair, because the default setting is that the tenant wins. Any adversarial dispute resolution system has to have a default. In criminal proceedings the default is that the defendant is acquitted and walks free, in civil proceedings the default is the status quo. Deposit disputes are civil actions, and the status quo is that the tenant owns the deposit.