

How to claim for smells

Proving a smell exists is very difficult especially when it comes to providing evidence for a deposit dispute.

In a deposit dispute the onus is on the landlord, or agent, to prove their claim to the deposit deduction at the end of the tenancy.

Even in this age of detailed inventories and photographs there is one particular issue that commonly becomes the subject of negotiation and a proposed deduction at the end of the tenancy, and that's 'smells' from smoking, pets or cooking.

Check in

If the check-in inventory notes any smells, the tenant is unlikely to be held liable at the end of the tenancy. If there is no reference to smells, then the default position is that no smells were evident on moving in.

Emails from the tenant at the time of move in that refer to any smells, can alter this default position.

TOP TIP Some inventory templates include a space in their reports prompting the person compiling the check-in inventory to note any evidence of smells.

During the tenancy

Best practice is to carry out mid-term property visits. It's a great opportunity to check for any evidence of smells during the tenancy indicating:

- The tenant, or guests, have been smoking in the property
- The presence of a pet, which may or may not have been permitted, and any unreasonable adverse effects.
- **NOTE**, evidence of cooking smells at a mid-term property visit is not in breach of the tenancy agreement as the tenant has every right to peaceful and quiet enjoyment of the property and cannot be told how to live in the property, *unless* the action is causing any structural damage.

The majority of tenancy agreements contain a 'no-smoking' clause and while there might be evidence of smoke smells during the tenancy which is in breach of the tenancy agreement, a deduction to the deposit at the end of the tenancy will only be reasonable if there is a record of smells or damage at the end of the tenancy. In the case of a 'permitted' pet, managing expectations is a good idea. While pet smells recorded at the end of the tenancy would be a breach of the tenancy agreement, and a deduction may be appropriate, make sure that you also accept that there may be slightly more wear and tear on the property.



TOP TIPS

- Make the tenant's aware of any problems at a mid-term inspection and use this opportunity to advise on what actions are required to put them right.
- Consider taking a pet deposit (which will need to be protected) or a non-refundable pet fee as options to take into account extra costs towards reparations for any damage.

Before check out

Check previous property visit reports to see if smells were an issue. If so, arrange a pre-exit visit, with the tenant present, to discuss options of eradicating any lingering smells and avoiding a dispute.

Check out

Independent inventory clerks are qualified to make an objective and unbiased comment on the extent of any damage and smells.

If the final inspection is completed by an agent or the landlord, it is best practice to give the tenant the opportunity to attend, so that the smell can be discussed and verified at the time.

It is fundamental that the check out report contains a written description of any smells present at the time the tenant vacates the property. Photographs cannot evidence smells.

The check out report should clearly state any difference in the condition of the property when compared to the check in inventory.

Additional evidence such as property visit reports, emails showing discussion of the issue, an independent contractor's written report and estimates completed within a few days of the tenant moving out, can all help to support a deposit deduction.



TOP TIP Issues not recorded in the final check-out report and that are discovered after the tenant moves out are unlikely to be considered in a deposit dispute, especially where there is no other evidence that the tenant caused the smell.

TENANCY DEPOSIT PROTECTION

Did you know that by law you must protect your tenant's deposit money? There are three authorised schemes which you can use, including mydeposits. mydeposits has been protecting tenant's deposits since 2007 and counts over 150,000 landlords and 3,500 letting agents as members across England and Wales. Make sure you are protecting your tenant's deposit and have given them proof of protection to comply with the law and avoid a fine.

Contacting mydeposits

 www.mydeposits.co.uk

 0333 321 9401

 info@mydeposits.co.uk