

USE AND ABUSE OF THE DEPOSIT

WHAT must the landlord or landlady do if a deposit is used for repairs and replacing lost keys?

The landlord or landlady must have in his or her possession all receipts, as proof.

The tenant has the right to inspect all vouchers regarding the landlord /lady's expenses deducted from the deposit or set off in terms of section 5(3) (n) of the Rental Housing Act 50 of 1999 as amended (RHA).

What can the landlord do if the costs of repairs or arrears exceed the deposit with accrued interest?

The landlord / landlady can take legal action to claim the balance owed to him or her and any legal cost.

What about the tenant who moves out without a notice to end the lease?

- The tenant is in breach and the landlord can take legal action against him or her for breaking the contract (section 5(3) (o) of the RHA).
- The tenant is also responsible for the rental for the remaining lease period, or, up to the time of a replacement tenant.

Example 1

If the lease was for 12 months, from January to December, and the tenant moved out at the end of September, he or she will owe the landlord rentals for October, November and December.

If the landlord finds a “replacement” tenant for the remaining period at least at the same rental, there is no claim for rental for breach.

Example 2

If the lease is a monthly one, it is terminable on a month’s notice¹. The tenant is required to give the landlord a calendar month’s notice of his or her intention to move out.

If the tenant moves out, say on the third day of the month, the tenant is liable for the month’s rental.

Can deposit be used as rental?

The deposit is the landlord security against damages or arrears. The landlord can allow the tenant to use the deposit as rental for a particular period (e.g., the last week in the case of a weekly tenancy, last month, in a month to month tenancy or for rental arrears for any period).

What happens to the deposit if the landlord sells the dwelling?

The new owner or landlord is responsible for the refund of the deposit, even if he or she did not receive the deposit from the previous owner.

The tenant’s claim is based on the receipt for deposit paid.

What is the situation if a deposit was paid to the landlord agent?

The landlord instructs an agent (e.g., estate agent; attorney) to collect the deposit. At the end of the lease period, the landlord is responsible for the refund to the tenant - even if the agent did not hand over the amount to the landlord.

Let us examine the situation where a dispute between the agent and the landlord resulted in the cancellation of the mandate to the agent to act on behalf of the landlord.

The agent decides not to transfer the deposit to the landlord and may have legal grounds to do this.

This conflict does not affect the tenant’s claim to a refund of the deposit, since the landlord is directly responsible.

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¹ *Scopeful 130 (Pty) Ltd v Mechani Mag (Pty) Ltd* 2008 (3) SA 483 (W).

