

CONSEQUENCES OF BREAKING THE LEASE

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A TENANT was desperate to have her deposit refunded because her financial circumstances did not allow her to continue the tenancy. Is she entitled to a refund of the security deposit? Can her landlord withhold the deposit and hold her responsible for rentals for the remaining period of the lease? What is the legal procedure for the refund of the deposit?

The tenant was not entitled to a refund of her deposit since she intended to break the lease. Having signed a fixed six months lease agreement, she cannot be released from the lease period unless the landlord agreed to do so. If she broke the period, then she would be in breach of contract and liable for rentals for the full term. Should she move out and the landlord was unable to secure a tenant, the tenant forfeits her deposit and is liable for rentals.

Should tenant move out at the end of the fourth month, her deposit may be considered rental for one month and she would have to pay rental for the sixth month.

The landlord, however, is not obliged to use the deposit to offset any rental while the lease is in place. In fact, the landlord can recover any other financial loss incurred for the breach on the tenant's part.

Examples are the cost of re-advertising of the dwelling and perhaps the cost of the landlord's share of drawing up a new lease agreement.

Let's take the case of the tenant with the financial predicament. Should she move out at the end of the fourth month and the landlord finds a tenant who takes occupation at the beginning of the fifth month, she will have to refund the deposit with accrued interest.

The legal argument is that the landlord did not suffer financial prejudice by re-letting the dwelling and receiving a security deposit from

the new tenant even though the tenant vacated the dwelling prematurely.

In this instance, the tenant is not liable for rentals for the remaining lease period and she is also entitled to a refund of her deposit with interest.

Her landlord may sympathise with her regarding her financial predicament but unless he agrees (preferably in writing) to her vacating the dwelling before the expiration of the lease, the tenant is liable for rentals.

The landlord may indicate that he is willing to relieve her of the remaining month(s) but this must be confirmed in writing so that the lease is ended without any confusion or the right to claim rentals. Deposit is refundable when one vacates the dwelling as per the agreement.

The procedure for a refund is as follows:

If the deposit is kept by the landlord's estate agent, any accrued interest is paid by the registered estate agent to a special fund (Estate Agents Fidelity Fund). The accrued interest is not paid to the estate agent or the landlord. The tenant in this instance will not receive any accrued interest at the end of the lease period.

However, the following conditions for a refund would apply at the end of the lease period: -

- (i) *Within seven days* - when no amount is owed to the landlord.
- (ii) *Within fourteen days* - when amount such as cost of repairs is owed to the landlord.
- (iii) *Within twenty one days* - when tenant refuses joint inspection.

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