

HANDLING A DEPOSIT IN EVENT OF NOTICE

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A LANDLORD terminated the residential lease contract because he promised a friend occupation of the dwelling.

The tenant demanded her security deposit and the landlord refunded half the deposit and undertook to give the balance when she moved out.

Subsequently, the landlord's friend changed his mind, leaving the landlord in a quandary. The landlord then decided to inform his tenant that the notice to vacate was withdrawn.

A notice to terminate a lease contract, once communicated to the other party, cannot be withdrawn except by mutual agreement.

A notice to vacate does not have to be acknowledged by the other party for it to be valid. Its withdrawal before the effective date though depends on the willingness to "compromise" by the party who received the notice.

When a notice to vacate is given, parties often make arrangements: the tenant has to find alternate accommodation and the landlord / landlady a new tenant. Sometimes both parties have to endure inconvenience and relocation and advertising costs.

In this instance, the fact that the tenant received a partial refund of the deposit, she is not obliged to hand it over to her landlord if she agrees to continue her occupation.

A security deposit is paid *before* a tenant takes occupation in terms of the Rental Housing Act 50 of 1999. Should the tenant reject the withdrawal offer, the landlord cannot prevent his tenant from moving out or refuse a refund of the balance of the deposit.

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