

Handling tenant's deposit

Landlord can be asked to show how much interest has accrued

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THE landlord or landlady is permitted to charge a security deposit for a dwelling leased to a tenant. The deposit must be paid before the tenant takes occupation in terms of section 5(3)(c) of the Rental Housing Act.

New landlord

If there is a change of ownership, the tenant is not obliged to sign a lease or pay a security deposit to the new owner/landlord. The lease and deposit, if any, is 'automatically' transferred or deemed to be transferred by the previous landlord to the new.

This operates in terms of a legal rule in our common law, called “*huur gaat voor koop*”.

It means “lease goes before sale”; the new owner “steps into the shoes” of the previous owner or landlord / lady. In other words, the sale of the dwelling that leads to the change of ownership does not break the lease. The new owner/landlord becomes the landlord and the relationship between the tenant and the “new” landlord continues (*Mignoel Properties (Pty) Ltd v Kneebone 1989 (4) SA 1042 (A)*).

The new owner/landlord acquires all the rights of the original or previous landlord / lady under the lease.

What amount is to be paid?

The amount to be paid depends on the agreement between the landlord / landlady and the tenant.

It could be an amount equal to one month's rental or any amount agreed upon between the parties (section 5(3) (c)).

What must the landlord / lady do when he or she receives a deposit?

- (i) Give the tenant a receipt in which the following must be written: -
 - Date
 - For deposit and the amount
 - Tenant's name, address of the dwelling for which deposit is paid, the type of dwelling (e.g., flat, room, garage, cottage)
 - Landlord's signature
- (ii) Invest the deposit with a bank in an interest bearing account. It could be any type of account (e.g., current account, savings,) but the interest rate *must not be less than* the rate offered by the savings account of the same bank or same financial institution.
- (iii) Provide the tenant with written proof of accrued interest when the tenant makes a request.

Deposit with accrued interest to be refunded: Exception to Estate Agents removed

Previously, in terms of section 5(3) (d), if the tenant's deposit was kept with the landlord who was a registered estate agent, the accrued interest was handed over to the Estate Agency board and not the tenant. The landlord / lady had to be a registered estate agent though.

Before the amendment of section 5(3) (d) of the Rental Housing Act, this provision read:-

“the deposit contemplated in paragraph (c) must be invested by the landlord in an interest-bearing account with a financial institution and the landlord must subject to paragraph (g) pay the tenant interest at the rate applicable to such account which may not be less than the rate applicable to a savings account with a financial institution, and the tenant may during the period of the lease request the landlord to provide him or her with written proof in respect of interest accrued on such deposit, and the landlord must provide such proof on request.

Provided that where the landlord is a registered estate agent as provided for in the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), the deposit and any interest thereon shall be dealt with in accordance with the provisions of that Act.”

The amended section 5(3) (d) in 2008 reads:-

“the deposit contemplated in paragraph (c) must be invested by the landlord in an interest-bearing account with a financial institution and the landlord must subject to paragraph (g) pay the tenant such interest at the rate applicable to such account which may not be less than the rate applicable to a savings account with that financial institution.

The tenant may during the period of the lease request the landlord to provide him or her with written proof

in respect of interest accrued on such deposit, and the landlord must provide such proof on request.”

The amendment in May 2008 confirms the common law position of holding the landlord / landlady responsible for the refund of the deposit to tenant. It would appear that irrespective of who holds the deposit, the landlord / landlady must refund it with accrued interest at the end of the lease period when the tenant has vacated the dwelling.

Section 5(3) (g), (i), (j), (l) and (m) deals with the refund of the deposit with accrued interest under different circumstances of the lease coming to an end.

When should a deposit be refunded?

At the end of the lease period with the following conditions: -

- (i) *Within seven days* when no amount is owed due to arrears, damage to the dwelling or repairs required by the tenant.
- (ii) *Within fourteen days* when amount is owed to the landlord / landlady in respect of arrear rental or cost of repairs for which the tenant was responsible.
- (iii) *Within twenty one days* when tenant refuses joint inspection.
The landlord has a total of 21 days from the time the tenant has moved out or became aware that the dwelling was abandoned by the tenant, to inspect the dwelling, carry out repairs and deduct the cost of repairs, arrear rental and cost of lost keys and to refund any money available.

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