

## **The importance of rental deposits for landlords and tenants**

Landlords often ask for one and a half, two or more month's rental to be paid as a deposit upfront before tenants take occupation.

These deposits safeguard landlords against breaches in the lease agreement, damage to property, rent shortfalls and the non-payment of utilities.

In the initial negotiation phases it is absolutely essential that the tenant and landlord (or his agent) inspect the property together, says Johann van der Merwe of Rawson's Somerset West franchise, and draw up a comprehensive lease agreement which includes a complete inventory of every item in the property and a written and photographic record of the condition of all aspects of the property.

Fairly often, says van der Merwe, the tenant is so relieved and pleased to have found a suitable home that he skips through this initial inspection without noticing defects to the premises. At the end of the lease he may well then find himself being held responsible for these but has no proof that they were already a problem when he moved in. Difficulties of this kind are, however, avoided if the lease agreement and inventory are thoroughly worked through.

In this initial stage, the tenant, having signed the lease, will be asked to pay the deposit mentioned above. What is vitally important here, says van der Merwe, is that this must be paid into an attorney's/third party's trust account not into the landlord's or any other cheque, savings or trust account. Furthermore, great care should be taken to ensure that the details of this account to which the money is being paid are exactly as specified by the attorney.'

It is also important, says van der Merwe, that the deposit should earn interest and that this is paid to the tenant when it is refunded. It is, he says, illegal (as has happened occasionally) to 'borrow' money from trust accounts for other purposes, even though the plan is to fully refund it on time.'

The precautions outlined above, says van der Merwe, are especially necessary as there is such a fine line between normal wear and tear and outright damage. The condition of floors, carpets, cupboards, lighting, internal walls (into which picture hanging nails may have been driven) and, not least, the garden may in the landlord's opinion be so unsatisfactory that he feels entitled to withhold part of the deposit. In South African law, however, disputes should be settled and the money returned within 14 days of the premises being vacated.

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