



Can I do as I please with deposits received from my tenant?

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“I have a small block of flats that I lease out to tenants. I always insist on a deposit to cover tenants that skip out on the final lease payment or cause damage to the property. I always invest the deposits in a savings account and in general return the deposits to the tenants. Recently a tenant wishing to terminate his lease approached me and asked for his deposit back including all interest earned thereon. I have never had such a request. Do I have to return the full deposit and interest to him?”

The purpose of a deposit and what should be done with it at the expiration of a lease is regulated primarily by the Rental Housing Act (“Rental Act”). The Rental Act provides that a landlord may require a deposit at the beginning of the lease and the deposit must be invested in an interest-bearing account with a financial institution, which interest rate may not be less than the rate applicable to a savings account with that financial institution. The Rental Act also provides that a tenant may request written proof in respect of interest accrued from the landlord, and on receipt of this request, a landlord must provide such proof to the tenant.

The landlord may apply the deposit and interest earned thereon for the reasonable costs of repairing damage caused to the property at the termination of the lease. The balance of the deposit, together with the interest amount must be refunded to the tenant by the landlord no later than 14 days from the restoration of the property to the landlord. Where no amounts are due and owed to the landlord the deposit and interest accrued thereon must be fully refunded to the tenant by the landlord within 7 days of the expiration of a lease agreement.

If the landlord does not inspect the property with the tenant, he is deemed to acknowledge that the property is in a good and proper state of repair, and the landlord will have no further claim against the tenant who must then be refunded, the full deposit plus interest by the landlord.

It may be noted that where the landlord is a registered estate agent in terms of the Estate Agency Affairs Act the deposit and the interest accrued thereon is dealt with in accordance with that Act.

In your situation, it does not appear that you are an estate agent. Accordingly, depending on the outcome of your inspections and any reasonable damages to be rectified, the balance of the deposit and interest must be paid to your tenant to whom you will need to disclose proof of interest earned on the deposit.

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