

What expenses are covered by the rental deposit?

By  Adrian Goslett

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Following a period of lockdown restrictions that put severe pressure on the income levels of many households, some landlords have had to go through the costly process of applying for a court order to evict defaulting tenants. The rental deposit exists largely to protect the landlord against defaulting tenants and the lengthy, expensive process that is involved to evict them.



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Tenants are protected by the Prevention of Illegal Eviction from Unlawful Occupation of Land Act, No. 19 of 1998, also known as the PIE Act. If the correct procedures are followed, it can take at least eight to ten weeks for an eviction order to be granted during which time the landlord is out of pocket.

Legal costs

Besides the fact that the landlord is not getting a rental income from the defaulting tenant during that period, they will also have to pay legal costs. An unopposed eviction could cost between R12,000 and R20,000 in legal costs plus disbursements, while the cost of an opposed matter will be substantially more. Section 5 of the Rental Housing Act, No. 50 of 1999 states that a landlord is legally entitled to request a deposit from their tenants. This deposit can be used to help cover these legal costs.

With this in mind, most landlords request a deposit from their tenants before they move into the property. The amount that the tenant will be required to pay as a deposit is stipulated in the lease agreement. Conventionally, the rental deposit amount is equal to anywhere from one to even three months' rent.

When a tenant pays the deposit, the landlord is required by the Rental Housing Act to place the money in an interest-bearing account, held with a financial institution. The tenant is within their rights to request a statement of the interest earned on the money at any time during their tenancy. Even though the deposit is paid to the landlord, it remains the tenant's money. The landlord is merely holding the money as a security measure, should the tenant default or breach the rental agreement. If the tenancy runs its normal course, the deposit along with all interest earned on the money must be paid over to the tenant at the end of the lease agreement period.

Repair costs

However, the landlord is entitled to deduct from the rental deposit any expenses incurred repairing any damage to the property which occurred during the tenancy. The remainder of the money must then be refunded to the tenant no later than 14 days after the restoration of the property as dictated by the Act. If repairs are done, the tenant can request to see all repair receipts to confirm that the money was spent to repair the damage they did to the property. The landlord cannot use the deposit for general maintenance or upkeep of the property. If there is no damage to the property, the full deposit and interest must be paid to the tenant within seven days of the lease's expiration date.

Should any disputes arise between the landlord and the tenant regarding the rental deposit, they can turn to the province's Rental Housing Tribunal. The tribunal assists to mediate and resolve disputes between the parties. Before entering into a rental agreement, both the tenant and the landlord should familiarise themselves with their legal rights regarding the tenancy and the rental deposit. Knowledge of the relevant procedures can help prevent unpleasant and costly disputes down the line.

ABOUT ADRIAN GOSLETT

Adrian Goslett is CEO and regional director of RE/MAX Southern Africa. He joined RE/MAX Southern Africa in 2005 as a franchise development consultant, supporting various regions and offices. Throughout his career at RE/MAX he has held various positions. In 2010, after successfully leading 160 offices and over 1500 agents in six countries through the worst years real estate has ever seen in South Africa in 30 years, Goslett was appointed as CEO of RE/MAX Southern Africa.

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