



## TENANTS' SECURITY DEPOSITS

Landlords' requirement that tenants pay a security deposit in a transaction for the rental of premises is quite common place in Jamaica. In some cases, neither tenant nor landlord fully appreciates his/her obligations and responsibilities in relation to the security deposit.

### How Much to Charge?

Security deposits should represent a reasonable estimate of the amount of money that may compensate a landlord if a tenant (assumed to be a reasonable person) turns out to be bad. The landlord should evaluate the circumstances under which the premises are rented, and may take into account factors such as: likelihood of the tenant abandoning the premises without notice (is he a flight risk); the report from former landlords regarding whether the tenant pays his/her rent in a timely manner; whether the tenant has a stable job; and the usual practice regarding assessment of the amount to be collected as security deposit. In Jamaica, the usual practice is to assess security deposit as the equivalent of 1 – 2 months rent. Security deposits which are unreasonable may be challenged (even after payment) under the Rent Restriction Act, which generally governs rental of dwelling and commercial premises, unless the owner obtained an exemption certificate from the Rent Board.

### Landlord Holds for Tenant's Benefit

The security deposit is not a part of the rent payment and it does not belong to the landlord. For the duration of the tenancy, the landlord holds the security deposit on trust for the tenant. The landlord as trustee, therefore, owes the basic obligation of ensuring that the security deposit is held for the benefit of the tenant. The landlord ought not to use the funds for his own benefit. The Rent Restriction Act also provides that it is unlawful for landlords to require a tenant to pay a premium, make a payment or give a benefit to the landlord in addition to rent. But, how many landlords account to tenants for interest earned or ought to have been earned on the funds held as security deposit? To whose benefit does the interest, even at bank rates, usually accrue? Should landlords be required to show evidence of a special account set up for holding security deposits and ensuring that those funds are not comingled with the personal funds of the landlord? Depending on the amount of money involved, even though it is not the general practice, it may be worth the while of a tenant to insist that an escrow account be set up for the deposit.

### Use on Termination

With a fair degree of regularity, at the end of a tenancy landlords and tenants have disputes about how the security deposit is to be used. The security deposit belongs to the tenant and so may be used to reduce any obligation or liability of the tenant to the landlord. On termination of the tenancy, the deposit may be applied towards the reduction of any outstanding rent or costs for repairs which the tenant is obligated to do pursuant to the tenancy agreement or principle of law. One common mistake of landlords is to apply the security deposit to restoring the rented premises to the state that it was in at the commencement of the tenancy, and thereby using the tenant's funds to make good "fair wear and tear" arising during the tenancy. This practice can be challenged in a court of law.

Both landlord and tenant should appreciate the purpose and context in which security deposit is charged and is to be used. They should both try to seek professional advice (as may be required) and honour their obligations (as are applicable) so as to avoid the unpleasant situation of a dispute about the validity or use of the security deposit on the termination of a lease and sometimes using up valuable time and the expense of attending court to have a claim determined.

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