



Consumer Awareness: Rental Deposits

15th March 2021

Background

As part of its awareness program, the Office of Fair Trading (OFT) is issuing this guidance to consumers who have paid a rental deposit in connection with their rental of a property. This will assist consumers to understand how a landlord or letting agent should handle their rental deposits.

Deposit Payment

When entering into a new rental arrangement a consumer will commonly be asked to pay a deposit. The following principles should be observed:

1. Before a deposit is paid:
 - (a) the consumer must understand what the deposit is for;
 - (b) all terms and conditions surrounding the circumstances under which the deposit is to be held, refunded, kept, or used towards the rental or tenancy agreement or other must be clear;
 - (c) all terms and conditions must be in writing and agreed by all parties; and
 - (d) a copy of the agreement must be provided to those parties
2. Deposits paid to a letting agent for safekeeping should not be renamed or disguised as an introducer's fee, commission or other brokerage fee.
3. Unless expressed otherwise in writing, deposits made by consumers that are held by a letting agent are to be held in a client account for the duration of the rental agreement.
4. Where a consumer who has paid a deposit for a rental agreement prior to signing the contract decides not to proceed with the rental, the deposit should be returned to the consumer in full unless it was expressly agreed that all or part of the deposit would be retained under such circumstances.
5. Should the contract between the letting agent and landlord terminate, any change of arrangements shall be communicated to the tenant as soon as possible, but in any event prior to the contract exterminating, and the communication shall set out where and by who it is proposed that the rental deposit will be held.

End of Tenancy – Tenants' rights

As set out in the OFT's Code of Conduct for Real Estate Agents:

1. Towards the end of a tenancy, the letting agent should inform tenants of the steps they are to take to prepare the property for the final checkout, handover of keys and any other related matters.
2. Tenants should be actively informed of any specific clauses within the tenancy agreement relating to deductions from the rental deposit and to specified standards of cleaning etc.
3. Any necessary deductions from a rental deposit at the end of a tenancy agreement, must be reasonable and clear so it is simple to understand what portion of the deposit is allocated to the landlord for damages, replacement of items, cleaning etc. Wherever possible this should be supported with detailed quotations and / or receipts.
4. Any part of the rental deposit that is not in dispute should be returned to the tenant and repaid within 10 working days from the conclusion of the tenancy.

While the Code of Conduct for Real Estate Agents does not apply to landlords, the above provisions are regarded by the OFT as best practise for landlords also. The OFT may therefore regard any departure by landlords from these as a practise which is harmful to consumer interests.

Practical Tips and Recommendations for Tenants

If followed, these practical recommendations will assist tenants to reduce issues recovering their rental deposits at the end of their tenancy.

1. At the start of a tenancy take the time to carefully check the condition of properties and its contents and report every defect identified in writing to the letting agent.
2. Take photos of everything when you move in so you have proof of what condition the accommodation was in at the start of the tenancy agreement.
3. Do a thorough inventory check when you move in and before you move out.
4. Keep to the terms of the tenancy agreement.
5. Always communicate with the landlord and / or the letting agent in writing.
6. Get written permission before you make any changes to the property.
7. Tell your landlord straight away if repairs are required.
8. Always pay your rent and associated bills on time.
9. Get acquainted with your rights and obligations under the rental agreement.
10. As a general rule the OFT does not recommend that you stop paying your rent as an offset to disputes arising with your landlord and/or letting agent. If you think you may have cause for doing so, we recommend that you seek legal advice before taking this course of action.

Sample letter

If you have a dispute with a landlord and / or letting agent regarding the return of a rental deposit you can use [this sample letter](#) to write to them to demand that the rental deposit is returned.

Note that you should only write to the landlord and / or letting agent where they are withholding the rental deposit for no justifiable reason. There are occasions where they may have a right to retain the deposit, e.g. where you have caused damage to a property or its contents.

Code of Conduct for Real Estate Agents

You can access the OFT's Code of Conduct for Real Estate Agents on our website: https://www.oft.gov.gi/images/documents/REA_code_of_conduct.pdf

Contact us

We hope the above is of assistance. If you have any queries or have encountered any problems, please contact the OFT's Consumer Protection Team:

Email: consumer.protection@gibraltar.gov.gi

Tel: 20071700

Web: www.oft.gov.gi

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