



Guide to a legal deposit in tenancy relations

Table of contents

1. Introduction	3
2. The relationship between the tenancy agreement and the Tenancy Act	3
3. What is a deposit?	4
3.1 Where can a deposits account be opened?	4
3.2 Who is required to pay the fee for opening a deposits account?	4
3.3 Who can manage the deposits account?	4
3.4 Is there an upper limit for how much the tenant can pay?	4
4. Has the deposits account been legally established?	4
4.1 The Tenancy acts conditions for establishment of a deposits account	4
4.2 Consequences of non-compliance of the conditions	5
4.3 The tenants right to interest on overdue payments in the event of illegally paid deposits	5
5. My landlord won't pay back my deposit - what do I do?	6
5.1 Illegally paid deposit: Claiming repayment of the deposit	6
5.2 Legally paid deposit: The tenant wants the deposit paid back	6
5.3 Legally paid deposit: The landlord believes to have a claim towards the tenant	7
5.4 What is a lawsuit, and who can a lawsuit be sent to?	7
6. Exceptions to the deposit rules	7
7. Guarantee	7
8. Other tips in tenancy relations	8
Tip nr. 1: Make sure you have a written tenancy agreement	8
Tip nr. 2: Review the contents of the tenancy agreement before signing it	8
Tip nr. 3: Have an open and constructive dialogue with the other party	9

1. Introduction

The purpose of this brochure is to provide an easy-to-understand guide to how deposits legally can be created. The brochure is of a general nature, and the presentation is not intended to be exhaustive.

The background for making this brochure is that Jusshjelpa i Nord-Norge receives many cases concerning illegally paid deposits. In our experience, tenants and landlords do not have sufficient knowledge of the rules for deposits in tenancies, which often leads to conflicts between tenants and landlords at the end of the tenancy. We want to improve this situation.

The brochure has been made by Jusshjelpa i Nord-Norge by employee Marcus Veinan in autumn 2018 and translated to English and updated by employee Herman Strøm Aasmoe in 2024. Jusshjelpa i Nord-Norge takes reservations for possible changes and emphasizes that this brochure is intended for guidance purposes only. Last updated: 05.12.2024.

2. The relationship between the tenancy agreement and the Tenancy Act

The general rule in Norwegian law is that there is contractual freedom. In principle, this means that two or more parties can agree what they want, when they want and in what way they want. There are a few exceptions to the freedom of contract in tenancy relations. The Tenancy Act section 1-2 decides that conditions that are less favorable to the tenant than what follows from the rules in the Tenancy Act, cannot be agreed or applied. This means that the Tenancy Act sets certain limits on what the parties are allowed to agree.

The exceptions to contractual freedom can be found in the individual sections in the Tenancy Act. The provisions in question generally allow for freedom of contract when they contain the wording “unless otherwise agreed” or similar. Whether there is full or limited freedom of contract must be assessed specifically based on the individual sections.

The Tenancy Acts sections regarding deposits allow little freedom of contract. However, there are two conditions that can be agreed, which is stated in the Tenancy Act section 3-5.

1. Firstly, it can be agreed whether or not the tenant will pay a deposit. This means that there is no legal requirement for a deposit account to be set up, to be able to rent. Other forms of security will be discussed in more detail in segment 7 in this brochure.

2. Secondly, it can be agreed that the deposit will change in line with changes in the rent. The deposit amount can only be changed as long as it is a legal index adjustment in accordance with section 4-2, or if the rent is adjusted to current level of rents for similar property on similar terms of agreement in accordance with section 4-3.

3. What is a deposit?

A deposit is a sum of money which the tenant pays to a bank account in order to protect the landlord against financial loss in the tenancy, as stated in the Tenancy Act section 3-5. If, for example, the tenant does not pay rent or damages the property, the landlord may claim his financial loss covered by the deposit.

3.1 Where can a deposits account be opened?

A deposits account can be opened both in a bank and in an internet bank. The opening of a deposits account requires approval by the tenant, usually by signing the electronic link for opening the account in an internet bank. You can find out what information the tenancy parties need to provide by contacting the bank where the deposits account is going to be set up in.

3.2 Who is required to pay the fee for opening a deposits account?

According to the Tenancy Act section 3-5, the landlord is required to cover the cost of opening a deposit account. It is not permitted to agree that the tenant must pay for the opening of a deposits account. The landlord may choose which finance institution the deposits account is to be opened at unless this is a significant disadvantage for the tenant.

3.3 Who can manage the deposits account?

Without the other party's consent, neither the tenant nor the landlord may use the deposit during the tenancy, according to the Tenancy Act section 3-5, third paragraph.

3.4 Is there an upper limit for how much the tenant can pay?

It is not permitted to agree that the tenant shall pay a deposit amount that corresponds to more than six month's rent, as stated in The Tenancy Act section 3-5, first paragraph.

Example: James Smith pays a monthly rent of 5000 NOK. In this case, it cannot be agreed that he will pay more than 30 000 NOK (six month's rent) as a deposit.

4. Has the deposits account been legally established?

4.1 The Tenancy acts conditions for establishment of a deposits account

Section 3-5, second paragraph of The Tenancy Act states that the deposit must be deposited in a "special account" in the tenant's name with normal rate of interest in a finance institution that is entitled to offer such services in Norway. The term "special account" means that the account must be separate from the landlord's other accounts, so that neither party can dispose of the amount during the rental period. This is stated in the preparatory work for the Tenancy Act section 3-5.¹

¹ Ot.prp.nr.82 (1997-98) p. 171

Both the tenant and the landlord must therefore consent to the creation of the account and to the payment of the deposit at the end of the tenancy. If you're unsure whether the account has been legally established, we recommend that you check this. Sometimes landlords call the deposit other things, such as «security deposit», «guarantee», «advance rent» or similar. The important thing is what the security amount in reality is, not necessarily what it is named in the tenancy agreement. This means that an amount that is called something other than a deposit, still legally can be considered one.

4.2 Consequences of non-compliance of the conditions

According to the Tenancy Act section 3-7, first paragraph, it cannot be agreed that the tenant shall pay, amongst other things, «other sums of money» than those specified in sections 3-1 to 3-6 of the Tenancy Act. Thus, it cannot be agreed that the tenant shall pay anything other than rent (section 3-1), electricity (section 3-4), deposit (section 3-5) or guarantee (section 3-6).

If the deposit is not paid in accordance with the terms of section 3-5 second paragraph, the deposit is to be regarded as «other (...) amounts» as described in section 3-7, first paragraph of the Tenancy Act. This means that the deposit has been paid illegally.

The Tenancy Act section 3-7, second paragraph provides guidance on what the tenant can do if the deposit has been paid illegally. The section states that anyone who has paid an amount in breach of the first paragraph, may always demand that the amount be repaid or replaced by the landlord.

The term «always» implies that the tenant can demand repayment or replacement of the amount of money paid. This applies regardless of whether or not the landlord knew that the deposit was paid illegally, or whether the landlord believes that he has a claim on the amount of money owed to the tenant.

Example: James Smith has paid a deposit of 20 000 NOK to his landlord, David Jones, into his private account. The deposit has therefore not been paid in accordance with the conditions in The Tenancy Act section 3-5. According to The Tenancy Act section 3-7, first paragraph, the amount is to be regarded as «other amounts». James Smith can therefore claim the amount from David Jones according to The Tenancy Act section 3-7, second paragraph.

It is important to note that the rental agreement between the tenants will still be binding if the tenant demands that deposit be repaid or replaced, according to the Tenancy Act section 3-7, second paragraph.

4.3 The tenants right to interest on overdue payments in the event of illegally paid deposits

The Tenancy Act section 3-7, third paragraph, entitles the tenant to interest on overdue payments from the day the deposit was illegally paid.

However, the right to interest on overdue payments may be lost if the tenant must be considered to have contributed to a significant degree to the breach. The tenant paying the illegal deposit, while knowing the

circumstances that makes the deposit illegal, is normally not enough to be considered as contributing to a significant degree.²

The amount of interest on overdue payments is set out in Interest on Overdue Payments Act section 3 and associated regulations. Interest on overdue payments will generally be higher than other types of interest. This means that if the landlord does not comply with the conditions for setting up a deposits account in accordance with the Tenancy Act section 3-5, second paragraph, he may risk having to pay a lot in interest on overdue payments. If the deposit amount has been placed in a legal deposits account when the tenancy agreement was entered into, it would probably be cheaper for the landlord.

To calculate interest on overdue payments, you can visit the Government's interest on overdue payments-calculator: <https://www.regjeringen.no/no/tema/okonomi-ogbudsjett/renter/kalkulator-for-forsinkelsesrenten>

5. My landlord won't pay back my deposit - what do I do?

5.1 Illegally paid deposit: Claiming repayment of the deposit

We recommend that you first contact your landlord yourself to point out that the deposit has been paid illegally and ask for it to be refunded, and that you and your landlord set up a legal deposits account where the money is paid.

If your landlord fails to respond, you can initiate a process to get your deposit refunded. Jusshjelpa i Nord-Norge has made a brochure called "How to claim money" that describes how you can initiate this process. Jusshjelpa i Nord-Norge can also aid in such a process.

5.2 Legally paid deposit: The tenant wants the deposit paid back

If the deposit has been placed in a legal deposits account, the tenant may, amongst other things, reclaim the deposit if the landlord agrees to this in writing. This is described in the Tenancy Act section 3-5, sixth paragraph.

The bank will then send a written notice to the landlord stating that the deposit will be paid to the tenant if he does not, within five weeks of receiving the note, submit a claim in accordance with the Tenancy Act section 3-5 fourth paragraph, or document that legal action has been taken.

If the bank does not receive such a claim or documentation within the deadline, the deposit amount will be paid to the tenant.

² NOU 1993:4 p. 135. These preparatory statements are linked to section 4-4, but the wording is the same, and will thus also provide guidance for section 3-7

5.3 Legally paid deposit: The landlord believes to have a claim towards the tenant

If the tenancy has ended, the landlord may send a claim to the bank for the claims he believes he may have against the tenant. This is stated in the Tenancy Act section 3-5, fourth paragraph.

However, there are limitations to what the landlord can demand from the tenant. According to section 3-5, a claim can only be made if:

- It has been agreed that the deposit will be moved to another account in the same financial institution,
- The landlord has documented the owed rent, and
- The tenant does not document that he/she had filed a lawsuit within five weeks after the notice under section 3-5, fifth paragraph has been sent.

If the tenant does not document that he/she has filed a lawsuit within five weeks, the landlord's claim will be paid to the landlord, according to the Tenancy Act section 3-5, fifth paragraph.

5.4 What is a lawsuit, and who can a lawsuit be sent to?

A lawsuit means that a case is brought before the courts regarding a legal claim, stated in The Dispute Act section 1-3. A legal claim means that it must be a claim that is subject to legal regulation, mainly including legal rules. For example, the Tenancy Act's rules are legal rules that can be brought before the courts.

In the first instance, legal action may be brought before the Rent Disputes Tribunal (HTU). HTU is a government body that settles disputes between tenants and landlords under the Tenancy Act. This is stated in the Tenancy Act section 12-5.

6. Exceptions to the deposit rules

For student housing, the Tenancy Act section 11-2, sixth paragraph, states that it may be agreed that the interest on the deposits account shall go to the landlord. This typically applies to student welfare organizations. An important remark is that section 11-2 does not automatically entitle the landlord to interest on the deposits account, but that it must be agreed upon between the parties. If no such agreement has been entered into, the interest shall go to the tenant, as stated in the Tenancy Act section 3-5, third paragraph.

7. Guarantee

According to the Tenancy Act section 3-6, security can be provided in the form of a guarantee. A guarantee means that a third party undertakes to pay any claims the landlord has against the tenant. As with the deposit rules in section 3-5, it can be agreed that the tenant must provide security for claims that apply:

- Owed rent
- Damages to the property

- Expenses in connection with eviction, and
- Other claims under the tenancy agreement, such as payment of electricity and fuel.

It also states that the guarantee amount together with the deposit under section 3-5 may not exceed the sum of six months' rent.

Example: James Smith pays 10 000 NOK in rent every month. His parents provide a guarantee for him of 60 000 NOK. In this case, the guarantee-amount is legal.

Example: In addition to the 60 000 NOK as security provided as a guarantee, James Smith and his landlord David Jones enter into an agreement for James Smith to pay 40 000 NOK in deposit. The total amount paid as security is 100 000 NOK. The maximum amount that David Jones can claim as a security amount is 60 000 NOK (six months' rent), and the agreed security amount is therefore not legal.

8. Other tips in tenancy relations

Tenancy law is one of Jusshjelpa i Nord-Norges' largest subject areas. We often receive disputes between tenants and landlords, and we see that some of these disputes reoccur. Therefore, we want to present some tips that will hopefully prevent problems from arising in your tenancy.

Tip nr. 1: Make sure you have a written tenancy agreement

The Tenancy Act section 1-4 states that a tenancy agreement can be made in writing or orally. If The tenancy agreement is orally agreed, it must nevertheless be drawn up in writing if one of the parties demands this.

A written tenancy agreement makes it easier for the parties to find out what rules apply to the tenancy. As mentioned under segment 2, there is contractual freedom in tenancy relations. If the parties have agreed on something that is written down in the tenancy agreement, this will be what the parties must adhere to, unless it contradicts the rules in the Tenancy Act. A written tenancy agreement can also be used as evidence in the event of a dispute between the tenant parties.

Example: James Smith has received a verbal permission from his landlord to hang up two shelves in the kitchen. He gradually learns that his landlord complains a lot about what he should and should not do and therefore demands that the verbal permission be included as a clause in the tenancy agreement. At the end of the tenancy, James's landlord tells him that he must replace the holes in the wall by caused by the shelf. James refers to the tenancy agreement and rejects the landlords' claim for compensation.

Tip nr. 2: Review the contents of the tenancy agreement before signing it

Before signing the tenancy agreement, the tenancy parties should get familiar with its content to avoid problems arising later. Many people use standardized tenancy agreements, which can be more or less detailed. By familiarizing oneself with the content in the tenancy agreement, the parties will be certain of their rights and obligations.

The tenancy parties should also carry out a thorough inspection of the rental property before signing the tenancy agreement. The property should be checked for any deficiencies so that no problems arise at a later time. Documentation in the form of photos and/or a written document helps the parties to avoid any disputes.

Example: James Smith inspects the rental property before moving in. He discovers that there is an approximately 20 cm large scratch on the floor in the living room. To prevent his landlord from making a claim against him at the end of the tenancy, he takes a photo of the scratch and writes it down on a sheet of paper that he keeps throughout the tenancy.

Tip nr. 3: Have an open and constructive dialogue with the other party

Finally, we recommend that the parties maintain a good dialogue, as mentioned earlier in this brochure. Many problems in tenancies can be solved by the tenancy parties themselves agreeing on how to handle the situation. However, if it is not possible to resolve the problems, Jusshjelpa i Nord-Norge can assess which rights and obligations lies on the parties.

