

35. Transition – Security Deposits

Mar-04

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

The *Residential Tenancy Act*¹ provides “(i)f a landlord holds a security deposit in accordance with the former Act, the security deposit is deemed to be held in accordance with this Act and the provisions of this Act respecting security deposits apply”. The former Act required that a landlord either file a claim against or return a security deposit, plus interest, within 15 days of the end of a tenancy, except for an amount the tenant agreed in writing the landlord could deduct, or an amount previously ordered by an arbitrator.

The Act² further provides that arbitrations started under the former Act, or applications for arbitration made under the former Act, must be conducted under the former Act.

The Act was proclaimed on January 1, 2004. A claim regarding a security deposit filed on or before December 31, 2003, is conducted under the former Act and all the provisions regarding security deposits under that Act apply.

A landlord who held a deposit on a tenancy that ended on or before December 16, 2003, who neither returned nor filed a claim against that deposit by December 31, 2003, was not holding the deposit in accordance with, but rather contrary to the provisions of, the former Act on January 1, 2004. Therefore, the deeming provision does not apply and any claim regarding that deposit is conducted in accordance with the law that was in effect at the time the 15 day time period elapsed and the tenant’s right to the return of the deposit crystallized. If the 15 day period elapsed on or before December 31, 2003, the tenant has 2 years from the end of the tenancy to file a claim for the return of the deposit. The tenant is not entitled to the return of double the deposit for the landlord’s failure to comply with the provisions of the former Act.

A landlord who held a deposit on a tenancy that ended on or after December 17, 2003, who had not returned or filed a claim against that deposit when the Act was proclaimed on January 1, 2004, held the deposit in accordance with the Act at the time of proclamation. The deeming provision and the provisions of the Act regarding security deposits apply. Under the Act, the landlord has 15 days from the later of the date the tenancy ends or the tenant provides a forwarding address in writing to file a claim against or return the deposit. Until the tenant provides a forwarding address, even though the tenancy ended under the former Act, the landlord is not required to claim against or return the deposit. If the tenant does not provide a forwarding address within 1 year of the end of the tenancy, the landlord may keep the deposit.

If the tenancy ended on or after December 17th, the landlord held the deposit at January 1st, and the tenant has provided a forwarding address in writing, the landlord must make a claim against or return the deposit plus interest within 15 days of the later of the date

1 *Residential Tenancy Act*, section 103

2 RTA, section 101

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the tenancy ended or the forwarding address was provided. If the landlord fails to do so, the tenant is entitled to the return of double the deposit. The tenant has 2 years from the end of the tenancy to make that claim.

The Act³ states that the requirement for a start of tenancy condition inspection does not apply to a tenancy that started before January 1, 2004. If a tenancy ended before January 1, 2004, the landlord was not required to conduct an end of tenancy condition inspection and the tenant was not required to attend one. As the requirement did not exist, the landlord has not lost the right to claim against the deposit for damage if an end of tenancy inspection was not conducted, and the tenant has not lost the right to the return of the deposit for failure to attend an end of tenancy inspection, even though the landlord may have continued to hold the deposit in accordance with the former Act on January 1, 2004.

³ Section 100