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Rent agreements: how deposits work in Austria

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This Q&A answers 10 of the most important questions regarding deposits in Austria.

What types of deposit are available?

In most cases, the parties agree on a guarantee, a cash deposit or, in case of residential leases, a savings book.

Usually, a bank or, less commonly, an insurance company or group company provides the guarantee. The guarantee is addressed to a specific landlord and requires the bank (or other guarantor) to pay any amount that the landlord requests, up to the limit stated in the guarantee. The guarantor can only raise objections that relate to the guarantee (eg, the guarantee has expired or the request amount exceeds the agreed limit). The guarantor cannot raise any objections relating to the lease (eg, that the rent payment is not due).

Guarantees are formalistic agreements. Typically, they serve to secure claims arising from a particular lease agreement. If the lease agreement is renewed or changed in any other way, the guarantee will cover claims arising from this new agreement only if the guarantor has consented.

Cash deposits are usually paid by wire transfer to the landlord's bank account and – for obvious reasons – not in the form of actual cash (ie, bank notes).

Savings books are saving accounts opened by the tenant (and recorded in a booklet) and pledged to the landlord.

When must the security be provided?

Any type of security must be agreed between the parties. The landlord has no statutory right to request a deposit.

Typically, the deposit must be provided on the handover date, at the latest. In development leases, where premises are constructed in accordance with the specifications of the tenant, the deposit is often requested already at an earlier stage, when the landlord incurs significant construction costs.

Is there any limit on the deposit amount?

Usually, the parties agree on three to six months' gross rent, including service charges and value added tax (VAT).

If the Rent Act applies to the lease agreement, according to settled case law, a deposit exceeding six months' rent is valid only if the landlord can demonstrate that there is an objective justification (eg, large investments, bad credit standing of the tenant or expensive furnishing).

If the Rent Act does not apply, there is no limit on the permitted deposit (except cases of usury or other extreme cases).

Which landlord claims are secured?

This depends on the agreement between the parties. Typically, the deposit secures all claims arising out of or in connection with the lease agreement, including:

- rent;
- service charges;
- VAT; and
- damage claims.

It also secures:

- the cost for refurbishment after the end of the lease if the leased premises are not handed back in the agreed condition; and
- claims for compensation for the use of the leased object if the premises are not handed back on the last day of the lease.

Typically, the deposit does not cover any other claims that the landlord may have against the tenant.

What happens if the tenant does not provide the deposit?

The parties may agree that the payment of the deposit is a precondition to the lease. Thus, if the tenant does not pay the deposit, the lease does not enter into force.

If the Rent Act applies, a failure to provide or refill the deposit cannot be a reason for termination.

What assurances does the tenant have in case of a cash deposit?

If the Rent Act applies, the deposit must bear adequate interest at market rates and must be protected against the insolvency of both the bank and the landlord. The landlord must keep the deposit separated from their other assets; they may, however, keep the deposits from different tenants in the same account, provided that the interest can be calculated separately.

What happens if the landlord makes use of the deposit?

If the tenant fails to make a payment that is due under the lease agreement, the landlord can freely choose whether they want to use the deposit or file a claim against the tenant. If they use the deposit, the tenant is generally not obliged to provide a new deposit, unless this is explicitly agreed in the lease agreement.

What happens to the deposit if the property is sold?

In the case of a cash deposit, the tenant may reclaim the deposit from whoever happens to be the landlord when the lease ends (which is not necessarily the same person who received the deposit at the beginning of the lease). Thus, if the property is sold during the lease, the buyer must ensure that they receive the deposit from the seller.

In the case of a guarantee, the buyer must make sure that the guarantor issues a new guarantee in their favour.

What happens if the landlord becomes insolvent?

If the landlord becomes insolvent, the receiver may use the deposit only for claims against the tenant in connection with the lease agreement. If the lease agreement ends during the insolvency proceedings, the tenant can reclaim the deposit.

When does the landlord have to return the deposit?

If the Rent Act applies, the landlord must return the deposit as soon as the tenant has handed back the premises to the extent that the landlord does not use the deposit to cover claims against the tenant.

If the amount that the landlord is claiming against the tenant is unclear (eg, because the tenant has not handed back the premises in the agreed state), the landlord can withhold the deposit until they have obtained quotes for the repair work.

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