24 July 2020

<u>**Rental agencies and the accrued interest on the deposit paid by the tenant**</u>**:**
[the EAA Act 112 0f 1976 – prior to **the** Property Practitioners Act 22 of 2019 **which** came into effect on: **1 February 2022**] refers...

When renting residential property, it is important for the prospective tenant to know the difference between **renting directly from the owner** of the property and when **renting through an estate agency**, especially regarding the refund of the interest which accrues on the deposit. This distinction is important because when renting residential property through an estate agency, <u>tenants are not automatically entitled to claim the interest</u> on the deposits paid by them, which is invested by the rental agent…. ??

Rental agencies and the accrued interest on the deposit paid by the tenant When renting residential property, it is important for the prospective tenant to know the difference between renting directly from the owner of the property and when renting through an estate agency, especially regarding the refund of the interest which accrues on the deposit. This distinction is important because when renting residential property through an estate agency, tenants are not automatically entitled to claim the interest on the deposits paid by them, which is invested by the rental agent. Section 5(3)(c) of the Rental Housing Act, 50 of 1999 provides that when renting directly from the owner of the property, the landlord may require the tenant, before moving into the property to pay a deposit.

The landlord is in terms of section 5(3)(d), **required to invest the deposit in an interest-bearing account** with a financial institution. The landlord must in terms of section 5(3)(g) and (I) at the expiration of the lease, refund the deposit together with the accrued interest to the tenant. However, <u>the landlord is entitled to apply the deposit and the interest towards any amount the tenant is liable for</u> e.g. arrear rental; reasonable costs of repairing damage to the property; lost keys etc.

The landlord must refund the balance to the tenant **not later than 14 days after the date of termination of the lease**. <u>If there are no amounts due to the landlord in terms of the lease, section 5(3)(i) provides that the deposit with the accrued interest must be refunded to the tenant</u> **within 7 business days after the expiration of the lease**.

Section 5(3)(d) of the Rental Housing Act, provides that when a registered estate agency, acts on behalf of the owner of the property as provided for in the Estate Agency Affairs Act, Act 112 of 1976, <u>the deposit and the interest thereon shall be dealt with in accordance with the provisions of the Estate Agency Affairs Act</u>.

The tenant is not automatically entitled to claim any interest on the deposit paid into the estate agency’s trust account, unless the lease agreement states otherwise. The default position in terms of the Estate Agency Affairs Act, is for the estate agent to pay the interest over to the Estate Agents Fidelity Fund. The Fidelity Fund refunds one half of the interest to the estate agent, therefore the agent is in effect entitled to retain half of the interest earned and none is to be refunded to the tenant.

The lease agreement may alternatively provide that the interest should not be paid to the Fidelity Fund. In such a case the Estate Agents Affairs Board's Code of Conduct provides that <u>the agent shall pay the full interest to the party entitled to such interest</u>, subject to the written agreement between the agency and the party entitled to the interest.

It is in terms of the EAAB's Code of Conduct, the responsibility of the estate agent to disclose to the tenant to whom the interest shall be paid.