

## Getting Rent Deposits Back

When a person applies for an apartment, landlords usually take a deposit. The law prohibits landlords from taking more than one month's rent as a deposit. But sometimes the person does not end up moving in and the landlord keeps the deposit. The law was not clear about what should happen in these cases. In 2001, the law was changed to require landlords to return the deposit "if vacant possession of the rental unit is not given" to the person. The Landlord and Tenant Board can order landlords to return the deposit in these situations.

Our client paid a rent deposit on an apartment and then chose not to take it before signing the lease. She asked for the deposit back but the Landlord refused to return it. She applied to the Board to get an Order requiring the landlord to return the deposit. The Board dismissed her application and both a Board review and an appeal to Divisional Court upheld this decision. She received permission from the Court of Appeal to bring a further appeal to that Court.

The Court of Appeal reversed the lower decisions and ordered the landlord to return the deposit. They partially agreed with what those decisions said, holding that where it was the tenant's action that prevented her from taking possession, the return of the deposit is not automatic. But they decided that a person applying for an apartment who changes their mind after the landlord accepts the application will only lose their deposit if:

1. The application that was made by the person and accepted by the landlord (or a later agreement between them, like a formal lease) specifies that the deposit will be applied to payment of last month's rent;
2. The landlord does everything necessary to give the person possession of the rental unit: AND
3. The landlord suffers a loss of rent, so that the deposit is needed to cover a rent payment.

If these requirements are not met, the Landlord and Tenant Board should order the deposit to be returned to the prospective tenant. If you think you should get a deposit back from a landlord, you should get legal advice as soon as you can.