Payment for a rental deposit

Topic: **Account/savings book** Case number: **2022/05**

> When moving into a new flat, the complainant was asked by the landlord to pay a rent deposit in the amount of CHF 2 400. He transferred this amount to the landlord's property account. When he moved out of the flat a year later, the landlord only paid him back part of the deposit of CHF 700 and kept the rest. The complainant objected to the fact that the bank holding the landlord's account had granted the landlord access to the deposited amount without his consent and thus without complying with the provisions of tenancy law on rent deposits and submitted the case to the Ombudsman. The Ombudsman did not see any misconduct on the part of the bank in the specific circumstances and recommended that the complainant assert any claims directly against the landlord.

The complainant had paid the amount for the rent deposit at a post office counter using a payment slip received from the landlord. On the receipt of the payment slip intended for the payer, it was evident that the recipient's account was in the name of the landlord. The landlord then handed the tenant a printed bank receipt, signed by the tenant, with booking details of this account. This showed that an amount of CHF 2,400, less the fee for the cash deposit at the post office counter, was entered in the private account "Liegenschaft" (property), which was in the name of the landlord, with the note "Mietkaution" (rent deposit). Under the amount, the address of the flat for which the deposit was paid was noted as a personal note by the account holder.

As the complainant correctly stated, there are provisions in tenancy law on how funds for rent deposits must be kept and who may dispose of them under what conditions. The landlord must pay deposits received from the tenant into an account or custody account at a bank which is in the name of the tenant. The bank may only release such a deposit with the consent of both parties or on the basis of a legally binding order for payment or a legally binding court judgment. If the landlord has not legally asserted a claim against the tenant within one year after the termination of the tenancy, the tenant may independently demand the return of the deposited amount from the bank (Art. 257e of the Swiss Code of Obligations). The complainant's argument that the landlord had violated these provisions was readily comprehensible to the Ombudsman.

The complainant was also of the opinion that the staff of the bank that maintained the account for the landlord could have recognised in the bank documents that the money deposit served as a rent deposit. For this reason, and the fact that the bank had given the landlord access to the deposited amount without his consent, he therefore considered the bank to be partly to blame for the violation of the tenancy law provisions.

The Ombudsman could well understand the complainant's displeasure about the incident. However, he pointed out to him that, in his experience, banks only open rent deposit accounts in the name of the tenant using standardised form contracts that have to be signed jointly by the landlord and the tenant. In the present case, it was not evident that the bank had opened such a rent deposit account in the name of the tenant. It was, however, clear from the section of the deposit slip intended for him and the detailed receipt provided to him by the landlord for the account in which the amount was paid in that it was in the landlord's name. There was no indication that the complainant had entered into a contractual relationship with the bank on the basis of which he could have made a claim against the

bank in respect of the rent deposit. Rather, there was no apparent contact between the complainant and the bank in relation to the beneficiary account and its purpose. There was also no evidence that the bank had colluded with the landlord in any way to make the tenant believe that a rent deposit account had been opened in his name and that it would keep the amount blocked in his interest for the purpose of complying with the provisions of the tenancy law.

The question remained whether the bank should have understood and taken into account the payment purpose “Miete Kaution 2400.-” (rent deposit 2400.-), which was obviously visible in the message field on the payment slip, in such a way that the amount paid in would have had to be blocked for the tenant’s flat as a rent deposit within the meaning of Art. 257e CO. However, as the Ombudsman understands it, such notices merely serve the purpose of communication between the payer and the payee. The bank does not have to monitor or interpret them to ensure that the recipient complies with the remitter’s intended purpose of payment and any specific legal provisions associated with it.

The Ombudsman was therefore unable to establish any misconduct on the part of the bank and saw no arguments with which he could have persuaded it to make concessions to the complainant. He pointed out to him that he would have to complain about the violation of the tenancy law directly to the landlord and assert any claims against him.