

Repayment of a rent deposit

Topic: **Account / Savings account** Case number: **2018/03**

The customer and tenant asked the bank to repay a rent deposit as the underlying tenancy had ended more than one year prior to his repayment request and the landlord had not asserted any legal claims against him in the meantime in connection with said tenancy. The bank contacted the landlord who reported that he still had claims against the tenant. The bank therefore refused to return the deposit to the customer. Since the latter believed he had a legal entitlement to repayment, he asked the Ombudsman to initiate mediation proceedings. During said proceedings, it was ultimately possible to convince the bank to pay the rent deposit back to the customer.

In accordance with Art. 257e of the Swiss Code of Obligations, the customer had opened a rent deposit account with the bank. The law states that the sum of such a rent deposit should be deposited in a savings account or custody account in the tenant's name. The bank may only return this security deposit with the consent of both parties or based upon a legally enforceable payment order or a final court decision. If the landlord has not legally asserted any claim against the tenant within one year following termination of the tenancy however, the tenant may ask the bank to repay the security deposit. Initiating debt collection proceedings for a claim under the tenancy or taking relevant court action is deemed asserting a legal claim in this respect.

According to the customer, the tenancy had ended more than one year prior to him submitting his repayment request to the bank. The bank contacted the landlord whose legal representative prohibited the bank from repaying the rent deposit. He claimed that the tenancy law dispute had not yet ended and that he had initiated rent conciliation proceedings on the landlord's behalf with the relevant court of jurisdiction. On that basis, the bank refused the customer's repayment request and referred him to the landlord with whom he should endeavour to resolve the problem directly. The customer pointed out in vain that the rent mediation proceedings had only been initiated more than one year following the end of the tenancy and that the landlord had not provided proof of any other legal action taken by him to assert a claim under the tenancy. Since the parties were unable to reach an agreement, he submitted the case to the Ombudsman.

The Ombudsman fully understood the fact that, in such a case, the bank would inform the landlord about the repayment request and give him an opportunity to state his position. He did not share the customer's view that the repayment must take place exactly one year after termination of the tenancy without the bank contacting the landlord. Considering the unambiguous legal stipulation, in the Ombudsman's view, such contact should however be limited to checking that the legal requirements for repayment without the landlord's consent are indeed present. Such a check should also be possible quickly. In other words, the landlord must be able to prove immediately that he has legally asserted a claim against the tenant under the tenancy within the one-year period. In this case, the landlord's lawyer had in fact actually initiated conciliation proceedings. This was only done after the one-year period had expired however. The customer's request for repayment was therefore justified even though, according to the landlord's statements, he still had outstanding claims under the tenancy. Repayment could not be refused by the bank on the grounds that there was still no definitive clarification of the mutual claims under the tenancy. The bank eventually saw this and returned the rent deposit amount to the customer.

