

# Your Security Deposit Rights

## **1. HOW MUCH OF A SECURITY DEPOSIT DO I HAVE TO PAY?**

The law says that your landlord can ask for a security deposit equal to the amount of your monthly rent. The landlord cannot get more than that by saying you must pay a security deposit plus "last month's rent." For example, if your rent is \$400, the landlord can ask for a total security deposit of up to \$400.

## **2. WHAT SHOULD I GET FROM THE LANDLORD WHEN I PAY THE SECURITY DEPOSIT?**

You should get a receipt for the security deposit that states: the amount you paid and that it was for a security deposit, the name and signature of the person you gave the money to, the address of the apartment and the date of payment.

You should also make a list of any problems with the apartment. You should write down: broken windows or screens, holes in walls, broken lights, etc. Try to have a friend go with you when you make the list and ask him/her to sign the list. Send a copy of the list to your landlord.

The purpose of the list is to show that you did not cause any of the problems, so that you can get back your security deposit when you move out. The friend can be a witness, if necessary.

## **3. WHAT IF I DECIDE NOT TO TAKE THE APARTMENT?**

If you decide not to move in because the apartment has serious defects (bad roach problem, no heating system, etc.), you should demand the deposit back, as well as any prepaid rent, on the grounds that a landlord cannot legally rent a substandard apartment. If the landlord refuses to refund your deposit, make your demand in writing (see Example 1) and then, if necessary, take your landlord to Small Claims Court. If you discover serious defects in the apartment right after you move in, you can still move out and demand the security deposit and rent back. But you must send the landlord a letter giving him/her five days notice that you are terminating your rental agreement. (See Example 2)

## **4. HOW DO I GET MY SECURITY DEPOSIT BACK?**

The landlord must give you back your security deposit within 20 days after you leave the apartment if you give a new mailing address to him/her.

Before you leave the apartment, you should make a list describing the condition of the apartment. Again, you should have a friend witness the description. If the friend who signed the list when you moved into the apartment can do this, it is helpful. You might also consider taking pictures of the apartment after you have finished moving and cleaning up.

When you leave, you should give the landlord a letter stating your new address and request that she or he send you the deposit. (See Example 3) You should put the date on the letter and keep a copy for your records. If the landlord thinks you caused any damage to the apartment or if you owe back rent, the landlord can withhold money from the deposit. However, she or he must give you a written itemized list of the damages and/or rent owed and must give you the difference between these costs and the security deposit you paid. The landlord must send this list within 20 days of getting your new address.

## **5. WHAT IF THE LANDLORD DOES NOT SEND THE DEPOSIT OR KEEPS PART OF THE DEPOSIT FOR DAMAGES/RENT?**

If the landlord fails to return the deposit within the 20-day period or if you disagree with the amount s/he has withheld for damages or rent, you can sue the landlord in Small Claims Court.

## **6. DO I NEED A LAWYER TO SUE IN SMALL CLAIMS COURT?**

No, Small Claims Court is set up for people to use without an attorney. Small Claims Court is located in the district court. There are several around the state. The courts are listed at the end of the pamphlet. To find out which you should go to, call the clerk at the court located closest to the place where you used to live.

The clerk can help you fill out the complaint. In addition to asking for the return of your deposit, you should ask the judge for damages of up to twice the amount of the security deposit. Once you file the complaint, the landlord can counter-sue for damages or back rent s/he claims is owed. It costs under \$20.00 to file the complaint, including all mailing charges. The clerk will mail the complaint to the landlord.

The clerk will also tell you the date of your hearing in court. The landlord must file and send you an "ANSWER" to the claim by the date listed on the Complaint. If s/he does not do this on time, you should contact the clerk about winning the case by default. It is a good idea to call the court a few days before the hearing to make sure the landlord received notice of your complaint and that the hearing is still scheduled.

## **7. WHAT HAPPENS WHEN I GO TO COURT?**

When you go to court, you should be prepared to tell the judge why you are entitled to the return of your security deposit. You must bring the letter showing that you gave the landlord your new address and requested the return of the deposit.

You should bring the list you made when you moved into the apartment and/or witnesses who can state that you did not cause any damage to the apartment. If you have any photographs which show the condition of your apartment when you moved in or out, these may be helpful. You should also bring your rent receipts or other proof to show that you did not owe the landlord anything for back rent.

After hearing your story and the landlord's story, the judge will decide whether the landlord must pay you any money. (If the landlord counter-sued, the judge will decide whether either side must pay the other.)

Note that if you lose this case in District Court, you do not have the right to appeal.

## **8. HOW DO I COLLECT MY MONEY?**

If the judge orders the landlord to pay you money, you should get a copy of the judge's decision. The landlord has two (2) days to appeal. If your landlord does appeal, the case will go to Superior Court for a new trial. If there is no appeal, ask the clerk for an "execution" paper and take it to a sheriff or constable to serve on the landlord. You will have to pay a fee for this.

If the landlord still fails to pay, the execution has a date on it (filled in by the sheriff) for the landlord to go back to court (this is called a "citation" hearing) and be examined by the judge about his/her ability to pay. You must go to Court that day, too, and ask the landlord questions on the witness stand about his/her income and expenses. The judge will then hopefully order the landlord to pay you. If the landlord still does not pay, he/she is in contempt of court. If it comes to this, you may need to decide if you want to hire a lawyer to collect your judgment.

The other option you have is to try to "seize" the landlord's wages, bank accounts, or real estate. To try to get wages or bank accounts (if you know who the landlord's employer or bank is), you must get the proper "motion" from the clerk. For assistance, you can try contacting a lawyer to do this for you. To seize real estate, you must attach to the execution a legal description of the landlord's real estate (you get this information from the recorder

of deeds at the city or town hall in the city or town in which the real estate is located).

See PDF for example letters.

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## Topics

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