



SECURITY DEPOSITS

KNOW YOUR RIGHTS

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Almost all landlords require tenants to give a security deposit upon signing a lease agreement, or prior to move-in if there is no lease agreement being entered into. Typically security deposits are equal to one month's rent, but at this time there is no law that limits how much a landlord can charge as a security deposit.

LANDLORD RESPONSIBILITY:

Landlords, regardless of the number of units in their building, must treat security deposits as separate trust funds belonging to their tenants and they may never mix the deposit with their own money. Landlords of buildings with 6+ apartments must put all security deposits in New York State bank accounts that earn interest at the prevailing rate (the interest rate will be very low, amounting to a couple cents). Each tenant in the building of 6+ apartments must be informed in writing of the bank's name, address, and the amount of their deposit. Landlords are entitled to collect annual administrative expenses equal to one percent of the deposit. All other interest earned on the deposits belongs to the tenant.

TENANTS, PLEASE NOTE:

If a lease is renewed at a greater amount, or the rent is lawfully increased during the term of a lease agreement or month-to-month tenancy, the landlord is permitted to request additional money from the tenant in order to bring the value of the security deposit up to the higher monthly rent.

USE & OBLIGATION TO RETURN:

A landlord may choose to use the security deposit as a reimbursement for any unpaid rent at the end of a tenancy, and/or the reasonable "out of pocket" cost of repairs beyond normal wear and tear caused by the tenant. Under no circumstances does a landlord have to agree to use the security deposit for the final month's rent, nor will a judge ever order a landlord to do so. However, it is not uncommon for landlords to *agree* to use the security deposit for the final month's rent when the apartment has been kept tidy throughout the lease term/tenancy. It's OK to ask.

The landlord must return the value of the security deposit, minus any legal deductions, to the tenant at the end of the lease or within a "reasonable time" thereafter. NYS law does not specify what this "reasonable time" is, exactly. Locally in Albany, 30 days from the time of move-out is often considered reasonable, though this may vary. The timeframe may have been defined in the lease agreement signed at the beginning of the tenancy - when in doubt, double check what was agreed upon. The tenant need not request the return of the deposit - it is the responsibility of the landlord to make arrangements for the monies to be returned.

SALE OF BUILDING:

If the building is sold, it is the responsibility of the landlord to transfer all tenants' security deposits to the new owner within five days of the sale, or return the security deposits to the tenants & allow the tenants to tender deposits to the new owner on their own. The landlords must notify all tenants, by registered or certified mail, the name and address of the new owner.

****SEE BACK****

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AVOIDING DISPUTES:

The best way to avoid security deposit disputes is to be diligent from the very beginning of a tenancy. The tenant should thoroughly inspect the unit with the landlord prior to move in, and document in writing any preexisting conditions. MOVE-IN, MOVE-OUT checklists signed by both parties are a great way to document these things. Photographs or a video upon move-in can be considered as an alternative option to document pre-existing conditions if a landlord is not present for a move-in inspection. Notifying the landlord **in writing** of any repair issues in the apartment throughout the duration of the tenancy is also important.

Upon vacating, the tenant must leave the apartment in clean condition, removing all personal belongings and trash, and making any minor repairs as needed where the tenant caused damage beyond normal wear and tear.

Take photographs that show entire rooms, as well as typical problem areas like a stovetop or fridge.

If a dispute arises involving security deposits, tenants should always first try to resolve the issue with the landlord by communicating to the best of their ability prior to taking legal action. The court will look to see that the tenant has made good-faith attempts to resolve the dispute before making the decision to file a claim.

WHERE DISPUTES ARISE:

Typically, security deposit disputes will need to be filed in Small Claims court. As the tenant, you must sue the **owner** (not the property manager or agent) of the apartment at a physical address where the **owner lives or works** (PO Boxes cannot be sued). A great way to double-check details about who owns the apartment is to call the local tax assessor where the apartment is located. Ask who is listed as the owner on their records. They may be able to provide you with an address as well.

Your Day in Court: Depending where the hearing actually takes place, general procedure can vary between courts. Some courts only hear the beginning of the case at an initial appearance and set the case down for a trial at a later date if there is not a resolution. Photographs of the apartment, videos of the space, written requests for repairs throughout the tenancy, witnesses, and move-in/move-out checklists are all some examples of what tenants might choose to bring with them to court to prove their case. If you have questions about this process, it is best to consult an attorney. It's important to note that if your landlord is claiming damages to the apartment, he/she will need to supply something to the court to prove the claim (photos will generally be used for this).

The burden is on the tenant to refute these claims, for example by perhaps showing their own photos or having a witness testify. It will be up to the judge to decide whose case has the most merit, and at that point it will typically either be ordered that the monies be returned or not. Sometimes the money will be paid on the spot, or the judge will sign a judgment for the amount that is granted.

If you find yourself in a situation where your security deposit dispute is being set down for a trial that could be complicated, make sure that you reach out to an attorney so that you are prepared.

In some courts, a judge might ask the parties to make a last attempt to resolve the issue on their own if both sides appear. It might be that now your landlord is more willing to return all or a portion of the deposit now that you've ended up in court, and it is often worthwhile to try to settle the dispute.

** Remember, the best way to avoid security deposit disputes is to document, document, document from the start of the tenancy!**