



# SECURITY DEPOSITS

## KNOW YOUR RIGHTS

255 ORANGE ST. SUITE 104  
ALBANY NY 12210  
PHONE: (518)436-8997

*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.*

### ALL NYS TENANTS:

#### **\*\*EFFECTIVE JULY 14, 2019 - LANDLORDS MAY NOT CHARGE A DEPOSIT OR ADVANCE THAT IS MORE THAN THE AMOUNT OF ONE MONTH'S RENT\*\***

This means landlords can no longer ask upfront for **1st month's rent, last month's and security - or 1.5 month's security,** etc. *A landlord may, of course, require payment of the **first month's rent in addition to the deposit** upon lease signing/ exchange of keys.*

#### LANDLORD RESPONSIBILITY:

Landlords, regardless of the number of units in their building, must *never* mix the deposit with their own money. Landlords of buildings with 6+ apartments must put security deposits in New York State bank accounts that earn interest (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 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.

### **WHAT SECURITY DEPOSITS CAN BE USED FOR:**

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.

**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.**

### **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\*\***

# SECURITY DEPOSITS

## KNOW YOUR RIGHTS

### 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 pre-existing 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.

### 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, even if that's who you typically dealt with) 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 (Albany Tax Assessor - (518)434-5155). 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 bring with them to court. 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 as well.

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

### **TENANTS/TENANCIES PRE-DATING JULY 2019** **LANDLORD DUTY TO RETURN**

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.

# SECURITY DEPOSITS

## KNOW YOUR RIGHTS

### ANY TENANCIES ENTERED INTO AFTER JULY 2019 LANDLORD DUTY TO RETURN

*Note: these provisions below **do not** apply to any tenancies/lease agreements/ landlord-tenant relationships entered into prior to July 2019. Those relationships will still be defined by the pre-July 2019 landlord duty to return which is explained on the previous page.*

#### Changes to Security Deposit Law in NYS which apply to landlord-tenant relationships entered into after July 2019:

- Landlords must now offer the tenant the opportunity to inspect apartment prior to move in – if this occurs, parties must execute a written agreement outlining conditions of property.
- Tenant may now have landlord inspect property prior to tenant vacating the premises. Inspection to take place at most 2 weeks and at least 1 week before vacating, with 48-hours notice
- After inspection, tenant will have an opportunity to cure any damage to apartment prior to moving out

#### IMPORTANT

-Within **14 days** of the tenant vacating the property, the landlord SHALL provide tenant with itemized statement indicating the basis for the amounts deducted from security and **return any remaining portion of the deposit.**

\*\*If a landlord does not provide this statement within 14 days, they forfeit the right to retain any portion of the deposit. This means that if the tenant sues for the deposit back after the landlord fails to give this notice, the landlord **must** return the deposit\*\*

In any dispute over the amount of the deposit retained, the landlord must prove the actual cost of damages and demonstrate the damages that were caused by tenants beyond normal wear and tear.

Any landlords who willfully violates these new provisions will be subject to punitive damages up to twice the amount of the deposit. This means that the tenant could sue for 2x the value of the security deposit if the landlord purposefully withholds it and fails to give proper notice.