

Security Deposits

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What is a security deposit?

A security deposit is money you pay to your landlord when you move into a rental unit. Under New York State law, the money you pay as a security deposit still belongs to you. However, the law permits the landlord to hold your money until you move out. If you damage the property or fail to pay rent, the landlord can retain some or all of the security deposit. If there is no property damage when you move out of the rental unit and you do not owe your landlord any rent, utilities, or storage fees, the landlord must return your security deposit.

What should I do before I move into a new unit?

If you moved into a rental unit after July 14, 2019, your landlord is required to offer an inspection of the unit with you present. The inspection should occur before you move in; either the landlord or the landlord's agent must be present. You should request this inspection. After the inspection, the landlord must create a written agreement noting any damage to the rental unit that existed before your move-in date. This agreement will serve as evidence of any future dispute regarding the damage to the property. You should carefully inspect the unit alongside your landlord and a third person who can act as a witness. Use a checklist to note any problems you observe. For example, if you notice a hole in the wall or a cracked window, write it down or take photos if possible. These items should be documented in the written agreement with your landlord. Taking these steps before moving into a new rental unit will protect you when moving out. Your landlord cannot withhold your security deposit to cover damage that existed when you moved in. Before moving out, have a witness inspect the apartment with you again. If possible, take photos.

How can a checklist help me during the move-in and move-out inspections?

You can create a checklist to help you as you conduct the inspection. After each item, leave enough space to note your observations. If possible, make two columns. One for when you move in and the other for when you move out. Include the following items:

GENERAL

Doors, locks, windows, window screens, furnace, basement, carpets, curtains, window shades, entryway, yard, the presence of vermin or insects, etc.

KITCHEN

Refrigerator, stove, oven, sink, counters, cupboards, drawers, floor, walls, plumbing, outlets, light fixtures, etc.

BEDROOM(S)

Closet, windows, floor, walls, ceiling, light fixtures, etc.

BATHROOM(S)

Sink, toilet, tub, shower, tiles, plumbing, floor, walls, fixtures, towel bar(s), cabinets, drawers, mirror, etc.

You, the landlord, and any witnesses should sign and date the checklist. Be sure to include all damages listed in the checklist in the written agreement following the inspection. Create a checklist for both move-in and move-out inspections. Keep a copy of the inspection checklist with other important documents.

How much is the security deposit?

For most rental units leased on or after July 14, 2019, a security deposit may not exceed the amount of one month's rent. The deposit is typically paid before or upon moving in, in addition to the first month's rent. Although they are usually paid simultaneously, you should pay the security deposit by a separate personal check or via money order. If you pay by check, write "security deposit" in the memo line. You should request a receipt indicating it is a deposit receipt. Save your canceled check, the carbon copy of your money order, or the receipt you received from your landlord. This is proof that you paid the deposit.

Additionally, for most rental units leased on or after July 14, 2019, landlords can no longer require you to deposit your last month's rent upfront. Generally, they may only demand your first month's rent and a security deposit that does not exceed your monthly rent.

Can I use my security deposit to pay for the final month's rent?

No. If you do not pay your last month's rent when it is due, you risk being evicted for nonpayment of rent before the end of your lease.

Where is my security deposit?

If your apartment building has six (6) or more units, your landlord must place your security deposit in a separate, interest-earning savings account. Additionally, your landlord must notify you, in writing, of the name and address of the bank. The landlord may retain 1% of the account's balance annually, while the remainder belongs to you. Although the landlord is not required to give you the interest each year, they must return it along with the security deposit when you move.

If there are fewer than six (6) rental units in the building where you reside, the landlord is only required to deposit the security deposit in a separate bank account. This account does not need to bear interest.

When can my landlord keep the security deposit?

Your landlord can keep the deposit if you damaged the unit beyond normal wear and tear. However, your landlord can only keep as much money as is needed to fix the damage. The landlord must provide you with an itemized list of the repairs they allege are the reason for keeping some or all of your security deposit. Follow up with your landlord after the move-out inspection and request a copy of the repair receipts. You should get back whatever part of the security deposit your landlord did not use to make repairs.

If you owe rent, utilities payable directly to the landlord, or storage fees, the landlord can keep all or part of the deposit. Your landlord should return any portion beyond what you owe.

When must my landlord return my security deposit?

Your landlord is not required to return your security deposit before you move out or on the day you vacate the rental unit. If you leased the apartment on or after July 14, 2019, the landlord must return the security deposit within 14 days after you vacate the unit. If the landlord plans to retain some or all of your deposit, they must provide you with an itemized statement within 14 days of your move-out. If the landlord does not do this, they forfeit their right to keep any part of the deposit. For rentals before July 14, 2019, the landlord must return the security deposit within a reasonable timeframe, typically 30 days.

How can I protect myself against a landlord unfairly claiming that I damaged the apartment?

To best protect yourself, you should remember to request an inspection from your landlord when you move in and when you move out of the unit. After you or the landlord gives notice to end the lease (unless you provide fewer than two weeks' notice), the landlord has to notify you in writing of your right to request an inspection of the rental unit. You have a right to be present at this inspection. The landlord should give you at least two days' notice regarding when the inspection will take place. The inspection should occur at least a week before you move out. After the inspection, the landlord should provide you with an itemized statement describing why they propose deducting any portion of your security deposit. This allows you time to fix any of these conditions before you move out. You should also take pictures when you move out. Ask an outside party to inspect the apartment carefully, if possible. Make sure you return the key on time. These steps may help you win if you need to sue your landlord in Small Claims Court to recover your deposit.

How do I get my security deposit back?

If your landlord refuses to return your security deposit without receipts, fails to provide an itemized list of deductions, or does not return your security deposit within 14 days of your move-out date, you may wish to file a lawsuit in Small Claims Court. The court may award you damages for any portion of your security deposit that should have been returned. You should inform the court if your landlord did not follow the aforementioned rules or mixed your deposit with their money. The court may determine that by violating these rules, the landlord forfeited the right to keep any part of your security deposit. If you rented the property after July 14, 2019, and the landlord willfully violated the security deposit rules, the court may award punitive damages of up to twice your original claim. Punitive damages penalize outrageous behavior, such as retaining a tenant's deposit without just cause.

When should I take my landlord to Small Claims Court?

You may consider filing a lawsuit in Small Claims Court if your landlord says that you damaged the apartment or owe back rent, and you can prove that you did not cause the damage and do not owe rent. You may also go to Small Claims Court if the landlord fails to return the security deposit and does not account for any deductions.

Small Claims Court is designed to be a simple, inexpensive, and informal court where individuals can sue for money without the need for a lawyer. Small Claims Courts based in cities can award up to \$5,000, while Small Claims Courts in towns and villages can award up to \$3,000. If your landlord refuses to return your security deposit because they claim you damaged the apartment, you may want to file an action against them in Small Claims Court. You should bring witnesses, photographs, and other evidence to court to prove that you did not cause the damage. If your landlord refuses to return your deposit because they claim that you owe back rent, you should bring with you to court copies of rent receipts, money orders, and canceled checks that you used to pay

your rent.

Please be advised that if you file a lawsuit against your landlord in Small Claims Court, the landlord can file a countersuit against you. If the landlord believes you owe money beyond the security deposit and provides evidence to support that claim, they may be awarded a judgment against you. If the judge determines that the landlord's evidence is more substantial and convincing than yours, you could owe more money to the landlord.

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