

Legal Assistance of Western New York, Inc. ®

We provide free legal aid to people with civil legal problems in western New York.

www.lawny.org

Security Deposits

Security Deposits

What is a security deposit?

A security deposit is money that you pay to your landlord when you move in. Your landlord holds this money until you move out. If you damage the property or do not pay rent, the landlord can keep the money. If, when you move out, there is no damage and you don't owe your landlord any rent, you get the security deposit back.

Before moving in:

Before you move into an apartment, you should carefully inspect it. Inspect it with your landlord and a third person as a witness. Use a checklist to note any problems that you see. For example, if you see a hole in the wall or a cracked window, write it down. If you can, take photos. Ask your landlord to sign the checklist. These steps will protect you when you move out. Your landlord will not be able to keep your security deposit to pay for damage that existed when you moved in.

IMPORTANT: Before you move out, you should have a witness inspect the apartment with you again. If you can, take photos.

Using a checklist for inspections:

You can use a checklist that you make up. After each item, leave enough room to write what you saw. If you can, make two columns. One is 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
- **KITCHEN:**
 - Refrigerator, stove, oven, sink, counters, cupboards and drawers, floor, walls,

- plumbing
- BEDROOMS:
 - Closet, floor, walls, ceiling, light fixtures
- BATHROOM:
 - Sink, toilet, tub, shower, tiles, plumbing, floor, walls, fixtures and towel bars, cabinets, mirror.

You, the landlord, and any witnesses should sign and date the list. Do this after both the inspection when you move in and the one when you move out.

How much is the security deposit?

It is what you and your landlord agree on. Usually, a security deposit is equal to one month's rent. This does not have to be the case. The deposit is usually paid with your first month's rent. You should pay the security deposit by a separate personal check or by a bank money order. If you pay by check, you should write "security deposit" on it. This receipt should say that it is a receipt for the deposit. Save your canceled check, the carbon copy of your money order, or the receipt that you received from your landlord. This is proof that you paid the deposit.

Can I use my security deposit for the last month's rent?

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 6 or more apartments, your landlord must place your security deposit in a separate savings account. Your landlord must also notify you in writing of the name and address of the bank. The landlord may keep 1% of the balance of the account each year, but the rest belongs to you. The landlord does not have to give you the interest each year. The landlord does have to return the interest with the security when you move.

If there are fewer than 6 rental units in the building where you live, the landlord is only required to put the security in a separate bank account. This account does not have to pay interest.

When can my landlord keep the security deposit?

Your landlord can keep the deposit if you damaged the apartment. Your landlord can only keep as much as is needed to fix the damage. Ask to see the receipts for the repairs. You should get back whatever part of the security deposit that your landlord did not use.

If you owe rent, the landlord can keep all or part of the deposit. Your landlord should return any portion beyond what you owe for back rent.

When must my landlord return your deposit?

Your landlord does not have to return your security deposit before you move out, or on the day that you move. The landlord has a "reasonable time" to inspect the property to see if you damaged it.

How do I protect myself from the landlord unfairly claiming that I damaged the apartment?

You should take pictures when you move out. If you can, get somebody to carefully check over the apartment. Make sure you return the key on time. Also, ask your landlord to inspect the property with you right before your move. This will help you win if you have to sue your landlord to get your deposit back.

How do I get my security deposit back?

The landlord does not have to give back your deposit until you actually move out. If the landlord refuses to return the security deposit after you leave, you can sue him or her in Small Claims Court.

When should I take my landlord to Small Claims Court?

Go to 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.

Small Claims Court is designed to be simple. You can sue another person without having a lawyer represent you. If your landlord refuses to give back your deposit because he or she claims that you damaged the apartment, you should bring witnesses, photos and other evidence with you to court to prove that you did not cause the damage. If your landlord refuses to give back your deposit because he claims 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.

If you go to Small Claims Court, the landlord can sue you for any amounts that the landlord believes you still owe after the security deposit has been deducted. This means that the landlord could be awarded a judgment against you, if the Judge decides that the landlord's evidence is stronger and more convincing than yours.

(c) Legal Assistance of Western New York, Inc. ®

This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

Last Review Date: January 23, 2019

Printed: April 23, 2019

<http://www.lawny.org/node/72/security-deposits>

©Legal Assistance of Western New York, Inc. ®