

Legal Assistance of Western New York, Inc. ®



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

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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. When you move out, if there is no damage - and you don't owe your landlord any rent, utilities, or storage fees - then you get the security deposit back.

Before moving in:

If you move into an apartment after July 14, 2019, your landlord is required to offer to conduct an inspection of the apartment with you. The inspection should happen before you move in, and the landlord or the landlord's agent must be present. You should request this inspection. After the inspection, the landlord is required to create a written agreement noting any damages to the apartment that existed before you moved in. If there is any dispute later about the damage, this agreement will be allowed as evidence. You should carefully inspect the apartment. Inspect it with your landlord and a third person as a witness. Use a checklist to note any problems you see. For example, if you see a hole in the wall or a cracked window, write it down. If you can, take photos. These items should go into the written agreement with your landlord. Taking 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. Also be sure to include all damages listed in the checklist in the written agreement after the inspection. Do this after both the inspection when you move in and the one when you move out.

How much is the security deposit?

For most apartments rented on or after July 14, 2019 a security deposit may not exceed the amount of one month's rent. The deposit is usually paid along 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 beyond normal wear and tear. Your landlord can only keep as much as is needed to fix the damage. The landlord is required to provide you with an itemized list of the repairs that he proposes are the reason for not giving the deposit back. Be sure to follow up and 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, utilities payable directly to the landlord, or storage fees, then 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 deposit?

Your landlord does not have to return your security deposit before you move out, or on the day that you move. If you rented the apartment on or after July 14, 2019, the landlord must return the security deposit within 14 days after you move out of the apartment. If the landlord plans to keep some or all of your deposit, the landlord must give you an itemized statement explaining this within 14 days of your move out. If the landlord does not do this, they forfeit any right to keep any part of the deposit. For rentals before July 14, 2019, the landlord must return the security deposit within a reasonable time, usually 30 days.

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

To best protect yourself, you should remember to request an inspection from your landlord both when you move in and when you move out. After you or the landlord give notice to end the lease (unless you end it on less than two weeks' notice), the landlord has to notify you in writing of your right to request an inspection of the apartment. You have a right to be present at this inspection. The landlord should give you at least two days' notice about when the inspection is going to take place. The inspection needs to happen at least a week before you move out. After the inspection, the landlord should provide you with an itemized statement describing why they are proposing to deduct any portion of the deposit. This gives you a chance to fix any of these conditions before you move out. You also 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. 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?

If the landlord refuses to return the security deposit on time, you may have to sue in Small Claims Court. The Court may award you damages for any part of your security deposit that should have been returned. If your landlord didn't follow the rules described above, or mixed your deposit with the landlord's own money, you should make sure you tell this to the court. The court may decide that by violating these rules the landlord forfeited any right to keep any portion 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 also award punitive damages that are twice your actual damages.

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. You may also go to Small Claims Court if the landlord failed to return the security deposit and did not account for any deductions.

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.

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Last Review Date: July 3, 2019

Printed: December 3, 2020

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

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