



SECURITY DEPOSITS

What is a security deposit?

A security deposit is any money that you give to your landlord, other than your monthly rental payment. Even if your landlord calls the money a deposit for cleaning, pets, or keys, or the last month's rent, the law considers it to be a security deposit. Security deposits are regulated by state law (RSA 540-A:5-8).

Who is protected?

- All tenants are protected by this law EXCEPT:
- tenants who rent a single family home from a landlord who does not own any other rental property;
- tenants under the age of 60 who live in a building with less than six apartments and whose landlord lives in the same building; and
- tenants in business, vacation, or recreational rentals.

Even if your tenancy is not covered under the law, your landlord is still obligated to return your deposit after you move out, minus unpaid rent and/or repair costs. If your security deposit is not returned, you still may sue your landlord, although you may not be entitled to the special penalties provided by New Hampshire's security deposit law.

What is the maximum deposit a landlord can require?

A landlord cannot require you to pay a security deposit greater than one month's rent or \$100, whichever amount is larger.

If your landlord demands first and last month's rent, plus a security deposit, this may be a violation of the law.

Your landlord is required to give you a receipt

When you pay a security deposit, the landlord is required to give you a signed receipt. The receipt must inform you:

- at which bank your deposit is kept; and
- that you have five days to give your landlord a list of defects and damages that were in the apartment when you moved in.

Where will your money be kept?

Any security deposit you pay remains your property. The landlord is required to hold your money in trust for you. The landlord must not mix the landlord's personal funds with your security deposit, but may mix the security deposits of all tenants in a single account.

Earning interest on your deposit

If your landlord holds your deposit for more than one year, he or she must pay you the amount of interest earned on the money in the savings account where it was deposited. You should get this money when your deposit is returned.

Every three years you can ask your landlord to pay you the interest earned on your deposit. You must do this at least 30 days before the end of the three-year anniversary of your tenancy. The landlord then has 15 days after the end of that year's tenancy to give you the interest earned on your deposit.

When your landlord sells the property, files for bankruptcy or is in foreclosure

Your security deposit is still your money, held in trust by the landlord. Any landlord who sells the property you are renting, files for bankruptcy, or is in foreclosure, must turn over all security deposits to the new owner.

Contact the buyer, the foreclosing bank, or the bankruptcy court as soon as you hear that a sale, foreclosure, or bankruptcy is in process. This will alert the new owner, the bank, or the bankruptcy attorney of the need to collect the security deposit from the original landlord for you.

What happens when you move?

When you move out, you must notify your landlord in writing of your new address as soon as possible and in any event within a reasonable time. To avoid problems, it is a good practice to give this notice on or before the day you move.

The landlord has 30 days from the end of the tenancy to:

- return your full deposit with any interest owed; or
- return your deposit minus any permitted deductions.

What may a landlord deduct from your deposit?

Your landlord may deduct any or all of the following expenses from your security deposit:

- any rent that is still owed;
- the cost to repair any damages to the apartment or leased premises caused by you or your guests; and
- the tenant's share of increases in real estate taxes (but only if a written agreement requires this).

Your landlord is required to provide you with an itemized list of any damages deducted from your deposit.

An itemized list of damages deducted from your deposit must state the exact repairs necessary to correct any damage. The landlord is further required to provide evidence or proof that the repairs have been or will be completed.

Examples of evidence are: receipts for materials purchased to make repairs, labor estimates, actual invoices.

Normal wear and tear

The landlord is not permitted to charge you for "normal wear and tear" to the premises. Whether or not something is considered damages or the result of normal wear depends on all the facts. Certain things like crayon marks, holes in the walls, and broken windows will usually be considered damages. Other things, such as worn carpeting or linoleum, usually will be considered normal wear and tear. If you go to court, the judge will decide whether something is normal wear and tear.

Protecting yourself

You can protect yourself best by making a complete inspection of the apartment, with a friend as a witness, and writing down all of the problems in the apartment. Send a copy of this list to your landlord within 5 days of when you move in. Do the same thing when you move out.

Whether or not the law protects you, you can take steps to protect yourself.

Remember to:

- Get a receipt for your deposit.
- Make a list of defects and damages when you move in.
- Give a copy of the list to your landlord and keep one for yourself.
- Give as much notice as possible of the date you intend to vacate.
- Clean your apartment and remove excess trash when you move out so the landlord cannot claim damages for "cleaning."
- Make a list of the conditions when you leave. Have a friend go through the apartment with you so you have a witness in case you have to go to court. (If possible, go through the apartment with your landlord.)
- Leave your new address with the landlord so he or she can return your deposit.

Suing to get your money back

Within 30 days from when your tenancy ends, your landlord must return your full security deposit, or the portion left after deductions for unpaid rent and/or the cost of repairs.

You can sue your landlord in small claims court if you do not get your security deposit back within 30 days. Before you file a lawsuit, send your landlord a letter asking for your money back. Make sure that the letter contains your new address, and that you keep a copy for yourself.

If you decide to sue, call LARC to request the How To Sue In Small Claims Court pamphlet. Remember, your suit could give your landlord the chance to claim that you owe him or her additional money. You should be prepared to go to court with evidence in support of your case, including proof that you paid your rent, and that you and your guests did not cause damage to the apartment.

Double Damages

You may sue your landlord for twice the amount of your security deposit for failing to:

- pay interest;
- return your security deposit (in order to recover double damages, you must have notified the landlord of your new address within a "reasonable

time” – reasonable time has not been defined, but you should probably send notice within 30 days of moving out);

- provide an itemized list of damages deducted from your deposit.

Special Damages

You may sue your landlord for actual damages or \$1,000, whichever is greater, plus costs and attorney's fees, for the following violations:

- requiring a security deposit greater than permitted by law;
- failing to provide a signed receipt and notice that tenant has five days to notify landlord of defects in the apartment;
- mixing your security deposit with the landlord's own money;
- failing to transfer your deposit and notify you of the transfer when the property is sold, foreclosed or goes into bankruptcy.
- If you can prove that the act was a willful or knowing violation, the court may award as much as three times the amount of damages.

Landlord's rights

Your landlord can sue you if the deposit was not enough to pay for damages and/or rent owed. Your deposit could become the landlord's property after 6 months if you fail to communicate your new address.

If you are facing eviction

If your landlord tries to evict you and sues for back rent in the same action, you can make a counterclaim for any damages you are owed for security deposit violations (and other possible counterclaims). When you file your appearance in the eviction action, you need to notify the court and your landlord, on the appearance form, of your counterclaim for damages. Then, when the eviction case is decided, the court will also decide on your security deposit damages. Any damages you are entitled to will be deducted from any award your landlord gets for back rent, and if your damages are greater than the rent claim, you might even win the eviction. See our pamphlet The Eviction Process.

Remember, before you sue:

- NOTIFY the landlord of your new address.
- SEND the landlord a letter asking for your money back.

- CONSIDER the claims the landlord could make against you.
- REVIEW the Small Claims Court materials.

Legal Advice & Referral Center
48 South Main Street
Concord, NH 03301
1-800-639-5290 or 603-224-3333