

# YOUR SECURITY DEPOSIT RIGHTS

This handbook has been prepared for you by

## **RHODE ISLAND LEGAL SERVICES, INC.**

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# **YOUR SECURITY DEPOSIT RIGHTS**

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## **1. HOW MUCH OF A SECURITY DEPOSIT DO I HAVE TO PAY?**

The law says that your landlord can ask for a security deposit equal to the amount of your monthly rent. The landlord cannot get more than that by saying you must pay a security deposit plus "last month's rent." For example, if your rent is \$800, the landlord can ask for a total security deposit of up to \$800.

## **2. WHAT SHOULD I GET FROM THE LANDLORD WHEN I PAY THE SECURITY DEPOSIT?**

You should get a receipt for the security deposit that states: the amount you paid and that it was for a security deposit, the name and signature of the person you gave the money to, the address of the apartment and the date of payment.

You should also make a list of any problems with the apartment. You should write down: broken windows or screens, holes in walls, broken lights, etc. Try to have a friend go with you when you make the list and ask him/her to sign the list. Send a copy of the list to your landlord.

The purpose of the list is to show that you did not cause any of the problems, so that you can get back your security deposit when you move out. The friend can be a witness, if necessary.

## **3. WHAT IF I DECIDE NOT TO TAKE THE APARTMENT?**

If you decide not to move in because the apartment has serious defects (bad roach problem, no heating system, etc.), you should demand the deposit back, as well as any prepaid rent, on the grounds that a landlord cannot legally rent a substandard apartment. If the landlord refuses to refund your deposit, make your demand in writing (see [Example 1](#)) and then, if necessary, take your landlord to Small Claims Court.

If you discover serious defects in the apartment right after you move in, you can still move out and demand the security deposit and rent back. But you must send the landlord a letter giving him/her five days notice that you are terminating your rental agreement. (See [Example 2](#))

## **4. HOW DO I GET MY SECURITY DEPOSIT BACK?**

The landlord must give you back your security deposit within 20 days after you leave the apartment if you give a new mailing address to him/her.

Before you leave the apartment, you should make a list describing the condition of the apartment. Again, you should have a friend witness the description. If the friend who signed the list when you moved into the apartment can do this, it is helpful. You might also consider taking pictures of the apartment after you have finished moving and cleaning up.

When you leave, you should give the landlord a letter stating your new address and request that

she or he send you the deposit. (See [Example 3](#)) You should put the date on the letter and keep a copy for your records.

If the landlord thinks you caused any damage to the apartment or if you owe back rent, the landlord can withhold money from the deposit. However, she or he must give you a written itemized list of the damages and/or rent owed and must give you the difference between these costs and the security deposit you paid. The landlord must send this list within 20 days of getting your new address.

## **5. WHAT IF THE LANDLORD DOES NOT SEND THE DEPOSIT OR KEEPS PART OF THE DEPOSIT FOR DAMAGES/RENT?**

If the landlord fails to return the deposit within the 20-day period or if you disagree with the amount s/he has withheld for damages or rent, you can sue the landlord in Small Claims Court.

## **6. DO I NEED A LAWYER TO SUE IN SMALL CLAIMS COURT?**

No, Small Claims Court is set up for people to use without an attorney.

Small Claims Court is located in the district court. There are several around the state. The courts are listed at the end of the pamphlet. To find out which you should go to, call the clerk at the court located closest to the place where you used to live.

The clerk can help you fill out the complaint. In addition to asking for the return of your deposit, you should ask the judge for damages of up to twice the amount of the security deposit.

Once you file the complaint, the landlord can counter-sue for damages or back rent s/he claims is owed.

It costs under \$65.00 to file the complaint, including all mailing charges. The clerk will mail the complaint to the landlord.

The clerk will also tell you the date of your hearing in court. The landlord must file and send you an "ANSWER" to the claim by the date listed on the Complaint. If s/he does not do this on time, you should contact the clerk about winning the case by default. It is a good idea to call the court a few days before the hearing to make sure the landlord received notice of your complaint and that the hearing is still scheduled.

## **7. WHAT HAPPENS WHEN I GO TO COURT?**

When you go to court, you should be prepared to tell the judge why you are entitled to the return of your security deposit. You must bring the letter showing that you gave the landlord your new address and requested the return of the deposit.

You should bring the list you made when you moved into the apartment and/or witnesses who can state that you did not cause any damage to the apartment. If you have any photographs which show the condition of your apartment when you moved in or out, these may be helpful. You should also bring your rent receipts or other proof to show that you did not owe the landlord anything for back rent.

After hearing your story and the landlord's story, the judge will decide whether the landlord must pay you any money. (If the landlord counter-sued, the judge will decide whether either side must pay the other.) Note that if you lose this case in District Court, you do not have the right to appeal.

## 8. HOW DO I COLLECT MY MONEY?

If the judge orders the landlord to pay you money, you should get a copy of the judge's decision. The landlord has two (2) days to appeal. If your landlord does appeal, the case will go to Superior Court for a new trial. If there is no appeal, ask the clerk for an "execution" paper and take it to a sheriff or constable to serve on the landlord. You will have to pay a fee for this.

If the landlord still fails to pay, the execution has a date on it (filled in by the sheriff) for the landlord to go back to court (this is called a "citation" hearing) and be examined by the judge about his/her ability to pay. You must go to Court that day, too, and ask the landlord questions on the witness stand about his/her income and expenses. The judge will then hopefully order the landlord to pay you. If the landlord still does not pay, he/she is in contempt of court. If it comes to this, you may need to decide if you want to hire a lawyer to collect your judgment.

The other option you have is to try to "seize" the landlord's wages, bank accounts, or real estate. To try to get wages or bank accounts (if you know who the landlord's employer or bank is), you must get the proper "motion" from the clerk. For assistance, you can try contacting a lawyer to do this for you.

To seize real estate, you must attach to the execution a legal description of the landlord's real estate (you get this information from the recorder of deeds at the city or town hall in the city or town in which the real estate is located).

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### Rhode Island District Courts

Second Division Eisenhower Square Newport, RI 846-6500	Third Division 222 Quaker Lane Warwick, RI 822-1771
Fourth Division 4800 Tower Hill Road Wakefield, RI 782-4131	Sixth Division One Dorrance Plaza Providence, RI 458-5400

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**RHODE ISLAND GENERAL LAW 34-18-19. Security deposits.**-(a) A landlord may not demand or receive a security deposit, however denominated, in an amount or value in excess of one (1) month's periodic rent.

(b) Upon termination of the tenancy, the amount of security deposit due to the tenant shall be the entire amount given by the tenant as a security deposit, minus any amount of unpaid accrued rent

and the amount of physical damages to the premises, other than ordinary wear and tear, which the landlord has suffered by reason of the tenant's noncompliance with §34-18-24, all as itemized by the landlord in a written notice delivered to the tenant. The landlord shall deliver said notice, together with the amount of the security deposit due to the tenant within twenty (20) days after the later of either termination of the tenancy, delivery of possession, or the tenant's providing the landlord with a forwarding address for the purpose of receiving the security deposit.

(c) If the landlord fails to comply with subsection (b) the tenant may recover the amount due him or her together with damages in an amount equal to twice the amount wrongfully withheld, and reasonable attorney fees.

(d) This section does not preclude the landlord or tenant from recovering other damages to which he or she may be entitled under this chapter.

(e) In the event the landlord transfers his or her interest in the premises, the holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section.

(f) No rental agreement shall contain any waiver of the provisions of this section.

## **YOUR SECURITY DEPOSIT RIGHTS**

### **EXAMPLE 1**

FROM:

*your name and address*

TO:

*landlord's name and address*

*today's date*

Dear *landlord's name* :

This is to notify you that I will not be renting your apartment at (*address of apartment*) because there are serious defects in the property. They include:

*(list worst problems here)*

Please return to me immediately my security deposit of \$XX.XX (*fill in the amount here*) plus the prepaid rent of \$YY.YY (*fill in the amount here*). You may send a check or money order to (*fill in your mailing address here*), or call me at (*fill in your phone number here*) to make other arrangements.

If I do not receive the deposit within a week, I will take you to

Small Claims Court and will ask the judge to award me twice the amount of the deposit as compensation.

Sincerely,

*sign your name here*

## **YOUR SECURITY DEPOSIT RIGHTS**

### **EXAMPLE 2**

FROM:

*your name and address*

TO:

*landlord's name and address*

*today's date*

Dear *landlord's name* :

This is to notify you that I am terminating my rental agreement for the property at (*address*) in five days because the apartment was delivered to me with serious defects. These include:

*(list worst problems here)*

In accordance with R.I. Law §34-18-29, please return to me immediately my security deposit of \$XX.XX (*write the amount here*) and all the rent I prepaid, \$YY.YY (*write the amount here*). You may send a check or money order to (*write your mailing address here*) or call me at (*write your phone number here*) to make other arrangements.

If I do not receive the deposit and rent within a week, I will take you to Small Claims Court.

Sincerely,

*sign your name here*

## **YOUR SECURITY DEPOSIT RIGHTS**

### EXAMPLE 3

FROM:

*your name and address*

TO:

*landlord's name and address*

*today's date*

Dear *landlord's name* :

As you know, I was your tenant at (*write your old address here*) and I moved out on (*write the date you moved here*).

This is to demand that you return to me my security deposit of \$XX.XX (*write the amount here*) within 20 days of the date I moved out. Please mail me a check or money order at my new address, which is (*write your new mailing address here*) or call me at (*write your phone number here*) to make other arrangements.

If I do not receive the security deposit back within 20 days, I can take you to Small Claims Court and ask the judge to award me twice the amount of the deposit as compensation.

Sincerely,

*sign your name here*