



## Security Deposit

Practically all states now have laws dealing with the disposition of the security deposit and what can be deducted from it. Beyond the bare regulations, there are things the landlord can do to avoid misunderstandings which lead to small claims court litigation, or consumer fraud investigations. Because of the growing legal recognition that the deposit is the tenant's money, it is necessary that the tenant have a solid understanding of what happened to it and that its disposition was fair.

### **Make things clear at the lease signing.**

1. While you naturally wish to retain the tenant on a long term basis, nevertheless, some discussion of what will happen upon tenancy termination is wise. Establish a specific move-out procedure, which you actually follow. It need not be complicated or time consuming, but it must be clear. Reduce it to writing, and give a copy to the tenant at the time of lease signing. It is not necessary to include it in the rental agreement, or even smart to do so, as you may wish to modify it, which is more difficult if it is in the lease. But do have the tenant initial a receipt for a copy which you reserve for the tenant's file. The move out procedure should include a walk through, at the time the last piece of heavy furniture is removed from the unit and the tenant has completed cleaning. In the event you run into a dispute with the tenant at this point, be sure to photograph the point of dispute.

### **Prepare for move-out before move-in.**

2. Have a walk through, at the time of lease signing, with an inventory sheet. Have the tenant initial the inventory sheet, then keep it in the tenant's file. This documents the condition of the premises before the tenant's movers start throwing the sofas and tables against the walls. If any discrepancies are noted, have them attended to within the first week of the tenant's occupancy, the sooner the better. Document the fix.

### **Provide a move-out notice.**

3. When your tenant announces he is going to move, and you have implemented some of the suggestions contained in our Tenant Retention article, provide the tenant with a notice of termination of tenancy addressed to you which complies with the laws of your state, and have the tenant sign it. This gives you the opportunity to obtain a forwarding address. Explain to the tenant that you cannot refund the security deposit until he has vacated and you have completed any corrections necessary. Even if the premises are perfect, it will still take a day or two to provide a formal accounting after the walk-through.

### **Provide an accounting.**

4. Whether your state or locality requires it or not, send an accounting of each charge to the deposit. Back it up with copies of invoices. Do this within the time required by your state or locality, or within two to three weeks. If the property is so far gone that you cannot complete the work within this time, then send an interim accounting, with a statement explaining the necessity for delay and that the complete accounting will be provided when all the work has been completed.

### **Avoid obviously inappropriate charges.**

5. All jurisdictions reserve the security deposit for compensation of the landlord for injury caused by breaches of the rental agreement, necessary cleaning, and damage to the property over and above normal wear and tear. Common sense helps. If the carpet

was already 12 years old when the tenant moved in, do not charge for carpet replacement after he moves out. Carpets wear out. But if the carpet was near new, and you are confronted with a mess of oil stains and burn marks, by all means charge. If the tenant has been there five years and you never painted the place, do not charge for painting. Do not charge for cosmetics which you do to the premises on a routine basis, regardless of what the vacating tenant does to clean the property, to make it more pleasing to prospective tenants. Do not hesitate, however, to take all charges against the deposit which can properly be charged to the tenants rent and other defaults, failure adequately to clean, and damage to the property.

**Follow up on Deficiencies.**

6. Your accounting will show whether the tenant owes you money. He does, make a clear demand for payment along with the accounting. Follow up with your invoices if requested. Part of a successful security deposit policy is to assure that you are reimbursed if the tenant does so much damage, or owes so much rent, that you still take a loss. Small claims court can be a useful tool in this regard.

There are plenty of profit opportunities in the landlord/tenant relationship which are perfectly legitimate. The security deposit is not one of them. Deal with the security deposit fairly and use it for the purposes for which it is intended, and not only will you avoid needless litigation, but also onerous governmental intervention.