Fair Housing And Recovering Your Security Deposit

How-To-Guide With Answers to Your Questions

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Fair Housing Resource Center is a non-profit 501 (c) 3 organization that offers several housing programs that benefit residents of Lake, Geauga and Ashtabula County, Ohio. Our mission is to promote equal housing opportunities for all persons and to advocate for fair housing and diversity in Lake County and surrounding communities through the education and involvement of the public, the governments, and the business community. Some of the services we offer include:

- Discrimination testing & complaint processing;
- Mortgage foreclosure counseling;
- Rental assistance programs;
- Tenant-Landlord information and mediation.

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Serving Lake County and Surrounding Communities

Table of Contents

How Do I Use This Booklet? …….....4

The Fair Housing Act ……..... 5

The Basics of Fair Housing …….....7

The Basics of Security Deposits ….....…….....8

FAQ's …….....11

Step-by-Step Deposit Procedures for tenants……..….....27

Obligations of Tenants ……....33

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How Do I Use This booklet?

Fair Housing Resource Center's Tenant-Landlord Information Line answers hundreds of calls per month. One of the most common questions we receive center upon security deposits. In this booklet you will find the most common questions we hear, and the best answers that we can provide to those questions. It is very difficult to write a comprehensive booklet on security deposits, because every move-out situation is a bit different and only resolves on a case-by-case basis. We have organized this booklet as a series of the most common questions tenants ask, followed by our answers.

It is important that you consult with an attorney before taking court action regarding any legal matter.

Nothing in this pamphlet should be relied upon as legal advice, nor should this pamphlet be regarded as creating an attorney-client relationship. It is offered as a quick reference and for general information only.

We hope that you use this booklet for the following things:

· To help you decide when it may be worthwhile to consult an attorney and file a claim;

· To help you keep attorney's costs down by minimizing research time;

· To help you take the necessary steps before court action is necessary.

The Fair Housing Act

Title VIII of the Civil Rights Act of 1968, commonly known as the Fair Housing Act, prohibited discrimination based on race, color, religion, sex and national origin. In 1988, Congress passed the Fair Housing Amendments Act that expanded the coverage of Title VIII to include familial status and disability as additional protected classes. Ohio codified the Federal Fair Housing Act in § 4112.02 of Revised Code.

In order to understand how the Fair Housing Act works, you must know the following:

· The Fair Housing Act applies to rental housing, home sales, lending, the insurance industry and more.

· Under specific exemptions, the Federal Act does not apply to housing operated by organizations and private clubs that limit occupancy to members.

· Housing discrimination is defined as any attempt to prohibit or limit free and fair housing choice because of race, color, religion, national origin, sex, disability or familial status. A person or entity who has violated a fair housing statute has committed housing discrimination.

Protected Classes

The following classes are protected under the Fair Housing Act:

· Race or Color (refers to whether a person is White, Black/African American, Asian, American Indian or Alaska Native, or is a Native Hawaiian or Pacific Islander, or a mixture of two or more of these groups)

· National Origin (refers to a person's birthplace or ancestry)

· Religion (refers to both the practice or non-practice of religion such as atheism, or religious affiliations that are outside the mainstream religious organizations)

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· Sex - Includes sexual orientation and gender identity

· Familial Status (refers to having children under 18 in a household, including expecting women)

· Disability (those individuals with mental or physical impairments that substantially limit one or more major life activities)

· **Military Status in Ohio

Prohibited Acts in Rental Properties

Section 4112.02 of the Ohio Revised Code and the Federal Fair Housing Act prohibits discrimination in the following practices:

In the Sale and Rental of Housing

Refusal to rent or sell, negotiate, or otherwise make available housing;

· Apply different conditions, terms or privileges for sale or rental of dwelling;

· Harassment of tenants;

· Discourage the purchase or sell of rental;

· Falsely deny that housing is available for inspection, rental or sale;

· Provide a person different housing services or facilities;

· Impose different sales prices or rental fees, use different qualification criteria or applications for the sale or rental of a dwelling;

· Create, publish or print any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination;

· Failure to complete, or delay the performance of repairs or maintenance.

The Basics of Fair Housing

What Type of Housing is Covered?

The Fair Housing Act covers most housing. In some situations, housing operated by organizations and private clubs that limit occupancy to members are exempt.

What are Common Violations to the Fair Housing Act?

· Marketing that is discriminatory against a protected class or classes;

· Falsely representing availability (or lack of availability) due to the potential renter's actual or perceived membership in a protected class;

· Refusing to rent, sell or negotiate with members of protected class(es);

· Participating in blockbusting (The use of prejudice to instill fear, or panic in order to motivate individuals in a particular area or neighborhood to sell or dispose of their property because of the entrance, or potential entry, of a protected class)

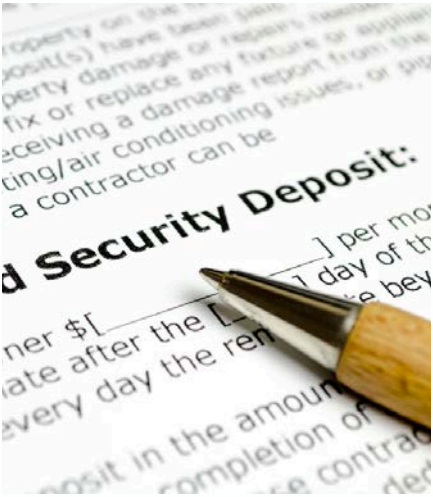
· Setting different conditions, terms or privileges for members of protected class(es).

Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include, (1) individuals with a mental or physical impairment that substantially limits one or more major life activities, (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The Basics of Security Deposits

A security deposit is a payment intended to provide the landlord with funds to cover the cost of repair of damages caused by the tenant. Most residential leases and rental agreements in Ohio require a security deposit. A security deposit is a dollar amount, usually one month's rent, paid to a landlord to ensure that a rented property will be kept in good condition. It is typically paid before or at the time of moving in.



Security deposits are not rent, and are returnable after the tenant moves out, as discussed below. A security deposit is a one-time payment that the landlord holds until the tenant moves out. After move-out, the landlord must return the deposit or provide an itemized list showing all charges. If they use the deposit incorrectly, they may be legally required to pay back that money.

Security deposits are usually equal to one month’s rent. If the landlord charges more than one months rent, a landlord is required to pay annual interest. It is the landlords responsibility to keep track of your annual interest.

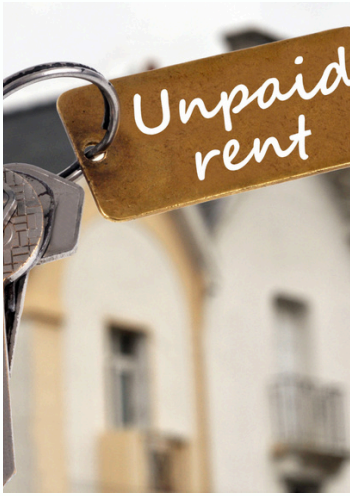
In order to apply a security deposit to repairs or other costs, a landlord is required to provide you with an itemized description of the work or repair that they used the deposit to pay for. As discussed below, this requires a fair bit of specificity as to what the damage actually was, and what the deposit money was applied to. Ultimately, the landlord must be able to demonstrate why they believe the tenant caused the damage, and why the deduction was correct for repairing the damage. It is recommended that you document the condition of your new place before you move in – if possible, with the landlord.

If a landlord can withhold all or part of the security deposit is dependent upon the facts of your particular situation. For that reason, it is helpful to look at the law that defines security deposits.

A landlord may withhold part or all of a security deposit for two reasons:

1. Late or unpaid rent;

2. Any damages that the tenant causes the landlord because of a violation of either the lease or the "Tenant's Duties" section of state law (§5321.05).



Late or Unpaid Rent

Let us discuss late or unpaid rent. A landlord can use a security deposit to pay for late or unpaid rent at the end of your lease upon move out. If you move out of the home and you have not paid last months rent or any late fees, your landlord may use the deposit to pay the balance owed on the account. A landlord is not required to use the deposit for late rent during your lease terms.

Damages

Damages are not just physical damages to the dwelling unit. Damages can also included out-of-pocket expense that the tenant causes the landlord by not living up to the lease. For example, if a tenant agrees to pay for electric service in a lease, and then fails to pay the final electric bill, that tenant would most likely owe the landlord that money, if the landlord has to pay that bill. The landlord would be entitled to use part of the security deposit to pay that bill.

When the landlord accesses the unit and finds damages, the landlord must send a letter itemizing any deductions within 30 days after the end of the lease and the tenant has moved out.

A landlord's failure to return the security deposit, or failure to properly itemize any payment deducted from the deposit, can permit the former tenant to sue for double the withheld deposit and attorney's fees.

In order for a tenant to sue for damages, a tenant is required to give the landlord written notice that includes a forwarding address. If the tenant does not give the landlord a forwarding address, the tenant gives up the right to sue for damages and attorney's fees.

Remember, every situation is different and this booklet is a guide- not a one-size-fits-all. If you are unsure of your rights, please contact a private attorney or Fair Housing Resource Center, Inc, for assistance.

It is easier to show examples, then to explain the law. We have compiled FAQ`s to assist with your housing needs.

FAQ`s

What does a landlord need to prove in order to deduct damages from a tenant's deposit?

Until recently, it was generally acceptable for a landlord to do a walk-through inspection at the time of move-in and at the time of move-out to show the amount of damage that the tenant has caused during his or her tenancy. The testimony of the landlord and the documentation of a walk-through list were generally sufficient to prove damages.

However, two Ohio court cases have affected the amount of evidence a landlord must collect to successfully hold a deposit. In these cases, the courts determined that a landlord not only needs to show the amount of damage a tenant has caused during his or her tenancy, but also, the landlord must show the reduction in market value of the property due to the tenant's damage. If the landlord is not able to provide evidence of the relative market value of the property before the tenant moved in, and after the tenant moves out, the landlord is not entitled to claim any damages.

The law in this area is still subject to change. It is still unclear what level of proof a landlord must offer to demonstrate the market value of a property: is a full appraisal required or will the court accept the landlord's estimate of market value?

Another area of difficulty for landlords is damage caused by a tenant's guest. If a tenant's guest causes damage to the apartment, in order to collect, the landlord must be able to show that:

1. The tenant was aware of the guest's negligent acts, and;

2. The tenant failed to verbally forbid the guest from continuing, or;

3. The guest, having received a warning, failed to heed the tenant's warning.

If the tenant is not present to observe the guest's act, then the tenant cannot issue a verbal warning. If the tenant does warn the guest, but the guest ignores the warning, the tenant has done all that the tenant can be expected to do to prevent the damage. In either case, the tenant is not liable for the damage; the landlord would have to collect directly from the tenant's guest. Lease clauses designed to directly bind tenants to liability for all their guests' actions have been found unenforceable.

Remember that we are not attorneys, and not qualified to interpret matters of law. Because these are such complex issues, we recommend that all parties to a security deposit dispute consult an attorney to review these matters.

If the tenant doesn't give the landlord a return address in writing, does the landlord still have to send an itemization?

Yes. According to at least one Ohio court, the landlord has a duty to make a reasonable effort to locate the tenant. If the landlord knows where the tenant works, he or she should attempt to contact them there. If the landlord and tenants have mutual friends, an address may be obtained through them. If all else fails, a landlord should send a letter addressed to the dwelling that the tenant used to rent from. The post office may forward it to a new address. If the envelope is returned as not deliverable, the landlord will have proof of his or her attempt. This proof is important to the landlord establishing best efforts to a court.

As a tenant, how can I best protect my deposit?

The process of protecting your security deposit begins prior to moving in. You should document the condition of your apartment both before you move in and when you move out. Before signing a lease or paying a deposit, be sure to do a careful inspection of the unit that you will be leasing. If you notice any problems with the unit, talk to the landlord about his or her plans for repair. When you complete the inspection, send an email to the landlord summarizing your conversation about any repairs you discussed, or other damage or problems. Or in the alternative, use the Move-In/Move-Out Checklist form on our website - www.FHRC.org and ensure that both you and the Landlord sign the form agreeing to what was discovered.

If the landlord promises a repair, make sure that the repair and a deadline for completion are included in the lease! Generally, oral promises or agreements must be included in any later written rental agreement in order to be valid. By including the repairs in the lease, you, as the tenant, preserve your ability to terminate that lease or sue if the landlord fails to make the repairs. You also make clear who is responsible for the repair.

Most landlords make a practice of walking through with the tenant and filling out an inspection checklist a few days before move-in. A written document of this sort, signed by both the landlord and the tenant, is very good documentation of the condition of the unit. Upon move-out, the landlord generally walks through again with the same checklist. You can ask to accompany the landlord on this inspection, but the landlord is not required to let you accompany him. If the landlord will not do the exit inspection in your presence, have a neighbor over before you turn in the keys and do your own checklist with the neighbor.

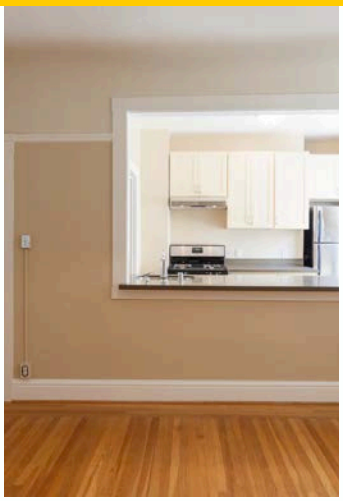
To err on the side of safety, always take pictures before move-in and upon move-out. This way you or the court can tell what damages already existed, and what damages were created during your tenancy. Thanks to cell phones you can easily take photos at move-in and at move-out to be able to compare unit conditions with time-stamped images.

Can the landlord charge me for cleaning the dwelling?

Sometimes yes, sometimes no. The tenant can be charged for cleaning if the landlord demonstrates that the cleaning had to be done due to the tenant's noncompliance with duties under state law or the rental agreement. The landlord cannot charge the tenant for cleaning that results from normal wear and tear to the unit. Ideally, tenants should clean the apartment themselves prior to move-out to leave it in the same condition in which the tenant received it upon move-in. Normal wear and tear is minor damage caused by ordinary use, not (for instance) a hole cut in the wall or a door broken off its frame.

Oftentimes, a landlord will deep clean a unit in order to "spruce it up" for a new tenant, often including a new coat of paint or similarly minor repairs. A landlord should not charge a vacating tenant for these types of cleaning tasks. These "spruce it up" measures should be absorbed by the landlord as reasonable business expenses.

For example, imagine that you only moved your belongings out of the apartment and failed to clean the unit prior to move-out. You have left the garbage, the food in the fridge, and the moving company tracked mud on the floors. Your landlord may be entitled to keep a reasonable portion of the deposit to cover the costs of the clean-up in this example.



Now imagine that the situation is a bit different. You have cleaned the apartment thoroughly. You disposed of the garbage, the food in the fridge, and cleaned up the mud on the floor. In fact, you think it's cleaner now than it was when you first moved in. The landlord should not charge you for general cleaning tasks because you took the necessary steps to make sure you complied with your obligations as a tenant under Ohio law.

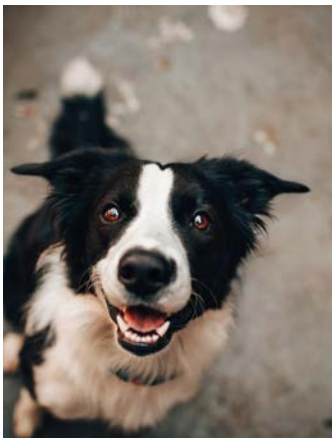
No matter what, if the landlord deducts money for cleaning, he or she should specifically list the reason for cleaning and amount of time that it took to do the cleaning in the notice he or she sends to the tenant. It should be clear why the charged amount applies in terms of both the work done and the price charged. One Ohio court disallowed a deduction for general cleaning because the list of damages simply read "$40-cleaning". The court found that this did not constitute "itemization", and the tenant was awarded double damages of $80 for the wrongful withholding.

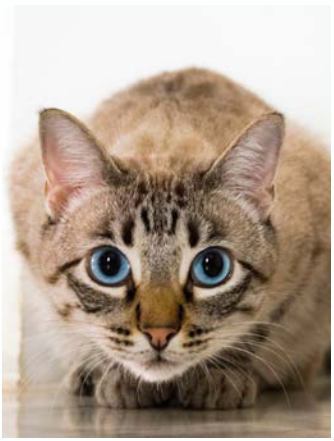
What about pet deposits and last month's rent?

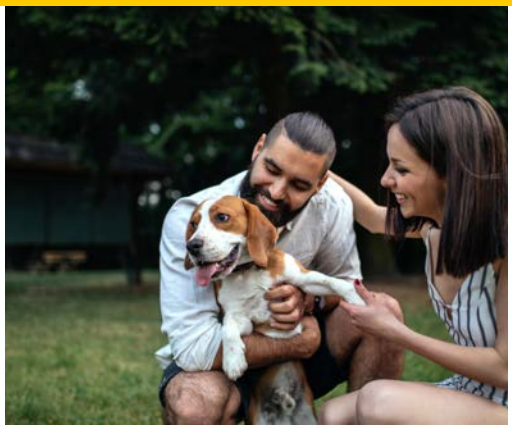
Landlords often charge pet deposits, utility deposits, or the "last month's rent" in advance. The question is: should these deposits be considered part of the security deposit? This issue often becomes important when computing interest to be paid on a deposit, or if a small claims suit is filed.

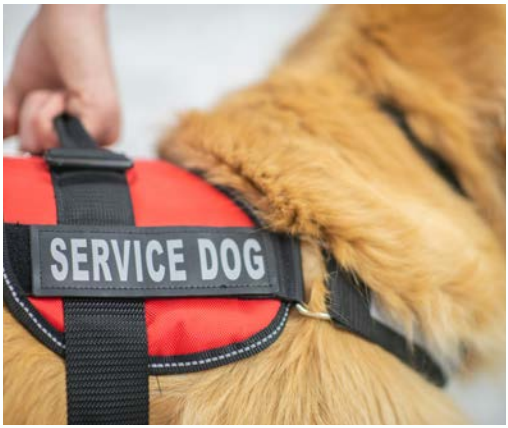
Fair Housing Resource Center's position is that all deposits charged by a landlord should be added together and considered a security deposit. The Ohio Revised Code defines a security deposit as "any deposit of money or property to secure performance by the tenant under a rental agreement." (§5321.01(E)). Notice that the law states that any deposit of money or property should be considered a security deposit. The only exception to this section may be escrow accounts set up to ensure the removal of modifications to the interior of units for persons with disabilities. Landlords, naturally, do not agree with this position, and it is not definitely settled by court decisions. This disagreement also means that landlords will not agree that these extra deposits increase the deposit over the amount of one month's rent and thus should accrue interest. Ultimately, it is up to the courts to decide.

The purpose of charging the last month's rent in advance is to make sure the tenant will live up to the rental agreement. The same applies to pet and utility deposits. It appears that these deposits meet the definition of a security deposit under state law, no matter what names they are given by the landlord.









Another type of deposit we see in leases is the so-called "non-refundable pet deposit." For tenants who have a pet, and not a service animal, there are two ways to look at these deposits. First, the “non-refundable pet deposit” could be seen as a security deposit. However, challenging a landlord who held such a deposit would be very difficult. The second and perhaps most reasonable way to view the "non-refundable pet deposit" is to regard the deposit as a one-time fee for permission to have a pet. Clearly, a great deal of confusion would be avoided if the landlord simply called this type of charge a fee rather than a deposit. A deposit is not the same as a monthly additional “pet charge” which is not addressed by the law of security deposits.

If your animal is a service or assistance animal, and you have provided your landlord with documentation from a healthcare professional of your need to have this animal, you should have any “pet deposits” waived as your animal is not a pet.

If your landlord attempts to collect a "pet deposit" for your service or assistance animal, please contact Fair Housing Resource Center, Inc. for assistance at 440-392-0147.

Wait, what was that about interest?

A landlord must pay 5% interest yearly on the amount of deposits that are greater than one month's rent, if you have lived at the property for more than 6 months. Here's how it works:

Imagine that you rent from a landlord who charges $400 per month in rent. The landlord charges a $400 security deposit, a $100 pet deposit, and $400 for last month's rent in advance. The total of all deposits is $900. The amount over one month's rent is $500. The landlord should send you a check for $25 (5% of $500) each year that you live there.

In reality, most landlords charge a deposit equal to one month's rent to avoid paying interest, and of the landlords who do charge additional deposits, very few landlords pay interest at all. The only penalty for a landlord refusing to pay interest is that the tenant can sue the landlord for that interest, but court costs will usually be bigger than the amount in dispute.

If the landlord does not send an itemization within 30 days, am I entitled to double my entire deposit?

No. You are entitled to double the amount wrongfully withheld, but not necessarily the entire deposit. That does not mean that a landlord is released from the obligation of sending an itemization notice within 30 days. It simply means that if the landlord fails to send notice, he or she will only be penalized if the tenant can prove that some part of that deposit was wrongfully withheld. For example, if your rent was $500 and the deposit was the same amount, if the landlord is found to have wrongfully withheld $100 but properly withheld $400, you are entitled to $200 in total damages.

What if the deduction is listed in the lease?

Many courts in Ohio have disallowed automatic deductions from the security deposit, even when the tenant agrees to it in the lease. Most often, these deductions are for carpet cleaning, painting, and early termination of the lease. Leases that list automatic deductions from the security deposit for moving out during a lease have been found by many Ohio courts to be invalid.

Often upon move out, the landlord will send a tenant a list of minor cleaning tasks and the deductions that the landlord will make from the deposit if the tenant doesn't do them. Although we know of no specific cases where this issue has been raised, it is fairly clear that these move-out lists are similar to the examples listed above.

What is normal wear-and-tear?

Normal wear and tear is the result of reasonable use of the apartment by a tenant. Wear and tear is the damage that results from the natural usage of a rental property and should be considered a business expense by the landlord. Here are some examples of what we generally considered wear-and-tear:
General cleaning, regardless of the tenant's reasonable efforts to thoroughly clean the apartment (see page 15). "Spruce it up" cleaning is usually done by management in order to prepare the apartment for a new tenant, and should not be considered damage. However, if the tenant fails to make reasonable efforts to thoroughly clean, the landlord may charge for cleaning tasks. For instance, where a tenant takes no action to keep a wall or floor clean, and significant mold or water damage develop as a consequence, the tenant may be charged for the necessary cleaning because it is over and above normal wear-and-tear

Carpet cleaning, when no specific damage was done to the carpet. However, stains, burn, tears, or excessive dirt build-up due to neglect could be properly charged as damage.

Nail holes, for hanging pictures. Minor holes like these are normal wear-and-tear. Of course, creating excessive nail holes, such as using 20 nails to hang a poster, would go beyond the scope of reasonable use of the apartment. Glue-backed plastic hangers may cause chargeable damage if removing them would tear or crack drywall or plaster.

Painting. Unless the tenant has caused damage to the wall that can only be repaired by covering the damage with paint. Painting that counts as damage is likely to be painting that finishes a bigger repair job, such as a patch to drywall.

For example, if a tenant painted the walls with dark or unusual paint, requiring more than the ordinary coats of paint to obscure, or if a tenant's children had drawn on the walls, and the marks could not be washed off, the tenant could be held responsible for the damage.

Replacement of light bulbs. Unless the tenant has broken or taken them, burned-out light bulbs are normal wear and tear.

There is no guarantee that a court would find these items to be normal wear and tear if a tenant were to challenge deductions from his or her security deposit. Much would depend upon the structure of the lease, and upon the particular facts of the situation.

How specific does an itemized list of damages have to be?

The list needs to specifically identify each damage and the cost to repair. The list needs to go into enough detail so that it can be easily determined that each charge is the result of damage caused by the tenant, rather than wear and tear.

If you have any questions about a security deposit invoice provided by your landlord, or if it has been over 30 days and you have not yet received one, you may contact a Housing Counselor at Fair Housing Resource Center, Inc., for assistance.

If I don't give the landlord thirty day's notice before moving, can the landlord keep my deposit?

If you have a long-term or one year lease, you typically cannot terminate that lease early simply by giving thirty days notice. You should review your lease to understand what it permits and requires in order to end it early. If you do move out before your lease is over, the landlord can sue you for the remainder of the lease (once the term of the lease has expired) or until it is re-rented, which ever is greater. It is a common practice for landlords to withhold a security deposit in order to defer the costs of the tenant breaking the lease.

If you have a month-to-month agreement, either the landlord or the tenant can terminate the agreement, for any reason, simply by giving the other thirty days notice before the next rent due date (§5321.17 ORC). This is not a breaking of the lease, it is a notice of non-renewal. Of course, if you signed a lease that requires you to give more than thirty days notice, you must follow the terms of the lease. See the Sample Letter on page 36 for an example of such notice.

If a landlord wrongfully withholds my security deposit, what do I have to do to collect?

In order to collect your security deposit, you would need to file a lawsuit in court against your landlord. Generally, lawsuits involving wrongful withholding of security deposits are filed in your local municipal court in the small claims division. Check with your local municipal court in order to determine if small claims is the proper place to file your claim.

Keep in mind that attorney's fees are a mandatory part of the award if you gave the landlord written notice of your forwarding address and you win your case. If you have a strong case, an attorney may take your case on what is called a “contingency” basis, which means that he or she would collect their fees from the landlord if your suit is successful.

No matter if you pursue the case with an attorney, or file yourself, you will need to document your claim. You will be making the claim of wrongful withholding; therefore you need to directly prove the claim. For example, if the landlord withheld the deposit, claiming that you did not give a proper termination notice, you need to produce a copy of your termination notice and proof of date of mailing. If the landlord claims you punched holes in all the walls, you will need to prove that the damage did not occur during your occupancy, or was already repaired. The defendant (the landlord) will get the benefit of the doubt in any "my-word-against-yours" scenario.

Isn't there some other way for me to get my deposit back without the hassle of going to court?

Maybe. Once you have prepared your case and finished your research, you might try sending a letter of demand that requests the return of your security deposit. The Fair Housing Resource Center has template letters on their website www.FHRC.org to help guide you. Some landlords will prefer to pay or to try to negotiate rather than deal with the hassle of going to court.

I **paid a deposit before signing a lease or moving in and now I don't want to live there. Can the landlord keep the deposit?**

That depends on what type of deposit you paid. There are two types of deposits that you may have paid; a security deposit or a deposit-to-hold. Hopefully, your receipt will specify what sort of deposit you paid.

A deposit-to-hold is a fee that a tenant pays to the landlord to keep a unit open for a period of time. The landlord's only duty is to not rent the unit to anyone else for a specified period of time. If the landlord holds the apartment for the tenant for the specified time, then the landlord has performed his or her duty and can keep the deposit whether the tenant moves in or not. Most landlords, however, will roll the deposit-to-hold into the security deposit if the tenant moves in.

If a landlord charges a security deposit, however, before you move in, and before you sign a lease, then the full deposit is refundable. In one Ohio court case, a tenant decided not to move into an apartment after paying the deposit and receiving a key. The landlord refused to return the deposit, and the tenant sued. The court awarded the deposit and double damages, noting that Ohio law §5321.16 allowed the landlord to deduct for "rent past due." Because the tenant did not move in, no rent was due. However, this is a case that took place before a lease was signed. If you sign a lease, and do not move in, the landlord can hold you responsible for the full value of the lease! In most situations, this will consume your security deposit.

As you can see, the answer to this type of question often hinges on the wording of the deposit receipt. Be sure the following information is on any receipt for a deposit, and don't be afraid to insist that the landlord add anything missing before you hand over any money:

- Tenant's and landlord's name and address;
- The amount and date of payment;
- The date until which the apartment will be held
- The amount that is refundable if the tenant does not move in; and
- What portion of the deposit will be applied toward the security deposit.



My landlord sold the house I was living in, and I lived under a new owner for 4 months. Now I have moved out and each owner is claiming that the other owes me the deposit. Who owes me?

That depends on the terms of the sale agreement. If the new owner assumed the legal responsibilities of the old owner, or if the new owner received a credit for the security deposit toward the purchase price, then the new owner is responsible for the deposit. If, however, there is no mention of the security deposit in the sales agreement, then the old owner is still responsible. Since it will probably be difficult to get either owner to disclose the sales contract, you might wish to name both owners in a small claims action.

As a tenant, what do I have to prove in order to collect double damages and attorney's fees?

The state law clearly places the burden on the tenant to provide the landlord, in writing, with a forwarding address. The courts are split on how strictly to interpret this requirement.

Some courts have held the landlord to the double damages provision when the landlord has actual knowledge of where to contact the tenant, even though the tenant has failed to provide written notice of a forwarding address. Under this interpretation, the landlord has a duty to make a reasonable attempt to reach the tenant with an itemization or refund.

If the landlord does not make a reasonable effort, then the tenant can collect double damages whether or not he or she gave written notice of a forwarding address. It is important to note here that this is a different situation than one where the tenant simply provides no information.

It is advised to provide your housing provider with written notice of your forwarding address to ensure that your landlord has the ability to refund the deposit or provide an itemized list of all charges.

I won my wrongful withholding case, but the referee said she could not award double damages because no punitive damages are allowed in small claims court. What can I do?

Normally, small claims courts cannot award anything more than actual out-of-pocket expenses or damages. Punitive damages, or damages that act as a penalty, are not allowable. Some small claims courts refused to award the double damages under §5321.16, describing the damages as punitive.

However, the Ohio Supreme Court recently clarified the nature of security deposit damages and held that damages under §5321.16 were not punitive. Small claims courts cannot award punitive damages because, in general, to allow recovery of punitive damages, the court would have to find that the defendant acted maliciously or out of ill will. However, the security deposit statute imposes the double damages penalty regardless of the intent of the landlord. Because security deposit double damages lack this element of intent, they are not punitive and can be awarded in small claims. You will need to get an attorney and appeal the decision.

Step-by-Step Deposit Procedures Overview
For Tenants

1. **Inspect the unit carefully prior to move-in**. Do an inspection with the landlord, and note any damages. Both you and the landlord should sign the inspection form, and both parties should get a copy. If the landlord does not have an inspection form, you can download one from our website: www.FHRC.org or pick one up at our office. Make sure any promises for repair that the landlord makes are included on the lease, with a deadline for completion, and initialed by both you and your landlord. Always put any agreed change to the lease into writing and initial next to it. The landlord must also initial the change. Be sure to take pictures prior to moving your belongings into the rental.

2. **If you pay a deposit, make sure you know what it means**. Your receipt should be very specific.

3. **Take care of the place while you live there!**

4. **Try to repair any damages yourself before move-out.** Generally, it is much cheaper to repair damage yourself, rather than allowing the landlord to do it.

5. **Clean thoroughly before you move out.**

6. **Provide your landlord with a forwarding address, in writing**, prior to move-out. Providing a written forwarding address to your landlord entitles you to "double damages" and attorney's fees if you are forced to sue. You should keep a copy of the notice, and send it registered or certified mail in order to document providing the landlord with a written notice. Or, you may wish to hand it to the landlord in the presence of a witness. See the Sample Letter on page 37 for an example.

7. **Document the condition of your apartment upon move-out**. The landlord will make an inspection to determine the amount of damage that occurred in your apartment. You should do the same, although the landlord does not have to allow you to accompany him on the inspection. If there was a move-in inspection, you may wish to retrace the steps of that inspection and mark the inspection form. You also may wish to take photographs, use a video recorder, or ask third-party (non-family member) to inspect the apartment with you.

8. **Start counting the days.** The landlord must return your deposit and provide written itemization of all deductions within 30 days of "termination of the rental agreement and delivery of possession" (ORC 5321.16 [b]). To be safe, start counting from the date where both the lease has expired and you have returned the keys to the landlord, whichever is later. Keep in mind that the deposit return and itemized list only has to be postmarked within 30 days. If it is late, you may wish to claim that the entire deposit was "wrongfully withheld." If you receive a check for only part of what you feel you owe, then either *do not cash the check, or write "this does not satisfy my claim*" above your signature when you endorse the check. Acceptance of the check without this notation will be taken as an agreement to settle.

9. **Do your own research or contact the Fair Housing Resource Center**. Once you get your itemized list, if you disagree with items that you are being charged for, do research to find out if you have basis for challenging the deduction. You can also contact the Fair Housing Resource Center for assistance. If you find that you have good support for your position, you may wish to send a letter to the landlord explaining your position and asking for the return of the "wrongfully withheld" amount within a certain amount of time.

10. **File a claim.** You must file the claim in the municipal (city) court that has jurisdiction over the apartment you used to live in. If you don't know which court is correct, call your local city or township offices and ask. You will need to contact the Civil or Small Claims Division of the Clerk of Courts office in order to file a claim. Ask if the office uses a form for small claims, or if you will have to type out your own "plea". If the court uses a form, fill in all of the information according to the form. If the court does not use claim forms, ask if you can have a sample plea or a copy of the "local rules" of the court. Use the format of the sample and substitute your information. Itemize the amount you are requesting. An attorney will take care of all of this for you, and offer advice on what you may or may not claim. If unsure, please consult a private attorney or contact the Greater Cleveland Legal Aid Society for assistance.

11. **Pay the filing fee.** Even if you have an attorney, you will have to pay a fee for filing the complaint. Check with your local municipal court for filing fee schedules. Turn in your complaint and prepare yourself for the hearing. The court will notify you of the hearing date at least five days in advance

12. **Get any agreements in writing.** If the landlord wants to settle with you before the court hearing, get any agreement in writing. The agreement should include a time-line for repayment as well as specify how payment is to be made (by certified check, direct deposit, etc.). You may wish to ask the landlord for your court costs in return for dropping the claim. Be sure to notify the Clerk of Courts office if you reach an out-of-court settlement.

HEARING

1. **Have your documentation ready and complete**. Bring copies for both the judge and the other side. Do not over whelm the judge with papers, just present items that directly support your case, or directly contradict your landlord's case.

2. **Bring any necessary witnesses**. Have your witnesses approach the judge's bench with you when your case is called and instruct them to remain quiet unless called upon.

3. **Dress nicely.**

4. **Stay calm**. A small claim can be very frustrating, but it is important that you stay calm and do not interrupt the judge, the landlord, or the witnesses. You will be given a chance to present your side of the story when any testimony raises questions about your claim. Do not make accusations, just state facts as you understand them.

5. **Plan your case carefully**. Because you are making the claim, you will be asked to present your argument first. State the facts briefly but completely, starting at the beginning, and offer any documentation to support your case as the issue comes up in the hearing. When an issue comes up that one of your witnesses can testify to, let the judge know. The judge will ask the witness for the necessary information.

6. **Stay on the subject.** Even if you feel that the landlord treated you unfairly throughout your tenancy, that information will not be considered by the judge. The judge will only consider the facts of the case, and will not decide against the landlord just because the landlord is "mean". The facts of this claim are only those that concern the security deposit dispute. Listening to arguments over issues that do not directly affect the case will only frustrate the judge.

7. Collection: If you win your claim, you still must collect from the landlord. The court does not collect a judgment on the spot. If the landlord refuses to pay, you have several options available. With a "certificate of judgment", you may arrange for a lien on the landlord's property, a garnishment of his or her wages, or you may attach a bank account. These processes can be arranged through the Clerk of Courts office. You will have to provide the court with information about the property, salary, or bank accounts you wish to collect from. As a last resort, you may be able to sell the right to collect to a collection agency.

Resources

Here are some references that may help you prepare your wrongful withholding case:

- The Ohio State Bar Association (as well as your county's bar association) and the Cleveland Metropolitan Bar Association, have lawyer referral services as well as some general guides to understanding the legal process. You can find OSBA guides at local libraries, and additional information at:

  www.ohiobar.org
  www.clemetrobar.org
  www.lakecountyohiobar.org
  www.geaugabar.org
  www.ashtabulacountybar.org

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- The "local rules" of the court you are filing your claim in. Most courts have a set of local rules that explain filing fees and the format in which the court expects pleadings and claims to be typed, deadlines for filing, and other procedural requirements. Typically these rules are posted to the court's website, but you may also consult the Supreme Court of Ohio website:

  https://www.supremecourt.ohio.gov/JudSystem/trialCourts/default.asp;

- Ohio Landlord-Tenant Law, by Frederic White, Banks-Baldwin Law Publishing Company (1995)[check your local library];

- Various other "Be your Own Lawyer" books, such as Nolo guides, many of which are available in public libraries.

- Nolo also publishes guides on the Internet, including Get Your Security Deposit Back, available at https://www.nolo.com/legal-encyclopedia/get-security-deposit-back-29695.html

- The Nolo and other online resources will remind you that they are not providing legal advice nor should you rely upon them to be completely accurate as to the local law. You should be careful when referring to these guides

Please keep in mind that the Clerk of Court's office cannot answer legal questions nor give legal advice. If you get confused along the way or feel overwhelmed with preparing your case, you may want to consider employing an attorney or contacting the Greater Cleveland Legal Aid Society for assistance.

The Law in Ohio

ORC 5321.05 Obligations of Tenant

A tenant who is a party to a rental agreement shall do all of the following:

- Keep that part of the premises that he occupies and uses safe and sanitary; dispose of all rubbish, garbage, and other waste in a clean, safe and sanitary manner;

- Keep all plumbing fixtures in the dwelling unit or used by him as clean as their condition permits;

- Use and operate all electrical and plumbing fixtures properly;

- Comply with the requirements imposed on tenants by all applicable state and local housing, health and safety codes;

- Personally refrain, and forbid any other person who is on the premises with his permission, from intentionally or negligently destroying, defacing, damaging, or removing any fixture, appliance, or other part of the premises;

- Maintain in good working order and condition any range, refrigerator, washer, dryer, dishwasher, or other appliance supplied by the landlord and required to be maintained by the tenant under the terms and conditions of a written rental agreement;

- Conduct himself and require persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;

- The tenant shall not unreasonably withhold consent for the landlord to enter into the dwelling unit in order to inspect the premises, make ordinary, necessary, or agreed repairs, decorations, alterations or improvements, deliver parcels that are too large for the tenant's mail facilities, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

If the tenant violates any provision of this section, other than division (A) (9) of this section, the landlord may recover any actual damages that result from the violation together with reasonable attorney's fees. This remedy is in addition to any right of the landlord to terminate the rental agreement, to maintain an action for possession of the premises, or to obtain injunctive relief.

SAMPLE LETTER
(Intent to Vacate)

February 28, 2007

Landlord's Name
Address
City, OH Zip

Re: 123 Apartment Lane

Dear (Landlord's Name):

Pursuant to our agreement, this letter serves as a 30-day notice of my intent to vacate your rental property located at 123 Apartment Lane, Painesville. I will be moved out on March 31, 2007 and I will furnish the keys to you by that date.

Please call me at (440) 555-1234 or (440) 555-9876 if you have any questions.

Sincerely,

Jane Doe

*This letter follows the statutory notice requirements for a month-to-month lease agreement (30 days). If you have a lease for a period of more than one month, please be sure to check the notice requirements contained in that contract.

SAMPLE LETTER
(Forwarding Address Upon Vacating)

March 15, 2007

Landlord's Name
Address
City, OH Zip

Re: 123 Apartment Lane, Painesville

Dear (Landlord's Name):

Pursuant to my written February 28, 2007 Intent to Vacate letter, I am moving out of your apartment located at 123 Apartment Lane, Painesville, on March 31, 2007. Would you please return my security deposit to the following forwarding address:

Jane Doe
789 Home Drive
Painesville, OH 44077

Since the Ohio Landlord-Tenant Law allows a landlord to deduct from the deposit for damages other than normal wear and tear, I would like to inspect the unit with you and document the conditions. Would you please call me at (440) 555-1234 or (440) 555-9876, to set up a time when we can inspect the unit and I can return the keys?

I look forward to hearing from you. I am sure that if we can get together, we will avoid future problems over the return of the deposit. Thank you in advance for you attention to this request.
Sincerely,

Jane Doe

This booklet was sponsered by the U.S. Department of HUD

Fair Housing Resource Center
1100 Mentor Avenue
Painesville, Ohio 44077
Phone: (440) 392-0147
Fax: (440) 392-0147
E-mail: info@fhrc.org
www.fhrc.org