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## Renter information: security deposits

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### Quick Facts

- A security deposit (or damage deposit) often is required by a landlord from a renter to cover possible damages to rental property.
- To facilitate return of the deposit to the renter, a list of damages and necessary cleaning should be recorded on the day a tenant moves in, with copies to renter and landlord.
- If the full amount of the deposit is not refunded, the landlord is required by law to provide a written statement within 30 days explaining the reason for any portion withheld.
- If a landlord does not comply with the law, a renter may take legal action.

A security deposit, damage deposit or cleaning deposit is any payment of money by a tenant to a landlord to cover damage or cleaning of rental property.

A landlord cannot keep the security deposit to cover normal wear and tear. Thus, a landlord cannot charge a tenant for normal cleaning if the apartment or house is left in as good or better condition than first occupied. A landlord can keep all or part of the security deposit to cover damage caused by the tenant's negligence, carelessness or intentional abuse of the rental property.

A landlord must prove the amount of the damage to the apartment/house and that it was caused by the tenants and/or their friends. A landlord no longer can keep the security deposit and make the tenant prove that he or she should get it back. The burden is on the landlord to return the deposit or prove the right to keep it.

### Moving In

- 1) The renter should keep a receipt for all deposits paid.

2) The renter should know and receipts should indicate how much of the first payment applies to the first month's rent and how much is actual damage or security deposit.

### 3) On the day a tenant moves in:

- Any existing damages and necessary cleaning should be listed, preferably with the landlord or apartment manager present. Not only will this help when the tenant moves out, but it lets the landlord know of repairs needed in the apartment.
- One copy of the damage sheet should be given or sent by certified mail to the landlord.
- One copy should be retained by the tenant. It is preferred to have all copies signed by both the tenant and landlord.
- Pictures should be taken of anything that is seriously damaged and the photos should be saved for the moving out process.

### Moving Out

1) The renter should furnish the landlord with a forwarding address. If the landlord sends a written statement of the damages to the tenant's last known address, it is important to provide the forwarding address. Register a forwarding address with the local post office.

2) The tenant must give the landlord proper written notice of intent to move out within the time specified in the lease. If no time is specified in the lease, notice must be given within the time specified by law. In a month to month lease, written notice must be given to the landlord 10 days before the end of the month.

3) The tenant should inspect the premises on the day that he or she moves out. A tenant may want to have a neutral party witness the condition the house or apartment was left in. Photos can be taken of the apartment condition when the renter moves out.

### Return of the Deposit

When a tenant leaves an apartment, the landlord has 30 days (unless a longer period of time,

<sup>1</sup>Original text by Colorado State University Student Legal Services; and Alice M. Morrow, former Cooperative Extension faculty. Reviewed by Judy McKenna, Cooperative Extension family resource management specialist and associate professor; and Office of Renter's Information, Student Legal Services (6/89)

not to exceed 60 days, is stipulated in the lease) to send to the tenant's last known address the full amount of the security deposit or a written list of the damages caused by the tenant and the amount of money needed for repairs. If the deposit is larger than the amount required for repairs, the landlord must return the excess.

### **Retrieving Unreturned Deposits**

If the landlord does not comply with the law and fails to refund the deposit within 30 days (or up to 60 days if stipulated in the lease), or withholds any portion for normal wear and tear, or if the tenant considers the reasons for withholding invalid and wishes to pursue the matter, legal steps can be taken.

The tenant may seek the assistance of an attorney, file a complaint in county court under Simplified Civil Action, or file a complaint in the small claims division of county court.

The tenant who seeks the assistance of an attorney should make an appointment and bring copies of the lease, deposit checks, correspondence, etc. Discuss fees with the attorney at this first appointment.

The tenant who pursues the matter without an attorney should first check the rental agreement with the landlord or realtor to see what liabilities might incur should he or she lose the suit. The renter must decide if it is worth about \$20 to retrieve a deposit often in excess of \$100.

To start the action, send the landlord a certified letter (with a return receipt requested) and demand the deposit be refunded within seven days under threat of legal action. The letter should cite violation 38-12-103 of Colorado Revised Statute and mention that 30 days has elapsed following the termination of the lease agreement. (See Figure 1 and 2.)

If seven days after the landlord receives the letter has lapsed and the tenant hears nothing from the landlord, the tenant can pursue court action. If the amount is \$2,000 or less, the tenant should go to the small claims court in the county courthouse in the county where the defendant lives or works to initiate a case.

If the amount (including trouble damages) is more than \$2,000 but less than \$5,000 the tenant should go to the county court in the county where the problem arose to begin legal proceedings.

If the name of the landlord is not known, the county assessor's office can help find the owner of the rental property.

Before filing, the renter must have grounds to file. Grounds include (a) expiration of the 30-day period and either non-refund without explanation or fictitious claims for damage and withholding charges and (b) seven days since the landlord's receipt of the warning letter.

### **Filing in the Small Claims Division of County Court**

The small claims courts are informal courts where people can sue for up to \$2,000 without a lawyer. These courts are a division of the county courts with a judge or referee that presides. Small

claims hearings are designed to be quick and relaxed and provide people with an inexpensive method to settle minor claims.

To start a small claims suit, fill out a small claims form from the court clerk. The complaint must have complete names and addresses, the amount the tenant is seeking, and a brief statement of why the amount is owed. The bill must be one owed directly to the tenant and not to anyone else.

The clerk will explain the various ways the complaint may be given to the defendant. This is called service of the complaint. The primary method of service is by certified mail, return receipt requested, notifying the defendant of the date and time to appear for trial. If the defendant cannot be served by mail, then a process server or sheriff must be used.

The court clerk will advise the plaintiff of the appropriate dates available for the return and trial.

Currently, there is a \$17 filing fee to start a small claims action. This fee can change and must be paid to the clerk of the court before the claim can be filed.

There is no additional fee to serve the first notice of the complaint by certified mail to the defendant. If service by mail is unsuccessful, then a process server or sheriff must be used. The fee for personal service by the process server or the sheriff, which the plaintiff must pay, depends on the actual cost. (Ask the county clerk for the pamphlet, How to Use the Colorado Small Claims Court or write for one from the State Court Administrator's Office, 323 State Capitol, Denver, CO 80203.)

### **Filing a Simplified Civil Action in County Court**

People can sue for claims up to \$5,000 in county court. The forms required to file a complaint are available at office supply stores.

It is important that the tenant fill out two copies of each form with the proper information. In addition, the tenant should keep a copy of each completed form.

The docket fee is \$25 and subject to change. The landlord should be served by the county sheriff or a process server.

Copies of the complaint, summons and answer forms should be taken to the county court office. The forms will be assigned a docket number and return date. This will give the landlord a deadline to answer the complaint (at least 10 days).

If the case goes to trial the tenant must gather written evidence: copies of the lease, cancelled checks, damage deposits, letters, replies and photographs.

For more information, see Service in Action sheets 9.904, Renter information: leases; 9.905, Renter information: evictions and landlord liens; and 9.906, Renter information: rental location, selection and roommates.

**(This material should not be used as a substitute for advice from attorneys and other qualified advisors.)**