



# HOUSING

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## Renting: Security Deposits

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### Quick Facts...

A security deposit (damage deposit) often is required by a landlord from a renter to cover possible damages to rental property.

To facilitate return of the deposit, make a list of damages and necessary cleaning on the day you move in, with copies for both you and the landlord.

If the full 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, you may take legal action.

A security deposit, damage deposit or cleaning deposit is money you pay 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 you 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 your 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 you or your friends. A landlord cannot keep the security deposit and make you prove that you should get it back. The burden is on the landlord to return the deposit or prove the right to keep it.

### Moving In

Keep a receipt for any deposit paid. It should indicate how much of the first payment applies to the first month's rent and how much is actual damage or security deposit. On the day you move in:

- List any existing damages and necessary cleaning, preferably with the landlord or apartment manager present. Not only will this help when you move out, but it lets the landlord know of repairs needed in the apartment.
- Give one copy of the damage sheet to the landlord, or send it by certified mail.
- Keep one copy. If possible, have all copies signed by both the tenant and landlord.
- Take pictures of anything that is seriously damaged. Save the photos for when you move out.

### Moving Out

Under Colorado security deposit law, the landlord is required to send a written statement of damages, along with any security deposit refund, to the renter's last known address. Therefore, it is important that you furnish the landlord with a forwarding address. Also file a change of address form with the local post office.

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, unless otherwise specified, written notice must be given to the landlord 10 days before the end of the month.

Inspect the premises on the day you move out. You 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.

## Security Deposits

**Return of the deposit.** When you leave an apartment, the landlord has one month (unless a longer period of time, not to exceed 60 days, is stipulated in the lease) to send to your last known address the full amount of the security deposit or a written list of the damages 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.

*When you leave an apartment, the landlord has one month (unless a longer period of time, not to exceed 60 days, is stipulated in the lease) to send to your 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.*

**Retrieving unreturned deposits.** If the landlord does not comply with the law and fails to refund the deposit within one month (or up to 60 days if stipulated in the lease), or withholds any portion for normal wear and tear, or if you consider the reasons for withholding invalid and wish to pursue the matter, you can take legal steps.

You 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. If you consult an attorney, bring copies of the lease, deposit checks, correspondence, etc. Discuss fees with the attorney at this first appointment. If you pursue the matter without an attorney, check the rental agreement with the landlord or realtor to see what liabilities might incur should you 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. Also send a copy by regular first class mail. The letter should cite violation 38-12-103 of Colorado Revised Statutes and mention that the statutory time requirement for returning the deposit has elapsed following the termination of the lease agreement.

If the landlord does not respond within seven days after the letter is sent, you can pursue court action. If the amount is \$5,000 or less, go to the small claims court in the county courthouse in the county where the defendant lives or works.

If the amount (including treble damages) is more than \$5,000 but less than \$10,000, 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 one-month period and either non-refund without explanation or fictitious claims for damage and withholding charges, and (b) seven days since sending the warning letter.

## Security Deposits and Hazardous Gas Appliances

If any service personnel from a gas utility service becomes aware of a hazardous condition concerning any gas appliance, they will inform the customer at the affected address of the hazardous condition. Immediately inform the landlord, in writing, of the hazard. Within 72 hours of receipt of the written notice (excluding Saturdays, Sundays and legal holidays), the landlord must have the necessary repairs performed by a professional. The landlord should provide you with written proof that the repairs have been made.

*If any service personnel from a gas utility service becomes aware of a hazardous condition concerning any gas appliance, they will inform the customer at the affected address.*

If the repairs are not made within the 72 hours, and the condition remains hazardous, you may choose to vacate the premises and declare the lease null and void. You may demand the immediate return of all or any portion of the security deposit to which you are entitled. Although not specified in the statute, best advice would be to make sure that the landlord is provided with a written notice advising of your decision to vacate, and a demand for refund of the security deposit. The landlord has an additional 72 hours after you vacate the

premises to deliver the refund to you. Be sure you provide the landlord with a forwarding address.

If the landlord holds the security deposit beyond the 72-hour period, without legitimate written justification, the retention of the security deposit is deemed willful and wrongful and entitles you to twice the amount of the security deposit, as well as reasonable attorney's fees.

*The small claims courts are informal courts where people can sue for up to \$5,000 without a lawyer. People can sue for claims up to \$10,000 in county court.*

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

## Filing in the Small Claims Courts

The small claims courts are informal courts where people can sue for up to \$5,000 without a lawyer. These courts are a division of the county courts with a judge or magistrate 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 you are seeking, and a brief statement of why the amount is owed. The bill must be one owed directly to you 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, the filing fee in small claim court ranges from \$9 to \$43, depending on the amount sued for. This fee can change and must be paid to the clerk of the court before the claim can be filed. There is an additional fee, currently \$5.27, to serve the first notice of the complaint by certified mail. 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, Colorado 80203.

## Filing a Simplified Civil Action in County Court

People can sue for claims up to \$10,000 in county court. The forms required to file a complaint are available at office supply stores. Fill out two copies of each form with the proper information. In addition, keep a copy of each completed form.

The docket fee is subject to change. The landlord should be served by the county sheriff or a process server. Take copies of the complaint, summons and answer forms 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, gather written evidence: copies of the lease, canceled checks, damage deposits, letters, replies and photographs.

*For more information, see fact sheets 9.904, Renting: Leases; 9.905, Renting: Evictions and Landlord Liens; and 9.906, Renting: Location, Selection and Roommates.*

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