

# **A Guide to Security Deposits and the Delaware Landlord-Tenant Code**

## **What is a Security Deposit?**

A "security deposit" means any deposit, not including a pet deposit, that a tenant gives to the landlord and the landlord holds for any part of the duration of the rental agreement. A "pet deposit" means any deposit held by the landlord because the tenant keeps an animal in a rental unit. When the landlord requires a tenant to pay a fee to determine the tenant's credit worthiness, this fee is called an "application fee." It is illegal for the prospective landlord or owner of the rental unit to ask for any "assurance money" or other payment which is not an application fee, security deposit, or pet deposit.

## **Is the Landlord Allowed to Ask for A Pet Deposit?**

A landlord may require a pet deposit unless the pet is a duly certified and trained support animal for a disabled person. It is unlawful for the landlord to require a pet deposit in excess of one month's rent, regardless of the duration of the rental agreement. A tenant should follow the same procedures for return of a pet deposit as for the return of a security deposit.

## **Is the Landlord Allowed to Ask for an Application Fee?**

A landlord may charge an application fee to determine a tenant's credit worthiness. The application fee must not exceed the greater of either 10 percent of the monthly rent for the rental unit or \$50.00. Upon receipt of an application fee, the landlord

must give a receipt to the tenant and must keep records for at least two years. The tenant is entitled to double the amount charged as an application fee when the landlord unlawfully demands an application fee greater than the amount allowed under the Landlord-Tenant Code.

## **What is the Purpose of the Security Deposit?**

The purpose of the security deposit is: (1) To reimburse the landlord for actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning; and/or (2) To pay the landlord for all rental arrearage due under the rental agreement, including late charges and rent due for premature termination or abandonment of the rental agreement by the tenant; and/or (3) To reimburse the landlord for all reasonable expenses incurred in renovating and re-renting the premises caused by the premature termination of the rental agreement by the tenant.

## **Are There Limitations on the Amount of Deposit?**

Where the rental agreement is for one year or more, or month to month tenancies that last one year or more, it is unlawful for the landlord to require a security deposit in excess of one month's rent. However, the landlord may require a security deposit in excess of one month's rent for a furnished rental unit, rental of certain federally-assisted housing and where the tenancy is expected to last less than one year.

## **Is the Landlord Allowed to Increase the Amount of Deposit?**

A landlord may increase the security deposit along with an increase in rent if the rental agreement allows such increases. If the increase of the security deposit exceeds ten percent of the monthly rent, payment of the increased security deposit must be spread proportionately over the term of the rental agreement, except for

month-to-month tenancies, in which case payment of the increase must be spread out over a period of four months.

## **Where Does the Landlord Keep the Security Deposit?**

The landlord must place the security deposit in an escrow bank account in a federally-insured banking institution located in Delaware. If requested by the tenant, the landlord must disclose to the tenant the location of the security deposit account. If the landlord fails to disclose the location of the security deposit account within 20 days of a written request by the tenant, then the landlord loses the right to hold the security deposit and must refund it to the tenant within 20 days. The landlord also loses the right to hold the security deposit if the landlord fails to deposit the security deposit in a federally-insured financial institution located in Delaware. The tenant is entitled to double the amount of the security deposit if the landlord fails to return the full security deposit to the tenant within 20 days of forfeiture. Legal Services of Delaware can provide you with a form named [Request For Location of Security Deposit](#) which you can use to send a written request to your landlord to find out the location of your security deposit.

## **How Do I Request the Return of the Security Deposit?**

The tenant should provide the landlord with a forwarding address in writing and a written request to return the security deposit before moving out of the rental unit. Legal Services of Delaware can provide you with a form named [Request For Return of Security Deposit/Notice of Forwarding Address](#) you can use to provide the forwarding address to your landlord. The landlord must provide the tenant with an itemized list of damages to the rental unit and must return within 20 days after the termination or expiration of the rental agreement, either the full security deposit or the difference between the security deposit and the amount of damages.

## **How Do I Object to the Amount Withheld?**

If the tenant disagrees with the landlord's deductions from the security deposit, the tenant must object in writing to the itemized damages within 10 days of receipt of the landlord's itemized list of damages. If the tenant receives a check for a partial refund of the security deposit and objects to the deductions from the security deposit, the tenant should not cash or deposit the check in her bank account because it might prevent the tenant from recovering the full amount of the deposit. Instead, the tenant should promptly photocopy the check and send it back to the landlord along with a letter objecting to the amount withheld and requesting that the landlord return the full amount.

## **How Do I File a Lawsuit to Recover the Security Deposit?**

A lawsuit for return of a security deposit is considered a debt action. A debt action is a claim for a sum of money - in this case, for the return of a security deposit. In order to begin a lawsuit, you must fill out a Complaint (J.P. Civil Form No. 1) and submit it, along with the filing fee, to the Justice of the Peace Court nearest your residence. The Justice of the Peace Court's [website](#) has a Sample Complaint and Instructions for filing a Complaint for return of security deposit. On the website, open the Frequently Asked Questions page. Scroll down to the Brochures heading and open the Sample Civil Complaints page. You should also read the brochure How to File and Defend a Civil Case in the Justice of Peace Court of the State of Delaware. This brochure and the sample forms are on the website and also available at the Court. Legal Services of Delaware can also provide you with a copy of the brochure.

If the tenant provides the landlord with a forwarding address in writing at or prior to the termination of the rental agreement, and the landlord fails to remit the security deposit, or the difference between the security deposit and the amount set forth in the list of damages, within 20 days from the termination of the rental agreement, then the tenant is entitled to seek double the amount wrongfully withheld. If the tenant is seeking double the amount wrongfully withheld, then the tenant should

write the doubled amount in the Relief Sought section of the Complaint where it says "amount of money claimed."

It is important to remember that the return of the security deposit is not automatic and usually requires some action by the tenant. To help ensure that the entire security deposit will be returned to the tenant by the landlord, the rental unit should be clean, completely vacated, and not have any damages caused by the tenant. If possible, the tenant should take pictures or a videotape before leaving to document the condition of the rental unit. It is also important for the tenant to give the landlord a forwarding address in writing before or at the time the tenant vacates the rental unit and to timely object to the landlord's deductions from the security deposit if the tenant disagrees with them. If a tenant believes that the landlord unjustifiably kept all or a portion of the security deposit, the tenant can file a lawsuit in the Justice of the Peace Court as outlined above.

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