

SECURITY DEPOSITS

A security deposit is money given to a landlord to provide some protection to a landlord for damage to the rented premises or for some other failure of a tenant.



Deposit Basics

The Texas Property Code, §92.101 – §92.109

- ◆ Protects the right of renters regarding their security deposit.
- ◆ States that the landlord has 30 days after the tenant surrenders the premises to refund the security deposit.
- ◆ If the tenant fulfills the lease contract and leaves the unit in good condition except for normal wear and tear, the security deposit is always refundable; **a tenant can never waive their right to a refund of the security deposit.**
- ◆ However, the landlord can keep part of the deposit, but only if the non-refundable portion has a different name, such as a “redecorating fee” or a “make-ready fee.”

What Can and Can't the Landlord Deduct from the Security Deposit?

A landlord **CANNOT** legally deduct for normal wear and tear. This refers to deterioration, which occurs during regular, daily, intended use of the rental unit, for example nail holes in the walls from pictures or paintings.

A landlord **CAN** legally deduct for damages caused by negligence, carelessness, accidents, or abuse of the premises by the tenant or the tenant's guests, or damages that are not normal wear and tear.

If the landlord retains all or part of a security deposit, the landlord is required to give to the tenant a written description and **itemized list of all deductions** providing the tenant meets certain conditions.

These conditions are:

1. **Rent Owed?** A landlord is not required to give the tenant a description and itemized list of deductions if the tenant owes rent when the tenant moves out and there is no controversy over the amount of rent owed. If the landlord claims the tenant owes rent and the tenant disputes the claim, the tenant should make a written request for the deposit which states the tenant's position about the rent.
2. **Forwarding Address.** The landlord is not required to return a deposit until the tenant gives the landlord the tenant's forwarding address in writing. However, the tenant does not forfeit the right to a refund of the security deposit or to receive a description of damages just because the tenant forgot to turn in a written forwarding address. Send the forwarding address certified mail, return receipt requested.

How to Dispute Deposit Deductions

If a tenant receives a list of deductions, it is possible to dispute items on that list. The tenant should address the deductions in a letter sent to the landlord. The demand letter should include a response to each of the deductions, explaining which charges are being disputed and why. The tenant should keep a copy of the letter and send the original by certified mail, return receipt requested.

If the tenant receives a partial refund along with the list of deductions and wants to dispute some or all of the deductions, the tenant may want to refrain from cashing the check. If the tenant must cash the check then the tenant should tell the landlord in the letter that even though the check has been cashed, it does not mean the tenant agrees with the amount of the check.



Preventative Steps to Ensure a Deposit Return

A tenant must meet all the previous conditions to ensure a refund of the deposit.

Furthermore, tenants' chances of receiving their deposit back will increase if they follow these suggestions:

- **Move-In Inventory Inspection.** Arguments often arise over what condition the rental unit was in when the tenant moved in, so preventative measures should be taken. The tenant should make a list of everything that is broken, stained, defective, or damaged when moving in. Both the tenant and the landlord should sign the list, and each should keep a copy. If the landlord will not cooperate, tenants can take pictures, video and/or get an impartial witness to view the apartment during move-in.
- **Move-Out Notice.** A lease may require that the tenant give the landlord 30 or 60 days' written notice prior to move-out to get the security deposit back. The Texas Property Code says that advance notice of move-out can be a condition for return of the deposit if the requirement for advance notice is written into a lease and is underlined or in conspicuous bold print. Even if the lease does not require it, giving the landlord notice prior to moving is always a good idea. Tenants should carefully review their leases three months before they intend to move since many landlords require 60 days' notice.
- **Thorough Cleaning** A tenant should thoroughly clean all floors, appliances, etc. and remove all of their belongings and garbage before moving out.



- **Move-Out Inventory Inspection.** When the tenant prepares to move, the apartment should be cleaned and the landlord asked to appear for an inspection. The tenant should fill out another inventory form, similar to the move-in inventory. If the landlord has any disputes, the tenant should negotiate them on the spot. If the landlord is unwilling or unable to perform a walk-through, it is still important for the tenant to make an inventory list. The tenant should have a friend act as a witness to the condition of the premises if the landlord is not present or if the landlord does not sign the inventory list. The tenant can also take pictures or video to have further proof of the condition of the premises. These inventory lists are important evidence if the tenant and landlord end up in a dispute or in court.
- **Turn in the Keys.** The keys should be turned in on the exact day the tenant vacates the premises. If the keys are turned in later, the landlord may be able to charge the tenant additional rent or other charges under the lease. A tenant's actual move-out date is often considered to be when the keys are turned in.

Can the Deposit Be Used in Place of the Last Month's Rent?

The security deposit law also contains a protection for landlords. Normally, the tenant cannot deduct the security deposit from the last month's rent without the landlord's written permission. If the tenant withholds part of the rent and claims that the security deposit makes up the balance, that action will be in violation of the law. The landlord can sue the tenant for three times the amount wrongfully withheld plus court costs and reasonable attorney's fees. However, the court must find that the tenant acted in bad faith to award the landlord these damages.

The only time a tenant may use the security deposit in place of the last month's rent is when the tenant terminates the lease under the repair law.

If you feel like you are being discriminated against due to your race, color, national origin, religion, sex, disability (mental or physical), or familial status, you can call the

**Office of Fair Housing and Equal Opportunity
at 1-800-669-9777.**

