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Security Deposits

What is a security deposit?

One of the first costs that you have when you move into a new home, apartment or trailer park is a security deposit. This is money paid to the landlord to protect the landlord in case you cause any damages to the property or in case there is rent due when you move out. Sometimes you may be charged an extra deposit if you have a pet. The following information deals with security deposits where the landlord is covered by the Virginia Residential Landlord Tenant Act (VRLTA) or the Manufactured Home Lot Rental Act (MHLRA).

Generally speaking, the Virginia Residential Landlord Tenant Act, or VRLTA, applies to apartment complexes, regardless of the number of apartments; single-family residences, if the landlord rents out more than two of them in Virginia; and hotels, motels, or boarding houses if the tenant has been renting for more than 90 days or has a written lease for more than 90 days. If your rental is not covered by the VRLTA, there may be other state laws that apply to your situation. If you do not know which law applies, you should seek advice from an attorney.

How much can a landlord charge for a deposit?

A landlord cannot ask for a deposit that is more than two months' rent. It can be less, but it cannot be more. If a landlord requires a tenant to get damage or renter's insurance and requires the premiums to be paid before the tenant moves in (unless the tenant provides written proof that he has obtained a separate policy for renter's insurance), the amount of the insurance premiums plus the security deposit cannot total more than two months' rent. However, the insurance premium is considered part of the rent, not part of the security deposit.

Once I move out of the rental, what does the landlord have to do with my deposit?

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Once you move out, the landlord has 45 days to return the deposit, unless there are deductions that the landlord is allowed to take from the deposit. Within 45 days of your moving out, the landlord must send you a written statement listing any damages or charges that he is deducting from your security deposit. He must also refund the rest of your deposit, after deductions, at that time. Be sure to give your landlord your new address so he knows where to send your deposit and the list of any deductions from your deposit.

When can the landlord deduct from my security deposit?

During the 45 days after you move out, the landlord can use all or part of the deposit for damages that you caused to the property, as long as the damages are not “reasonable wear and tear.” For instance, if you lived somewhere for a long time, the carpet may not look new anymore and the walls may need to be painted. That is reasonable wear and tear and you should not have to pay for the carpet to be replaced or the walls repainted. However, if you burn a hole in the carpet or you punch a hole in the wall, those are damages, not normal wear and tear, and the landlord can deduct the cost of those repairs from your deposit.

Are damages the only thing that the landlord can make deductions for?

No. The landlord can use the deposit for other costs set out in the lease. For instance, some leases state that the tenant agrees to pay the cost of carpet cleaning once she moves out. If that part of the lease is proper, the landlord can deduct for that charge. The landlord can also deduct any unpaid rent or late fees from the deposit.

If you are covered by the VRLTA, the landlord may be able to withhold a reasonable portion of the security deposit to cover any unpaid water, sewer, or other utilities that were your responsibility to pay directly to the utility company under the lease agreement. The landlord must first give you notice of the intent to withhold that amount. That notice may be given to you in a termination or vacating notice, or in a separate written notice at least 15 days prior to the landlord’s disposition of the security deposit. If the landlord actually pays the utility bills that were your responsibility, then the landlord must give you written confirmation of that fact within 10 days after the payment was made, along with payment to you of any balance of the security deposit owing. On the other hand, if you can provide written proof to the landlord that you actually paid the utility bills, then the landlord must properly refund the security deposit.

Is it okay for me not to pay my last month’s rent and tell the landlord to use my deposit for the final month’s rent?

Not unless the landlord agrees. The landlord is allowed to have the security deposit available after the tenant moves out in case there are damages to the rental property. If the landlord does agree that the deposit may be used for the final month’s rent, and any late fees, be sure to get the agreement in writing and signed by the landlord.

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Does the landlord have to let me know what deductions he has made?

Yes, within 45 days after you move out, the landlord must give you written notice of any deductions that he has made from the deposit. The landlord must list all the deductions that were made from the deposit. The landlord must keep records for each tenant of all deductions for two years and you should be able to look at your records.

How can I make sure I am not charged for damages that I did not cause?

Ask for an inspection when you move in. Make a **written** list of any damages that you see within five days of moving in. **Sign the list, put the date on it, and give a copy to the landlord. Keep the list.** The landlord is supposed to do this, but sometimes they do not. If the landlord prepares a list, check it carefully and add any damages that you see that are not on the list. Keep a copy of that list. Before you move out, make a **written** request to attend a move out inspection. Be sure to give the landlord a phone number to notify you of the date and time of the inspection. The inspection should be held within 72 hours after you move out. After the inspection, ask for a copy of the landlord's list of damages. You may want to take pictures of any damages you see when you move in and of the condition of the rental when you move out. You may also want to have someone else look at the condition of your apartment when you move out so he or she could be a witness if necessary.

What if the security deposit does not cover all the damages?

The landlord can sue you for any other damages and for unpaid rent or late fees which are not covered by the deposit.

What if the landlord does not return all or part of the deposit that I feel that I am entitled to?

You can file a lawsuit--called a Warrant in Debt-- in the General District Court where the property is located. There will be a fee for filing the case and for service of the lawsuit on the landlord. You will need to bring as much documentation as possible to court. This should include cancelled checks, the lease, any move-in or move-out inspection reports, pictures, and witnesses. If the landlord fails to handle the refund of the deposit according to law, the landlord may have to pay your attorney's fees.

The landlord may file a counter-claim if he thinks you have caused damages. The landlord may try to prove that you should not get all, or any, of your deposit back, or even that you owe the landlord more than the amount of the security deposit. If the landlord does counter-claim, then you will have to defend against that, in addition to proving your own claim for return of the

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security deposit.

If the property is sold or transferred to a new owner while I was living there, who is supposed to return my security deposit?

The owner of the property when you move out is responsible for refunding your deposit. The law requires the owner of rental property, when selling or otherwise transferring that property, to turn over any security deposits, along with any accrued interest, to the new owner. In other words, your security deposit goes along with the property and becomes the obligation of the new owner.

What happens to my security deposit if the property I'm renting is foreclosed on?

If you are a tenant on the date of the foreclosure sale, the security deposit, with any accrued interest and allowable deductions, must be returned to you by whoever holds the landlord's interest in the property as of the date your tenancy is terminated. The termination of your tenancy may or may not happen at the same time as the foreclosure. For example, the new owner may choose to keep you as a tenant, in which case the security deposit becomes the responsibility of the new owner, who must follow the rules explained above when it comes time to return your deposit. Changes in ownership and legal relationships can become complicated when there is a foreclosure, and you should consult with legal aid or another lawyer to help you understand your particular situation.

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Free Legal information by Web and Phone: www.vlas.org and
1-866-LegalAid (534-5243)

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