

# SECURITY DEPOSITS



## WHAT IS A SECURITY DEPOSIT?

A security deposit, also called a damage deposit, is any advance deposit of money used to secure the performance of the lease. Residential security deposits are regulated by C.R.S. §38-12-101 *et seq.* There is no statutory regulation of commercial security deposits.

## REASONS TO WITHHOLD A SECURITY DEPOSIT

A landlord may keep all, or a portion, of the security deposit for any of the following reasons:

- Unpaid rent owed by the tenant
- Unpaid utility bills
- Cleaning required to restore the rental to the condition it was in when the tenant moved in
- Cleaning services, for example, a professional rug shampoo, agreed to under the lease
- Payment for damages to the rental beyond “normal wear and tear”
- Any other breach of the lease causing financial damage to the landlord



### “Normal Wear and Tear”

Colorado defines “normal wear and tear” as “deterioration which occurs based upon the use for which the rental unit is intended, without negligence, carelessness, accident or abuse of the premises or equipment . . . by the tenant or . . . household or . . . guests.”

C.R.S. §38-12-102(1). “Normal wear and tear” is caused by normal, everyday use.

Damage is injury to the premises beyond normal wear and tear, caused by irresponsible unintentional actions or intentional actions (*see* page 64 of this *Handbook*, Appendix E, Depreciation Schedule). For example:

#### Normal Wear & Tear

Worn and dirty carpet

Faded curtains

Worn out keys

Dirty window screens

Faded, chipped paint

#### Damage

Torn, stained, or burned carpet

Torn or missing curtains

Lost keys

Torn or missing screens

Hole in the wall

## RETURN OF SECURITY DEPOSIT (C.R.S. §38-12-103)

If the tenant has fulfilled all of terms of the lease, has paid the rent in full and on time every month, has left no financial obligation for the landlord to cover and has caused no damage beyond normal wear and tear, the tenant is entitled to the return of the entire security deposit. No Colorado state law or Longmont ordinance requires a landlord to pay interest on security deposits held by the landlord.

Tenants should arrange to either collect the security deposit from the landlord in person or leave a forwarding address, so the landlord can mail the security deposit to them. When roommates have co-signed a lease, a landlord may either divide the security deposit reimbursement equally among the tenants or reimburse the entire return amount to one tenant. Ideally, tenants should agree in advance how the security deposit reimbursement is to be divided and provide the landlord with their written, signed agreement.

After a tenant leaves a rental property, the landlord has 30 days (unless a longer period of time, not to exceed 60 days, is agreed to in the lease) to either

- 1) Return the security deposit in full, **or**
- 2) Return a portion of the deposit along with a written list of expenses incurred by the landlord or damages caused by the tenant and the cost of the necessary expenses or repairs. If the deposit amount is larger than the cost of the expenses or repairs, the landlord must return the balance of the deposit. The landlord is not required to provide the tenant with copies of receipts for expenses or repairs in addition to the written list, though doing so as a courtesy may be appreciated by tenants as helpful clarification.

### **TENANT’S RECOURSE FOR WITHHELD SECURITY DEPOSITS**

If the landlord does not either return the entire security deposit or send an itemized list of deductions, along with any remaining portion of the security deposit, within the required time period, the landlord forfeits all rights to withhold any of the security deposit. (C.R.S. §38-12-103(2)). If the landlord does provide a list of deductions and the tenant disagrees with the deductions taken for expenses and damages, or if the landlord has not provided such a list, within 30 days (or up to 60 if specified in the lease), the tenant may send a “**Seven-day Demand Letter**” to the landlord, itemizing the charges with which the tenant disagrees and stating that **the tenant may sue the landlord for three times the amount of the deposit** withheld if the entire deposit or the disputed portion is not returned to the tenant within seven days of receipt of the letter. The Seven-day Demand Letter should be sent certified mail, return receipt requested. Additionally, the tenant should keep a copy of the letter. If the landlord returns the security deposit in full or pays the tenant the disputed portion within seven days, the matter is resolved. (See page 65 of this *Handbook*, Appendix F, for a sample Seven-day Demand Letter.)



#### **A Seven-day Demand Letter must include:**

- **The address of the rental property**
- **The dates of the occupancy**
- **The amount of the security deposit originally paid**
- **The tenant’s current mailing address**
- **An explanation of the disagreement regarding the portion of the deposit withheld, if applicable**

**If the tenant does not hear from the landlord** within the seven days specified by the demand letter, the tenant can then pursue legal action. A tenant **must** give the landlord a Seven-day Demand Letter prior to pursuing legal action. If the amount claimed by the tenant is \$7,500.00 or less, the tenant may initiate a case through Small Claims Court. As of January 2010, the filing fee for claims up to \$500 is \$31.00; for claims over \$500 and up to \$7,500, the filing fee is \$55.00. If the tenant claims more than \$7,500.00, the tenant has to file in County Court (check with the Court Clerk for current filing fees, as they are subject to change without notice). (See also [www.courts.state.co.us/district/20th/20dist.htm](http://www.courts.state.co.us/district/20th/20dist.htm))