



University of Illinois at Urbana-Champaign



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ARCHIVED DOCUMENT: Housing Guide, Part

3

ARCHIVED DOCUMENT Housing Guide, Part 3: After You Move Out

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TAKE STEPS TO AVOID DEPOSIT PROBLEMS

Finals are fast approaching. The last thing you want to think about while you pull all nighters, day long cram sessions, and are approaching an anxiety level which could lead to commitment to a mental institution is your security deposit on your apartment. Clip this article out of the paper and post it on your refrigerator for post-exam perusal and pre-move out examination if you really can't bear to think of one more thing.

The experience of Student Legal Service regarding damage deposits teaches a series of valuable lessons which can save you cash and legal hassles.

1. Tenants who filled out check-in sheets (retaining a copy for their own records) and who fill out check-out sheets are the least likely candidates to have their deposits ripped off. If you didn't fill out a check-in sheet, you can still note in writing pre-existing conditions if you have independent witnesses who can establish that the condition existed at the inception of the lease.
2. Reread your entire lease before you leave for the summer. Often there are hidden costs and fees which the landlord will exorbitantly deduct from your deposit. To the extent possible prepay those charges.
3. Take photographs of your apartment. This is excellent proof for you should the landlord say you 'trashed' the place. Photographs coupled with a check-out sheet is nearly always enough to dissuade the unscrupulous landlord from making unwarranted deductions.
4. Spruce up the joint! Paint fades, carpets get worn; these things are normal wear and tear and nothing can be done about them. Yes, there are indeed unethical landlords who deduct for what is legally normal wear and tear. These folks give good landlords a bad name and should be dragged into court if not jail for their thievery. With the vast majority of landlords you as a tenant can prevent this type of theft by cleaning the door jams and window sills. Scrub the stove, oven, cupboards and kitchen as if your mother was coming to inspect. Bathrooms are a particular fetish for landlords out to rip off your deposit. Clean the soap scum in the shower, tub and sink. Sanitize the toilet. The most common deductions we see at Student Legal Service arise out of bathrooms and kitchens. Concentrate your efforts in these areas and document your work.
5. If you have not sublet the unit to another tenant for the summer make sure that you turn off the phone, etc. and return all keys to the landlord. Most of you remain liable for summer rent if you did not sublet. If you did sublet, it is equally imperative to take these steps especially making sure that utilities do not remain in your name and that you pay your portion of summer rent.
6. Arrange a final walk through with the landlord before you depart so any minor deficiency can easily be corrected. If the landlord or his agent finds nothing wrong in the unit, note this in writing along with the date. If the landlord will not cooperate, have an independent witness inspect and verify the condition of the unit in writing.
7. Make sure you leave a forwarding address with the property management company. Problems can arise with your subtenants that require your intervention but most importantly the landlord needs to know where to send your refund check in October of 1995. A significant number of tenants don't receive timely refunds because few landlords will strain themselves to locate former tenants. The law in absence of a proper address permits the landlords to send the refund to the



Did you get a visit by an "energy company" or "electric company" person? Did they ask for a copy of your electric bill? Ask if you had gotten your \$25 gift card? Tell you that you are paying too much for electricity or that there is a new program that will save you money?

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last known address (your present unit) where it may be returned as undeliverable if you did not file a forwarding address with the post office. With this attempt satisfied the landlord is under no further obligation to make further efforts to return your hard earned money.

8. Following these steps is likely to produce a prompt and full refund of your deposit. The effort in total is likely to take less than two hours of your time; an effort well worth undertaking given the amount of money and the meager budgets upon which most tenants survive. Do not withhold the last month's rent in lieu of the security deposit without consulting the Tenant Union or Student Legal Service. This practice is rarely if ever justified and only buys you a lawsuit along with a marred credit history.

Good luck on your exams. Please remember to tack this article to your refrigerator. If you leave it there after you move out, one of two things will likely happen. Your landlord may see that you have been diligent in preparing to leave and credit you properly. Then again, they may charge you to remove it from the refrigerator door.

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LOCAL DAMAGE DEPOSIT GAMES

While the start of a new semester means that a lot of your cash is leaving your possession, you may be in a position to expect some money coming your way, from last year's landlord. Yes, that security deposit could be on its way to you even as you read this. In fact, if you lived in a building that contained 5 or more rental units, you should already have at least some idea of what kind of refund to expect, if not the actual check in your hand. That's because your landlord has to provide you, at the very least, notice of what he or she intends to withhold from the deposit within 30 days of the expiration of your lease. If all you got was a list of estimated deductions, then your landlord has to provide you with proof of the legitimacy of these deductions, plus a check for the balance (if any) of your deposit within another 30 days.

That's what the law says, for buildings of 5 units or more. If you live in a house, for example, these time constraints do not apply, and your landlord only needs to act on your deposit in a reasonable amount of time. In either instance, though, if your landlord has made deductions from your deposit it's important to take a close look at them and see if they're accurate, rational, or even real. For instance, you may have thought you left your apartment in stupendous condition, having cleaned every inch of every surface, dusted light bulbs, and vacuumed windowsills. Aha! You forgot all about the little Tidy-Bowl boat in your toilet tank. The skipper was shouting at the top of his little lungs "change me, change me," but you couldn't hear him due to the drone of the vacuum cleaner. That means that the landlord's cleaning service had to do the job, and one year tenants were charged \$6.00 a pop for this delicate and difficult labor. Consider the time it takes, and what hourly rate these people must be earning. It's enough to make you scuttle your plans for medical school.

Of course, when you moved in, you noted in detail what came with your apartment, and what didn't. Refer to that check-in sheet if you are now charged for missing closet doors, microwaves, lamps, Nordic Traks, etc., which were never there to begin with.

The flip side of this business practice is something to be aware of as well. If you were charged, say, \$200.00 to have your old unit repainted, run, don't walk, back there to see if it was in fact, painted. If it wasn't, why are you being charged? The landlord may say that painting is "planned," and he or she just hasn't gotten to it yet. That is simply an inadequate explanation, and you should get your money back.

Then there are charges that are just too strange to be believed. What do you make of a \$20.00 charge for "26 holes with liners," or \$7.50 for "bush abuse"? And is it possible for it to cost \$25.00 to have someone pick up a plastic bag of trash and place it in a dumpster? We are not making this up.

Of course, not all deductions are absurd or even particularly arguable. If there is a hole in one of your walls that just happens to be the size and shape of your roommate, your landlord is entitled to charge such repair against your deposit. And if you left your Rotweiler in your apartment while you went to St. Louis for the weekend, you're going to have to pay for Fido's damage.

If you sublet your apartment over the summer, consider damage your subtenants might have caused. You may have left the place spotless in May; however, your subtenants could have undone all your good work. The landlord can hold any and all of you responsible. If it goes to court, the judge may be sympathetic, as in the case of tenants whose subs trashed the house over the summer, leaving behind among other party favors, wall ornaments consisting of condoms. The judge found the tenants liable, but did observe that the subs, while slovenly, appeared to have had a pretty good time.

State law and local ordinance provide that, under certain circumstances, landlords who fail to properly account for and return security deposits can be punished for their shortcomings. No, you can't send them to their rooms, make them live in their own rental properties, or publish written apologies in the DI. What you can do is hit where it really hurts, in the wallet. For properties containing 5 units or more, the landlord must provide at least written estimates of damages within 30 days of the termination of the lease. That buys them an additional thirty days

to provide proof of the repair of the damage and a check for the difference, if any. If this is not done, then the landlord must refund the deposit in full. That in itself can be a penalty; but wait, there's more. If you feel that your landlord refused to provide a statement of damages, or has provided you with one in bad faith, and one of our local judges agrees with you, then the landlord is liable to you for your deposit times two, plus court costs, plus your attorney's fees.

But wait, there's more. For properties containing more than 25 units, state law provides that the landlord must accrue and pay interest on your deposit, at the prevailing rate of interest. If this is not done and paid to you within 30 days of the termination of your lease, the potential penalty is an amount equal to your deposit, plus interest, plus court costs and attorney's fees. However, there's a catch; you cannot be in default in your obligations under the lease. Therefore, if you or any of your roommates owe rent, you have no legal right to seek this remedy.

If you live in Urbana, almost all rental property is subject to an Urbana city ordinance which provides identical protection for tenants. Some limitations exist: the deposit must be at least \$100.00, and the property must not be owner-occupied containing 3 units or less.

The point here is to read security deposit accountings with a critical eye, following up whenever possible to verify the alleged repairs, and to be suspicious of deductions that just don't make sense, no matter how small the charge. Student Legal Service is available to discuss all these issues with you, and to assist you in getting a fair return.

By: Susan Y. Hesse, Staff Attorney

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TENANTS BE CAREFUL IF LANDLORDS 'SETTLE' ON DEPOSIT RETURNS

A problem has come to Student Legal Service's attention, one that affects tenants in a very personal place -- your legal rights, which in landlord-tenant relations means your wallets.

We have all, at one time or another, heard of or dealt with the concept of "settlement." In fact every single day, we compromise with those around us: exchanging a "right" we have or "want" for some other goal. Basically these compromises, if they do not make life ideal, at the very least, make it smoother. Compromise means that you do not get all you need or want, but neither does the other guy or gal; nobody "loses," we split the difference.

It appears that some individuals are not pleased by this concept; they want more than their fair share. Now this does not just happen. You, the tenant, have to do "something." What this "something" is, is that some landlords are now putting written language on the back of their security deposit refund checks to the effect of "negotiation of this check constitutes full settlement of any disputed amounts." If the tenant cashes the check then the landlord might have a defense to the subsequent claims against him or her by the tenant for overcharging or non-payment of interest.

You say this sounds bogus and cannot possibly happen here in the United States? Rant and rave all you like, but it can and might happen. The English common law principle involved is called "Accord and Satisfaction." The way the principle is supposed to work is that when an "issue" (security deposit monies) is in "dispute" (the landlord has taken too much) and a complaint has been made, if the parties agree on a "settlement" in a specific amount and that amount is received on the basis of that understanding (the check is cashed) the complainer cannot again raise that issue. Now, this principle is good and fair if both parties have agreed to compromise.

When the parties have not agreed to compromise the issue, however the tenant has "settled" the problem because he or she cashed the check. Aye, therein lies the rub. The landlord's motive for this type of chicanery is simple -- you cash the offending instrument and the landlord need not deal with your "petty" complaints later, thus saving him/herself time, effort, attorney's fees and most importantly, penalty money, right from day one.

This type of conduct is INTENTIONAL! Do not be fooled into just giving up your right to what the security deposit laws give you.

In case you do not remember those rights, I will briefly summarize them here. Within 30 days of vacating your apartment the landlord must either return your security deposit in full (you lucky dog) or, if there are deductions, supply you with an itemization of those deductions and the remainder of the deposit. If the latter should befall you, then the landlord must also supply you with paid receipts of the deductions within 30 days of the itemization. Further, if you lived in Urbana, or in a building or complex containing 25 or more units in Champaign, the landlord must pay you the prevailing savings book rate of interest on the deposit. His or her failure to comply with these mandatory laws can subject the landlord to penalties.

In a nutshell, DO NOT CASH THOSE DEPOSIT RETURN CHECKS unless you are satisfied that the landlord has done what he or she was supposed to do under the law and you, the tenant, have been returned all the money that you are entitled to. Just say no. If you have complied with the law, come to Student Legal Service and check it out. In situations where the return check has NO added language on it, also be careful. The situation itself might allow the defense outlined above. In either event, if you are uncertain, come in and discuss it with us.

Only in this way can all of us make sure that the principle of Accord and Satisfaction is used as God, Holmes and Merry Ole England intended it to be.

By: John P. Popek, Staff Attorney

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