



# Security deposits and last month's rent

**A security deposit is a deposit of money to the landlord to ensure that rent will be paid. Last month's rent is the pre-payment to the landlord for the last month of tenancy.**

The purpose of the security deposit is to indemnify the landlord against losses due to the tenant's failure to pay rent or to pay for repairs if the tenant damages the premises.

Landlords are allowed to collect the first and last month's rent, a security deposit equal to one month's rent and money for the purchase and installation costs for a lock and key. These prepayments can't be transferred for another use unless both parties agree (this means your security deposit cannot be used as your last month's rent, unless the tenant and landlord agree). If the landlord later raises the rent, s/he can increase the amount of last's month's rent to equal the new rent.

## Receipts and interest

The landlord must hold the security deposit in a separate, interest-bearing account in a Massachusetts bank. A receipt must be given to the tenant for their payment within 30 days of the landlord receiving the security deposit. The receipt must list:

- the name of the bank
- the account number

- the amount of the deposit
- a statement indicating that the tenant is entitled to all interest received from the bank where the deposit has been held, if they live in the apartment for at least 1 year.

The landlord must pay interest on both the security deposit and the last month's rent.

- **Security deposit** - The tenant is entitled to either 5% interest or whatever lesser amount is received from the bank where the deposit has been held, if you live in the apartment for at least one year.
- **Last month's rent** - The tenant is entitled to either 5% interest or whatever lesser amount is received from the bank where your rent was held. If the last month's rent is not held in a bank account, the landlord must pay 5% interest per year. The tenant does not need to have lived in the apartment for 1 year to be eligible for the interest.
- **Payment of interest** - Interest is payable to the tenant each year on the anniversary date of their tenancy. The landlord must inform the tenant of any interest owed to them, and must either include the interest or allow the tenant to deduct the amount from the next rental payment. If the interest is not received within 30 days of the anniversary, then the tenant may deduct the interest from the next month's rent. Once tenancy is terminated, any interest owed to the tenant must be paid within 30 days of termination.

## Return of security deposit and last month's rent

The tenant is entitled to the immediate return of the prepayments made such as the security deposit and last month's rent if the landlord:

- Fails to make the prepayment records available to the tenant during business hours
- Fails to give the tenant, within 30 days of receiving any deposits, a receipt with the bank information and account number of the deposit
- Make deductions for damages without submitting proper documentation
- Use a lease with provisions that conflict with the prepayment laws and you attempt to enforce this lease or attempt to make the tenant waive their rights

The tenant is entitled to the immediate return of the prepayments and potential triple damages, court costs, and attorney's fees if the landlord:

- Fails to place the security deposit in a Massachusetts interest bearing bank account separate from their own
- Fails to transfer the security deposit and other prepayments to a new landlord
- Fails to return the prepayments or balance within 30 days after termination of the tenancy

## Damage deduction for security deposits

The landlord must return the security deposit or balance within 30 days after the termination of tenancy. However, the landlord can deduct from the full amount for:

- Any unpaid rent which has not been withheld validly or deducted in accordance with the law
- Any unpaid increase in real estate taxes if you were obligated to pay it under a valid tax escalator clause in your lease
- A reasonable amount necessary to repair any damage caused by the tenant, any person under the tenant's control, or any person on the premises with the tenant's consent
- Pet damage can also be deducted
- Tenants do not have to pay for reasonable wear and tear associated with normal use

If the premises are damaged, the landlord must provide the tenant a detailed list of damages and the necessary repairs within 30 days after the tenancy ends. The landlord or agent must swear to this list under the pains and penalties of perjury. In addition, the landlord or agent must provide the tenant with written evidence indicating the actual or estimated cost of these repairs, such as estimates, bills, invoices, or receipts.

## Transfers of deposits to new landlords

**Transfers of Pre-payments to New Landlords:** If the building is sold or transferred to a new owner, the landlord must credit the last month's rent and security deposit, with any accrued interest, to the new landlord. The new landlord must notifying the tenants about the transfer, in writing, within 45 days of receiving the money. If the former landlord fails to transfer the pre-payments to the new landlord, they

are still liable, but the new landlord is also obligated to the tenant for the amount of the pre-payments. The new landlord can satisfy this obligation by granting free rent for a time equivalent to the payments made.

The tenant is entitled to the immediate return of the security deposit plus accrued interest if the landlord:

- Fails to make the security deposit records available for inspection during office hours; or
- Fails to deposit the security deposit into a separate, interest-bearing account in a Massachusetts bank; or
- Fails to provide, within 30 days of receipt of the security deposit, a receipt with the name and location of the bank and the amount and account number of the deposit.

**The landlord cannot keep any portion of the security deposit for any reason, including making deductions for damages, or counterclaim for any damage to the premises in a court action by the tenant to recover a security deposit if the landlord . . .**

- Uses a lease which contains provisions conflicting with the Security Deposit Law and attempts to enforce these provisions or attempts to get you to sign a waiver of rights; or
- Fails to deposit the security deposit into a separate, interest-bearing account in a Massachusetts bank; or
- Fails to transfer the security deposit or last month's rent to the new landlord after the sale of the rental property; or
- Makes deductions for damages and fails to furnish you with an itemized list of damages within 30 days after termination of tenancy.

**The tenant could be entitled to three times the amount of the security deposit or the remaining balance to which the tenant is entitled after lawful deductions with interest, plus court costs and reasonable attorney's fees if the landlord . . .**

- Fails to deposit the security deposit into a separate, interest-bearing account in a Massachusetts bank; or
- Fails to transfer the security deposit or last month's rent to the new landlord after the sale of the rental property; or
- Fails to return the security deposit (or balance after lawful deductions) with interest within 30 days after termination of tenancy.

If the landlord fails to pay the tenant any interest to which the tenant is lawfully entitled (including interest on the security deposit and interest on the last month's rent) within 30 days after termination of the tenancy, the tenant may be entitled to *three times the interest*, plus court costs, and reasonable attorney's fees.

**NOTE: Continuing liability of former owner**

The former owner and agent remain liable under the treble damages provision of the Statute for retention and accounting, until either:

1. The security deposit has been transferred and the tenant has been given the above-written notice or
2. The security deposit has been returned to the tenant.

The new owner has full liability for the treble damages, even if the former owner fails to transfer the security deposit and fails to give the proper notice described immediately above.

It is recommended that if a landlord chooses to take a security deposit, it is advisable to consult an attorney or other real estate professional before doing so, because the penalties for failing to properly handle the tenant's money are severe.

## CONTACT

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