

Feeling Secure About Your Security Deposit

This is a long article. If you care about your money, you will read it. Only then will you know which details apply to you.

One of the biggest mistakes renters make is assuming that their landlords/managers will behave honorably after termination of tenancy. Non-return, or only partial return, of the security deposit are common, even when dwelling units are left in immaculate condition. Additional claims are also common.

Tenants should demand the return of their security deposits *even when none was originally paid*. This is because by doing so a tenant puts a 14 day legal time constraint on the owner/agent being able to make any claim. The last thing tenants need is to come home one day and find demands for thousands of dollars from landlords of years ago, or that their credit records are degraded and they are consequently unable to purchase homes or cars or whatever.

Many landlords claim that tenants either owe rent, late fees, repair bills or other charges from way into the past. This is despite any evidence tenants may have to the contrary, including receipts or cancelled checks, or that there had been no previous demand for these monies.

More often, the manager/landlord has a gripe, either real or concocted, against the tenant. They will fabricate all sorts of physical damages to the unit. Ridiculous claims are common -- ranging from overgrown weeds, to a broken lock, to dirty carpets -- all of which were conditions existing at the commencement of tenancy. Frequently managers, after inspections of perfectly cleaned apartments, refuse to return the security because of new claims never before mentioned.

What can you do to protect yourself? First of all, stop being naive and assuming that owners and agents will treat you honorably once they no longer have to deal with you every month. The scent of dollars can quickly alter the observed character of property managers. Second, review ARS §§ 33-1321 (Security Deposits) and 33-1313 (Notice).

Hopefully at the commencement of your tenancy the owner provided you with a form for specifying damages and you conducted a move-in inspection, noting problems. Take photos, have a friendly witness present. When concluding your tenancy, however, it is imperative you request that the owner/agent inform you of when the move-out inspection will occur, so you can be present. Don't verbally dance around the request, or request anything other than what is underlined above -- it's language from the statute. The request should be sent by certified mail, return receipt requested, several weeks before you actually plan to leave. Explain that you intend to return the keys at the joint move-out inspection, and that if the owner/agent fails to arrange such an inspection within a set period of time you will assume he/she accepts the dwelling in as good or better condition as when you originally took possession, ordinary wear and tear excepted. This puts the burden on the owner/agent to cooperate.

One important precaution is to consider changing or re-keying your locks and keeping the key for yourself only, in order to prevent management from entering with insufficient notice or taking possession prematurely. (Of course, read your lease carefully to make sure this is not prohibited. Understand there is a risk that you will be held liable for structural

damages to the door, or other damages, should management need to enter the premises by force in the event of a legitimate emergency.) It'll cost you \$6.00 or so at a hardware store.

Perhaps you think your landlord is friendly, and changes to the locks is just paranoid. Tell that to the many tenants who have found themselves illegally evicted, sometimes with police assistance, with little or no notice. Renters have had their personal belongings tossed in trash bags in front of their dwellings. Property worth thousands of dollars has been appropriated. But even less extreme is the real possibility that you move out your belongings, management enters without notifying you prior to your delivery of the premises and return of the keys, management inspects the premises in your absence and claims whatever it wants, and thereupon management re-keys the locks thus denying you access, hindering your challenge of its findings.

Obviously, do not turn in the keys until the conclusion of the inspection. At the termination inspection, like I wrote above, have a witness present. Also, use a camera or a video camera to establish a visual record of the conditions. If your camera does not have a time-date stamp on the photo, make sure that you have the front page of the main daily newspaper (e.g. The Arizona Republic) prominently visible in the photos; if a Polaroid, the headlines should be visible in each shot, and if the camera uses negative film, make sure that at least the first shot of each roll used has the headlines visible. Create a check-out list, itemizing each and every element you can imagine and leave space for ones that management wishes to bring up. When you have completed the walk-through, ask management to sign the check-out list in acknowledgement that it represents the true state of affairs at that time. Present one copy to management, but most importantly, keep the original for yourself. If management refuses to cooperate by signing the document, you and your witness sign it anyway and take it with you.

Whenever you communicate with management by certified (or registered) letter, return receipt requested, below your signature make the following notation: "Via Certified (or Registered) Mail No. (place sticker # here)," and then on the next line below write "Return Receipt Requested." By doing this you are correlating the letter with the envelope and with the return receipt that the recipient signs. If you think management may refuse the letter, you can send a copy by regular mail, making another notation on the letter to that effect, and obtaining a Certificate of Mailing from the post office for that letter. (A regular letter is invariably accepted.)

The most important factor of all is your preparation. You must clean the premises and repair all damage that you caused or allowed to occur by negligence. The place should be spotless, better than when you moved in. Yes, that may be unfair, especially if the dwelling was a dump when you took possession. But the fact is that you are at a disadvantage in Arizona just by virtue of being a tenant. Deal with it. Do more than is reasonable. Deny the owner any excuses to charge you.

Okay, let's say the inspection proceeded smoothly. The law says that in order to recover your security deposit, in part or in full, you must terminate the tenancy, deliver possession of the unit, and demand return of the security. While not stated as an absolute requirement in this section, clearly it is incumbent upon you to also provide notification of your new address. And while the statute is silent on the following, in practice an oral demand for security return never happened, despite your having gobs of witnesses attesting to the demand. Basically, you must integrate a demand

into a signed and dated letter that covers the issues of this paragraph, keeping a copy for your records. Failure to fulfill any and all of these stipulations means you may not get the security back, and you may face additional claims against you.

One caveat. If the owner/agent has problems with the premises, you have two options. Should the claims be arguably reasonable, you ought to correct the problems. That's a bunch less costly than letting the other side do the repairs and then billing you at an inflated rate. When you are done, ask for another inspection to certify the owner/agent's satisfaction. If he/she refuses or delays, then proceed on your own.

Alternatively, if the owner/agent is just feeding you a line and is clearly way out of line, stand your ground and present your points. Common arguments are: the damage was pre-existing at move-in; the damage is normal wear and tear; the owner/agent caused the damage; and, of course, you dispute the assertion that there is any damage.

The security demand letter should be handed to the owner/agent at the conclusion of the final inspection, along with the keys. Of course, keep a photocopy. As with anything delivered in person, you must be sure it is before a friendly witness and then both of you should sign a contemporaneous note making specific record of the transaction.

Should management fail to respond to your request to arrange a joint move-out inspection, do your own. Take photos, notes, have witnesses. . . all the usual steps. Then send the owner/agent your demand for return of the security (mentioning all the key points), and also the keys with a cover letter explaining that you are forced to send them by mail because the owner/agent ignored your request to set the move-out inspection at which you had intended to deliver possession by handing over the keys. Use the post office as your witness by giving notice and return of the key(s) via certified or registered mail, return receipt requested.

Once management has received your demand, it has 14 business days (add another five to accommodate the post office delivery) to do the following: return the amount of security due; and to make any additional claims, which must be itemized. If any of your security has been withheld, included with whatever security is actually returned must be a statement itemizing the "damages which the landlord has suffered by reason of the tenant's noncompliance with § 33-1341." If management fails to properly return what is due to you within the required time frame and with the proper itemization, then you have the right to sue for its return plus damages "equal to twice the amount wrongfully withheld." At this point you will be thankful that you took photographs, had a witness, followed the inspection process, and gave proper notice at all times.

Odds are, the owner/agent will within the 14 days send you a letter or form itemizing deductions. If the charges are invalid they must be disputed, explaining why you are not liable and that the charges are unwarranted. Under A.R.S. § 33-1321(D) your dispute must be submitted within 60 days from when the landlord mailed the itemization to you. Otherwise, pursuant to A.R.S. § 33-1321(D) the amount returned to you, as well as the landlord's claims against you, will be deemed valid and final. Give the owner/agent a deadline to respond by sending you what is wrongfully being withheld, and tell him/her that if the specific amount isn't returned to you within a given number of days you'll commence a legal action to recover it, that you'll seek damages, and if you that the prevail owner/agent will also be liable for costs and attorney's fees. For further

details on all of this, see the article on the ATA website entitled, "How To Refute Landlord Monetary Claims."

If the owner/agent never responded within the 14 day time frame, you are in luck. Send a simple letter informing the owner/agent that he/she had failed to timely respond, is therefore liable for damages in addition to the amount wrongfully withheld; and that if the specific amount is not returned to you within a given number of days you will commence a legal action to recover it, that you will seek damages, and that the owner/agent will also be liable for costs and attorney's fees if you prevail.

It is advisable to file your case in the civil division of justice court, rather than the small claims division, despite costing a bit more and requiring service by a process server. The problem with small claims, and why it is not recommended, is that judgements are not subject to appeal. Because most justices of the peace are extremely biased against tenants, the high risk of getting stuck with an adverse small claims ruling is just not worth it. Better to have the case heard in the civil division of justice court (only a little more costly) so you can appeal, if necessary. Besides, even if you were to file in small claims, the opposing side has the option to request transfer to the civil division where attorneys are permitted. So just plan on using your own attorney, despite the cost; with an attorney the odds of success are improved, because your statements will carry more credence with the court. For further details, please read the article on the ATA website entitled, "Small Claims: For Small Minds With Slim Pickin's."

Apart from the court filing fee, which might be around \$100, process server charges can range from around \$40 up to, or sometimes even exceeding, \$100, depending on mileage. Prior to filing, be careful to read the fine print in your lease stipulating upon whom process must be served, and be sure to research who, if anyone, is the owner's statutory agent. Although it will be one lawsuit with a single case number, you should name all the parties as defendants: on-site manager, management company, statutory agent (if applicable) and especially owner(s). If you have never previously known who is the owner, now is the time you must find out. All of this can be quite complex, and may involve research with your local county recorder's office, the Arizona Corporation Commission and/or the Arizona Secretary of State.

While there are many detailed arguments to be presented in precise language, if you cover your bases properly you are more likely to find that management will be careful to refund what is due to you; litigation will be unnecessary. The tenant who hunkers down and keeps quiet is the one most likely to get the short end of the stick.

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