

TENANT-LANDLORD INFORMATION: SECURITY DEPOSITS

I. Overview

Landlords who require a security deposit in a residential lease must meet certain requirements under Michigan law. The same law also has requirements for tenants who wish to have their security deposit returned. That law is called the Michigan Landlord and Tenant Relationships Act, MCL 554.601 et seq. (the “Act”). For example, under the Act, a security deposit cannot exceed one and a half months' rent. So, if your monthly rent is \$500, the landlord cannot require a security deposit greater than \$750. A security deposit may only be used for the following purposes:

- (a) To reimburse the landlord for actual damages (not cleaning expenses) not reasonably expected in the normal course of occupancy.
- (b) To pay the landlord for unpaid rent, rent due for the premature termination of the rental agreement, and for utility bills not paid for by the tenant.

The landlord may also ask for a separate, non-refundable cleaning fee and pet fee. Because these are separate non-refundable fees, the landlord cannot deduct these fees from the security deposit, but they will also not be returned to you at the end of your lease.

II. Landlord's Obligations

Residential landlord/tenant relationships are highly regulated by the state and security deposits are no exception. The security deposit must be deposited into a regulated financial institution (like a bank), and generally cannot be combined with the landlord's personal funds. In order to impose a security deposit, the landlord must do the following:

- (a) Within 14 days from the date the tenant moves in, the landlord must notify the tenant, in writing of:
 - the landlord's name and address where tenant can send communications;
 - the name and address of the financial institution or surety (e.g., the bank) where the deposit will be held;
 - the tenant's obligation to notify the landlord in writing of a forwarding address within 4 days after moving out. This notice must be in large, bold print.
- (b) Provide the tenant with inventory checklists both at the beginning and at the end of the lease. The move-in checklist must contain a notice that the tenant should return the list to the landlord within 7 days after moving in and that the tenant can obtain a copy of the prior tenant's move-out checklist.

At the end of the lease, the landlord must complete an inventory checklist listing all damage the landlord claims were caused by the tenant.

III. Tenant's Duties

At the beginning of the lease, the tenant should carefully inspect the rental unit, all of the landlord's items inside the unit (walls, appliances, etc.), as well as any parking garage, storage unit and any other property leased together with the rental unit. The tenant should write down the condition of each item on the inventory checklist provided by the landlord (this should be done even if the landlord does not provide an inventory checklist). This move-in inventory checklist is important because the landlord can claim that damages on the move-out checklist not appearing on the move-in checklist were caused by the tenant and charge the tenant for the cost of repair.

Within 4 days of moving out, the tenant should notify the landlord in writing of his/her new address or the landlord need not provide the tenant with an itemized list of damages.

IV. Notice of Damages

If there are damages to the rental unit, the landlord must mail to the tenant within 30 days after the tenant moves out, an itemized list of damages for which the security deposit will be used, including the cost of repair of each damaged item. The list must be accompanied by a check for any difference between the charges claimed and the amount of the security deposit. The notice must state that the tenant must respond to the notice by mail within 7 days; if the tenant fails to dispute the damages within this time, the tenant may lose the amount claimed for damages.

V. Failure to Send Notice of Damages

Failure by the landlord to send the notice of damages within 30 days after the tenant moves out is considered an agreement by the landlord that no damages are due, and the landlord must immediately return the full security deposit to the tenant.

VI. Suit to Retain a Disputed Security Deposit

If the landlord wants to keep part or all of the security deposit after the tenant has disputed the claimed damages, the landlord has only 45 days after the tenant moves out to file a lawsuit against the tenant in order to keep the disputed amount. The security deposit is considered the tenant's property until the landlord obtains a money judgment from the court for the disputed amount. The 45-day limit for the landlord to file a lawsuit to keep the security deposit will not apply when:

- (a) The landlord has filed with the court satisfactory proof of an inability to obtain service of process (e.g., notification) on the tenant.
- (b) The tenant has failed to provide a written forwarding address.
- (c) The tenant has failed to respond to the notice of damages within the 7-day limit.
- (d) The parties have reached an agreement, in writing, about how the disputed security deposit amount will be used.
- (e) The amount claimed by the landlord to be deducted from the security deposit is equal to unpaid rent.

VII. Failure of the Landlord to Sue Within 45 Days

Failure of the landlord to comply with the 45-day limit to initiate an action to retain a security deposit constitutes a waiver of all claimed damages, and makes the landlord responsible to the tenant for double the amount of the security deposit that was not returned. In other words, if the landlord does not return the security

deposit to the tenant or file a lawsuit against the tenant within the 45-day limit, the tenant may sue the landlord for twice the amount of the security deposit.

VIII. Electronic Notices

Landlords and tenants must be aware of the strict time limitations for notices regarding security deposits, and should keep accurate records of when notices are sent and received. This is especially important because of the short time periods for sending notices and for filing a lawsuit regarding security deposits. For example, if the landlord waits the full 30 days to mail out its notice of damages and the tenant waits the full 7 days to dispute the damages, the landlord will have only 8 days to file a lawsuit to keep the security deposit.

Landlords and tenants can agree to communicate and provide notices to each other via e-mail under Michigan law. Whether an agreement to communicate via e-mail exists is determined from the context and surrounding circumstances, including the conduct of the landlord and tenant. This means that if there is consistent back and forth e-mail communication between the landlord and the tenant, an agreement to communicate electronically may be implied. The applicable law is called the Uniform Electronic Transactions Act. MCL 450.838.

If you typically communicate in this way, it is better to include such an agreement in the lease. The lease agreement should contain an acknowledgement that the landlord and the tenant may choose to communicate electronically for purposes of handling the security deposit, such as tenant's notice of forwarding address, notice of claims against security deposit, and tenant's protest to landlord's notice of damages. The acknowledgement should contain the e-mail address of the tenant and the landlord and any changes or updates to the e-mail addresses should be in writing.

Some good e-mail communication practices include:

- (a) Following up an e-mail with a hard copy sent via regular mail;
- (b) Copying yourself on the e-mail to record the time and date when the e-mail was sent; and
- (c) Requesting a delivery confirmation if your e-mail program allows it, or requesting the recipient to reply acknowledging receipt.

If you do not have regular access to an e-mail account, you should be careful not to include such an agreement in your lease.

A Landlord may serve a demand for possession or payment (i.e. an eviction notice) to a tenant by e-mail if (a) the tenant has provided the Landlord with written consent to electronically serve the tenant, and (b) the tenant has affirmatively replied to an e-mail from the landlord to the tenant advising of the consent to receive service by e-mail. MCL 600.5718.

This brochure should not be used in place of legal assistance. In the event of a landlord/tenant dispute, seek legal advice.

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