



CYBER LEGAL ADVOCACY BRIEF

A Preventive Law Series

Cyber Center of Excellence Office of the Staff Judge Advocate
Legal Assistance Division, Fort Gordon



This Information Paper from the Fort Gordon Legal Assistance Division contains general legal information on a topic upon which Legal Assistance Attorneys typically advise. The information provided is general in nature and does not constitute formal, specific legal advice. If you wish to receive legal advice specific to your situation, please consult an attorney.

Security Deposit Disputes

Disputes often arise between tenants and landlords when dealing with return of a security deposit following the tenant vacating the leased property. Typically these disputes arise when a landlord refuses to return any portion of the security deposit or when the landlord and tenant dispute the application of the security deposit to claimed damage to the leased property.

Returning the Security Deposit

All landlords must return a security deposit within 30 days after obtaining possession of the leased property. If the landlord seeks to withhold a portion of the security deposit due to damage to the leased property, the landlord must provide written notice identifying the claimed damage and providing an estimate of the cost to repair the damage. The landlord must also issue payment of the difference between the amount of the security deposit and the amount retained for payment of damages. If the landlord provides this notice by first class mail to the last known address of the tenant, then the landlord is presumed to have complied with this requirement. If the letter contains a payment and is returned to the landlord as “undelivered,” and the landlord is unable to locate the tenant following a reasonable search, then the landlord can keep the payment 90 days after the date the payment was originally mailed. A landlord’s failure to comply with these requirements acts as a forfeiture of the landlord’s right to withhold any portion of the security deposit or bring an action against the tenant for damages.

Deductions from the Security Deposit

A landlord cannot retain the security deposit to cover ordinary wear and tear to the leased property occurring as a result of the tenant using the property for its intended purpose. However, a landlord can deduct from the security deposit for the following:

- Physical damage to the property by the tenant or the tenant’s family, guests or pets;
- Damages caused by the tenant’s negligent acts or abuse of the premises;
- Unpaid rent or late fees (including pet fees) owed by tenant;
- Unpaid utilities if they were the responsibility of the tenant under the terms of the lease;
- Repair or cleaning work contracted for by the tenant with third parties; or
- Any other actual damages caused by the tenant’s breach.

It is important to understand the difference between damage and ordinary wear and tear. Normal soiling and wear on the carpet is wear and tear but staining and excessive wear or soiling is damage. A lease may also require the carpet be professionally cleaned at lease termination. Another example of damage is coloring on the walls or excessive nail holes versus a few nail holes no larger than the diameter of small nail used for hanging pictures. Note: if the amount of damages claimed by the landlord exceeds the amount of the security deposit, the landlord may

be able to sue the tenant for damages to recover the additional amount. Tenants should take pictures when the move into a rental unit and when they move out to prove the condition of the rental. The tenant should also ask for and maintain a copy of a move-in/move-out inspection report.

Additional Requirements for Certain Landlords

Landlords who (a) own more than ten (10) rental units (including rental units owned by the landlord's spouse and/or children) or (b) employ a management company must follow a more formal set of requirements related to unit inspection and return of the security deposit.

First, within three (3) business days after the lease terminates or the landlord discovers the tenant vacated the leased property, the landlord must inspect the rental property and provide a list of all alleged damages and their estimated value. The landlord must sign this list and provide it to the tenant. Within five (5) business days after the termination of the lease, the tenant may inspect the rental property, and then either sign the list of damages from the landlord or specify in writing the items in dispute. The best practice is for the tenant to be present at the post-termination inspection with the landlord, if possible.

If the landlord is required to provide this written list of damages and fails to do so within the three day time period, the landlord is not entitled to retain any portion of the security deposit.

The tenant can bring an action to recover the disputed portion of the security deposit retained by the landlord. If the tenant fails to dispute or challenge the list of damages provided by the landlord, the tenant is deemed to have waived those claims and cannot later seek to recover them or challenge the landlord's retention of the security deposit for those amounts. As a result, it is very important for tenants to carefully review the list of damages provided by the landlord and make any objections known in writing.

Wrongfully Withheld Security Deposits

If a landlord refuses to refund a security deposit, the tenant can bring a lawsuit to recover the security deposit, along with potential additional damages including interest that accrued while the deposit was wrongfully withheld, attorney fees, and the cost of filing the legal action. In the event the landlord provided a list of damages to the tenant, the tenant will only be able to recover the amount remaining from the security deposit once deductions are made from any listed damages undisputed by the tenant. If a landlord owning more than ten (10) rental units or employing a management company wrongfully withholds a security deposit, the landlord can be liable for three times the amount of the security deposit plus attorney fees, unless the landlord can show the withholding was unintentional and the result of a bona fide error that occurred.

Additional Information

The Fort Gordon Legal Assistance Division is located at 267 Heritage Park Lane, Building 35202, Fort Gordon, Georgia. You may call the office at (706) 791-7812 / 7813. Please be advised you must have an appointment to consult with an attorney; however, paralegals are available via telephone during normal hours of operation to answer general questions that do not amount to legal advice.