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**SECURITY DEPOSITS:  
YOUR RIGHTS AS A TENANT  
IN NORTH CAROLINA**

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## Introduction

Each year the office of the Attorney General receives many complaints and inquiries from tenants regarding disputes they are having with their landlords. The laws governing the relationship between a landlord and a tenant are complex and come from several sources. Those sources include the law of contracts (leases are a type of contract), the law of negligence, the North Carolina General Statutes, local health, safety and building codes, federal laws and regulations governing subsidized rental housing, and the Constitutions of the United States and the State of North Carolina.

What is printed here is not a complete discussion of North Carolina landlord-tenant law. Instead, it is a discussion of rental security deposit problems and the North Carolina laws concerning such problems. Also, available from the Attorney General's Office are two other information packages similar to this one discussing the landlord's repair and maintenance duties and Small Claims Court procedures.

We hope that the information provided here will be helpful to you. You might be surprised how much a little bit of knowledge of your rights as a tenant can help you resolve disputes with your landlord, and maybe even avoid them altogether.

### **THE TENANT SECURITY DEPOSIT ACT**

Most landlords require their tenants to pay a rental or security deposit. The main purpose of the deposit is to protect the landlord from financial losses resulting from a tenant's damage to the premises or failure to pay rent. The deposit is refunded if the tenant completes his or her obligations under the lease and leaves the premises in an undamaged condition.

In the past, landlords too often failed to return security deposits at the end of a tenancy, even though their tenants had complied with their responsibilities. Also, some landlords kept the tenant's entire deposit, even though the problem caused by the tenant took only a few dollars to correct.

In 1977 the North Carolina General Assembly passed the Tenant Security Deposit Act in order to take care of such problems. The Act states the purposes for which landlords may use tenant security deposits: (1) compensation for the tenant's possible nonpayment of rent; (2) damage to the premises; (3) nonfulfillment of the rental period, (tenant moves out early); (4) any unpaid bills which become a lien against the rental property due to the tenant's occupancy; (5) costs of re-renting the premises after breach by the tenant; (6) costs of removal and storage of the tenant's property after a summary ejection ("eviction") proceeding; (7) court costs in connection with terminating the tenancy.

The act also states that a landlord may not use the deposit to cover normal wear and tear

to the premises. A landlord may not charge more than his actual losses against the security deposit. In other words, a landlord cannot keep the entire \$300.00 security deposit, or even \$100.00 of it, if he had to pay someone only \$10.00 to repair a broken window screen left behind by the tenants.

Where the Landlord Can Put the Deposit -- Landlords cannot put tenant security deposits in their own personal or business accounts. They must keep deposits in a separate “trust account” set up for security deposits only. The account must be with a licensed North Carolina bank or savings institution. The tenant must be given the name and address of the bank or savings institution within thirty days after the beginning of the lease period.

The reasons for the requirement of a separate tenant security deposit account are to keep landlords from using tenant security deposit money for their own purposes. Also, if the security deposits are kept in a separate trust account, it makes it easier for tenants to get their deposits back at the end of their lease periods even though the landlords might have died, filed for bankruptcy or been sued by someone else.

The one exception to the requirement of a separate bank account for tenant security deposits is when a landlord gets a special bond from a North Carolina insurance company to insure the proper return of all security deposits. Tenants who are due a return of their security deposit but do not receive one can make a claim against the bond for the amount of the security deposit due. Landlords who choose to purchase a security deposit bond rather than use a separate security deposit trust account must notify the tenant in writing of the name of the insurance company. This notification must be given to the tenant within thirty days after the beginning of the lease period.

When the Deposit Must be Returned -- The landlord must return the deposit to the tenant within thirty days of the end of the rental period. If the landlord makes charges against the deposit for damage to the property, or for unpaid rent, those charges must be described to the tenant in writing, and the writing (also referred to as an accounting) plus any portion of the deposit still due to the tenant must be delivered within that same thirty-day period.

Security Deposit “Forfeiture” -- Some leases will contain clauses stating that the tenant will forfeit, or give up, the entire deposit if certain things happen, such as failing to give the landlord enough advance notice that the tenant does not wish to renew his lease for another year, or failing to clean out the bathtub when moving out, or committing any other act or offense in violation of the lease. Lease forfeiture provisions such as this violate the Tenant Security Deposit Act and are unenforceable because they allow the landlord to keep more than his actual losses.

Normal Wear and Tear -- At the end of the lease period some landlords and tenants argue over whether a problem constitutes “normal wear and tear” rather than “damage.” In the course of a one or two-year tenancy, all rental premises are going to suffer some wear, and things such as door handles, oven heating elements, curtain strings, toilet parts, faucet handles or electrical

switches may wear out and break without having been abused by the tenant. Paint will fade and become flyspecked over time despite reasonable care, and portions of the carpet may wear down and start to unravel. These sorts of things should not be charges to the tenant or the security deposit. These are normal expenses of being in the rental property business and they are to be borne by the landlord. Most landlords will incur such costs when they refurbish their rental units before leasing them out to new tenants.

Damage -- Window screens and window panes that were broken by the tenant because the keys were accidentally locked inside constitute damage. Coffee or soft drink stains on the carpet constitute damage. Large holes in the wall from where a tenant mounted bookshelves constitute damage. Crayon marks, dart holes, bizarre or unauthorized paint colors, also constitute damage and can be charged to the deposit based upon the actual cost of repairs.

Having to clean up filthy ovens, ranges, refrigerators, kitchen floors, cabinets and bathrooms are problems that go beyond normal wear and tear, unless the landlord provided the premises in that condition to begin with. Tenants leaving such problems behind, when they did not exist at the beginning of the tenancy, have essentially damaged the premises, and the reasonable costs of clean up can be charged against the deposit. If the costs are greater than the deposit, the landlord can sue the tenant for the additional amount.

Close Calls Between Damage and Normal Wear and Tear -- It is costly for landlords to refurbish apartments or rental houses between tenants, and the cost involved often tempts some landlords to call something damage when it is actually normal wear and tear. The tenant's best defense against this is to clean the premises thoroughly when moving out and to have some unbiased person inspect the premises before the landlord makes his inspection. Another good idea is for the tenant to ask to be present when the landlord is doing the inspection. It is harder for a landlord to tell tenants to their faces that an old, worn out refrigerator or carpet is "damaged."

Pre-existing Damage -- Some tenants complain of landlords charging their security deposits for damage or excessive dirtiness that existed before the tenancy began. This is not permitted under the Security Deposit Act. In court, however, this situation turns into a matter of the tenant's word versus the landlord's. The best way for a tenant to avoid this problem is to note on a piece of paper all problems in the premises when the tenancy begins. The paper should be dated and signed by the tenant and the landlord, and a copy kept by both of them. No problem should be ignored when preparing the list -- be sure to list such items as missing cabinet handles, mold around the bathtub, spots on the carpet, grease splatters inside the oven, dirty filters in the stove hood, and cracks on the face plates on electrical switches. In court the landlord will have to prove that the tenant caused these problems, but the type of list described here will make that proof more difficult.

Whether to Hire an Attorney -- In a security deposit dispute, consultation with an attorney is usually a good idea. The law allows the tenant to recover attorney's fees from the landlord when a landlord has deliberately failed to return the proper amount of the security

deposit within thirty days. Also, through a phone call or letter to the landlord, the lawyer may be able to convince the landlord to return the proper amount of the security deposit without anyone having to go to court.

Dispute Settlement Centers -- In many North Carolina cities and towns there are organizations known as dispute settlement centers. These are nonprofit organizations that were established as an alternative to the use of courts and lawsuits. Usually their services are free. The people at the dispute settlement centers who try to resolve disputes are called “mediators.” Mediators do not act as judges. They do not try to find who is the “winner” or who is the “loser.” In fact, they do not try to act as courts at all. Instead they try to get people either to realize the problems with the position they have taken or to compromise their position. One way mediators try to get people to compromise is to point out how expensive it is to try to take the matter to court.

Mediation sessions are usually face-to-face. Normally, the mediator starts out by talking with the two sides separately. Mediation sessions, unlike court, are usually at times convenient to both parties, such as in the evening when people are not at work.

Use of a dispute settlement center is voluntary. No one is forced to go there. People using the mediation services of such centers should have some willingness to compromise, or at least hear what the other side has to say.

Tenants who want to try mediation rather than Small Claims Court only need to call the local dispute settlement center. The dispute settlement center takes it from there, contacting the landlord, arranging mediation sessions, and trying to resolve the dispute.

Small Claims Court -- Small Claims Courts exist in every county in North Carolina. Compared to the other courts of this State, they are relatively informal. They often hear tenant security deposit claims, and often the tenants and landlords argue such claims themselves rather than hire attorneys.

Tenants wishing to use the Small Claims Courts to recover their security deposits can receive an information package on Small Claims Court from this office.

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