



New Jersey Department of Community Affairs Division of Codes and Standards Landlord-Tenant Information Service



SECURITY DEPOSIT BULLETIN

May 2010

This bulletin outlines the laws pertaining to security deposits for residential rental properties in New Jersey, pursuant to the *Security Deposit Law*, as set forth in N.J.S.A. 46:8-19 through 26 and as may be interpreted by a court of law. Landlords are permitted to charge security deposits as security for the full performance of all of the terms of a lease. The security deposit law was created to protect tenants from landlords who require security deposits and then divert the deposits for their own use. This bulletin is for informational purposes only and should not be used for legal interpretations or legal advice. Please consult an attorney for legal services and advice when necessary.

APPLICABILITY

The *Security Deposit Law* applies to all rental premises or units used for dwelling purposes except owner-occupied premises with not more than two rental units. However, a tenant residing in an owner-occupied premise with not more than two rental units can invoke the protections of the Act by giving the landlord 30 days written notice of the tenants desire to receive the Act's protection. Such written notice may be given at any time during the tenancy.

AMOUNT OF SECURITY DEPOSIT

Landlords are not permitted to require more than one and one half times the monthly rental payment as a security deposit. Any additional yearly security deposit increase may not exceed 10% of the current security deposit. There is no time limitation within the statute for making a request of a deposit.

Note: Be sure to obtain signed, dated receipts marked "security deposits". Keep receipts for your records.

DEPOSIT OR INVESTMENT OF SECURITY DEPOSIT

a) Landlords receiving security deposits for 10 or more rental units shall invest or deposit security deposits in an insured money market fund established by an investment company based in New Jersey, or in an account that bears a variable rate of interest, at a State of federally chartered bank, savings bank or savings and loan association insured by the federal government and located in New Jersey. All deposits and investments shall be made in accordance with the *Security Deposit Law*. The security deposit shall be used in accordance with the contract, lease or agreement and shall not be mingled with the personal property or become an asset of the landlord.

b) Landlords subject to this law, receiving security deposits for less than 10 rental units shall deposit money in a State or federally chartered banking institution, in this State insured by the federal government in an account that bears interest on time or savings deposits. The Commissioner of Banking and Insurance, by rule or regulation, may require some or all persons receiving money for less than 10 rental units to follow the investment and deposit requirements that apply to landlords with more than 10 rental units.

Administrative and Service Fees

Pursuant to P.L. 2003, c. 188 landlords are no longer allowed to take administrative expenses from security deposit money. The earnings or interest belongs to the tenant. The tenant's interest or earnings shall be paid to the tenant in cash, or credited toward payment of rent due on the renewal or anniversary of the lease **or on January 31, if the tenant has been given written notice that the interest payments will be paid on January 31, of each year.** *The landlord must give a security deposit notice at the time of each annual interest payment to the tenant.*

Notice of Deposit of Security Funds

Landlords are required to give tenants a statement in writing including the name and address of the investment company, bank or savings and loan association along with the **type of account, current rate of interest** and amount deposited within 30 days of receipt of a security deposit. This notice may appear in the lease. The landlord must notify tenants within 30 days of transferring security deposit money to a new landlord or moving the security deposit to another account or bank. If notification is not given or if the security is not deposited or invested in accordance with this law, the tenant has the right to require that the security deposit, **plus 7 % per year** be applied toward any rent due. This request must be made in writing. However, after giving the landlord written notice the tenant must allow the landlord 30 days to comply with the annual interest payment and notice requirements. The 30-day allowance is not required, if the landlord failed to properly deposit the initial security deposit money. At no time thereafter, while the tenant occupies the unit, can the current landlord ask for or collect another deposit.

Sample Letter

You have failed to notify me in writing, and within 30 days of my payment, of the name and address of the banking institution in which you have placed my security deposit. On _____ (date)_____, I paid a security deposit to you in the amount of \$_____, by check # _____. Therefore, I am hereby applying the remedy as prescribed by the Security Deposit Law, by informing you to apply my security deposit plus the tenant's portion of the accrued interest to my rent for the month of _____. According to the law, I am without further obligation to pay you a security deposit as long as I live in the rental unit.

Note: Make sure you date and sign your letter and send it certified or registered mail, return receipt requested.

Exceptions

Security deposit investments and deposits to a banking institution are not required for seasonal rentals. Seasonal rentals refer to properties being rented or leased for residential purposes, for a term of 125 consecutive days or less, by a person having a permanent place of residence elsewhere.

CONVEYANCE OF (RENTAL) PROPERTY

If the property is sold, foreclosed or conveyed for reasons of bankruptcy or insolvency, the former owner within five (5) days of the date of delivery of the deed, instrument of assignment or court order, must turnover to the new owner all securities plus the tenant's portion of interest earned and notify the tenant by registered or certified mail of the name and address of the new person holding the tenant's security deposit. Once transfer and notification is made, the former owner is relieved of responsibility for the security deposit. The person receiving the security deposit along with the tenant's portion of the interest becomes responsible for the return of the money to the tenant.

It is the duty of the new owner to obtain the security deposit, plus accrued interest on the tenant's deposit, that was collected by the former owner. Therefore, whether or not the deposit and interest are transferred to the new owner by the former owner, the new owner is responsible for the investment of the security deposit, giving all notices and paying interest, and for the return of the security deposit, plus any accrued earnings or interest. A security deposit notice must be given by the landlord within 30 days of acquiring the property.

RETURN OF SECURITY DEPOSIT

Within 30 days after the termination of a tenant's lease the landlord must return the tenant's security deposit plus the tenant's portion of interest, less any allowable fees, by personal delivery, certified or registered mail. In addition, an itemized list of interest, earnings and deductions from the security deposit must be sent to the tenant within 30 days by personal delivery, registered or certified mail.

If the landlord fails to return the tenant's security deposit within 30 days, then the tenant is entitled to sue the landlord for the return of the security deposit. If the tenant sues successfully for the return of the security deposit, the Court shall award recovery of double the amount of money, along with full costs of any action and, in the Court's discretion, reasonable attorney's fees.

However, the landlord may deduct from the security deposit money for property damage that is more than ordinary wear and tear and any money due the landlord under the lease or agreement. If the amount of money owed to the landlord exceeds the amount of the security deposit, the landlord may sue for the difference. **No deductions shall be made from a security deposit of a tenant who remains in possession of the rental premises.**

Termination of Lease Due to Domestic Violence

If a tenant terminates the lease agreement prior to the expiration of the lease pursuant to the Safe Housing Act, N.J.S.A. 46:8-9.6, because by continuing to live at the rental unit, the tenant or the tenant's child faces an imminent threat of serious physical harm from another named person, the tenant is entitled to the return of his or her security deposit. Within 15 business days after the lease is terminated, the landlord shall make available the return of the tenant's security deposit, plus any interest earned, to the tenant or the tenant's agent. In addition within three business days after the lease is terminated, the landlord must notify the tenant in writing of when and where the tenant can pick up the security deposit. If the last known address for the tenant is at the property where the tenant no longer resides, the landlord shall post notices at each exterior entrance of the property. If the tenant does not collect the security deposit within 30 days, it shall be redeposited or reinvested by the landlord in the same bank from which it was withdrawn.

Displacement Due to Fire, Flood, Condemnation or Evacuation

Within five (5) business days after a tenant is caused to be displaced due to: fire, flood, condemnation or evacuation; an authorized public official posts the premises with a notice prohibiting occupancy; or any building inspector has certified within 48 hours that the displacement is expected to continue longer than seven days and has notified the owner or lessee in writing, the landlord shall return to the tenant upon his request his security deposit and the tenant's portion of interest, less any administrative fees, accompanied by an itemized statement of the interest, earnings and deductions.

Within three (3) business days after receiving notification of the displacement, the landlord shall provide written notice to a displaced tenant, by personal delivery or mail to the tenant's last known address, indicating when and where the tenant's security deposit will be available for return. If the last known address for the tenant is at the property that is no longer habitable, the landlord shall post notices at each exterior entrance of the property. The landlord may make arrangements to have the municipal clerk hold the security deposit so that the tenant may collect it at the clerk's office. If the tenant does not collect the security deposit within 30 days, it shall be redeposited or reinvested by the landlord in the same bank from which it was withdrawn.

If the tenant does collect the security deposit and then reoccupies the property, the tenant is required to repay the security deposit. The tenant must immediately redeliver one-third of the security deposit, one-third more in 30 days and the final one-third in 60 days.

Recipients of Governmental Assistance

A governmental agency that has made deposits on behalf of a tenant, who has received financial assistance through a State or federal program such as welfare, or rental assistance, may impose a civil penalty against a landlord who has willfully and intentionally withheld deposits in violation of this law. The penalty shall be no less than \$500 and no more than \$2,000 for each offense.

If you wish to file a civil court action to resolve a dispute regarding security deposits and the amount does not exceed \$5,000, including any applicable penalties, but not including costs. You must file with the Small Claims section of the Superior Court in the county where the rental property is located or in the county where the defendant resides. If the amount does exceed \$5,000, but is less than \$10,000 you must file in the Special Civil Part of the Superior Court.

Any person who unlawfully diverts or consents to an unlawful diversion of a tenant's security deposit shall be considered a disorderly person and subject to a fine of not less than \$200.00 and/or up to 30 days imprisonment.

The Bureau of Housing Inspection within the Department of Community Affairs enforces the Landlord Identity Law. For information regarding ownership of the premises you may contact the Bureau of Housing Inspection at (609) 633-6210. If you reside in a one (1) or two (2) unit building that is not owner-occupied, you may contact the municipal clerk for ownership information.