

SECURITY DEPOSITS



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INTRODUCTION

Idaho law strictly governs the use of rental security deposits by landlords. The law provides the following:

- Any money deposited with a landlord is either “rent” or a “security deposit.”
- When a lease or rental agreement ends, the landlord must return the entire deposit to the tenant or give the tenant a signed, itemized statement showing the amounts deducted from the deposit, why the amounts were deducted, and how they were spent.
- The landlord must return the deposit or send the itemized statement within 21 days after the lease ends. This 21-day period can be shortened or extended by agreement, but may never exceed 30 days.
- The landlord may take deductions **only** for items agreed upon in advance by the landlord and tenant (i.e. failure of tenant to leave premises clean or to return keys).
- Deductions **cannot** be made for “normal wear and tear.” Any damage or deterioration which is not due to negligence, accident, carelessness, or abuse of the property is “normal wear and tear.”

WHAT YOU CAN DO IF YOUR SECURITY DEPOSIT IS NOT RETURNED

If, after you move, your landlord has not returned your security deposit or sent an itemized statement of deductions within the required period, you should write a letter to the landlord demanding a refund.

Deliver the letter to the landlord by either:

(1) *Personal delivery* - you can deliver it to the landlord or the landlord’s agent. If you cannot find him at his usual place of business, leave the letter with an employee of the landlord at the landlord’s usual place of business. If you choose personal delivery, take someone with you as a witness to the delivery so the witness may testify in court that the landlord received the letter.

OR

(2) *Certified mail* - send the letter by “certified mail, return receipt requested.” You will receive a postcard showing when the landlord received the letter. The postcard may prove helpful in court to prove when the letter was received.

The landlord has three days (not counting Saturdays, Sundays or legal holidays) from the day he receives your letter to return the security deposit or send you an itemized statement. If your landlord has not done either of these after three days have passed, you may sue the landlord. You can sue the landlord in Idaho State District Court, where you will probably need an attorney to represent you, or you can sue in Small

Claims Court, where neither you nor your landlord may have an attorney.

If you decide to pursue your case in Small Claims Court, pick up the paperwork at the county court clerk's office. A brochure discussing Small Claims Court is available from our office.

Once you properly complete the Small Claims paperwork, you will be notified of the date, time, and place for the trial. You must be prepared to explain why you are suing. You should bring your copy of the lease, the letter you sent the landlord, and any proof you have showing how much security deposit you paid (receipt, canceled check, etc.). If you are suing because the landlord deducted improper amounts, then you should bring witnesses or photographs to help prove your position.

If the judge finds that the landlord violated the law maliciously or intentionally, the judge might award you "treble damages" (three times the damages you actually prove).

AVOIDING DISPUTES

While disputes between landlords and tenants over security deposits are common, there are ways to avoid disputes.

Before you move in, conduct a physical inspection of the premises with the landlord. Make a written list of everything broken or dirty, even if it seems minor. Both you and the landlord should keep copies of this list. Ask the landlord to repair any serious defects (such as a broken window or a heater that doesn't work).

When you are ready to move out and have completed the cleaning, ask the landlord to inspect the property. Compare the current condition of the property with the list prepared before you moved in. The first list should help avoid disagreements about what items you are responsible for cleaning or replacing.

If you cannot meet with your landlord when moving out, take photographs and ask a friend or other third party to inspect the premises. If you must sue to recover your security deposit, your friend will be a good witness, and the photographs will be useful evidence.

SUGGESTED LETTER FORMAT

If you must write the landlord a letter requesting return of your deposit, this format is appropriate:

Dear Landlord:

On [date] I moved from the apartment at [address] which I rented from you. My lease terminated on [date]. I paid you a security deposit of \$___ when I moved in. You have not yet refunded this amount or sent me an itemized list of deductions made from the deposit. Because 21 days have passed since I left the apartment, you are now in violation of Idaho Code section 6-321. I demand that my entire security deposit be returned to me within three days of your receipt of this letter. Please send the check for the full amount, payable to me, at [new address]. If you do not do so within three days, I intend to sue you pursuant to Idaho Code section 6-320(a)(4). If I must sue you, the judge may award me three times the security deposit and require you to pay my court costs and attorney fees.

Sincerely,
Tenant

OTHER AVAILABLE RESOURCES

The Idaho Office of the Attorney General website has a manual titled "Landlord And Tenant Guidelines" available on their website with more information about the security deposit rules in Idaho.

***This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (August 2021)**

For additional information on this and other legal topics, see the Air Force Legal Assistance Website:
<https://aflegalassistance.law.af.mil>