

# Tenant's Security Deposit Law

## **The Landlord May Not Charge an Excessive Deposit**

Under the Tenant Security Deposit Act (N.C. Gen Stat. 42 Article 6), the amount that the landlord may charge depends on the length of the lease. If the lease is week-to-week, the deposit may not exceed two weeks' rent. If the lease is month-to month, the landlord may charge one and one half's month rent. For any lease longer than month-to-month, the maximum amount is two months' rent. However, the landlord may also charge a separate, reasonable, nonrefundable fee for pets kept by the tenant.

## **The Landlord Must Place the Deposit in a Trust Account or Furnish a Bond and Notify the Tenant**

The landlord must either place the tenant's deposit in a trust account with a licensed and insured bank or savings institution located in the state of North Carolina, or furnish a bond from an insurance company licensed to do business in North Carolina. The landlord must notify the tenant within 30 days after the beginning of the lease of the name and address of the bank or institution where the deposit is currently located or the name of the insurance company providing the bond. If the landlord willfully fails to follow these particular requirements, the landlord's right to keep any part of the security deposit is void.

## **The Landlord May Use the Security Deposit To Pay for These Eight Kinds of Expenses ONLY:**

1. The tenant's nonpayment of rent or utilities;
2. Property damage caused by the tenant's purposeful or negligent conduct (not ordinary wear and tear);
3. Costs due to the tenant's early leaving (other than that authorized by law, uninhabitable conditions, or the landlord's forcing the tenant to leave);
4. The tenant's unpaid bills resulting in a lien against the property;
5. Reasonable costs of the landlord for re-renting the property because of eviction or abandonment;
6. Costs of removing and/or storing the tenant's personal property after a lawful eviction;
7. Court costs incurred by the landlord for evicting the tenant; and
8. Late fees and administrative fees authorized by N.C. Gen. Stat. 42-46 for late payment of rent and court actions in which the landlord won.

## **The Landlord Must Account for Deductions and Refund the Balance on Time**

After the lease has ended or been terminated by a court, the landlord should account for his deductions and return the balance of the deposit within 30 days of the termination. If the landlord is unable to determine the extent of the damages within 30 days, the landlord may make an interim accounting within 30 days and a final accounting and refund of the balance within 60 days.

### **Other Requirements of the Landlord**

If the landlord does not know the tenant's new address, the landlord still must retain the balance due the tenant for at least 6 months. If the landlord transfers the ownership of the property during the tenancy, the landlord must either: (1) transfer the deposit, minus any lawful deductions, to the new owner and notify the tenant, or (2) do an accounting and refund the balance to the tenant.

### **The Tenant Has Rights to Court Remedies**

1. If the landlord fails to notify the tenant of placing the deposit in a proper bank or savings institution, or providing an insurance bond, the tenant is entitled to a full refund (even if the landlord could have legitimate deductions).
2. If the landlord fails to make a timely accounting and refund, the tenant can claim a refund, but the landlord may still prove some proper deductions.
3. If the landlord purposefully does not follow the law by charging for items not allowed or otherwise, the tenant may be able to make the landlord pay the tenant's attorney fees.

### **The Tenant Should Evaluate Other Possible Claims Against the Landlord and What Possible Claims the Landlord Might Bring Against the Tenant**

If the tenant suffered bad living conditions from repairs that the landlord should have made, the tenant may have additional claims that must be included in the same lawsuit with the security deposit claims.

Before the tenant sues for refund of the security deposit, the tenant should fairly consider the claims that the landlord may bring in response. If the tenant has caused expensive damages or failed to pay rent without a good legal reason, the tenant should consult an attorney before filing a lawsuit because the landlord might have counterclaims that would exceed the value of the deposit.