

ADVICE FOR RENTERS: SECURITY DEPOSITS

In 1977, the Idaho Legislature passed a law which gives tenants a simple and quick method of forcing landlords to return security deposits that are owed to tenants. The law (called Idaho Code Sections 6-320 and 6-321) says that:

- Any money deposited with a landlord is either “rent” or a “security deposit;”
- When the lease or rental agreement ends, and the tenant gives the apartment or house or mobile home back to the landlord, if the landlord does not return the entire deposit the landlord must give the tenant a partial refund and written statement showing the amounts deducted from the deposit, why they were deducted, and how the deductions were spent;
- The landlord must return the deposit, or send the written statement within 21 days after the lease ends and the tenant has left; this 21-day period could be shortened or extended by an agreement between the tenant and landlord, but it may not be more than 30 days;
- The landlord may take deductions **only** for reasons the landlord and tenant have agreed upon (for example, many leases say money can be taken from the deposit if the apartment is not left in a clean and rentable condition, or if keys are not returned);
- Deductions **cannot** be made for “normal wear and tear;” if damage or deterioration occurs which is not due to negligence, accident, carelessness, or abuse of the property, then it is “normal wear and tear.”

WHAT TO DO IF YOUR SECURITY DEPOSIT IS NOT RETURNED

If your landlord has not returned your security deposit or sent an itemized list of deductions within the required period (usually 21 days after your lease ended **and** you moved out, although it could be more or less time depending on the agreement you made), we recommend you take the following steps:

Step 1: Write a letter to your landlord. You should write a letter like this one:

Dear Mr. Landlord:

On (date) I moved from the apartment at (address) which I rented from you, and my lease terminated. I paid you a security deposit of \$ when I moved in, and you have not yet refunded this amount and have not sent me an itemized list of deductions made from the deposit. Since 21 days have passed since I left, 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. Kindly send the check for the full amount, payable to me, to (your new address) . If you do not do so within three days of your receipt of this letter, I intend to sue you pursuant to Idaho Code Section 6-320(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’s fees.

Sincerely,

Tom Tenant

(Be sure to keep a copy of this letter!)

If your landlord violated the security deposit law by making deductions for damages that were

done before you moved in, then you should write a letter explaining that her/his deductions were too large and why they were too large, and the letter should ask that the excessive deductions be returned to you within three days.

Step 2: Deliver the letter to your landlord. You can deliver the letter in either of two ways:

- You can deliver it personally to your landlord or your landlord's agent, or if you cannot find her/him at his usual place of business, by leaving the letter with an employee of the landlord at the landlord's usual place of business. This is the quickest way of delivering the letter. If you choose this method, have a friend or relative go with you as a witness, so the witness could testify in court that the landlord received the letter.
- Or, you can send the letter "certified mail, return receipt requested" to your landlord. You will have to go the Post Office to do this. You will receive a postcard showing when the landlord received the letter. If you choose this method of delivering the letter, use the postcard in court to prove when the letter was received. But remember—it will take longer for your landlord to receive your letter by mail than if you and a witness deliver it personally.

Step 3: Give your landlord time to return your security deposit. Your landlord has three days (not counting Saturdays, Sundays, legal holidays, or the day you received it) from the day s/he got your letter to return the security deposit. If s/he received your letter after the 21-day period had already ended, then s/he is supposed to return the entire security deposit, regardless of whatever damages you had caused to the place you rented.

But you might want to negotiate with your landlord. For example, assume that you did \$50 of damage to the apartment, and your landlord can prove it. Your landlord did not send you the \$150 security deposit you paid, and did not send the itemized list of deductions s/he was supposed to send you. You could sue her/him for the full \$150, but s/he might be able to sue you for the \$50 in damages (her/his right to sue you is undecided in Idaho law). So you might want to agree that if s/he refunds \$100 to you, neither s/he nor you will sue each other. If you both agree on a settlement other than what you demanded in your letter, it will be binding on both of you. It is a good idea to put any new agreement in writing and have your landlord sign it. You should keep a copy.

Step 4: Sue the landlord. You could sue your landlord in Magistrate Court, where you would probably have to have an attorney, or in Small Claims Court, where neither of you may have an attorney. The rest of the section tells you how to sue in Small Claims Court for the return of your security deposit.

[If you have access to the Internet, the Interactive Court Forms project has forms available for filing claims in Small Claims Court. The website is: www.courtselfhelp.idaho.gov.]

To begin a lawsuit in Small Claims Court, you must go to the court clerk's office and fill out two forms. You will have to give information such as your name and address and your landlord's name and address. Also, you will be asked to state the nature of your claim, the amount owed to you, and when the amount became due. We recommend you state something like the following:

"My landlord owes me a debt of \$_____ for his failure to return a security deposit and failure to send me an itemized list of deductions within the time required by Idaho Code Section 6-321. I demanded the return of the deposit by the attached letter, pursuant to Idaho Code Section 6-320, and the debt was due three days after my landlord received the demand letter. Also, I request that s/he

pay my filing fees and that the damages be tripled.”

If the landlord did send you a list of itemized deductions, but you believe some of the deductions are improper, your demand letter to the landlord and your statement on the Small Claims Court form will be different from the examples. You will want to explain why you think the deductions made violated the law or the lease, and you should demand that the **excessive** deductions be returned to you.

Sometimes a landlord will retain part or all of a deposit to cover the cost of cleaning or repairs that were not needed. If you believe your landlord has done this, then in your small claims complaint against the landlord you may state:

“I am entitled to the return of my deposit or the sum of \$1,000 from the landlord, whichever is greater, because s/he violated Idaho Code Section 48-603(16) by claiming that services or repairs were needed when they were not needed or by providing services or repairs that were not needed.”

Step 5: Go to the Small Claims Court trial. 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 letter you sent the landlord and any proof you have showing how much security deposit you paid (receipt, cancelled check, etc.). If you are suing because deductions were made which your landlord was not allowed to make (for example, deductions were made for cleaning the stove, but you left the stove in spotless condition), then you should bring witnesses or photographs to prove that what you say is true.

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

Common Questions

Here are some common questions people ask about the security deposit law:

“My lease required me to pay a ‘cleaning deposit’ and a \$25 processing fee. Are these security deposits?”

Anything called a “deposit” and any amount you “deposit” with the landlord is a security deposit, and the security deposit law would apply to it. But a “processing fee” or “non-refundable cleaning fee” might be a security deposit (which has to be returned to you, or accounted for) or might be rent (which the landlord gets to keep). To decide if a particular amount is rent or security deposit, a judge would probably look at the language of the oral or written agreement and try to determine what the landlord and tenant had in mind when they made the agreement.

“My rental agreement said if I move out within six months, I would forfeit my entire security deposit. Is this legal?”

Maybe, and maybe not. You could argue that if you moved out after five months, and left the apartment in good condition, your landlord’s losses (damages) are much less than your security deposit, and that the landlord should not be permitted to keep the entire security deposit. (Technically, you would be arguing that the agreement was a “liquidated damages” clause, and should not be enforced because the damages were less than the agreement anticipated.) Your landlord could argue that the security deposit statute allows the two of you to make nearly any agreement you want, and that if you understood what you were signing then you should be held to your agreement. A judge would probably consider a number of factors in deciding such a case.

“My lease said I had to give one month’s notice before moving or I would forfeit my security deposit. I only gave 20 days’ notice before I moved, and now the landlord wants to keep my entire security deposit. Is this legal?”

It depends. Deductions should be made **only** to cover the landlord's actual expenses. If the landlord rented the apartment one day after you moved out, then the landlord lost only one day's rent, and should be allowed to deduct only that much. (The landlord might argue s/he had to advertise the apartment earlier than expected, and a court **might** allow the landlord to deduct the advertising costs too.) But if s/he were unable to rent the place, even though s/he tried, then the landlord probably can deduct 10 days of rent from your deposit. The landlord probably **cannot** keep the entire deposit. But in some situations your landlord is not permitted to keep any of the deposit for failure to give the full one month's notice. For example, if your landlord told you you **had** to move out early, or if the conditions in the place you rented were so bad that you **had** to move out, or if the landlord said or did something which made you think it was okay for you to move out with less notice than you originally agreed to give.

"My lease said nothing about how much notice I had to give before moving out. If I gave only 15 days' notice, and paid rent only for those last 15 days, could my landlord say that I had to give one month's notice, and keep part of my security deposit for 15 days' extra rent, even though I was not living there?"

If your lease was silent as to how much notice you must give (and this could apply to written or oral leases), and you paid rent once each month, then the usual rule is that either you or the landlord can end the lease by giving one-month's notice. So, if you failed to give the full notice, you might owe some back rent. If you gave only two-weeks' notice, you might owe two-weeks' back rent. But if the exceptions discussed in the last question apply to you, you would owe no back rent.

If you **do** owe back rent, then you have to determine whether the agreement you and your landlord made allowed her/him to make deductions from the security deposit to recover back rent. If the lease said "deductions can be made to cover any of the tenant's promises," then the deduction is probably lawful.

"My landlord said s/he didn't have to return my security deposit because s/he had no way of reaching me within the required time. Can s/he avoid returning my deposit for this reason?"

Of course s/he can. So, it is up to you to let her/him know how s/he can contact you after you move, and you must be able to prove s/he knew how to send you the deposit or itemized list. One way of proving s/he could reach you is to have a friend give her/him your new address. Your friend could testify in court if your landlord claimed s/he had no way of sending you the itemized list of deductions. Or, if the Post Office sent your mail to your new address, you could bring to court one of the envelopes forwarded by the Post Office, and explain to the judge that if your landlord had written to your old address, it would have reached you.

IMPORTANT THINGS TO KNOW

There are a lot of disputes between landlords and tenants about security deposits. To minimize security deposit problems, take these steps: During the first week you live in a rented apartment, house, or mobile home, make a very thorough list of everything that is broken or dirty and take photos and/or video. List everything, even if it seems minor to you. Send a copy of this list to your landlord. You should probably ask your landlord to repair the defects that are serious (a broken window, for example, or a heater that does not work properly—see Idaho Legal Aid's pamphlet on repairs). But you should list even the minor defects --worn carpet, chips in bathtub, etc.

When you move out, after you have finished cleaning the place you rent, have the landlord meet you to go over the place thoroughly with her/him. Make sure that you both agree on what is damaged and what is dirty. Your list will be very useful to show what things were damaged or dirty when you moved in.

If you cannot meet with your landlord when moving out, have a friend or family member go through the apartment with you after you have cleaned, and take photos and/or videotape the unit. If you have to sue your landlord to recover your security deposit, your friend or family member will be a good witness, and your photos and/or video will be useful evidence.

- Many landlords charge you for having to replace the locks if you do not return all the keys you were given. Many landlords also claim that you have not moved out (and still owe rent) until you have returned the keys. Keep track of your keys, and plan on returning them to your landlord when you move out. It is not a good idea to leave the keys inside when you have completely moved out—it is much safer to give them to your landlord.
- If your lease says you have to be out on May 31, this usually means you have to remove all your belongings and clean the place before midnight, May 31. Do not plan on going back on June 1st or 2nd to clean the place, unless you have made special arrangements in advance with your landlord.
- When a landlord or a tenant sues under the landlord/tenant laws in Idaho, the winner can generally get an award of attorney’s fees for having to bring or defend the action.
- Many disputes about security deposits can be avoided by signing a written lease with your landlord before renting and keeping a copy for your records. We recommend you always ask your landlord for a written lease before renting an apartment, house, or mobile home.
- For additional information, read the Small Claims brochure created by Small Claims Subcommittee of the Idaho Supreme Court.

The advice in this pamphlet is very general. There might be special factors in your case, or you might have questions after reading this pamphlet. We urge you to consult an attorney about security deposit problems. If you cannot afford an attorney, contact the Idaho Legal Aid Services office nearest you.

Idaho Legal Aid Services Area Offices

310 N. 5 th Street, Boise	345-0106
1104 Blaine, Caldwell	454-2591
410 Sherman Avenue, Suite 303, Coeur d’Alene	667-9559
482 Constitution Way, Suite 101, Idaho Falls	524-3660
633 Main Street, Lewiston	743-1556
150 S. Arthur, Pocatello	233-0079
475 Polk, Twin Falls	734-7024

Idaho Senior Legal Hotline	1-866-345-0106
Idaho Senior Legal Hotline (Spanish-speaking)	1-866-954-2591
Domestic Violence Legal Advice Line	1-877-500-2980
TTY (Deaf & Hard of Hearing)	1-800-245-7573
Fair Housing Legal Advice Line	1-866-345-0106
Email fair housing questions only to: fairhousing@idaholegalaid.org	
www.idaholegalaid.org	Revised 9/08 (11/09)

To find Idaho rental assistance and properties, call 1-877-428-8844 or visit www.housingidaho.com