

BACE LAW REPORT

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Demystifying the Security Deposit Law

Collecting a “security deposit” at the onset of any residential tenancy imposes significant and complex statutory requirements. A security deposit is essentially the tenant’s money, collected by the landlord in advance to protect against any damage to the premises caused by the tenant. The funds remain the tenant’s money upon collection, and can only be debited under certain strict circumstances. If a landlord chooses to require a security deposit, she must abide by M.G.L. Chapter 186 Section 15B. The statute is complex, and violations of the procedures dictated therein abound. This office frequently receives complaints from tenants that their landlord has unlawfully refused to return a deposit. The following is only a brief summary of some of the points of law; landlords and tenants alike must contact an attorney without delay in order to determine whether or not compliance with the law is achieved.

Vacations and Tenancies for Less than 100 Days

M.G.L. Chapter 185 Section 15B states in relevant part:

“The provisions of this section shall not apply to any lease, rental, occupancy or tenancy of one hundred days or less in duration which lease or rental is for a vacation or recreational purpose.”

In discussing security deposit law and the rights of tenants, it is important to note that the Security Deposit Act is not intended to apply to occupancies of one hundred days or less or to vacation homes. As a matter of public policy, short tenancies are exempt from the strict regulations regarding the collection of security deposits. Other than these limited exceptions, the following law regarding security deposits applies to all landlords, regardless of the number of properties they own.

Amount & Receipt

The law provides further:

“At or prior to the commencement of any tenancy, no lessor may require a tenant or prospective tenant to pay any amount in excess of the following: (i) rent for the first full month of occupancy; and, (ii) rent for the last full month of occupancy calculated at the same rate as the first month; and, (iii) a security deposit equal to the first month’s rent provided that such security deposit is deposited as required by subsection (3) and that the tenant is given the statement of condition as required by subsection (2); and, (iv) the purchase and installation cost for a key and lock.” M.G.L. c. 186, §15B(4).

While the first and last month’s rent protects the landlord from a tenant who decides to skip town, a security deposit is money that a tenant expects to get back upon moving out; it is and remains, for all intents and purposes, the tenant’s money. The amount of the security cannot exceed that of the first month’s rent.

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In order to protect their rights, tenants must be sure to follow the golden rule of security deposits: get a receipt for any cash payments made to the landlord. Since a tenant's rights are based on being able to prove that monies were paid to their landlord, a receipt will constitute proof that money changed hands, in the event that a dispute arises.

Leases Terms That Alter Ch. 186

The law clearly states:

“No lessor or successor in interest shall at any time subsequent to the commencement of a tenancy demand rent in advance in excess of the current month's rent or a security deposit in excess of the amount allowed by this section.” M.G.L. c. 186, §15B.

Fees a landlord can charge a tenant are restricted to those enumerated in the Security Deposit Act. However landlords often try to impose extra charges on tenants who are not apprised of the law. Fees guised as “holding deposits”, “pet fees”, “fees for credit checks,” “cleaning fees,” or “application fees,” are illegal. Further, a landlord cannot take what is really a security deposit and call it something else, to escape the requirements established to protect tenants.

A lease that attempts to force tenants to waive their rights under the security deposit law by using terms that conflict with the law will be unenforceable. An attempt by a landlord to do so entitles a tenant to recover their security deposit immediately upon demand and may give rise to consumer protection claims.

Interest & Commingling

According to the law:

“A security deposit shall continue to be the property of the tenant making such

deposit, shall not be commingled with the assets of the lessor, and shall not be subject to the claims of any creditor of the lessor or of the lessor's successor in interest ...the tenant shall be entitled to only such interest as is provided for in subsection (3)(b).”

In essence, this part of the law requires that landlords keep security deposits in an account separate from the landlord's personal assets. This protects the tenant in the event the landlord was to go bankrupt or enter foreclosure. The landlord must also pay a tenant interest on the security deposit yearly, providing a year end statement that details the interest earned each year. Commingling of the landlord's personal funds and security deposit amounts is unlawful and can give rise to civil liability.

Deductions

Generally, a landlord must return a security deposit within 30 days of the end of a tenancy. Landlords often withhold part or all of a security deposit at the end of a lease to be used for “repairs” or damage that a tenant has caused during their tenancy. In actuality, there are only a few reasons that a landlord can withhold a security deposit: the security deposit may be used by a landlord if it is necessary to pay for certain expenses, limited by law to 1) Any unpaid rent, unless it was withheld for bad living conditions, 2) unpaid increases in real estate taxes (if applicable), and 3) a “reasonable amount necessary to repair any damage” caused by a tenant or a tenant's guests, with reasonable wear and tear being excluded. M.G.L. c. 186, §15B(4).

To protect against a security deposit being unlawfully withheld, a vital step tenants need to take upon moving into a new rental is to make sure a

landlord issues them a Statement of Condition. G.L. c. 186, §15B(2)(c). This document details the condition of the premises, including any existing defects. The purpose is to prevent disputes in the future, when a tenant is moving out; the return of a security deposit rests on being able to prove that any damage to the property existed before a tenant moved in.

In the event a landlord does try to withhold a security deposit, the Statement of Condition will be very useful in proving a landlord's damage claims to be fictitious. A landlord cannot deduct from a security deposit for damages that existed when a tenant took possession. If a tenant does cause damage, a landlord may use the security deposit to pay for the reasonable cost of the repairs. A landlord who determines that he is entitled to retain all or a portion of a security deposit has a duty to state with *particularity* why an amount is being withheld and to return the balance to the tenant without condition within 30 days of a tenant moving out. *Goes v. Feldman*, 8 Mass.App.Ct. 84, 92 (1979).

The notice requirement is significant; Even if they believe they are withholding a security deposit in good faith, a landlord's failure to issue this written proof will waive their right to use a tenant's security deposit for repairs and will subject them to triple damages if a tenant sues. *Mellor v. Berman*, 390 Mass. 275, 281. (1983).

Damages for Noncompliance

Failing to comply with the law can have costly consequences for landlords. A landlord *must* return a tenant's complete security deposit immediately upon demand if a tenant learns that 1)

the landlord has failed to put the security deposit in a separate account, or 2) the landlord does not give a complete, written receipt to the tenant upon receiving a security deposit and last months' rent. G.L. c. 186, §15B(3).

For these reasons, a tenant may request the return of a security deposit even if they will continue to live in the rented space.

If a landlord fails to return a security deposit or has not given a complete list of the damages they are deducting from the deposit within 30 days of moving out, a tenant can sue a landlord for *treble damages* (triple damages); that is, the landlord's liability exposure can potentially reach three times the amount of the original security deposit. G.L. c. 186, §15B(7).

In certain circumstances, tenants can also seek unpaid interest on the deposit, as well as attorney's fees incurred to bring the action. Further, in a suit against a landlord she is not permitted to accuse a tenant of causing the damage for which he is withholding rent. Rather, landlords must file their own, separate lawsuit against a tenant to make this claim.

Disputes arising out of a landlord-tenant relationship can quickly become complex; Early intervention on behalf of an attorney is crucial. Contact this office without delay if you are experiencing such a dispute.

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