

## HOW SAFE IS YOUR SECURITY DEPOSIT?

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By dan the roommate man

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When you move into an apartment, you and your landlord have to have a lot of blind faith for each other. You could be "Mr. Nice Guy", or "Mr. I'm Going To Throw Parties Here Every Night Guy."

Tenants are usually not into maintenance, therefore they aren't as careful with their rented property as they would be if they owned it. They also tend to see maintenance as the landlord's job. So, in order to assure the landlord that any damages made to the apartment while you are a tenant will be covered, most apartment complexes require a security deposit.

The deposit is usually equivalent to about two months rent. The reasons?

- \* If you fail to pay the rent one month, it won't come out of the landlord's pocket. He has the right to use your deposit.
- \* If there are any major damages made to the apartment when your lease is up, he can use the remaining deposit to make any repairs.

But what if the landlord claims you made that hole in the wall when you know it was there before you were? Nothing, really. At that point it's probably too late to fight back. According to MetLife, this is why you take precautions before you sign the lease. When you think you're going to live in an apartment, and it's almost a done deal, go around the apartment and check EVERYTHING for problems. Here's a check list of some of the major things you should check out/look for:

Door locks: Do they turn easily? Can you be assured the landlord re-keyed/replaced them since the last tenant?

Smoke detectors: Are there any? Do they work properly?

Walls: Are they marked, dented, scratched, or cracked?

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Pipes: Are they in good condition, or are they rusty?

Leaks: Check under the kitchen sink, by the front door, the ceiling, and throughout the bathroom for water damage.

Tiles: Are they all there? Are they in good shape?

Doors: Are they evenly painted? Are they marked/dented/scraped etc.?

Carpet: Is it fastened securely? Stained?

Paint: Is it smooth or chipping off?

If you see anything that could pose a problem in the future, you'll need to document it. The best way to do this is by taking a picture of the damaged item/area, and then making a log describing all of the pictures. Get the landlord to sign and date the log, and you sign and date it too. This way, you cannot be accused of damage you didn't do.

Robert Irwin, author of *The Landlord's Troubleshooter*, published by Dearborn, offers some helpful hints: "It is absolutely necessary that you use precise language to describe any exceptions to 'clean and undamaged' that you write down. For example, there may be a mark in a wall caused by the previous tenant having hit it with a dresser while moving out. If you write down, 'back wall of bedroom is marked,' you could be in for real trouble. When this tenant moves out, that wall could be covered from floor to ceiling with marks and when you protest, the tenant will point to the wall—through saying, 'See, you wrote down that the wall was marked!'"

In many cases, you can insist that the landlord make the repair before you move in, especially if it is likely to get worse, or put you or others at risk. If you do this before you sign the lease you will avoid future misunderstandings.

Your landlord could be the friendliest person in the world and turn into a pit bull when it comes time to return your security deposit. So, make sure there isn't a fine print clause in your rental contract that allows the landlord to keep some of your deposit for "cleaning." Again, before you sign the lease, ask the landlord to define the conditions in writing under which you would get or not get your deposit back.

Also, when your lease is up, plan to have the landlord walk through the apartment with you again. Compare the apartment to the pictures taken before and make sure you both agree on everything.

Understanding what you need to do in order to earn your deposit back will go a long way toward parting company with your landlord on good terms, with your security deposit safely back in your pocket.

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### WHAT DOES THE TERM "LAST MONTH'S RENT" REALLY MEAN?

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#### QUESTION:

After five years in a rental house, I have been given a 30 day notice to vacate the premises. This was done mid-month after I paid and the property manager cashed my check for the current month of rent. I also paid "last month" rent when I initially rented this place, plus a security deposit. Since I have paid and the property manager has accepted rent for the next 45 days, is it still possible to be given the 30 day notice mid-cycle? And what becomes of the last month rent which is in addition to the security deposit?

#### ANSWER:

Yours is a common question, but unfortunately, one without a common answer.

Never a thoughtless one, I do have a few thoughts to offer. When you prepay a last month's rent, and it is clearly labeled as such, you are paid up for that last month — whenever it is, even if the rent has gone up in the meantime. You could say that every time the landlord accepts a monthly rent check, he or she acknowledges that you have another month in the proverbial housing kitty.

You could argue that since accepting rent nullifies a 30 day notice, the notice can't expire when you are still paid up. In other words, you would have until the end of the second month before the period expired. And you might even argue that the notice is totally nullified when, on the 30th day, the landlord still has remaining rent money.

Here's what your arguing lips are likely to be up against: Your landlord might contend that the last month's rent is simply refundable, and doesn't have a darn thing to do with the timing of a 30-day notice. He or she will want to refund a prorated share of that last month's rent when the 30 days expires. There may be some authority for that view, if you're in a state that considers all prepaid sums to be refundable. In these states, you can expect a landlord to argue that since the law defines security deposit to include last month's rent, it's all a security deposit, anyway

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