

Deposits

Deposits and Prepaid Rent

Landlords will usually require some form of payment in advance (such as, the first month's rent, the last month's rent, a security deposit, or all three) when they enter into an agreement to rent. These advance payments are held as security by the owner in the event the renter damages the apartment or fails to pay rent.

In general, deposits (security deposits, key deposits, and cleaning deposits, etc.) are refundable if contractual conditions are met. However, payments and fees, such as prepaid rent or carpet and drapery cleaning fees, are not refundable. If any part of a deposit is made nonrefundable in order to obtain payment of fees, it must be so stated in writing to the renter at the time the deposit is taken. You should clarify the nature of the payments and deposits being made and the conditions for either their return or forfeiture.

Purpose of the Rental Deposit

A security deposit may be used by the landlord to recover payment for:

1. Damage to the premises beyond normal wear and tear.
2. Accrued rent.
3. Cleaning of the unit.
4. Other costs provided for in the contract.

If a deposit is specifically designated for "cleaning" or "keys", it should then be used only for that purpose.

Deposit Refunds

Utah law requires the owner to return the security deposit to the renter within 30 days of termination of tenancy or within 15 days after receipt of the renter's new mailing address, whichever is later, or send a written statement explaining why the deposit or any part of it is being withheld. The renter must notify the owner or agent of the location where payment and notice may be made or mailed. An exception is allowed when the premises are damaged—the time period is extended to 30 days.

Here are seven simple steps that could prevent security deposit nightmares for the renter. Follow these steps closely, and the chances are good that your deposit will not be withheld:

1. Complete a cleaning and damage evaluation within 24 hours of checking in the apartment. Note all damages and dirty areas left in the apartment. Give a copy to the landlord; if possible, have the landlord sign it. Keep a copy for your records.
2. Keep the property clean and thoroughly clean it just before moving out.
3. Promptly pay the rent and utility bills.
4. Do not abuse the property or allow your friends to.
5. Report all problems as they occur, even if you are at fault.
6. Give the landlord proper, legal written notices, if necessary, before moving.
7. Leave a forwarding address with your landlord in writing. Some landlords require a self-addressed, stamped envelope.

Legal Remedies for Deposits Not Refunded

If the landlord or agent in bad faith fails to return the deposit within the legal limits described above, the law provides for recovery of the deposit in full as well as a civil penalty of \$100 and court costs. However, the landlord must receive the renter's new address within 30 days of termination of tenancy for this law to be effective. In such case, the renter should respond in writing. It is wise to respond by registered or certified mail and keep a copy of your letter. In making a response, we suggest you include the following:

1. Your name.
2. The address of the former rental apartment (including apartment number).
3. The dates of the tenancy.
4. The amount of the deposit.
5. That no refund has been received.
6. The general condition of the vacated unit.
7. A demand for payment.
8. An address to which payment may be sent.
9. A deadline for receiving payment.
10. A reminder that bad faith retention carries a penalty. If the landlord does send you an itemized list of deductions within 30 days, but you disagree with the claims, you should also respond in writing and seek to negotiate a settlement. If you cannot reach a settlement, you may consult with the BYU Off-Campus Housing Office to determine what further steps may be taken.

Assessing Damages to the Rental Unit

Renters are responsible for any damage to the premises beyond ordinary wear and tear. Differences in interpretation of this term cause numerous conflicts between renters and landlords. The standard of reasonableness must be applied by each party. It is unreasonable to expect a dwelling to look exactly the same after use by the renter as it did when the renter took possession. It is also unreasonable for the renter to attribute all problems to ordinary wear and

tear without having exercised care in the use of the property. Regular cleaning during the tenancy is necessary to protect carpets, paint, and fixtures from excess wear.

There is no exact definition of what is normal or ordinary. Some of the guiding factors should be:

- Quality of and life expectancy of the item. Paint, drapes, or materials of inferior quality should not be expected to last as long as those of top quality.
- Length of tenancy. The longer the tenancy, the more wear should be expected.
- Number of residents. One person does not create as much wear as three.
- Use as opposed to abuse. Has the item been treated with care or negligence in regular use? It is unreasonable to expect renters to live in a dwelling with bare walls and no decorations. Some acceptable method of hanging art works and posters should be determined by management and communicated to each new renter. On the other hand, an excessive number of holes or unusually large holes may be considered abuse.
- Effort exerted in final cleaning. One appropriate standard may be a thorough cleaning with common household products. Renter labor should be expected.
- Generally, stains, burns, dents, holes, and dirty fixtures and appliances are beyond ordinary wear and tear.