

Security Deposit Guidelines

It is crucial for landlords to be fully informed about the Missouri law on security deposits because the courts enforce them rather strictly. More than a few landlords have gotten in trouble for not scrupulously following the statute.

Security deposits are governed by Sec. 535.300 RSMo. The key points of the statute are as follows:

1. You cannot collect a security deposit exceeding two months rent.

2. The statute requires you to give the tenant reasonable written notice at the tenant's last-known address (which can be the address of the leased premises if no forwarding address was left), or in-person notice, of the date and time when you will inspect the premises after termination of the lease to determine the amount of security deposit to be withheld, if any. If you mail the notice, send it by certified mail, return receipt requested, so you can prove mailing. The form "Notice of Security Deposit Inspection" can be used to give written notice.

3. The inspection must take place at a reasonable time, and the tenant has the right to be present.

4. Within 30 days after termination of a lease, you are required to either:

- a. return the full security deposit to the tenant, or
- b. give the tenant a written itemized list of damages for which the security deposit, or any part thereof, is withheld, along with balance of security deposit, if any.

See the additional information below on how to determine when a lease terminates, thereby starting the 30-day period to account for the security deposit.

5. You are deemed to have complied with these requirements by mailing the security deposit, or the list of damages and any balance of the security deposit, to the last-known address of the tenant. It is not an excuse for failing to do so that the tenant did not leave a new address with you. If no new address is known, you should mail the materials to the address of the formerly leased premises, preferably by certified mail, return receipt requested, so you can at least prove mailing if necessary.

6. The only amounts you are entitled to withhold from the security deposit are:

- a. Unpaid rent pursuant to lease; and
- b. Repairs and cleaning necessary to restore property to its condition at beginning of lease, except for ordinary wear and tear.

(Continued on Next Page)

7. Penalty provision: If you fail to follow the above-listed requirements in any respect, or if you wrongfully withhold all or part of the security deposit, the tenant can obtain judgment against you for up to twice the amount wrongfully withheld.

It should be noted that if your legitimate damages exceed the security deposit, nothing prohibits you from attempting to recover those damages by filing suit against the former tenant.

When does a lease terminate? Depending on the circumstances, sometimes it can be difficult to determine when a lease "terminates," thereby starting the 30-day period to account for the security deposit. Following are some guidelines for making this determination:

1. If the lease contains a definite termination date and the tenant moves out on or shortly before that date, then the termination date specified in the lease should be used.

2. If the lease contains a definite termination date but the tenant "skips" long before that, the lease will terminate on the *earlier* of the termination date specified in the lease *or* at midnight on the day before a new lease to a subsequent tenant takes effect. You are required by law to make good faith efforts to re-rent the premises and thereby "mitigate" your damages. Examples:

a. Assume the lease specifies a termination date of May 31. Tenant skips in January. You make good faith efforts to re-rent and a new tenant signs a lease effective April 1. In this case, March 31 would be the termination date for the old lease, and the security deposit accounting would be due within 30 days of March 31.

b. Assume the lease specifies a termination date of May 31. Tenant skips in January. Despite your best efforts, you are unable to re-rent the premises before May 31. In this case, May 31 would be the termination date, and the security deposit accounting would be due within 30 days of May 31.

3. Oral month-to-month leases present unusual problems in determining a termination date for security deposit accounting purposes. In these situations, it is recommended you consult with Scott Law Firm.

Caution about statements made during inspections: If there is a later court dispute about the security deposit, tenants often testify that they should have received a larger refund because of statements made by the landlord or landlord's agent during the inspection. Of course, it is not always possible to make a complete determination of damages at the time of the inspection. Therefore, Scott Law Firm recommends that language be included in leases to the following effect: "Any statements or estimates made by lessor or lessor's representative during inspection are subject to correction or modification before final security deposit accounting."

Refunds to multiple tenants: A recurring problem is how to refund security deposits when there is more than one tenant. To avoid problems, Scott Law Firm recommends that language be included in leases to the following effect: "Lessee must provide a forwarding address; if no forwarding address is provided, lessee agrees that the inspection notice, itemization of charges (if any), and refund (if any), may be mailed to the address of the premises. If more than one lessee signed this lease, lessee agrees that lessor may pay any security deposit refund to any single lessee or by one check jointly payable to all lessees. Any refund and any deduction itemizations may be mailed to one lessee only. The lessee to whom any refund is mailed agrees to indemnify and hold lessor harmless from the claims of the other lessees relating to the security deposit."