



LEGAL AID
SOCIETY OF HAWAI'I



SECURITY DEPOSITS: GENERAL INFORMATION PRIVATE LANDLORD-TENANT

This brochure provides basic information on what the landlord-tenant code rules are regarding security deposits.

The information in this brochure will not apply to public housing or special housing (e.g., UH housing, day-to-day hotel, or homeless shelters). The information in this brochure does not replace legal advice or counsel. Whenever possible legal counsel should be retained.

For more information on your matter, call Legal Aid Society of Hawai'i intake or visit us at <http://www.legalaidhawaii.org>

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BEFORE YOU DO ANYTHING

Before you can resolve a security deposit dispute, you must first determine what type of rental agreement you have:

1. Private Landlord Tenant (Month-to-Month or Lease)
2. Section 8 Certificate or Voucher (You receive a subsidy from the government to help you pay for rent. You have signed a lease.)
3. Public Housing

THE FOLLOWING FACTS APPLY TO PRIVATE LANDLORD TENANT RENTAL AGREEMENTS ONLY!

BASIC FACTS ABOUT SECURITY DEPOSITS

- A security deposit is money that you give the landlord at the beginning of a rental agreement as insurance against unpaid rent and damages caused by you, your family, or your friends.
- The amount of the security deposit is decided by the landlord, however, it can be **no more than one month's rent** plus (up to) an additional month's rent for pets (not an assistance animal).
- The security deposit cannot act as the last month's rent unless you and the landlord agree on this fact in **writing**

CAN I GET MY SECURITY DEPOSIT BACK?

Getting your security deposit back can be easy or difficult depending on your rental situation and your individual facts. There are no cut-and-dry answers about whether you are legally entitled to get your deposit back, but there are a few guidelines:

1. The Landlord has a right to keep part or all of the deposit in some situations. In most cases, you would not be able to get all of your deposit back if you:

- damage the property beyond normal wear and tear
- fail to pay rent or wrongfully quit the unit before the end of its term
- fail to return all keys upon moving out
- fail to clean thoroughly upon moving out
- abandon the property. (This means that you left the property for 20 or more days without notifying landlord AND without paying rent for this period.)

If none of these factors apply, you *may* be entitled to receive part or all of the security deposit.

2. The Landlord must notify you in writing if s/he is keeping part or all of the deposit. By law, the landlord **MUST** either return the full deposit to you or write you within 14 days after you move out to tell you exactly why all or part of your deposit is being kept (unless tenant

wrongfully quits the unit). With the letter, your landlord should include all copies of receipts for expenses he or she claims your deposit paid for.

If your landlord does not notify you or return the deposit within 14 days, you are legally entitled to get the deposit back in full. Be aware however, that judges rarely award you the security deposit on these grounds alone. If you have not given your landlord a forwarding address to return your deposit, your landlord must send it to your last known address, which is the landlord's unit. If you have a complicated situation (like you damaged the property for example), then you may not get your deposit back. And you will still be liable for damages your landlord can actually prove beyond normal wear and tear.

HOW DO I GET BACK MY SECURITY DEPOSIT?

There are different steps to take -- depending on whether you have moved out yet or not. These steps do not insure that your landlord will give you back your deposit, but by doing these steps, you will make it as easy as possible to recover your security deposit from your landlord.

The District Court has *concurrent* jurisdiction (i.e. has the power to hear the case also) over disputes involving security deposits in situations where the landlord filed a Summary Possession action against the tenant in District Court. What this means for the tenant is that the District Court will hear the dispute about the security deposit as part of the damages portion of the Summary Possession, rather than the small claims court. If you file a complaint in the Small Claims division for return of your security deposit while you are being evicted, your claim will be "joined" with the other Summary Possession.

If you've moved out and your landlord didn't file a complaint in District Court to have you evicted, but there is merely a dispute over your security deposit, *then* you can file a claim in Small Claims Court.

I. STEPS TO TAKE IF YOU HAVEN'T MOVED OUT YET

1. Give Your Landlord "Proper" Notice.

If you are on a month-to-month, then you must give your landlord at least 28 days written notice of when you plan to move out. The 28-day count starts when the letter is sent plus two additional days for mailing. To be safe, you may want to give more than 28 days notice. If you've given oral notice, legally it doesn't count. You must give written notice, and start over with the full 28-day notice. Remember to keep copies of this notice with dates included.

2. Keep Copies of Important Items.

Keep all receipts of security deposit payment and/or your canceled security deposit check.

3. Create a Check-Out List.

Sometimes landlords have tenants fill out a Check-In and/or a Check-Out inspection list to compare the condition of the rental before and after the tenant's stay in the unit. Often times, landlords will fill out a Check-Out inspection list after the tenant has gone, and will charge the

tenant for damages that are either not there or that were not caused by the tenant. To avoid this, you can ask your landlord in writing to do a Check-Out inspection with you there, and to have it signed by both of you. Another idea is at the inspection, write down all the things the landlord says s/he will charge you for. Write a statement above the list that says, "The following are the only damages I claim the tenant has caused." Have the landlord sign and date the form. You do not sign it: It is a statement of your landlord and not an agreement. (You may not agree with it.) By doing this, you can limit the charges the landlord says you owe. For example, if the landlord later claims that you owe money for additional damages; you can dispute these claims with proof. Remember to keep a copy for of this list yourself.

If you suspect your landlord will not return your deposit or sign a Checkout List in your presence, create a Check-Out List and have it signed by you and a witness.

****Check-In Lists: If you and the landlord did not do a Check-In inspection, it will be up to your landlord to prove that any damages to the unit were caused by you.*

4. Report all Damages in Writing to the Landlord.

Remember to keep copies of the letters.

5. Fix all Tenant-Caused Damages and Clean Property Thoroughly.

Remember to fix holes caused by wall-hangings, and to clean behind appliances. Keep receipts of any cleaning supplies you bought and used to clean the unit. If you suspect your landlord will not give back your deposit, take dated photographs of the unit after you have cleaned it.

6. Return all Keys.

7. Give the Landlord a Forwarding Address.

If you do not leave a forwarding address for the landlord to return the deposit, it will be sent to your last known address, which is the landlord's unit. Be aware however, that the landlord could use this address to serve you with court papers should s/he sue you.

II. STEPS TO TAKE IF YOU HAVE ALREADY MOVED OUT

If the landlord wrongfully keeps your deposit, you have several options to try to get your deposit back. Each option has advantages and disadvantages. It is up to you to decide which option is best for you based on the facts of your situation and your energy level. You can (1) write your landlord a letter asking for the deposit back; (2) use mediation to try to resolve the dispute; or (3) file a lawsuit in Small Claims Court.

Remember, the statute of limitations for a security deposit claim is ONE YEAR. This means after one year, your claim can no longer be resolved in court.

1. Write Your Landlord a Letter.

Write your landlord a nicely-worded, professional letter stating when you moved out and that, under state law, you are entitled to your security deposit because you paid all rent, returned all keys, and left the unit in better or the same condition as when you moved in. Give your landlord

a date by which to return the deposit, and indicate any other action you may consider taking if this deadline is not met (for example, taking him/her to court). You should ask that your landlord contact you within 10 business days.

Your letter should be brief and to the point. You should remember to keep a copy for yourself, and include the date; your return address; a brief history of the situation; and a statement of what you want from the landlord and by when. (For a sample letter, see back page.)

The advantages to writing the letter are that if the landlord sends back the deposit, you have solved the problem quickly and cost-effectively. Also, even if the landlord does not send you the deposit, the letter can be used in a court setting to help prove your case. The disadvantages are that the landlord may not repay the deposit, and may begin collecting information on ways to defend and counter-sue based on what is revealed in the letter.

2. Sue Your Landlord In Small Claims Court

Small Claims Court offers a less formal setting before a judge to settle the claim. In a security deposit dispute, neither party can be represented by an attorney. In court, facts can be stated and judged on their merit in a court setting, and any decision by the judge is final. However, as with any option, there are "down" sides. It is somewhat time-intensive; there is a minimal filing fee; even if you win you may still have to file other court papers to collecting that money; and/or the landlord could counter-sue you for more money.

To file in Small Claims Court, go to the District Court on your island, get court forms from http://www.courts.state.hi.us/self-help/courts/forms/court_forms.html, and/or see more detailed instructions in Legal Aid's brochure: "Security Deposits – Filing and Representing Yourself in Small Claims Court."

SHOULD YOU SUE? CAN YOU WIN?

If you can prove that your landlord is wrongfully withholding your security deposit, suing your landlord is a reasonable action. However, Small Claims Court is not for everyone or every situation. It may very difficult for you to prove your case if your landlord has a lot of proof on his/her side.

In deciding whether or not to sue, you may want to consider the following questions and determine how easy or hard it will be for you to prove your case:

1. Did you sign a Check-In Inventory List?

If the landlord does not have a check-in inventory report, then s/he must prove that the condition of the unit upon moving out was different from when you moved in. The landlord must prove that any damages to the apartment were caused by you, and were not already there. This can be hard to do, however there are various ways s/he could prove this. S/he could try to find a witness who inspected or looked at the place just before you moved in. S/he could have receipts of a new paint job, new carpets or new appliances installed just before you moved in. S/he could have dated pictures of the apartment.

In any case, if you know you did not sign a check-in inventory list, it will be on her/his shoulders to prove that the dwelling was damaged beyond normal wear and tear, which is difficult for most landlords to do.

If the landlord does have the check-in inspection signed by you, and has given you an accounting of what damages you caused, you will have to prove that the apartment was left undamaged. This is often very difficult to do. You will have to come up with the witnesses or photos to prove that the place has no more damages than when you moved in. If your building is old and in poor condition, you could go to the county building department and get proof of how old the building is.

2. Did you get a letter from your landlord within 14 days of moving out that stated why s/he kept the deposit?

If, within 14 days, the landlord did not give you a complete list of what s/he spent your deposit on, then under Hawaii law, s/he is obligated to give you the full security deposit back. For instance, if s/he sent the accounting dated 21 days after the termination date, the judge may be likely to rule in your favor. However, some judges have found that where the landlord came close to following the law, they will not return the security deposit to you in full, even if the landlord was late.

3. Does the landlord claim you owe more money over and above your deposit for damages?

If you owe your landlord any back rent or money for damages, it is probably not a good idea to sue your landlord for the deposit. If you do, your landlord is likely to counter-sue you. This means you may end up having to pay more money to your landlord, in addition to not getting back your deposit. The court could rule that you owe more for the damages you caused than your security deposit can cover, and you would then be responsible for paying the difference in addition to losing your deposit. If you lost any of your keys, you could be responsible for paying for the replacement of all locks, which could be quite expensive. If the

judge rules that you owe back rent, the judge might require you to pay your back rent in addition to the security deposit.

4. Is it worth your time and money to get the deposit back?

Remember, the Small Claims Court resolves disputes about money. If you are angry with your landlord, the court process may not make you less angry nor make your landlord apologize. Also, by going to court you may have to lose a day's wages, not to mention the time and effort spent on gathering evidence and preparing for court. If you are on welfare, you'd have to report any income you collect if you win, and it may affect you benefits. At most, you can obtain reimbursement for your court costs, such as filing fees and sheriff's fees.

Many times, if the landlord and tenant both have proof, the argument becomes "your word against hers/his." In these instances, it is common for the judge to "split the difference." This means the judge will award half of the deposit to the landlord and half to the tenant. Finally, if you win and obtain the judgment against the landlord, you still must go through the sometimes complicated process of collecting the money from your landlord.

Suing anyone is not an easy task. However, if you decide that it is an option for you, then you should begin collecting evidence and organizing yourself for court. Put together all copies of correspondence, dated photographs of the apartment, receipts for the security deposit payment, and find witnesses to prove your case. The more prepared you are for Court, the easier it will be. *Please refer to Legal Aid's brochure "Security Deposits – Filing in Small Claims Court" for more detailed information and instructions.*

IF THE TENANT FAILS TO PAY THE DEPOSIT:

If the tenant does not pay the security deposit and thereby violates the provisions of the rental agreement, the landlord may issue a **10 DAY NOTICE to comply**.

If the tenant does not pay the deposit within the 10 days, the landlord may issue a Summary Possession action in District Court against her/him to evict the tenant.

REMEMBER: This pamphlet is meant to give you general information and not to give you specific legal advice about your case. The law often changes. Each case is different. For more information or assistance call Legal Aid at 1-800-449-4302 or access additional information at <http://www.legalaidhawaii.org>.

IMPORTANT NAMES AND NUMBERS

Legal Aid Society of Hawai`i

LEGAL HOTLINE

Monday to Friday: 9:00 - 11:30PM
& 1:00 -3:30PM

Oahu: 536-4302

Neighbor Islands: 1-800-449-4302

Mediation Services

Oahu: Mediation Center of the Pacific
205 N. Kukui Street, Suite #206
Honolulu
521-6767

Maui: Mediation Services of Maui, Inc.
95 Mahalani Street
Wailuku
244-5744

Molokai: Mediation Center of Molokai
Meyer Bldg #9
Kaunakakai
553-3844

Hilo: Waiakea Settlement YMCA
Kuikahi Mediation Center
101 Aupuni Street, Suite 1014 B2
935-7844

Kona: West HI Mediation Services
750240 Nani-Kailua Drive
Kailua-Kona
366-2666

Kauai: Kauai Economic Opportunity
Mediation Program
2804 Wehe Road
Lihue
245-4077

Police Stations: See your phone book
for the station that is closest to you.

District Court Street Addresses

OAHU (FIRST CIRCUIT):

File all forms at Honolulu District Court:
1111 Alakea Street, 3rd Floor
538-5151

MAUI (SECOND CIRCUIT):

Haopili Hale
2145 Main Street, Suite 137
Wailuku
244-2800

Molokai
553-1100
Hana
661-0970
Lahaina
661-0970
Kaunakakai
553-5451
Lanai
565-6447

BIG ISLAND (THIRD CIRCUIT):

Hilo: 75 Aupuni Street
Hilo
961-7470
Kona: Old Kona Hospital
Keakealani Bldg., Rm. 240
Kealakekua
322-2022

Hamakua: South Kohala Courthouse
Waimea Civic Center
67-5175 Kamamalu Street
Kamuela
885-4615

KAUAI (Fifth Circuit):

3970 Kaana Street
Lihue, Hawaii 96766
482-2300

