

Questions and Answers on: **TENANT SECURITY DEPOSITS**

Each year, hundreds of thousands of North Carolinians rent houses, apartments, mobile homes, and other dwellings as their residences. For the first-time tenant—and some veteran renters—this can be a confusing and somewhat unsettling experience. The more you know about the process of renting residential real estate, the better you will be able to protect your interests and carry out your responsibilities under your rental agreement.

This booklet addresses an important aspect of the rental process which generates many questions from tenants—tenant security deposits.

How much security deposit can I be charged? Can my landlord charge me a “pet fee”? What happens to my security deposit while I’m a tenant? And what happens to it once my rental term is over? These are some of the questions that this booklet attempts to answer. Although this information focuses on security deposits from your perspective as a tenant, it should also be useful to landlords, property managers and rental agents.

The North Carolina Tenant Security Deposit Act (the “Act”) sets out the rights and responsibilities of residential tenants, landlords, and their agents regarding tenant security deposits. (See NC General Statutes Sections 42-50 through 42-56.) The Act applies to all residential properties except single rooms. The Act does not require landlords, or their agents, to collect security deposits, but they usually do in order to assure that they will be reimbursed if certain specified losses are caused by tenants. Landlords also frequently use the services of real estate agents to help them manage and rent their properties. These agents must be licensed by the North Carolina Real Estate Commission and, like the landlord, must comply with the Tenant Security Deposit Act as well as the N.C. Real Estate License Law and various rules adopted by the Real Estate Commission when renting the owners’ properties.

Read this booklet carefully! Then, if you still have questions about tenant security deposits, you are encouraged to contact your private attorney. You may call the N.C. Real Estate Commission’s Regulatory Affairs Division (919/875-3700) if a real estate broker or firm is managing the rental property or the N.C. Department of Justice (919/716-6000) if you are renting directly from an unlicensed landlord.

Q & A

Q: How much security deposit can a landlord charge?

A: If your agreement with the landlord is to rent his property on a week-to-week basis, your deposit may not exceed the equivalent of two weeks’ rent. If you’re renting on a month-to-month basis, your deposit cannot be more than 1 1/2 months’ rent. And, if your rental period is greater than month-to-month, your deposit cannot be more than two months’ rent.

Q: Can my landlord charge me a “pet fee”?

A: Yes. In addition to the security deposit, your landlord may also charge you a non-refundable fee if you plan to keep a pet in the property or on the grounds. The “pet fee” can be any “reasonable” amount that the landlord wishes to charge. If your pet damages the property, the landlord may also keep all or a portion of the security deposit as necessary to repair the damage in addition to keeping the pet fee.

Q: What happens to my security deposit while I’m a tenant?

A: To ensure that your security deposit is safe during the period of your tenancy, State law requires the landlord or property manager to keep it in a “trust account.” A trust account is simply a bank account designated as “trust” or “escrow” that does not contain any of the landlord’s or broker’s personal funds. The trust account must be maintained in a licensed and insured bank or savings and loan institution licensed in North Carolina. Within 30 days following the beginning of your lease term, the landlord or agent must notify you in writing where your security deposit has been placed (typically, this notification is given in the lease). If your security deposit is moved to a different bank or savings and loan during your tenancy, you must be notified in writing of the new location.

Q: Are there any exceptions to the requirement that my security deposit be placed in a trust account?

A: Yes, there is one exception. If the owner is managing their own property, or the property is being managed by an agent who has agreed for the owner to hold the deposits, the owner may post a bond to cover the security deposits. In such case, the landlord must: (1) notify you and the other tenants of the name of the insurance company providing the bond; (2) purchase the bond from an insurance company licensed to do business in North Carolina; (3) name you and the other tenants as payees under the bond; and (4) assure that the amount of the bond is sufficient to cover all security deposits collected. However, this is uncommon and most landlords require a security deposit.

Q: Can my security deposit be placed in an interest-bearing account?

A: Yes, under certain conditions. If a real estate agent is managing property for the owner, they may place your deposit in an interest-bearing account *only if they have your written permission and the written permission of the owner*. If your lease authorizes the agent to place your security deposit in an interest-bearing account, the authorization in the lease must be stated in a clear and conspicuous manner. The interest may be paid to you, to the landlord, or to the agent, and depends upon your agreement with the landlord.

Q: What will happen to my security deposit at the end of my lease term?

A: If you stay for the entire lease term and you have paid all rent due, the landlord (or agent) may deduct from your security deposit only the actual cost of repairing any damage which you have done to the property. *You cannot be charged for damage caused by “ordinary wear and tear.”* What constitutes “ordinary wear and tear” must be

determined on a case-by-case basis. For example, if you are the most recent tenant in the property, the landlord cannot charge you to replace such items as carpet, plumbing, or appliances which need replacement because they are old and worn out. In fact, you cannot be charged for even contributing to the normal wear and tear of such items. On the other hand, if you caused the item to wear out because of your mistreatment of it, you may be charged for the amount of *unusual* wear which you caused (but not the entire cost of replacement). Ordinarily, costs for routine cleaning and maintenance (painting, carpet cleaning, etc.) may not be deducted from your security deposit. However, if you leave the property so filthy that unusual or extraordinary measures are necessary to clean or restore the premises, the landlord may deduct the cost of such cleaning from your security deposit.

Q: What will happen to my security deposit if I vacate the property before the end of my lease?

A: In addition to any physical damage which you may have caused to his property, the landlord may also deduct from your security deposit any actual damages caused by your moving out of the property before the end of your lease term; however, they may not charge you a “termination fee” or impose any other penalty or forfeiture of deposit for your early termination and must use their best efforts to fill the vacancy as soon as possible. For example, your rent is \$600 per month and you move out of the landlord’s property two months before the end of your lease. If it takes the landlord one month to re-rent the property, \$600 may be deducted from your security deposit as lost rent for the period during which the property was vacant. The landlord may also use the security deposit to recover any reasonable fees or commissions charged by a licensed broker to re-rent the property.

Q: What will happen to my security deposit if, for some reason, I am unable to pay my rent?

A: If you fail to fulfill your obligations under the lease, including your obligation to pay rent, the landlord or agent may evict you from the property. The court proceeding is known as “summary ejectment.” In addition to having you removed from the property, the landlord or agent may recover from you any unpaid rent, late fees, and, of course, the cost of repairing any physical damage which you may have caused to the property—but not damage due to ordinary wear and tear. In addition, if you leave behind any of your personal property (furniture, clothing, etc.), the landlord may also recover from you the cost of storing your property. If your security deposit will not cover the landlord’s damages for unpaid rent, physical damage to the property, and storage of your personal property, you will be liable for payment of any remaining costs. If a civil judgment is entered against you by the court, it could adversely affect your credit rating.

Q: Is there a deadline by which the landlord or agent must return my security deposit?

A: Within 30 days after the termination of your tenancy, the landlord or agent must send you either a full refund of your deposit or a written itemized accounting of any deductions along with any remaining refund amount. Where the full amount of damage cannot be determined within 30 days, the landlord or agent must send you a written interim accounting of deductions claimed, followed by a final accounting no later than 60 days following the end of the tenancy. So, it is important to give your landlord or agent a full forwarding address. If you cannot be located,

the landlord or agent must hold any refund due for at least six months in their trust account. If the landlord or agent fails to refund your deposit or make the required accounting, you can sue for recovery of the deposit and reasonable attorney fees. The failure to make the accounting as required under the Act is a forfeiture of the landlord's right to retain any portion of the deposit.

Q: What will happen to my security deposit if the ownership or management of the property that I rent is transferred to someone else?

A: If the landlord who collected your security deposit transfers ownership of the property to someone else during the term of your lease, they must either refund your security deposit to you, or transfer your deposit to the new owner (after making any allowable deductions) and notify you in writing of the new owner's name and address. In either case, your deposit must be refunded or notice given to you of the new owner's name and address *within thirty days of the transfer*. Likewise, if you have paid your security deposit to the landlord's agent and the agent discontinues managing the property during the term of your lease, the agent must either transfer your deposit to the landlord/owner or, with the owner's permission, transfer your deposit to the new manager. In either case, the agent to whom you paid your security deposit must notify you of the new location of your deposit and, if your deposit is being transferred to the owner, advise the landlord of their responsibilities to you under the Tenant Security Deposit Act (NC Gen. Stat. § 42-50 et seq.).

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