

# Montana Legal Services Association

## How to Protect Your Security Deposit



Providing, protecting, and enhancing access to justice.

Rev. 11/08/18



## How to Protect Your Security Deposit

This article will help you protect your security deposit if you rent a residential unit in Montana. You will learn:

- What to do when you move in
- What you can do when you move out
- And, what you can do if you need to go to court

### What is a security deposit?

A security deposit is money you pay when you first move into a rental unit. This money protects the landlord from losses like:

- Unpaid rent or utilities
- Late charges
- Damages that you, your family, or your guests cause
- Other money you owe the landlord when you move out

### How can I protect my deposit?

When you move in, your landlord should give you a list of the conditions at the rental unit. This list is often called a condition report. The landlord is not required to ask you to sign it, but may ask you to sign it. If you're asked to sign the list, go through the list carefully. Make sure that everything is right. Write in any damages not on the list. Be specific about any damages that you see. Say which room, how big, and what kind of damage. For example, you might write that "there is a scratch about one foot long on the south end of the living room floor." Or, "there is a chip on the corner of the bathroom sink about the size of a quarter."

When you are done, send a copy of your list to the landlord. Keep a copy for yourself. The condition report may help you if you have problems when you move out.

### What should I do when I move out?

There are some things that you can do when you move out to help you get your security deposit back. When you move out, it's a good idea to:

- Clean the unit
- Keep a copy of your condition report
- Give your landlord your new address

### **Do I have to clean before I move out?**

Yes. The rental unit must be in the same condition as when you moved in -- but, you are not responsible for normal wear and tear or regular maintenance. Normal wear and tear means when things get worn out from regular use. Normal wear and tear does not include damage that you cause.

You are not responsible for the regular maintenance the landlord must do to maintain the unit in fit and habitable condition. The landlord must maintain the plumbing, heating, appliances, and other facilities supplied by the landlord. For example, generally a landlord should not take money out of your deposit to replace old carpet or to paint if you've lived there a long time. As a tenant, you must let your landlord know when there is a repair needed in your unit. It is a good idea to keep a record of any repair requests that you make.

### **Can my landlord take cleaning costs from my security deposit?**

Yes. Your landlord can charge you for any cleaning you don't do when you leave. But, first your landlord must tell you in writing what cleaning you must do. Your landlord can't take money from your deposit for cleaning without giving you written notice first. After you get the notice, you have 24 hours to do the requested cleaning. Make sure you do all the cleaning. If you don't, your landlord can deduct reasonable costs of the cleaning from your security deposit.

If you didn't give proper notice when you moved, your landlord can deduct costs for cleaning without first giving you the written notice.

### **How long does my landlord have to return my security deposit?**

In general, your landlord has 30 days after the end of your rental agreement to give you:

- A written list of all deductions from your deposit
- The rest of your security deposit after making the deductions

Give your landlord your new address when you move out. If you do not give your landlord a new address, the landlord will mail the deposit to your last known address.

## **Can I get my security deposit back sooner than 30 days?**

Yes. Your landlord must return your full security deposit within 10 days after you move if:

- There are no damages
- There is no more cleaning needed
- Rent is fully paid
- And, there are no unpaid utilities, and you provide proof to the landlord

## **My landlord didn't give me a written explanation of why they kept my security deposit. What should I do?**

Your landlord must give you written explanation of why they kept your security deposit within 30 days of the end of your rental agreement. If you do not get a written explanation from your landlord within 30 days, you can write your landlord a letter asking that they return the deposit. Make sure to keep a copy for yourself. You can download a form letter to send to your landlord asking for your security deposit back.

If your landlord still doesn't return your deposit, you can sue them in court. Usually, you must send a letter asking for the deposit back before you can go to court. Be aware that even if your landlord does not follow the procedure properly, they may be able to keep the cost of actual damages that they can prove you caused. You can download our complaint packet to sue a landlord to try to get your security deposit back. It is a good idea to talk to a lawyer before you start a lawsuit.

## **What if my landlord wrongly keeps my deposit?**

If you disagree with the amount your landlord has kept from your deposit, write a letter to the landlord. The letter should say why you disagree, and why the landlord should send the money back. Keep a copy of the letter. If you and your landlord still disagree, you may have to go to court. You can download a form letter to send to your landlord saying that you disagree with the charges and asking for your deposit back.

## **What do I need to show the court to get all or part of my deposit back?**

If you sue your landlord, you should tell the court if your landlord did not give you a written description of the rental's condition. The landlord should have given this to you when you moved in. If you didn't get it, the landlord must clearly prove that it was you who caused any damages, and not a previous tenant.

If your landlord didn't tell you in writing why you didn't get your deposit, be sure to tell the court. Your landlord must send you a written list of deductions from your deposit. Your landlord has 30 days after your rental agreement ends to send you the letter. Even if your landlord gave you the list of deductions they were supposed to, it may be that you think the landlord is wrong. You can sue the landlord in court, asking for your deposit. At the court hearing, you can:

- Have people who know the damages were there when you moved in testify as witnesses
- Show pictures of the rental from before and after your stay there.

The landlord must then prove that the deductions made from your security deposit were lawful.

### **Can I get attorney's fees if I win?**

Yes. The judge may award you attorney's fees if you win. But, you must have a lawyer to represent you to get attorney's fees. Lawyers charge clients differently depending on the case. Learn more about "What to Know When Hiring a Lawyer."

Be aware that if you sue the landlord and lose, the judge may order you to pay the landlord's attorney's fees. It is a good idea to talk to a lawyer before going to court. A lawyer can help you understand the pros and cons to going to court.

### **Can my landlord file criminal charges against me if they think I damaged the rental property?**

Yes. The landlord may press criminal charges against you if:

1. You purposely or knowingly destroyed, defaced, damaged, impaired, or removed any part of the premises, or permitted any other person to do so;
2. And, the damage was at least \$1,000.

If convicted, you could be fined up to \$1,000 or jailed for up to 6 months, or both. If convicted, the court must order you to make restitution in an amount set by the court.

## Summary

A security deposit is money you pay when you first move into a rental unit. This money protects the landlord from losses. When you move in, your landlord should give you a list of the rental's condition. Make sure the condition report is correct. Keep a copy for yourself.

When you move out, clean your unit, keep a copy of your condition report, and give your landlord your new address.

Your landlord must return your security deposit within 10 days if they do not take any money out of it. Your landlord must return your security deposit within 30 days if they make deductions. Your landlord must also give you an itemized list of the deductions. If your landlord does not send you an itemized list within 30 days, or if you disagree with the deductions, your first step is to write a letter to your landlord.

You can sue your landlord if they refuse to give you back your deposit. You can also sue your landlord if you disagree with the deductions they took from your deposit. You can have a lawyer represent you, and the judge may award you attorney's fees if you win. The judge may also make you pay the landlord's attorney's fees if you lose. It is a good idea to talk to a lawyer if you are having trouble getting your deposit back.

## How do I get more help?

**Montana Legal Services Association (MLSA) provides free civil legal help to low-income people. Contact us to see if you qualify:**

- Apply anytime online at [mtlsa.org](http://mtlsa.org);
- Call our Helpline at 1-800-666-6899 (Helpline hours are limited).

## What help can I find at MLSA?

- Legal advice and representation;
- Referrals to volunteer attorneys and other providers;
- Self-help clinics and materials.

This pamphlet is meant to give basic legal information, not legal advice about your problem. The law changes often and each case is different. We recommend you talk to an attorney about your legal problem.