

SECURITY DEPOSITS AND LAST MONTH'S RENT

A security deposit is money paid by the tenant to protect the landlord in case the tenant or his/her guests damage the apartment. The security deposit does not become the property of the landlord and the landlord must separate the money from his/her own in a bank account.¹ The security deposit may not be greater than the amount of one month's rent.² Last month's rent is money paid by the tenant to protect the landlord in case the tenant does not pay the last month's rent. This money is the landlord's property when it is paid and does not have to be separated from the landlord's money.³ The last month's rent may not be greater than the amount of one month's rent.⁴

This chapter deals with the requirements of the Security Deposit Law governing security deposits and last month's rent which the landlord must follow at the beginning and during the tenancy. Chapter 18 deals with the requirements the landlord must follow at the end of the tenancy, Chapter 1 deals with the requirements the landlord must follow upon purchasing a property, and Chapter 24 deals with the requirements of the Security Deposit Law governing security deposits and last month's rent which the landlord must follow upon sale of the property.

A landlord needs to decide what he/she will charge a tenant before the tenant will move into an apartment. The most a landlord may charge under the law is:

- first month's rent;
- last month's rent at a rate no greater than the first month's rent;
- a security deposit no greater than the first month's rent;
- half of the pre-rental inspection fee (City of Boston);⁵ and
- a fee to purchase and install a lock.⁶

It is illegal to charge a tenant any other amounts such as a pet fee, holding deposit, or cleaning fee.⁷ It is legal for a licensed real estate agent to charge a finder's fee to the tenant to locate an apartment for him/her.⁸ A landlord who is also a licensed real estate agent can charge a prospective tenant a finder's fee as long as it is made clear to the tenant that the landlord is acting in the capacity of a real estate

agent. If the landlord is not a licensed real estate agent, it is illegal to charge a tenant a finder's fee to locate an apartment.

SECURITY DEPOSITS

The landlord has many responsibilities under the law with respect to security deposits. A checklist is provided at the end of this Chapter which itemizes in short form the requirements of the law.



See Security Deposit Checklist at the end of this Chapter.

The state law which regulates the taking of security deposits and last month's rent is G.L. c. 186, §15B. It is extremely important that a landlord who takes security deposits does so in accordance with the law.



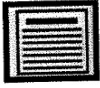
If the landlord is not willing to learn the law and follow its requirements, then the landlord should refrain from taking a security deposit from the tenant.

If the landlord has not followed the law, a tenant may be entitled to the return of his/her security deposit and up to three times the security deposit plus interest, costs, and attorney's fees.⁹ The tenant will not have to prove the landlord's fault or intent to violate the security deposit regulations.¹⁰

The following is an outline of the steps a landlord should take to satisfy the law with respect to security deposits:

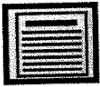
1. When the landlord receives the security deposit from the tenant, the landlord must give the tenant a receipt with the following information on it:
 - a. the amount of the security deposit;
 - b. the name of the person receiving it and if the person receiving it is not the landlord, then also the name of the landlord;
 - c. the date on which the security deposit is received;

- d. a description (address) of the premises being rented; and
- e. the signature of the person receiving the security deposit.¹¹



See Security Deposit and/or Last Month's Rent Receipt form at the end of this Chapter.

2. Upon receipt of the security deposit, or within ten days from the commencement of the tenancy, whichever is later, the landlord must give the tenant a separate written statement of condition.¹² This statement will list any damage that presently exists on the premises being rented. The landlord should be sure that there is no damage or bad condition that rises to the level of a code violation on the premises or that any damage or bad condition is repaired prior to the tenant move in date. The landlord has the duty to deliver the property to the tenant in habitable condition and therefore, no code violations should exist. The statement must be signed by the landlord or his agent. Since specific wording must be included on this statement, the landlord should use the Statement of Condition form provided.



See Statement of Condition form at the end of this Chapter.

After the landlord gives the tenant the statement, the tenant has the right to submit to the landlord his/her own list of damages. If the tenant does this, the landlord must return a copy of the tenant's list within fifteen days of receipt with either the landlord's consent or disagreement that the conditions exist as stated in the tenant's list.¹³ If the tenant has identified any damage or bad condition that exists and the condition is a code violation, the landlord must make the repairs.

While the security deposit law does not require the landlord to give the tenant back his/her security deposit for failing to provide a statement of condition, this document provides protection for the landlord. At the end of the tenancy, a landlord may want to charge the tenant for damages which were caused by the tenant. If a landlord has no documentation that the apartment was in good condition at the beginning of the tenancy, it becomes difficult to prove that any damages were caused by the tenant and did not exist at the beginning of the tenancy. It may also provide protection to the landlord during the tenancy or in an eviction proceeding in the event that the tenant alleges to the health authority or the Court that he/she has been living with bad conditions not caused by him/her. The statement of condition would

be evidence of the condition of the property at the beginning of the tenancy.

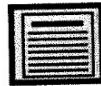


See Chapter 7, Duration of the Tenancy

3. Within thirty days from the date the landlord receives the security deposit, the landlord must deposit it in an interest bearing account in a Massachusetts bank.¹⁴ It is important that the funds are deposited in-state, regardless of whether or not the tenants consent to a deposit in an out-of-state bank.¹⁵ This account must be beyond the claims of the landlord's creditors, meaning it may not be in the landlord's name nor mingled with the landlord's money. While it is common to open separate accounts under the tenant's name with the tenant's social security number, the landlord is not required to open separate accounts for each tenant. As long as each deposit can be distinguished from other funds and is kept unattachable by the landlord's creditors, the account may hold different types of payments from multiple tenants.¹⁶ Opening an account using the tenant's name and social security number does not entitle the tenant to access the account but places the account beyond the claims of the landlord's creditors. In any event, make sure that the bank understands that the account is a tenant security deposit account under G.L. c. 186, §15B.

4. Within thirty days from the date the landlord receives the security deposit, the landlord must give the tenant a receipt with the following information on it:

- a. the name and address of the bank in which the security deposit is deposited;
- b. the amount of the security deposit; and
- c. the account number of the security deposit.¹⁷



See Receipt for Bank Deposit of Security Deposit form at the end of this Chapter.



To ensure that the landlord has followed the law with respect to security deposits, use the Security Deposit Checklist at the end of this Chapter.

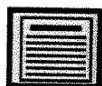
The law requires that the landlord keep records of all security deposits received for a period of two years from the date the tenancy ends.¹⁸ These records should contain information relating to damages and any repairs done along with copies of all receipts and

statements of condition. The records must be available for the tenant to inspect upon request, both during and following a tenancy. If the landlord does not allow the tenant to inspect requested records, the tenant is entitled to immediate return of the security deposit.

Remember that security deposits must be in interest bearing accounts. The law requires that the landlord give the tenant the interest during the term of the tenancy if the landlord has held the security deposit for one year or longer. At the end of each year of tenancy, the landlord must give the tenant a statement with the following information on it:

- a. the name and the address of the bank in which the security deposit is deposited;
- b. the amount of the security deposit;
- c. the account number of the security deposit; and
- d. the amount of interest payable to the tenant.¹⁹

This statement and a check for the interest must be given to the tenant. If the landlord only sends the statement to the tenant without a check for the interest, the landlord should include a notification to the tenant that the tenant may deduct the amount of the interest from the next month's rent. If the landlord has not given the tenant the statement or a check for the interest within thirty days from the end of each year of tenancy, the tenant may deduct the interest due from the next rent payment.²⁰



See Security Deposit Yearly Interest form at the end of this Chapter.

If the tenant has lived at the premises for less than one year when the tenancy is terminated, the interest shall be handled in the same manner as it would be handled at the end of a tenancy. That is, the landlord has thirty days from the termination of tenancy to return to the tenant the security deposit plus accumulated interest, less deductions.²¹



See Chapter 18, Security Deposit and Last Month's Rent at the End of the Tenancy

The landlord forfeits his right to retain any portion of the security deposit if he/she fails to return the portion of the deposit the tenant is entitled to within the thirty day period.²² However, if the written lease has expired but the tenant remains on the property as a tenant at sufferance, the landlord's obligation to

return the security deposit does not arise until the tenant relinquishes possession of the premises.²³

If the landlord has followed the law with respect to the taking of security deposits, the landlord will be able to use the money in the security deposit account at the end of the tenancy to make repairs and pay unpaid rent. If the landlord has not followed the law, it is possible that the landlord will have to give the security deposit back to the tenant prior to the end of the tenancy, leaving the landlord with no security against damages and unpaid rent.

At any time during the tenancy, the tenant has the right to demand the return of his/her security deposit if the landlord has failed to deposit the security deposit in an appropriate bank account.²⁴ If the tenant goes to court, the Court may award the tenant up to three times the amount of the security deposit, plus interest, costs, and attorney's fees.²⁵ If the landlord knows he/she has violated the law, it is generally best to return the security deposit upon the tenant's demand in order to avoid the treble damages.²⁶ While the Security Deposit Law does not give the tenant a legal remedy in every case where the landlord has not complied with all the provisions of the law, the Consumer Protection Act does.²⁷



See Chapter 22, Consumer Protection Act

For example: *The security deposit law requires the landlord to give receipts to the tenant when the landlord takes a security deposit or a last month's rent, but does not require the landlord to forfeit the deposit or rent if he/she does not comply. The Consumer Protection Act states that it is a violation for the landlord to fail to comply with any provision of the Security Deposit Law. Therefore, if the landlord is subject to the Consumer Protection Act, the tenant may bring an action pursuant to that law for failing to give the required receipts.*

It is also possible for the tenant to be entitled to return of the security deposit and up to three times the amount of the security deposit, plus interest, costs, and attorney's fees, if the landlord does not follow the law with respect to the security deposit at the end of the tenancy.²⁸



See Chapter 18, Security Deposit and Last Month's Rent at the End of the Tenancy

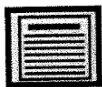
LAST MONTH'S RENT

Last month's rent is not the same as a security deposit. It does not remain the property of the tenant and therefore, does not need to be deposited in a

bank account. Although a last month's rent is the landlord's money, there are still legal requirements that must be understood.

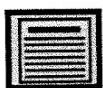
When the landlord receives the last month's rent, the landlord must give the tenant a receipt with the following information on it:

- a. the amount of the last month's rent;
- b. the date that it was received;
- c. the fact that it is a last month's rent;
- d. the name of the person receiving it and if the person receiving it is not the landlord, also the name of the landlord;
- e. a description of the premises (address);
- f. a statement that the tenant is entitled to 5% interest if the last month's rent is not deposited in the bank or lesser interest payable by the bank if the last month's rent is deposited in a bank account; and
- g. a statement that the tenant should give the landlord a forwarding address at the end of the tenancy so that the interest may be sent to the tenant.²⁹



See Receipt for Security Deposit and/or Last Month's Rent form at the end of this Chapter.

A landlord must pay interest on the last month's rent. Interest does not accrue for the last month for which rent was paid in advance. If the landlord does not deposit the last month's rent in the bank, which is allowable under the law, then the tenant is entitled to interest of 5%. If the landlord does deposit the last month's rent in the bank, then the tenant is entitled to whatever lesser interest is payable by the bank. In either case, a statement indicating the amount of interest due to the tenant should be given to the tenant each year. This statement and a check for the interest must be given to the tenant. If the landlord only sends the statement to the tenant without a check for the interest, the landlord should include a notification to the tenant that the tenant may deduct the amount of the interest from the next month's rent. If the landlord has not given the tenant the statement or a check for the interest within thirty days from the end of each year of tenancy, the tenant may deduct the interest due from the next rent payment.³⁰



See Last Month's Rent Yearly Interest form at the end of this Chapter.

If the tenant has lived at the premises for less than one year when the tenancy is terminated, the interest shall be handled in the same manner that it would be handled at the end of a tenancy. That is, the landlord has thirty days from the termination of tenancy to return the accumulated interest.³¹ Interest does not accrue for the last month for which rent was paid in advance.



See Chapter 18, Security Deposit and Last Month's Rent at the End of the Tenancy

INCREASING THE SECURITY DEPOSIT AND/OR LAST MONTH'S RENT DURING THE TENANCY

If during the tenancy the landlord and tenant agree to an increase in rent, the landlord has the right to increase the security deposit and the last month's rent by the same amount. The increase should be received by the landlord at the same time that the increase in rent occurs. If the landlord does not require the tenant to increase his/her security deposit or last month's rent at the time of the rent increase, the landlord gives up the right to later demand an increase retroactively.



See Increase in Security Deposit and/or Last Month's Rent form at the end of this Chapter.

ENDNOTES

- ¹ G.L. c. 186, §15B(1)(e)
- ² G.L. c. 186, §15B(1)(b)(iii)
- ³ G.L. c. 186, §15B(2)(a)
- ⁴ G.L. c. 186, §15B(1)(b)
- ⁵ CBC 9-1.3 (While the City of Boston requires a pre-inspection and allows the landlord to charge the tenant half of the fee in equal payments over twelve months, many other municipalities do not require it and might not allow a landlord who voluntarily requests an inspection to charge the tenant for any part of the fee.)
- ⁶ G.L. c. 186, §15B(1)(b)
- ⁷ G.L. c. 186, §15B(1)(b)
- ⁸ G.L. c. 112, §87DDD1/2
- ⁹ G.L. c. 186, §15B(7); 940 CMR 3.17(4); *Young v. Patukonis*, 24 Mass. App. Ct. 907, 506 N.E.2d 1164 (1987)
- ¹⁰ *In re Bologna*, 206 B.R. 628 (Bkrtcy.D.Mass. 1997)
- ¹¹ G.L. c. 186, §15B(2)(b)
- ¹² G.L. c. 186, §15B(2)(c)
- ¹³ G.L. c. 186, §15B(2)(c)
- ¹⁴ G.L. c. 186, §15B(3)(a)
- ¹⁵ *Ciociola v. Clark*, 1983 Mass. App. Div. 185 (1983)
- ¹⁶ *Neihaus v. Maxwell*, 54 Mass. App. Ct. 558, 766 N.E.2d 556 (2002) (Housing Court determined that tenants' security deposit was not illegally commingled with landlord's funds, even though the account contained both security deposits and last month's rents for several different tenants, because the accounting system distinguished the deposit from other funds and the deposit could not be attached by landlord's creditors.)
- ¹⁷ G.L. c. 186, §15B(3)(a)
- ¹⁸ G.L. c. 186, §15B(2)(d)
- ¹⁹ G.L. c. 186, §15B(3)(b)
- ²⁰ G.L. c. 186, §15B(3)(b)
- ²¹ G.L. c. 186, §15B(3)(b)
- ²² *Friedman v. Costello*, 10 Mass. App. Ct. 931, 412 N.E.2d 1285 (1980)
- ²³ *Neihaus v. Maxwell*, 54 Mass. App. Ct. 558, 776 N.E.2d 556 (2002)
- ²⁴ G.L. c. 186, §15B(3)(a)
- ²⁵ G.L. c. 186, §15B(7); 940 CMR 3.17(4)
- ²⁶ *Castenholz v. Caira*, 21 Mass. App. Ct. 758, 490 N.E.2d 494 (1986) (Appeals Court ruled that treble damages may be avoided by returning the security deposit on demand.)
- ²⁷ G.L. c. 93A; 940 CMR 3.17(4)
- ²⁸ G.L. c. 186, §15B(7); 940 CMR 3.17(4)
- ²⁹ G.L. c. 186, §15B(2)(a)
- ³⁰ G.L. c. 186, §15B(2)(a)
- ³¹ G.L. c. 186, §15B(2)(a)

SECURITY DEPOSIT CHECKLIST

A landlord who purchases rental property with existing tenants with security deposits should take the following steps:

- _____ Within thirty days of receiving security deposit from former owner, deposit funds into escrow account in Massachusetts bank.
- _____ Within forty-five days of receiving security deposit from former owner, give tenant Security Deposit Transfer Receipt.
- _____ If former owner has not provided copy of Statement of Condition, give tenant new Statement of Condition.
- _____ Within fifteen days of giving tenant Statement of Condition, collect signed Statement of Condition from tenant.
- _____ If tenant has submitted a list of damages with the Statement of Condition to landlord within fifteen days of receiving Statement of Condition, return a copy with consent or disagreement.
- _____ If damages exist, repair immediately.
- _____ On yearly anniversary of date security deposit was placed in escrow account, give tenant Yearly Security Deposit Interest Statement with a check for accumulated interest.
- _____ Any time an increase in rent occurs, give tenant a Demand for Increase of Security Deposit.

A landlord who receives a security deposit from a tenant should take the following steps:

- _____ Immediately give tenant Receipt for Security Deposit.
- _____ Within ten days of receiving security deposit, give tenant Statement of Condition.
- _____ Within fifteen days of giving tenant Statement of Condition, collect signed Statement of Condition from tenant.
- _____ If tenant has submitted a list of damages with the Statement of Condition to landlord within fifteen days of receiving Statement of Condition, return a copy with consent or disagreement.
- _____ If damages exist, repair immediately.
- _____ Within thirty days of receiving security deposit, deposit funds into escrow account in Massachusetts bank.

- _____ Within thirty days of receiving security deposit, give tenant Receipt for Bank Deposit of Security Deposit.
- _____ On yearly anniversary of the beginning of tenancy, give tenant Yearly Security Deposit Interest Statement with a check for accumulated interest.
- _____ Any time an increase in rent occurs, give tenant a Demand for Increase of Security Deposit.

At the end of the tenancy, a landlord who received a security deposit from a tenant should take the following steps:

- _____ Calculate unpaid rent due and security deposit accumulated interest.
- _____ Immediately after unit is vacant, inspect unit for damages.
- _____ Within thirty days of the end of tenancy, repair damages or obtain estimates for cost of repairs, keeping receipts.
- _____ Within thirty days of the end of tenancy, give tenant Statement of Security Deposit at End of Tenancy and Itemized Statement of Damages, if any, with balance due tenant or demand for balance due landlord.

Keep all security deposit records and make them available to tenant upon request.

**RECEIPT FOR SECURITY DEPOSIT
AND/OR LAST MONTH'S RENT**

Date: _____

To: _____

From: _____

This is a receipt for funds paid to the landlord by the tenant to be applied as follows:

Purpose	Amount Paid
First Month's Rent	_____
Last Month's Rent	_____
Security Deposit	_____
Purchase or Installation of Lock and Key	_____
Total Paid	_____

NOTICE TO TENANT REGARDING SECURITY DEPOSIT

The landlord must hold the security deposit in a separate, interest-bearing account and give to the tenant a receipt and notice of the bank and account number; the owner must pay interest, at the end of each year of the tenancy, if the security deposit is held for one year or longer from the commencement of the tenancy; the owner must submit to the tenant a separate written statement of the present condition of the premises, as required by law, and, if the tenant disagrees with the owner's statement of condition, he/she must attach a separate list of any damage existing in the premises and return the statement to the owner; the owner must, within thirty days after the end of the tenancy, return to the tenant the security deposit, with interest, less lawful deductions as provided in G.L. c. 186, §15B; if the owner deducts for damage to the premises, the owner shall provide to the tenant an itemized list of such damage and written evidence indicating the actual or estimated cost of repairs necessary to correct such damage; no amount shall be deducted from the security deposit for any damage that was listed in the separate written statement of present condition or any damage listed in any separate list submitted by the tenant and signed by the owner or his agent; if the owner transfers the tenant's dwelling unit, the owner shall transfer the security deposit, with any accrued interest, to the owner's successor in interest for the benefit of the tenant.

NOTICE TO TENANT REGARDING LAST MONTH'S RENT

The tenant is entitled to interest on the last month's rent payment at the rate of five percent per year or other such lesser amount of interest as has been received from the bank where the deposit has been held payable in accordance with the provisions of G.L.c. 186, §15B. The tenant should provide the lessor with a forwarding address at the termination of the tenancy indicating where such interest may be given or sent.

Name of Landlord: _____

Name of Person Receiving Deposit: _____

Property Address: _____

Date Received: _____

Date Receipt Given to Tenant: _____

Signature of Landlord or Person Receiving Deposit: _____

STATEMENT OF CONDITION

This is a statement of the condition of the premises you have leased or rented. You should read it carefully in order to see if it is correct. If it is correct, you must sign it. This will show that you agree that the list is correct and complete. If it is not correct, you must attach a separate signed list of any damage which you believe exists in the premises. This statement must be returned to the lessor or his/her agent within fifteen (15) days after you receive this list or within fifteen (15) days after you move in, whichever is later. If you do not return this list within the specified time period, a court may later view your failure to return the list as your agreement that the list is complete and correct in any suit which you may bring to recover the security deposit.

Tenant: _____

Property Address: _____

The present condition of the above property is as follows:

Name of Landlord: _____

Date: _____

Signature of Landlord or Agent: _____

The above statement of condition is accurate and I agree to it.

Signature of Tenant: _____

Date: _____

RECEIPT FOR BANK DEPOSIT OF SECURITY DEPOSIT

Date: _____

To: _____

From: _____

This is a receipt for a security deposit paid to the landlord by the tenant in the amount of \$ _____ indicating that the security deposit has been deposited in an escrow account as required by law.

Name of Landlord or Person Receiving Deposit: _____

Property Address: _____

Date Received: _____

Name of Bank Where Security Deposit is Deposited: _____

Address of Bank Where Security Deposit is Deposited: _____

Account Number of Security Deposit: _____

Signature of Landlord or Person Receiving Deposit: _____

SECURITY DEPOSIT YEARLY INTEREST STATEMENT

Date: _____

To: _____

From: _____

This is a statement indicating that your security deposit has accumulated interest in the amount of \$ _____.

Name of Landlord or Person Receiving Rent: _____

Property Address: _____

Amount of Security Deposit: _____

Name of Bank Holding Security Deposit: _____

Address of Bank Holding Security Deposit: _____

Account Number of Security Deposit: _____

Signature of Landlord or Person Receiving Security Deposit: _____

NOTIFICATION TO THE TENANT

_____ A check for the Security Deposit Interest is enclosed.

_____ The tenant may deduct the amount of the Security Deposit Interest from the next month's rent.

LAST MONTH'S RENT YEARLY INTEREST STATEMENT

Date: _____

To: _____

From: _____

This is a statement indicating that your last month's rent has accumulated interest in the amount of \$ _____.

Name of Landlord or Person Receiving Rent: _____

Property Address: _____

Amount of Last Month's Rent: _____

Signature of Landlord or Person Receiving Rent: _____

NOTIFICATION TO THE TENANT

_____ A check for the Last Month's Rent Interest is enclosed.

_____ The tenant may deduct the amount of the Last Month's Rent Interest from the next month's rent.

**DEMAND FOR INCREASE OF SECURITY DEPOSIT
AND/OR LAST MONTH'S RENT**

Date: _____

To: _____

From: _____

This is a demand for an increase in the amount of your security deposit and/or last month's rent based on an increase in rent as follows:

Current Rent	_____	
New Rent	_____	
Amount of Increase	_____	
Current Security Deposit	_____	
Amount of Increase Due		_____
Current Last Month's Rent	_____	
Amount of Increase Due		_____
Total Due		_____

Property Address: _____

Name of Landlord: _____

Signature of Landlord or Agent: _____