

Legal Notes: May 2013

It's May and we know what that means: The annual exodus of tenants from area apartments. Whether a landlord or a tenant, the ending of the rental relationship can be a legally perilous one. Best to know, or at least be aware, of the rules and where disputes often arise. Security deposit refunds and withholdings are perennial favorites.

A security deposit is money paid in advance to cover the costs of repair and clean up when the tenant vacates the rental. Security deposits may not only be money so designated but also rents paid in advance that remain at the end of the lease can also be characterized as a security deposit.

The landlord has 21 days to return the security deposit. The 21 days begins when the tenant "surrenders" the rental. Surrender may occur before the end of the rental period if the tenant gives the landlord written notice that the tenant is moving out early. The 21 days then starts when the landlord receives such written notice. Alternatively, if the tenant remains after the rental period, the surrender date occurs when the landlord learns the tenant has finally moved out.

To pay back less than the full amount of the security deposit, the landlord has to so notify the tenant within that same 21 day period. A landlord may withhold for "tenant damage, waste or neglect" but may not withhold for "normal wear and tear." The difference between those two phrases is in the eye of the beholder (or a judge). Best for both parties to have some sort of documentation of the state of the rental upon possession, such as a list of existing damages. In this day and age, photos and/or video taken before possession seem easy enough to do as well. Unpaid rent may also be deducted.

If the landlord withholds all (or part) of the security deposit, the landlord must provide an itemization of the damages. This itemization or statement must describe each item of damages and the dollar amount associated with the damage. An example may be "Hole in interior hall wall. \$50.00 for time and materials to re-plaster." While not legally required, inclusion of relevant receipts is helpful.

Where to send the notice or security deposit refund? The last known address or the forwarding address, if the tenant so notifies of the landlord of such forwarding address. If the notice or check is sent and returned because the post office can't deliver it, that is still effective notice under the law; landlords should obviously keep the returned envelope as proof of mailing.