

# **A Landlord's and Tenant's Guide to Recovering Security Deposits on Residential Apartments in Maine**

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## **Chapter 1**

### **I. Introduction to the Law**

#### **A. Two Sources of Law: Common Law and Statutes**

There are two sources of law in any state, common law and statutory law. We all know what statutory law is. That is when the legislature gets together and enacts a statute for all residents of the state to obey. But before there is a statute covering a certain area though, there is the common law. Common law refers to court decisions covering that situation. In the absence of statutory guidance, courts tend to follow what other courts have already decided. They do this for reasons of consistency.

Before there was any specific statute in Maine covering the subject of landlord tenant law, there were cases which determined the rights of landlords and tenants. The earliest cases were in keeping with the holdings of most other states not having landlord tenant laws. Those holdings determined that the tenant had almost no rights, and the landlord called almost all of the shots. The landlord could impose any conditions he wanted to upon the tenant by way of the lease agreement. If the tenant signed the lease agreement, then that was that and the tenant had to live with it.

For instance, if the lease contained a provision which stated that the tenant had to pay a \$2,500.00 security deposit and that it would be automatically forfeit at the end of the lease term, that was okay with the courts under common law so long as there was sufficient evidence that the tenant agreed to it. The only argument that the tenant might have would be an argument of unconscionability (meaning that the term of the contract was so unfair that the court should not enforce it).

Under the common law, if you placed a security deposit with the landlord, and the landlord did not return it, then you would have to sue for breach of contract. This would involve hiring a lawyer, going to court, winning, and then collecting upon the judgment you recovered. If your security deposit was for only \$750.00, you would very likely spend more in attorney's fees and lost time than you were likely to recover. Landlords knew all about this, and tended to keep security deposits, knowing that few people would sue out of principle.

#### **B. Enactment of the Landlord Tenant Statute**

In 1977, Maine's legislature passed the Security Deposit Act, Title 14, Chapter 710A, Sections 6031 through 6038. This statute codifies most aspects of the relationship between landlords and tenants with regard to security deposits. It sets out what the landlord can and can't do. As stated above, this is an example of the statutory law. The remedies of the statute are in addition to the already existing common law actions, so you still have those to work with, even if they aren't very helpful.

The cases which interpret the law are also part of the common law. Since no statute can be completely unambiguous, judges step in where things aren't clear and provide guidance to other courts to understand the text of the statute.

## **1. Boring Definitions**

The first thing that most statutes start out with is defining the terms that will be used in the statute. This is boring but necessary reading, as you have to know what a term means before you can understand your rights. Maine's law is no exception in this regard. Thus the first statutory section we will look at defines for us what certain important words mean:

### **Title 14 Chapter 710A: Section 6031: Definitions**

As used in this Part, unless the context otherwise indicates, the following words shall have the following meanings. [1977, c. 359 (new).]

1. Normal wear and tear. "Normal wear and tear" means the deterioration that occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident or abuse of the premises or equipment or chattels by the tenant or members of the tenant's household or their invitees or guests. The term "normal wear and tear" does not include sums or labor expended by the landlord in removing from the rental unit articles abandoned by the tenant such as trash. If a rental unit was leased to the tenant in a habitable condition or if it was put in a habitable condition by the landlord during the term of the tenancy, normal wear and tear does not include sums required to be expended by the landlord to return the rental unit to a habitable condition, which may include costs for cleaning, unless expenditure of these sums was necessitated by actions of the landlord, events beyond the control of the tenant or actions of someone other than the tenant or members of the tenant's household or their invitees or guests. [1997, c. 261, §1 (amd).]

2. Security deposit. "Security deposit" means any advance or deposit, regardless of its denomination, of money, the primary function of which is to secure the performance of a rental agreement for residential premises or any part thereof. [1977, c. 359 (new).]

Your landlord can only charge you for damages which are beyond normal wear and tear as that term is defined by the statute above. A security deposit is money that is given by the tenant to the landlord which has the primary function of protecting the landlord against damages flowing from your breach of the terms of the rental agreement.

You may be tempted to think that these definitions are pretty straight forward, but they aren't. Let's take the example of \$650.00 given by the tenant to take the apartment off the market for a short time so that the tenant can decide to rent the place or not. Is

this a “security deposit” as the statute defines it? Hmmm. Here we are going to have to turn to the case law, which says that it is. Magilione v. Murphy, 2003 WL 23112405 Me.Super.,2003, November 25, 2003.

## **2. Maximum Allowable Security Deposit**

At common law, there was no limit on how much the landlord could ask for as a security deposit. If you were wealthy enough and really wanted the apartment, I suppose a landlord could have asked you for a security deposit equal in value to the house itself. But under the Security Deposit Act, the landlord is limited to a security deposit in the amount of two month’s rent as we can see immediately below.

### **Title 14, Chapter 710A: Section 6032: Maximum Security Deposits**

No lessor of a dwelling intended for human habitation shall require a security deposit equivalent to more than the rent for 2 months. [1977, c. 359 (new).]

## **3. Return of Security Deposits**

What everybody wants to know is how long the landlord has to return your security deposit after you have moved out. The law states that the landlord cannot keep the security deposit or any part of it to compensate for reasonable wear and tear. The law gives the landlord only the time recited in the written lease to return the security deposit, and that time can’t be more than 30 days.

If the rental agreement between the landlord and the tenant is a tenancy at will, then the landlord must return the deposit or a proper itemization of why the tenant isn’t getting back the deposit within the later of 1) 21 days after the termination of the lease or 2) the surrender of the premises by the tenant and its acceptance back by the landlord.

If the landlord is itemizing part of the deposit as damages, then the itemization sent to the tenant must include a check for the remaining amount. The landlord may deduct for many things, including but not limited to unpaid rent, unpaid utilities which the landlord was paying on behalf of the tenant but was not paid by the tenant, and costs to the landlord of storing the tenant’s property that got left behind.

The tenant should make sure that he or she gives the landlord a forwarding address, because the landlord only has to mail the itemization and refund to the last known address of the tenant.

If the landlord is late sending out the payment or itemization to the tenant, then the landlord automatically forfeits his right to the security deposit. That gets really important as we read through the next section after this one, which covers the tenant’s remedies.

## **Title 14, Chapter 710A: Section 6033: Return of the Security Deposit**

1. Normal wear and tear. A security deposit or any portion of a security deposit shall not be retained for the purpose of paying for normal wear and tear. [1977, c. 359 (new).]

2. Return; time; retention. A landlord shall return to a tenant the full security deposit deposited with the landlord by the tenant or, if there is actual cause for retaining the security deposit or any portion of it, the landlord shall provide the tenant with a written statement itemizing the reasons for the retention of the security deposit or any portion of it:

A. In the case of a written rental agreement, within the time, not to exceed 30 days, stated in the agreement; and [1977, c. 359 (new).]

B. In the case of a tenancy at will, within 21 days after the termination of the tenancy or the surrender and acceptance of the premises, whichever occurs later. [1977, c. 359 (new).]

The written statement itemizing the reasons for the retention of any portion of the security deposit must be accompanied by a full payment of the difference between the security deposit and the amount retained.

Reasons for which a landlord may retain the security deposit or a portion of the security deposit include, but are not limited to, covering the costs of storing and disposing of unclaimed property, nonpayment of rent and nonpayment of utility charges that the tenant was required to pay directly to the landlord.

The landlord is deemed to have complied with this section by mailing the statement and any payment required to the last known address of the tenant.

[1995, c. 52, §1 (amd).]

3. Penalty. If a landlord fails to provide a written statement or to return the security deposit within the time specified in subsection 2, the landlord shall forfeit his right to withhold any portion of the security deposit. [1977, c. 359 (new).]

### **4. Tenant Remedies Upon Landlord Non-Compliance**

If the tenant can show the court that the landlord breached his duty to return the security deposit, the law sets out certain remedies. The first thing that the tenant should