

A Tenant's Guide To Recovery of Security Deposits New Jersey

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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 New Jersey 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 no duty on the part of the landlord to repair the rented premises, and the furnace went out in January, then the tenant would be liable for repairing or replacing the furnace. There is an old case (not from New Jersey, but it will serve to illustrate the example) where the judge wrote that there "is nothing at common law to prevent a landlord from renting a tumble-down house." The way the courts used to look at it, nobody was holding a gun to the tenant's head and forcing him to sign the lease agreement. If the parties intended that the landlord fix things, then they could have written that into the agreement.

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. Implied Warranties

But as the law evolved, courts began to realize that many tenants were

unsophisticated people. Some folks have trouble just reading, much less reading a contract with its \$64.00 words like “promissory,” “covenant,” and “estoppel.” Many courts also saw it as unfair that a tenant would have to pay to buy a new furnace for a landlord since the law of fixtures dictates that the tenant could not take the furnace with him when he left.

When a court looks at a contract, it construes the contract in accordance with the plain meaning of the terms, in order to get to what the parties to that contract actually meant to agree upon. Courts have a lot of discretionary power when doing this, and courts in New Jersey started to use that discretionary power to imply certain terms into certain contracts, such as residential rental contracts. I use the word “imply” but I should actually say “pretend.”

What the courts will do is pretend that there is a clause in the residential rental agreement whereby the landlord promises that he will put and keep the rented premises in a fit and habitable condition for the tenant. This is called an “implied warranty of habitability.” This gave the tenants the right to claim that the landlord had breached an implied warranty of habitability if he refused to effectively fix a problem around the rented premises.

C. Enactment of the Landlord Tenant Statute

In 1967 (and as amended on several occasions thereafter), the New Jersey Legislature enacted the New Jersey Landlord Tenant Act. The first few sections of any often act contain statements of legislative purpose and definitions, and the statute here is no exception. The first place a court always looks to determine the outcome of a case about security deposits is the statute. But sometimes it is not clear what the statute means. In such a case, the Court can look for guidance to cases where other courts (especially higher courts) have interpreted the statute. But if that is unavailing, then the court may look to the legislature’s intent when it enacted the statute.

In interpreting a statute, the courts often look to do what seems fair. But it should always be remembered that it is the responsibility of the court in construing a statute to determine what the Legislature intended rather than to apply a meaning which merely appears fairer as the statute is used in practice. If the statute works inequitably, it is for the Legislature to work changes. Matawan v. Monmouth City Tax Bd., 51 N.J. 291, 298 (1968).

1. Overview of the Security Deposit Act

It’s tough to read statutes. You are going to find out how tough it is in a moment. This is why they pay lawyers a great deal of money to slog through it all and then apply the law to the facts of a case. But one thing that helps like nothing else is to have a short concise summary of the subject area so that it will seem at least a little familiar to you as you go through it.

Most landlords ask that you pay the first month's rent and a security deposit before you move into residential rented property. But a landlord can never charge more than one and one-half times the monthly rent as a security deposit. *N.J.S.A. 46:8-21.2*. If your rent increases, the landlord may argue that he can increase the security deposit as well. But the law says that the most additional security money that a landlord can get in any one year is 10 percent of the current deposit. *N.J.S.A. 46:8-21.2*.

The New Jersey security deposit law, the Rent Security Deposit Act, requires that the landlord do certain things while collecting, maintaining, and returning your security deposit. *N.J.S.A. 46:8-19*. A security deposit is money belonging to you that is held by the landlord in trust. The purpose of a security deposit is to protect your landlord against any breach of the lease you might cause which damages the landlord, including non-payment of your rental obligations or physical damages from breaking things at the apartment.

Leases for residential property in New Jersey must state clearly where the landlord will hold your security deposit and under what conditions you may get it back. The law prohibits a landlord from taking money from your deposit for damages to the rented premises or unpaid rent or for any other reason while the tenant still lives there.

If you have to move because the rental unit is destroyed (this is called "displacement"), your landlord has five days to give you back your deposit, minus any proper damages, including unpaid rent. The landlord has to stand ready to give back your deposit for 30 days during normal business hours in the city in which the rental unit is located. The landlord must also give you a detailed statement of interest earned on the deposit and an itemization of deductions.

If your local municipal clerk agrees, your landlord can give the deposit to the clerk and the clerk will hold it for you.

Within three business days after the owner learns of the destruction of the rental unit, the owner must give you written notice by personal delivery or by mail at your last known address telling you where and when your security deposit will be available to you.

If the city in which you live has a relocation officer, your landlord must send a duplicate of this notice to that officer, or to the city clerk. If your last known address was the destroyed property (and thus your mailbox was also likely destroyed) your landlord must also post the notice outside each entrance of the destroyed property. If you do not ask for your money back within 30 days, your landlord must put the money back into an interest-bearing account in the same bank from which it was withdrawn.

But don't throw a party with your money after the place gets destroyed, because you may need it. If you got your money back but move back into the same property later after it is fixed, you must return to the landlord one-third of the security deposit when you move in. Another third is due within 30 days after you move in, and the last third within 60 days from the date you moved back in. If you do not repay the security

deposit, the owner may bring an eviction action against you for nonpayment of rent. *N.J.S.A.* 46:8-21.1.

The Security Deposit Act applies to all residential rented property, even single family homes you might be renting. But there is an exception for rental units in buildings in which the owner lives that have no more than two units other than the owner's unit. But even if you live in a place fitting this exception, if you send a 30-day written notice to the landlord stating that you want the landlord to comply with the law's provisions, then the law applies.

Within 30 days of getting your security deposit, your landlord has to: 1) put your security deposit in a separate bank account that pays interest; 2) must tell you in writing the name and address of the bank where the deposit is being kept, 3) must tell you the amount of the deposit, 4) must tell you the type of account, and 5) must tell you the current interest rate for that account. The landlord must also give the notice not just within 30 days of getting it from the tenant, but annually when the landlord pays the interest to the tenant (see Interest on your security deposit). If your landlord changes banks, then the notice must be given to the tenant within 30 days after the landlord has moved the deposit from one bank to another, or even from one bank account to another (except when the change takes place less than two months before the annual interest pay out required by the statute).

If the property you live at is sold to a new owner, that new landlord must also give the notice within 30 days of buying the property of where he keeps the security deposit (since he may bank somewhere else). If your rental unit is sold to a new owner while you are living there, the new owner must get your security deposits, plus interest, from your former landlord. The *new* owner is responsible to you to pay back your security deposit, plus interest even if the old owner never transferred it to him. *N.J.S.A.* 46:8-20 and 21.

Normally, it is a breach of the rental agreement for the tenants to use the security deposit as rent. But if the landlord fails to give the tenant the proper notice regarding the whereabouts of the security deposit, then the tenant can give a written notice to the landlord telling the landlord to use the whole deposit (plus seven percent interest per year) to pay the tenant's rent. If you properly inform your landlord to use the security deposit as rent, the landlord can't require a new deposit for as long as you live there. *N.J.S.A.* 46:8-19(c).

Remember that before you can do this, you have to send the landlord a letter giving him his 30 days to either pay the interest or give the required annual notice. This gives the landlord a chance to come into compliance with the law. *N.J.S.A.* 46:8-19(c).

Remember also that just because there is a notice in the lease of where your deposit is going to be kept, this does not mean that the notice is accurate. The landlord may be using an outdated lease agreement. If the money is not where the landlord says it is, then you can exercise your right to use the deposit at rent. Princeton Hill Associates v. Lynch, 241 *N.J. Super.* 363 (App. Div. 1990).

Landlords who rent out ten or more apartments must put your security deposit in either an insured money market fund or a federally insured bank account. The account must pay a rate of interest set at least quarterly and equal to the average rate of interest paid by the bank on money market accounts. These higher interest accounts must be in New Jersey-based institutions. *N.J.S.A.* 46:8-19(a). Landlords who rent fewer than ten apartments have to place security deposits in bank accounts that pay at least the regular rate of interest. *N.J.S.A.* 46:8-19(b). All interest from these accounts is the property of the tenant. The landlord cannot use this interest to cover expenses. *N.J.S.A.* 46:8-19(a).

The landlord must pay out the interest earned on the deposit to you in cash every year. The landlord can also subtract the amount owed to you from your monthly rent on the renewal or the anniversary of the lease. This has to be done either 1) when your lease is to be renewed; or 2) on January 31 each year if the landlord gives you notice that he will be using the first of the year date. *N.J.S.A.* 46:8-19(c).

Your landlord must return your security deposit less any amount due for damages or unpaid rent or other legitimate deductions within 30 days of your moving out, even if you move out early before your lease term is up. The itemization of the damages must be sent to you by certified or mail or registered mail. *N.J.S.A.* 46:8-21.1.

The landlord can deduct for physical damages to the apartment only if such damages are beyond ordinary wear and tear.

If some of the deposit was returned, be sure to ask for double the amount that you feel the landlord should not have deducted from your deposit. **Cite:** *Cottle v. Butler*, 257 *N.J. Super.* 401 (Law Div. 1992).

2. Important Case Holdings on the Legislature's Intent

The statute was enacted to protect tenants from overreaching landlords who require security deposits and then divert them to their own use. *Jaremback v. Butler Ridge Apts.*, 166 *N.J. Super.* 84, 87 [398 *A.2d* 1339] (App.Div.1979); *Smith v. Stark*, 153 *N.J. Super.* 48, 50 [378 *A.2d* 1169] (App.Div.1977); *Watson v. Jaffe*, 121 *N.J. Super.* 213, 214 [296 *A.2d* 537] (App.Div.1972). The Legislature endeavored to develop and enact an overall scheme to protect a tenant. *Sanchez v. Vaccarelli* (1992), 262 *N.J. Super.* 72 at 76; 619 *A.2d* 1050.

The Security Deposit Act provides double damages to the tenant who can show that his landlord wrongfully withheld the security deposit. If there is not a fixed, sure and meaningful penalty confronting the landlord in the event he withholds the tenant's security, then he has no incentive to return the security deposit. *Sanchez* at 76. Without the statutory penalty clause the tenant would be entitled only to usual damages, i.e., his out-of pocket loss, the security deposit. As a practical matter the landlord would have nothing to lose if he waited for the institution of suit. If no action were ever taken, he would not lose anything except that which he was wrongfully withholding. *Sanchez* at 76.