

## SECURITY DEPOSITS

This firm would like to take the opportunity to review the subject of security deposits. The issue of security deposits is hotly debated between landlords and tenants and is frequently the subject of small claim lawsuits. Florida Statute 83.49 provides very specific guidelines as to how security deposits are held by the landlord, how claims are made against the deposit and how the tenant responds to such claim. This article shall serve as an overview for the disposition of security deposits when the landlord makes a claim against the deposit.

When a tenant vacates the apartment unit after providing at least seven days written notice of his or her intent to vacate said unit, within fifteen (15) days the landlord must either return the security deposit to the tenant in full or notify the tenant of the landlord's intention to impose a claim.

In the event the landlord wishes to make any claim against the security deposit of the tenant, the Notice of Intention to Impose Claim *must* have the following language in order to be in compliance with Florida Statutes:

“This is a notice of my intention to impose a claim for damages in the amount of \$\_\_\_\_\_ upon your security deposit, due to \_\_\_\_\_. It is sent to you as required by Section 83.49 (3), Florida Statutes. You are hereby notified that you must object in writing to the deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to : (landlord's address).”

If the landlord fails to give the required notice within the thirty -day period, the landlord forfeits the right to impose a claim for damages against the security deposit pursuant to Section 83.49 (3) (a), Florida Statutes. The landlord does not waive, however, a claim for damages against the tenant. Simply put, the landlord may not use the security deposit to cover those damages if the notice is not sent out within the statutory fifteen-day period.

Please note that *whenever* the landlord will be imposing a claim upon the security deposit it is mandatory under Section 83.49 (3) (a) to send notice of his intention to impose a claim by *certified and regular mail* to the tenant's last known mailing address.

A common claim against the security deposit is for carpet damage. Frequently, a landlord will charge the tenant for the full replacement cost of carpet. Unfortunately, the judges do not permit the landlord to charge a tenant for “normal wear and tear.” The landlord must keep in mind that the tenant should be charged a pro-rata portion of the cost of carpet replacement. For example, carpet in apartments generally have a life of four years. When the tenant moved into the apartment, the carpet was one year old. When the tenant vacated the apartment, the carpet required replacement. The tenant should be charged for two years of normal wear and tear.

Once the landlord has sent the notice to impose claim to the tenant, the tenant will then have fifteen days to object to the claim. If the tenant does not object within fifteen days, the landlord may then use part or all of the security deposit to cover the damages and remit the balance, if any, to the tenant within thirty days.

In reference to files that are placed under eviction: once the landlord has regained possession of the premises, the landlord should mail the notice to impose a claim immediately.

In those cases in which interest is required to be paid to the tenant, the landlord shall pay directly to the tenant, or credit against the current month's rent, the interest due to the tenant at least once annually. However, no interest shall be due to a tenant who *wrongfully terminates* his tenancy prior to the end of the rental term.

If the tenant has placed a pet deposit with the landlord to cover damages caused by the pet, unless the lease agreement has specifically stated that all deposits placed with landlord shall be considered premises deposit, the landlord may only deduct specific damages caused by the pet from the pet deposit. For example, Joe Tenant has a \$200.00 security deposit and \$200.00 pet deposit. Joe Tenant failed to pay his rent in the amount of \$700.00 and vacated the premises. There was no damage to the unit and surprisingly enough, Joe left the premises in great condition. Unfortunately, unless the lease states that the pet deposit shall become part of the premises deposit or that the pet deposit merges with the security deposit, the landlord may only deduct his claim for rent, breach of lease, etc., from the \$200.00 security deposit and must return the pet deposit!

All security deposit disputes are litigated in small claims court. If the landlord or the ex-tenant institutes an action in a court of competent jurisdiction to adjudicate his right to the security deposit, the prevailing party is entitled to receive his court costs plus a reasonable fee for his attorney, if any. In the event an action is filed and the landlord has not followed the procedures as specified by the statutes, the County Court Judges have been known to grant the return of the security deposit in full no matter how much damage the landlord has suffered. So, remember to assess your damages conservatively and carefully.