

**This handbook is intended as general legal information. It is not legal advice about your specific case. If you would like advice about your case, you must contact a lawyer.**

## RENTER'S HANDBOOK ON SECURITY DEPOSITS

Most landlords require renters to pay a “security deposit” when they move in to a new rental. A security deposit is money paid by a renter to a landlord so that the landlord can make sure that the renter follows the rental agreement and leaves the rental in good condition when the move out. When a renter moves out, the deposit can be used by the landlord to pay any unpaid rent and fees, and to pay for any damage caused by the tenant beyond normal wear and tear. Any remaining amount must be returned to the renter, and the landlord must provide a written accounting for any amount that was not returned.

This handbook contains information about limitations on a landlord’s right to collect a security deposit, steps renters can take to increase their chances of having a security deposit returned when they move out, and how to respond if a landlord keeps a security deposit or does not provide a written accounting to show why the entire security deposit was not returned.

It is very important throughout the process to keep records of written communications with your landlord.

### **This handbook contains the following information:**

- Information about security deposits at the time of move-in, during the rental period, and at the time of move-out
- Step-by-step guide to getting a security deposit back
- Inventory and Condition Report to note the condition of the rental at move-in and move-out
- IRS Depreciation Table
- Letters to use in communicating with landlords about security deposits

### **Security deposits at move-in**

When you sign your rental agreement, the landlord has to provide a written explanation of the amount of the security deposit. The landlord also has to give you written information about any deductions from the security deposit, including if the landlord will charge to clean the carpets after you move out. Other than carpet cleaning, a deposit must be refundable. Non-refundable security deposits are illegal.

The amount of any security deposit you pay, including any money that will be treated as “last month’s rent,” must be listed in the rental agreement.

Your landlord can charge you an extra pet deposit if you have pets in your rental, but cannot charge an extra deposit for service animals or companion animals required by a renter with a disability.

Check carefully to see if the agreement says the deposit is for last month's rent. If the agreement doesn't specifically say that it's a last month's rent deposit, you can't use it to pay the last month's rent when you move out.

### Security deposits during the rental period

Usually, a landlord isn't allowed to increase the security deposit during the first year that you live in your rental. But if you and the landlord agree to change your rental agreement during the first year, the landlord can increase the security deposit. The most common reason for an increased security deposit is if the landlord allows the renter to have a pet. **A landlord is not allowed to increase the security deposit if the renter asks for a reasonable accommodation for an assistance animal or emotional support animal.**

After the first year, a landlord can raise the security deposit. If a landlord raises the security after the first year, the landlord has to give at least three months to pay the increased security deposit.

If a new landlord or property management company takes over while you're still living in your rental, the new landlord is responsible for returning your security deposit to you when you move out. It doesn't matter whether the old landlord gave the security deposit to the new landlord.

**For survivors of domestic violence/sexual assault/stalking:** Your landlord can't raise your security deposit because an abuser is removed from the rental agreement. However, if you end your lease early because of domestic violence, but other renters (including your abuser) remain in the rental housing, you are not entitled to get your security deposit back until everyone has moved out of the rental.

### Security deposits after moving out

After a renter moves out, the landlord has **31 days** to either return the full deposit, or send a written explanation of any deductions from the security deposit. A landlord is not required to give back the security deposit before the renter moves out.

Renters can use the security deposit to pay the last month's rent only if the rental agreement says that part of the deposit is for the last month's rent. If the rental agreement doesn't say what the deposit is for, it can't be used to pay the last month's rent.

After a renter moves out, the landlord is allowed to deduct money from the security deposit to cover:

- Unpaid rent or fees
- Repairs for any damage beyond "ordinary wear and tear"
- Cleaning costs
- Loss of rental income while cleaning and repairs are performed
- Carpet cleaning, if the rental agreement says that the landlord will charge for carpet cleaning

### What counts as “ordinary wear and tear”?

The law doesn’t say what counts as ordinary wear and tear. But usually, that means the kind of minor damage that is expected when a rental is used in a normal way. Scuff marks in the paint would probably be ordinary wear and tear, but a hole in the wall or a big stain on the carpet wouldn’t be ordinary wear and tear.

Part of “ordinary wear and tear” depends on how long you lived in the rental, and how old the parts of the rental are. The IRS has information about how long parts of a rental are supposed to last. This information is at the end of the handbook in Form B, the IRS Depreciation Table. For example, the table says that carpets should last 5-9 years. If the carpets in your rental unit have not been replaced for the past 10 years when you move out, then a landlord shouldn’t charge full replacement cost if the carpet is damaged.

A landlord can’t charge a renter for upgrades to the rental. That means that, for example, if the stove was damaged, the landlord can only charge for a replacement that’s more or less the same as the original stove, not a nicer or more expensive model.

### Can a landlord charge for damage caused by domestic violence/ sexual assault/ stalking?

No. A landlord is not allowed to charge a renter who was the victim of domestic violence, sexual assault, or stalking for any damage that was caused during the incident or incidents. A landlord is allowed to ask a renter for verification that the damage was caused by domestic violence, sexual assault, or stalking. Verification can be:

- A restraining order
- A police report
- A judgment in a criminal case
- A third party verification signed by a health care provider, police officer, victim’s advocate, or attorney.

### How to get a security deposit back

Renters are more likely to get their deposits back if they have proof of the condition of the rental when they move in. You can use the Inventory and Condition Report (Form A) at the back of this handbook as a checklist.

It’s also important to take photos of any damage in the rental at the time that you move in. It’s a good idea for renters to send the Inventory and Condition Report to the landlord, along with photos, right after moving in. Renters should also keep the Inventory and Condition Report in a safe place. If the information is on a phone or computer, renters should also save the information somewhere else.

When moving out, renters should compare the rental’s condition to how it was when they moved in. Renters should also be sure to clean before moving out, and to take all belongings with them. A landlord can charge for disposing of anything that’s left behind. A landlord can also charge for cleaning costs.

Taking pictures or video is important to show the true condition of the rental at the time of move-out. If you don't have a way to take photos or video, having a witness review the condition of the rental before move-out can be a good idea. But that person would have to be willing to testify in court in person as a witness. A written statement from the person would not be allowed in court.

Renters should be sure that they give proper notice to the landlord before moving out. If a renter is moving out based on their own termination notice, the notice needs to be in writing (on paper) and given to the landlord at least 30 days before the move-out date (or 33 days if sent by mail). If the renter doesn't tell the landlord at least 30 days ahead of time that the renter is moving out, the landlord might be able to deduct rent from the security deposit, even after the renter moves out.

It's also important to return the keys to the landlord or property manager when moving out. If the landlord requires that the keys be returned in a specific way, be sure to follow the instructions. Renters should send the landlord a text or email when they are finished moving out, and keep a copy.

Finally, renters should be sure to give the landlord a forwarding address for mail. This is important, because the landlord needs to have an address to send the security deposit back. If you don't give the landlord a mailing address, the landlord might not be required to return the deposit. It's best to have something in writing to prove that you gave the landlord a mailing address for the deposit.

### **Getting a deposit back: Step by step**

A landlord has 31 days from the day that a renter moves out to either return the deposit, or send a written explanation of the charges the landlord has deducted from the deposit. If it's been more than 31 days since you moved out, and you gave your landlord an address to send the deposit, but the landlord hasn't returned the deposit or sent you a written explanation of deductions from the deposit, then you can follow these steps. You can also follow these steps if you think the landlord charged you for things that they shouldn't have, or charged you more than is fair.

The most important thing to remember when trying to get a landlord to return a security deposit is to put all communication to the landlord in writing and keep a copy.

**If 31 days have passed since a renter moved out, and the landlord has not provided anything (either the deposit or a written explanation of deductions) then renters can follow these steps:**

#### **1. Send Letter 1**

After 31 days, you should have received your security deposit and/or a written accounting for any amount that the landlord kept. If you have not received anything from your previous landlord, you can send them Letter 1, at the back of this handbook. Letter A is a demand that your landlord return your deposit or send a written accounting.

Either give the letter to your landlord personally or send it through regular first-class mail – NOT certified or registered mail, as those can take much longer to arrive. Be sure to keep a copy of the letter.

## 2. Legal action

If a renter sends Letter 1, and the landlord still doesn't return the deposit or send a written explanation, a renter has the right to file a lawsuit against the landlord to get two times the amount of the security deposit. Renters have **one year** from the date that the landlord was supposed to send back the deposit to file a lawsuit.

Renters can file in small claims court or circuit court, as long as the amount the renter is suing for is at least \$750. Small claims court is designed for people to use without a lawyer, so can be easier for most renters. But some lawyers may take these kinds of cases. If you want to contact a lawyer, there is contact information at the end of this handbook. Or, you can contact the Oregon State Bar for a referral. Most legal aid offices do not represent renters in security deposit cases.

For more information about Small Claims Court, including how to complete court forms, how to file your case, and what to expect from the process, go to [www.oregonrentersrights.org](http://www.oregonrentersrights.org) or [https://www.osbar.org/public/legalinfo/1061\\_SmallClaims.htm](https://www.osbar.org/public/legalinfo/1061_SmallClaims.htm)

When preparing for a case in Small Claims Court, it's important to gather evidence ahead of time. That evidence could include:

- photos and videos from when you moved in and moved out
- your Unit Inventory and Condition Report (Form A)
- your rental agreement
- your security deposit receipt
- your termination/move-out notice
- a copy of Letter 1.

If you have witnesses who were with you during the move-in or move-out walk through and want to testify on your behalf, they must come to court with you. A written statement from your witness will not be considered by the court.

## If a landlord took deductions from a security deposit that a renter disagrees with, then renters can follow these steps:

### 1. Send Letter 2

Landlords can deduct from security deposits for lots of reasons, including repairing damage beyond ordinary wear and tear, cleaning, or to cover unpaid rent or fees. If a landlord has deducted money from the security deposit that seems unreasonable, or that the renter didn't actually owe, renters can ask the landlord for more information about the deductions.

If you received a written explanation from your landlord saying what amounts were taken from the security deposit, but you think that your landlord claimed more than they should have, you can send your landlord Letter 2. Letter 2 is a demand for more information about the charges. **You should only include the sections of Letter 2 that apply to your situation, based on what your landlord put in the written accounting.**

If your landlord has returned part of your security deposit, you can accept the money and still dispute the remaining charges.

Either give the letter to your landlord personally or send it through regular first-class mail – NOT certified or registered mail, as those can take much longer to arrive. Be sure to keep a copy of the letter.

## 2. Legal action

If the landlord doesn't respond to Letter 2, or a renter still believes that the landlord withheld more than they reasonably should have, renters can file a claim in Small Claims Court. In your claim, you can ask for twice the amount that was wrongfully withheld from the deposit. Renters have **one year** from the date that the landlord was supposed to send back the deposit to file a lawsuit.

Renters can file in small claims court or circuit court, as long as the amount the renter is suing for is at least \$750. Small claims court is designed for people to use without a lawyer, so can be easier for most renters. But some lawyers may take these kinds of cases. If you want to contact a lawyer, there is contact information at the end of this handbook. Or, you can contact the Oregon State Bar for a referral. Most legal aid offices do not represent renters in security deposit cases.

For more information about Small Claims Court, including how to complete court forms, how to file your case, and what to expect from the process, go to [www.oregonrentersrights.org](http://www.oregonrentersrights.org) or [https://www.osbar.org/public/legalinfo/1061\\_SmallClaims.htm](https://www.osbar.org/public/legalinfo/1061_SmallClaims.htm)

When preparing for a case in Small Claims Court, it's important to gather evidence ahead of time. That evidence could include:

- photos and videos from when you moved in and moved out
- your Unit Inventory and Condition Report (Form A)
- your rental agreement
- your security deposit receipt
- your termination/move-out notice
- a copy of Letter 2.

If you have witnesses who were with you during the move-in or move-out walk through and want to testify on your behalf, they must come to court with you. A written statement from your witness will not be considered by the court.

### Form A: Inventory and Condition Report

Use this report to record the contents and condition of your place when you move in and before moving out. If you mark anything as being dirty or damaged, you should take a picture of it and store a copy in a safe place. If the photo is on a phone or other electronic device, be sure to store a backup copy somewhere you can get it even if you lose your phone or it breaks. It's a good idea to take a picture of the Inventory and Condition Report, so that you can prove the date that you filled it out.

Kitchen	Dirty? Y/N	Damaged? Y/N	Notes
Stove			
Refrigerator			
Other appliances			
Sink			
Faucets			
Cabinets			
Drawers			
Flooring			
Walls			
Windows			
Blinds			
Lights			
Ceiling			

Bathroom	Dirty? Y/N	Damaged? Y/N	Notes
Toilet			
Tub/ Shower			
Shower door			
Sink			
Faucets			
Mirror			
Cabinets			
Drawers			
Flooring			
Walls			
Windows			
Blinds			
Fan			
Lights			
Ceiling			

Living room	Dirty? Y/N	Damaged? Y/N	Notes
Flooring			
Walls			
Windows			
Blinds			
Lights			
Ceiling			

Bedroom	Dirty? Y/N	Damaged? Y/N	Notes
Flooring			
Walls			
Windows			
Blinds			
Lights			
Ceiling			
Closet			

Other areas	Dirty? Y/N	Damaged? Y/N	Notes
Screens			
Porch/ deck/ balcony			
Doors			
Locks			
Heat			
Air conditioning			
Other			

Date: \_\_\_\_\_

Tenant signature: \_\_\_\_\_

Witness signature: \_\_\_\_\_

Landlord signature: \_\_\_\_\_



### Form B: Depreciation table

This is based on IRS rules for how long rental property is supposed to last. It is a general guide, but it isn't part of Oregon law.

Type of Property	General Depreciation System	Alternative Depreciation System
Appliances, such as: Stoves and Refrigerators	5 years	5 years
Carpets	5 years	9 years
Furniture used in rental property	5 years	9 years
Any property that does not have a class life and that has not been designated by law as being in any other class	7 years	10 years
Shrubbery	15 years	20 years
Fences	15 years	20 years
Structural components such as furnaces, waterpipes, venting, etc.	27.5 years	20 years

## Letter 1

Date: \_\_\_\_\_

Dear Landlord:

By law I am entitled to receive either a full refund of my security deposit or a written accounting of what the deposit was used for within 31 days from when I moved out. I moved out on \_\_\_\_\_ [date]. I have not received the deposit or the accounting.

Please return my deposit within 10 days from the date of this letter. If I do not hear from you by \_\_\_\_\_ [10 days from date of letter], I will file a claim in Small Claims Court. The law (ORS 90.300) says that I am entitled to twice the amount wrongfully withheld.

Sincerely,

\_\_\_\_\_  
[Tenant name]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[Tenant address]

## Letter 2

Date: \_\_\_\_\_

Dear Landlord:

As you know, I moved out on \_\_\_\_\_ [date]. You sent me an accounting for damages that you claim were caused during my tenancy. ORS 90.300(7)(a)(B) states that a landlord may not charge tenants for damage caused by ordinary wear and tear. The following items listed on your accounting constitute ordinary wear and tear:

[List items and amounts you were charged]

The following items listed on your accounting were left in the same condition at move out as when I moved in:

[List items and amounts you were charged]

Because these items were damaged in the ordinary course of wear and tear during the \_\_\_\_ [number of years] years of my tenancy, or because these repairs are not my responsibility, Oregon law does not permit you to charge me for them. In addition, because I was a tenant for many years, it is unlawful to charge me the full replacement cost of any items. Finally, some of the damage you have claimed is the result of your own failure to make repairs to the rental. (See attached documents.)

Please remove the disputed charges from my accounting and refund the wrongfully retained deposit to me within 10 days.

Sincerely,

\_\_\_\_\_  
[Tenant name]

\_\_\_\_\_  
\_\_\_\_\_  
[Tenant address]

If you would like to talk to an attorney about your rights, you can find contact information for a legal aid office near you at <https://oregonlawhelp.org/find-legal-help>.

Please keep in mind that many legal aid offices do not work on security deposit cases. Below is a list of private attorneys who represent tenants. You can also contact the Oregon State Bar for an attorney referral.

#### LIST OF ATTORNEYS WHO REPRESENT RENTERS

Jane L. Moisan  
971.258.1292  
[PeoplesLawProject@gmail.com](mailto:PeoplesLawProject@gmail.com)

Megan Van Kent  
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