

Application Fees and Deposits

IMPORTANT: This is an excerpt from the 2016 *Landlord-Tenant Law in Oregon* booklet, available on <http://www.OregonLawHelp.org>. It is for general educational use only. It is not a substitute for the advice of an attorney. If you have a specific legal question, you should contact an attorney. The information included here is accurate as of March 2016. Please remember that the law is always changing through the actions of the courts, the legislature, and agencies.

TIME LIMIT WARNING

Under state and federal laws there are time limits for taking action to enforce your rights. Most lawsuits related to the rental agreement and the Oregon Residential Landlord and Tenant Act must be filed (started in court) within one year of the incident. There may be other — shorter — time limits that apply in other cases. Ask a lawyer about the time limits that could apply in your situation.

1. What is the difference between a fee and a security deposit?

A “fee” is a non-refundable payment. To be enforceable, a fee must be described in a written rental agreement. A landlord may only charge you a fee in the following instances: if you are late on your rent (see the resource ‘Rent and Late Fees’ on www.OregonLawHelp.org); if you bounce a check to the landlord; if you tamper with your smoke detectors; if you violate pet rules; if you break your lease early; if you are late paying for a utility (see the resource ‘Utility Fees’ on www.OregonLawHelp.org); if you fail to clean up after your pet; if you smoke in clearly designated non-smoking areas; or if you violate parking or driving rules. All other fees are illegal. ORS 90.302. A tenant can be charged a late fee each month that the rent is paid late. ORS 90.100(16).

A “Security deposit” is any refundable payment that encourages the tenant to live up to the rental agreement. ORS 90.100(41). If the tenant follows rules stated in the rental agreement and does not damage the rental unit beyond ordinary wear and tear, then the landlord must refund the security deposit within 31 days after you move out and return the keys. ORS 90.300. See the questions below for more information about security deposits.

2. When I find a place that I want to rent, can the landlord make me pay in order to apply?

You cannot be charged a fee just to have your name placed on a waiting list, but you can be charged other costs associated with applying to housing. These costs include an applicant screening charge and a deposit to hold.

An applicant screening charge is a payment that covers the costs of screening tenants, such as reference checks and credit reports. These charges can be collected only if there is a unit for rent (or that will be soon), unless you agree otherwise in writing. The landlord must give you a receipt for the payment. You must be given a written notice before you pay an applicant screening charge of:

- 1) the amount of the charge;
- 2) the factors the landlord will consider in deciding on your application (the screening or admission criteria);
- 3) the process the landlord will use in screening, including whether the landlord uses a tenant screening company; and

- 4) that you have the right to send a statement to any screening company or credit reporting agency used by the landlord if you think the information the landlord gets is wrong.

Before accepting the applicant screening charge, the landlord must also give you an estimate of the number of other applicants who are ahead of you in applying for the unit or units of the size you want. This information can help you decide whether it's worth applying.

If the landlord charges you an applicant screening charge and you are denied, or if you did not pay an applicant screening charge but request in writing the reason for denial, the landlord must promptly provide you with one or more reasons for your denial in writing. ORS 90.304. If a landlord does not rent to you because of any information the landlord gets from a tenant screening service or credit reporting agency, the landlord must tell you this. The landlord must also tell you the name and address of the screening service or reporting agency. These rules apply even if you did not pay an applicant screening charge.

If the landlord doesn't do the screening after you've paid an applicant screening charge (because, for example, the unit is rented to someone else first), you must be refunded the money within a reasonable time.

If the landlord makes you pay an applicant screening charge without following these rules, you can sue the landlord for the amount of the applicant screening charge plus \$150. ORS 90.295. See the resource 'Can Small Claims Court Help Tenants?' on www.OregonLawHelp.org for information about small claims court. See the Time Limit Warning at the beginning of this section.

A deposit to hold the unit is a fee paid before you enter into a rental agreement so that the landlord will hold the rental unit and not rent it to others. There must be a written agreement that describes when the deposit must be refunded to the tenant and when it can be kept by the landlord.

If you and the landlord enter into the rental agreement, the landlord must give back the deposit — either by giving you a refund or by crediting your account. If you don't take the necessary steps to enter into the rental agreement, the landlord can keep the deposit. If the landlord doesn't take the necessary steps to enter into the rental agreement, the deposit must be refunded within 4 days. If the landlord charges a deposit without following these rules, you can sue the landlord for the amount of the deposit plus \$150. ORS 90.297. See the resource 'Can Small Claims Court Help Tenants?' on www.OregonLawHelp.org for more information about small claims court. See the Time Limit Warning at the beginning of this section.

3. When I rent a place, can a landlord make me pay a deposit?

Yes. A landlord can make you pay a security deposit. (But if you rent week-to-week, you cannot be charged this deposit (ORS 90.100(52)). When you pay the deposit, ask for a receipt that shows you paid a "security deposit." You can try to work out the amount of the deposit with the landlord. Some landlords will let you make several payments on the deposit instead of paying it all at once.

Once you have moved in, the landlord cannot, without your agreement, charge a new deposit or increase the deposit you have already paid for the first year you live there. After the first year, a landlord can charge or increase the deposit but must give you at least 3 months to pay it. ORS 90.300(5).

If you paid a deposit, the landlord must return the deposit within 31 days of when you move out and return the keys as long as you haven't damaged the place beyond ordinary wear and tear and have given the landlord the required notice, paid the rent, returned the keys, and followed other rules in

your rental agreement. ORS 90.300(7). The one exception is that a landlord may deduct the cost of professional carpet cleaning from your deposit if the carpet was professionally cleaned or replaced before you moved in and your written rental agreement says that the landlord may deduct the cost of carpet cleaning for your security deposit. A landlord is not required to repair the damage to the unit after you move out in order to deduct the cost of the repair from your deposit.

When you first rent a place, the landlord may also require you to pay rent in advance, sometimes called a “last month’s rent deposit.” ORS 90.100(26). See the resource ‘When the Tenant Moves Out’ on www.OregonLawHelp.org for more information.

4. Can I get interest payments on a security deposit?

Oregon law does not require landlords to pay interest, but you may ask if your landlord will agree to do this.

5. What if my landlord does not return my security deposit?

Within 31 days after you move out and return your keys, the landlord must either return your deposit or tell you in writing why all or some of it is not being refunded. If the landlord does not return the right amount of money or does not give you a written explanation, you may sue, asking for twice the amount wrongfully withheld. ORS 90.300(16). If the landlord kept all of your deposit and claims that you owe additional money, you should be ready to defend yourself against a possible counterclaim by the landlord for property damages. See the resource ‘Can Small Claims Court Help Tenants?’ on www.OregonLawHelp.org for more information about small claims court and the Time Limit Warning at the beginning of this section.

If the landlord refunds only part of the deposit, you can cash the check and still sue the landlord if you think you are owed more money. If the landlord has written “full settlement” or “accord and satisfaction” on the back of the check, you should see a lawyer before you cash the check.

See the resource ‘When the Tenant Moves Out’ on www.OregonLawHelp.org for more information on what to do to improve your chances of getting your deposit back when you move out. Also see Sample Letter 7 in the resource ‘Sample Letters to the Landlord’ on www.OregonLawHelp.org.

6. What happens if the place I am renting gets a new landlord?

If a landlord sells a building that you rent, both you and the new landlord must follow the terms of the original rental agreement. The new landlord must return any deposits when you move, even if the new landlord did not get the deposit money from the old landlord. The new landlord must also make repairs and follow the rules set out in this booklet *Landlord-Tenant Law in Oregon*.