

How to Properly Accept and Maintain a Security Deposit from a Residential Tenant

By Nelson Luz Santos, Esq.

Being a residential landlord in Massachusetts is not easy. There are many pitfalls for the inexperienced and even most experienced landlords. The problem that causes issues for most landlords, which typically comes up when they are trying to evict a tenant for nonpayment of rent or other lease breach, is G.L. c. 186, § 15B, which sets out the Massachusetts Security Deposit Law (hereinafter “the Security Deposit Law”).

The Security Deposit Law governs what monies a landlord may accept at the inception of the tenancy, which sounds simple. But when applying it in practice, most landlords fall short of doing it correctly. The consequence of not knowing the Security Deposit Law can cost most landlords more than it helps. “The legislative history of G.L. c. 186, § 15B, conclusively shows that the Legislature intends any violation of G.L. c. 186, §§ 15B(6)(a), (d), and (e), to result in the imposition of treble damages.” *Mellor v. Berman*, 390 Mass. 275, 283 (1983). Therefore, even for the most minor mistake by the landlord, mishandling the security deposit may automatically result in penalties, including potentially an award of three times the amount of the security deposit plus attorney’s fees and costs incurred by the tenant.

“The Security Deposit Statute is intended to afford protection to both the landlord and the tenant. It protects the landlord by allowing it to charge certain advances of money prior to the commencement of the tenancy; the statute also limits the up-front charges that the landlord legally can collect from the tenant in order to prevent unfair or deceptive charges. *Jinwala v. Bizzaro*, 24 Mass.App.Ct. 1, 7, 505 N.E.2d 904 (1987).” *Hermida v. Archstone*, 826 F. Supp.2d 380, 386 (2011).

In essence, the whole purpose of collecting a security deposit is to have a mechanism for landlords to have funds to make repairs for unreasonable damages, not normal wear and tear, caused by tenants when they leave or vacate. The security deposit can also be used to reimburse the

landlord for unpaid rent at the end of a tenancy. Therefore, the Security Deposit Law’s purpose is to help the landlord and protect the tenant, but in so many cases, due to the landlord’s mistakes, it becomes a vessel for tenants to get big rewards.

WHAT MONIES CAN A RESIDENTIAL LANDLORD ACCEPT FROM A TENANT AT THE START OF THE TENANCY?

Under the Security Deposit Law at the start of the tenancy, a landlord can only request and accept the following: (1) first month’s rent, (2) last month’s rent, (3) a security deposit, and (4) the cost of a new lock. See G.L. c. 186, § 15B(1)(b)(i)-(iv).

Sounds simple, but it is not. The value of each of the first month’s rent, last month’s rent, and the security deposit must equal only the value of the first month’s rent, and the cost of a new lock must be reasonable.

The only exception to the above is that a landlord may require a tenant to pay a broker’s fee if a licensed broker was used in the transaction. However, a licensed broker means just that. A landlord cannot accept a broker fee if there is no broker working on the deal or if the person assisting the landlord is not a licensed broker.

In my own practice in representing landlords, from those who own one rental property to those who own apartment complexes of 300 units, most landlords fail to properly follow the procedure set forth in the Security Deposit Law when accepting, depositing, and maintaining the money for the security deposit.

HOW TO PROPERLY ACCEPT A SECURITY DEPOSIT FROM A TENANT

By breaking down the Security Deposit Law in a checklist format, the landlord can use it for its actual purpose and benefit, rather than failing to comply with the Security Deposit Law and having tenants use it as windfall for money damages.

STEP 1: When the landlord accepts the value of one month's rent (and no more!) as security deposit, the landlord MUST:

- Give the tenant a "receipt" signed by him or her, which must state
 - the amount of the deposit and what it is for;
 - the name of the person receiving it (if an agent receives, then also the name of the landlord or owner);
 - the date on which it was received; and
 - a description of the premises.

Once the landlord has accepted the money, it must be properly handled and deposited. Again, beware: you cannot just deposit a security deposit into any old bank account you may have. See G.L. c. 186, § 15B(2)(b).

STEP 2: The landlord must hold the security deposit in an account that is

- separate,
- interest-bearing,
- located in a bank in the Commonwealth of Massachusetts,
- not subject to claims by the landlord's creditors, and
- transferable to a subsequent owner.

See G.L. c. 186, § 15B(3)(a).

STEP 3: WITHIN 30 DAYS from accepting the security deposit, the landlord must give the tenant a receipt, typically referred to as the "Rent and Security Deposit Receipt," provided in conjunction with the written tenancy agreement, which includes

- the name and address of the bank where the money is located, and
- the amount held and account number.

Even if the landlord has done everything up to this point correctly, the Landlord is not in full compliance with the Security Deposit Law. Stopping at this point would subject the landlord to a requirement to return the security deposit, multiple damages, and costs and attorney's fees for violating the Security Deposit Law. See G.L. c. 186, § 15B(3)(a).

STEP 4: At either the time of receiving the money for the security deposit or within ten days after the tenancy begins, the landlord must give the tenant a "Statement of Conditions Form," signed by the landlord, which must contain

- a list of all damage then existing, and

- the following statement in twelve-point boldface type at the top of the first page:

"This is a statement of the condition of the premises you have leased or rented. You should read it carefully in order to see if it is correct. If it is correct you must sign it. This will show that you agree that the list is correct and complete. If it is not correct, you must attach a separate signed list of any damage which you believe exists in the premises. This statement must be returned to the lessor or his agent within fifteen days after you receive this list or within fifteen days after you move in, whichever is later. If you do not return this list, within the specified time period, a court may later view your failure to return the list as your agreement that the list is complete and correct in any suit which you may bring to recover the security deposit."

The wording above comes directly from the Security Deposit Law. So essentially, it is as easy as copy and paste. See G.L. c. 186, § 15B(2)(c).

STEP 5: Within fifteen days from the tenant moving in, the tenant must return a copy of the "Statement of Conditions Form" and any separate list of damages he or she has found, and then the Landlord has fifteen days to provide a signed agreement or disagreement with the list. See G.L. c. 186, § 15B(2)(c).

Now, getting to this point only gets the landlord a gold star for properly accepting and depositing the security deposit. The landlord must then properly monitor the security deposit for the remainder of the tenancy.

WHAT HAPPENS AT THE END OF ONE YEAR FROM ACCEPTANCE OF A SECURITY DEPOSIT?

If the deposit is held for more than one year, the landlord must pay the tenant interest on the deposit at either 5 percent or the same rate as that paid by the bank, if it is less than 5 percent, together with a receipt indicating the same. See G.L. c. 186, § 15B(3)(b).

WHAT IF THE TENANT IS A LONG-TERM TENANT? DOES THE LANDLORD NEED TO PAY INTEREST EVERY YEAR ON THE SECURITY DEPOSIT?

Yes. The interest is payable each year on the anniversary date of the tenancy.

The preceding is only a review of accepting, depositing, and maintaining a security deposit. The Security Deposit Law also has specific procedures and requirements for returning the security deposit at the end of the tenancy, and the rules

and procedures of accepting, maintaining, and returning a last month's rent that may also be collected at the inception of the tenancy. Reading G.L. c. 186, § 15B and getting qualified help from professionals is key for any landlord who does not want to suffer from the harsh consequences of the Security Deposit Law for failure to comply. Having a reputable broker, property manager, and attorney who can advise you on how to properly lease your residential property is necessary to be successful as a landlord.

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www.fletcherilton.com



Nelson Luz Santos

P: 508.532.3525

F: 508.532.3125

E: nsantos@fletcherilton.com

Fletcher Tilton^{PC}
Attorneys at law

THE GUARANTY BUILDING

370 Main Street, 12th Floor
Worcester, MA 01608
TEL 508.459.8000 FAX 508.459.8300

THE MEADOWS

161 Worcester Road, Suite 501
Framingham, MA 01701
TEL 508.532.3500 FAX 508.532.3100

CAPE COD

1579 Falmouth Road, Suite 3
Centerville, MA 02632
TEL 508.815.2500 FAX 508.459.8300

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