

Part Two: Returning the Security Deposit

Residential Security Deposit Law Tips for the Developer Who Self-Manages Residential Apartments

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In my previous article, I outlined the potential pitfalls in accepting and holding a security deposit from a residential tenant in Massachusetts. As an owner/landlord, your goal is to maximize your return on investment. The failure to comply with the specific technical requirements of the security deposit law will ultimately eat into your bottom line. The main intent of the Security Deposit Law *G.L. c. 186, § 15B* (hereinafter “the Security Deposit Law”) is to protect tenants *and* landlords. It allows landlords to have funds available to repair unreasonable wear and tear caused by tenants, and it limits the landlord’s ability to collect excessive or unreasonable fees from tenants at the inception of the tenancy. As outlined previously, collecting and maintaining a security deposit is driven by procedures and rules-driven. So is the process of returning a security deposit. This article focuses the process of returning a security deposit properly.

The general rule of thumb is that a landlord must, within thirty days after the tenant moves out at the end of the tenancy, return the tenant’s security deposit with all interest accrued, less deductions for unreasonable wear and tear and unpaid rent.

1. DEADLINE TO RETURN SECURITY DEPOSIT:

- a. Landlords must return the security deposit within thirty days after the termination of occupancy under a tenancy-at-will or the end of the tenancy agreement in full or return to the tenant the security deposit less proper deductions. See *G.L. c. 186, § 15B(4)(i-iii)*.

2. WHAT YOU MAY PROPERLY DEDUCT FROM THE SECURITY DEPOSIT:

- a. According to *G.L. c. 186, § 15B(4)(i-iii)*, the landlord may be able to deduct the following items from the security deposit:
 - i. Unpaid rent or water charges,
 - ii. An unpaid increase in real estate taxes which the tenant is obligated to pay (requires a tax escalation clause that conforms to the requirements of section 15 C), and
 - iii. A reasonable amount necessary to repair any damage caused to the dwelling unit by the tenant or any person under the tenant’s control or on the premises with the tenant’s consent, reasonable wear and tear excluded.

- b. NOTE: Reasonable wear and tear is not necessarily easy to define and the statute does not provide examples. Generally, gaping holes in walls, gouged floors, broken trim/paneling or doors, and clogged kitchen drains due to improper use are *not* considered reasonable wear and tear. But scuffed entryway floors/carpet, faded paint, dirty window shades, and pinholes from picture frames *are* normal wear and tear. It is important for landlords to itemize and take photos of the premises before and after tenant occupancy for comparison. It is helpful to be armed with the facts.

3. HOW TO DEDUCT PROPERLY FROM THE SECURITY DEPOSIT:

- a. *G.L. c. 186, § 15B(4)(i-iii)* provides additional strict guidelines on what procedure must be used in returning the security deposit:
 - i. Regardless of deductions, the landlord has thirty days from the date the tenant vacates to provide an itemized list of damages.
 - ii. This itemized list must be sworn to under the pains and penalties of perjury. Many landlords forget this step, possibly subjecting themselves to damages even when everything else has been done correctly.
 - iii. Itemization must be explicit in stating the damage and repairs necessary. This requires evidence such as estimates, bills, invoices, and receipts indicating the estimated cost or paid cost of repairs. It is also best practice to have evidence of the cost to repair come from a third-party licensed professional such as a contractor not related to the landlord.

This may seem relatively simple, but a landlord who fails to comply with the law is subject to treble damages under *G.L. c. 93A. Goes v. Feldman 8 Mass. App. Ct. 84, 391 N.E.2d 943 (1979)*. Also see *940 C.M.R. § 3.17(4)*. Therefore, when your building enters the property management rental stage, make sure you comply with the Security Deposit Law and consult with counsel who can help you through this process for your continued success.



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