

Treating the tenant's troubles

Preventing ripped-off cleaning deposit blues

Every year landlords make thousands of dollars by confiscating tenants' security and damage deposits. Deposit abuses represent one of the most frequent student tenant complaints.

In the past, landlords have unlawfully held deposits secure in the knowledge students would do nothing about it.

The landlord has a legal obligation to return your deposit. If he refuses to respond to your inquiries or does not refund to your satisfaction, you can sue him in court. You should demand your right to the return of your deposit when you deal with your landlord.

BEFORE YOU MOVE OUT

There are only three things the landlord should deduct from your deposit: (1) unpaid rent, (2) cleaning to restore the unit to its original condition, and (3) damage beyond normal wear and tear.

Before you leave, be sure your rent is fully paid. Clean the unit thoroughly. You should leave the unit as clean as you found it. If the landlord disagrees, ask specifically what cleaning he expects. If you fulfill his requirements, he should not retain any of the deposit for cleaning.

Here is a list of cleaning requirements from one lease that may be a useful guide:

- (1) The kitchen shall be cleaned completely, including the entire oven and outside parts of the kitchen range, the inside and outside of the kitchen cabinets, and the counter, sink and other areas.
- (2) Bathroom walls, fixtures, floor and especially all tile area shall be thoroughly cleaned.
- (3) Floors shall be thoroughly cleaned and carpets vacuumed.

- (4) Walls shall be left clean.
- (5) Walls and floors of closets shall be scrubbed.
- (6) Furniture shall be left clean.
- (7) Drapery rods shall be dusted on the top edges.

In addition to restorative cleaning, the landlord can deduct for damage beyond normal wear and tear. Sometimes it is hard to define normal wear and tear. A broken lamp, cigarette burns or a hole in the wall are probably beyond normal wear and tear and you should pay for them if they were your fault. But if something is already wearing out and finally falls apart or if the unit has not been painted in a long time, those costs should be borne by the landlord. You have already paid rent to cover ordinary maintenance.

If the landlord does regular cleaning in every vacant apartment, those costs should be an ordinary operating expense and paid for from your rent, not the deposit.

MAKE AN ITEMIZED LIST AND SUBMIT IT TO YOUR LANDLORD

Inspect with your landlord before you leave and draw up a list of damages and necessary cleaning. Off-Campus Housing has special inspection forms designed to assure you do a complete job and check everything.

If your landlord is not available, inspect and make up your own list. Find a witness to help, and submit a copy to the landlord far enough in advance so he can check before you move. You may find it helpful to write a letter like this:

Dear _____,
When I moved in I deposited \$ _____

Date _____

to cover (1) cleaning necessary to restore my unit to its initial condition, (2) damages caused by me beyond normal wear and tear and, (3) unpaid rent.

Recently I inspected for damage and cleanliness. Before I leave I intend to do the following cleaning: _____. When I inspected I found the following damage beyond normal wear and tear for which I am responsible: _____.

I have included with this letter a copy of my inspection. If you believe it is incorrect, please feel free to inspect my unit. If you find any additional damage or necessary cleaning, I would like an itemized list, so we can settle any difference well before I leave.

Please return the balance of my deposit and an itemized statement explaining any deductions to me within thirty days of the time I move out. I plan to leave _____. You should forward the refund and statement to: _____

Yours truly,

By inspecting and making up an itemized list of damages and cleaning you can usually avoid later disagreements over the extent of damages and necessary cleaning. If you had a witness and gave the landlord a chance to double check, your inspection lists will be good evidence if you eventually have to take legal action.

AFTER YOU LEAVE

Keep writing your landlord. If you said you expected your refund within thirty days, you should act soon after those thirty days have passed.

Many landlords are slow: your deposit resembles an interest free loan and many are anxious to keep it as long as possible.

You should write regularly until you receive a proper refund and adequate explanation of any deductions. Demand an itemized listing justifying any deductions. Keep copies of all correspondence.

TAKE YOUR LANDLORD TO SMALL CLAIMS COURT, IF NECESSARY

One reason landlords have been able to continually confiscate deposits is that they know students will do nothing about it. If the landlord refuses to refund what you believe is rightfully yours, you should consider suing him in Small Claims Court.

Many landlords will not take you seriously until they believe you intend to take legal action. Some will not respond until the sheriff serves them with your court papers. A Small Claims action may be a very important "persuader" with your landlord. Small Claims judges see a lot of deposit problems and many will be sympathetic.

ASUO Legal Services (318 EMU; 686-4281) can help you file and prepare for the hearing. Take all your letters and lists with you, as well as your rental agreement and a receipt for the deposit, if you have them.

Attorneys are not allowed in Small Claims. It should cost you less than six dollars and you may be able to recover that if you win. Unless the landlord also sues you and wins, that should be your only expense.

You can sue up to \$500 in Small Claims. But the defendant may ask for a jury trial if your claim is over \$20. In that case you will both need attorneys. Usually landlords will avoid the cost of an attorney and should prefer to settle in Small Claims. The decision of the Small Claims Judge is final.

Housing problems

Providing answers to renter's questions

(Editor's note: Housing Problems is written by students at the University of Oregon working through the Off-Campus Housing Office. The information in this column is intended to be educational only. It is not legal advice and should not be relied on in answering a specific legal question or problem. A slight modification of the facts may require a radically different answer. To resolve a specific problem contact an attorney or Legal Aid. There is no substitute for individual legal advice.)

If I sue my landlord, can he force me to pay his attorney fees?

Many lease and rental agreements contain clauses that appear to require the tenant to pay the landlord's attorney fees. Oregon laws say that any agreement that provides for attorney fees for one party must be read as also providing the same rights for the other. That means you might have to pay your landlord's lawyer if you lose, but not if you win.

In effect the law rewrites any agreement that requires you to pay the landlord's lawyer. Unfortunately the law still allows the same old, unenforceable provisions to be written into any rental agreement and that creates confusion. Few tenants know the clause is unenforceable; they may be frightened by the possibility of having to pay the landlord's lawyer even if they win.

If you think you have a valid reason to sue your landlord, don't be frightened into believing you will be forced to pay his fees regardless of who wins. This is one case where what you see is not what you get.

My landlord told me he does not return deposits to students unless they stay for six months. I plan to move sooner and his rule seems unfair. Is there anything I can do?

A rule or clause in your rental agreement saying you forfeit all your deposit if you do not stay a certain time may be unfair and legally unenforceable. To determine if the provision is enforceable you have to go back to the time you



signed the agreement. If at that time the amount of money you agreed to forfeit was about the same as what the landlord could reasonably expect to lose if you left early, then it is all right and you will have to pay it.

Sometimes forfeitures have no relation to the landlord's losses. If the landlord spends only a few dollars on a newspaper ad, a fifty dollar forfeiture is probably unfair and unenforceable.

Penalty and forfeiture provisions are usually fair if they are related to the losses the landlord suffers. But if the penalty is designed to prevent you from moving and has nothing to do with any losses of the landlord, you should get it back.

If your rental agreement contains a forfeiture provision and the landlord threatens to enforce it, tell him he should only take the amount of money he needs to find a new tenant. If he refuses to return your deposit you will probably have to see an attorney or sue in Small Claims Court.

The landlady often demands to enter my apartment and fails to give me any notice. She comes in at any time she wishes, even when I am not at home. I had to sign a lease that allows her to inspect at any time.

Leases frequently have a provision like the one yours has. Landlords often want to inspect or show the unit to prospective tenants. Most landlords will be considerate and give you some notice and not come in when you are not there.

Although it may be used to unfairly harass you, the lease probably gives your landlord almost unlimited rights to enter and inspect. Unless the lease is poorly written or the landlord outrageously abuses it, you will not be able to sue him for trespass. Most leases are specifically drawn to protect the landlord from a trespass suit.

Even though the landlord may not be trespassing, he may be violating your rights to privacy. Under the Constitution of the United States the courts have said you have a right to privacy. In your home that right is the strongest. If the landlord has been harassing you, or his inspections are at unreasonable hours, your right to privacy may have been violated. You may be able to sue for invasion of privacy.

If the landlord continues to be unreasonable, even after you explain how you feel your privacy is being violated, you should see an attorney.