

“A Landlord Can Keep Your Security Deposit if...”

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Security Deposits in Rental Agreements

Introduction

The topic of security deposits is typically one of the most heavily contested when dealing with rental agreements. As a result, it is important that every tenant understand their security deposit rights under the Arizona Residential Landlord and Tenant Act (ARLTA).

Refundable v. Nonrefundable Security Deposits

A security deposit is generally the amount of money charged by the landlord prior to a tenant moving into the property. The purpose for a security deposit is to provide the landlord with money that they can use to repair the property in the event the tenant causes damage to the property.

The two (2) types of security deposits generally include refundable security deposits and non-refundable security deposits. A *refundable* security deposit is a deposit that is given to the landlord by the tenant at the beginning of the lease term and at the expiration of the lease term the tenant may be entitled to a portion of the deposit based on the terms of the lease agreement and the Arizona Residential Landlord and Tenant Act. A *non-refundable* deposit is a deposit that, once paid by the tenant to the landlord, will not be returned to the tenant.

Arizona law requires that any fee or deposit not designated as non-refundable shall be refundable. Therefore, all tenants should review their lease agreement to determine which fees the landlord has designated as refundable or non-refundable to make sure that the landlord is not keeping a portion of the tenant's deposit that the landlord is not entitled to retain.

Maximum Security Deposit

A landlord cannot demand a security deposit, including but not limited to prepaid rent, if the amount of the security deposit exceeds more than one and one-half (1½) month's rent, unless the tenant voluntarily agrees to pay in advance the amount.

Landlord's Duty to Return the Security Deposit

Upon termination of the rental period, the landlord must provide the tenant with an itemized list of all deductions, including the monies due and payable to tenant (if any) within fourteen (14) days excluding Saturdays, Sundays or other legal holidays so long as:

- 1) The rental period has been terminated;
- 2) The tenant is no longer in possession of the dwelling unit; and
- 3) The tenant has made a demand on the landlord for such information.

Absent an agreement between the landlord and tenant in writing, the landlord must mail an itemized list and any monies owed by first class mail to the tenant's last known place of residence.

TENANTS: - If your address has changed, notify the landlord of your new address to help ensure you receive your security deposit refund.

Tenant's Rights Regarding a Non-Refunded Security Deposit

If the landlord fails to timely provide the tenant with an itemized list of all deductions and amounts owed to tenant (if any), the tenant may recover any property or monies owed to them in addition to money damages in an amount equal to twice the amount wrongfully withheld by the landlord. Tenants who believe their landlord has failed to properly return their security deposit should seek legal assistance to determine if in fact their landlord is in violation of their duties.

Proper v. Improper Use of a Security Deposit

During the term of the lease, the landlord has the right to use the tenant's refundable security deposit or other refundable deposits in accordance with the terms of their rental agreement. However, at the end of the rental period, all refundable deposits shall be refunded to the tenant in accordance with Arizona law.

About the Author

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Scott F. Burns, Esq. is an Arizona attorney whose clientele include professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning and business consulting.

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