

Security Deposits and Refunds

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How does it feel if you do it wrong?

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Today's Roadmap

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- Before - What to do before you sign a lease.
- During - What to do while your lease is in place.
- After - Handling deposit charges and refunds.
 - ▣ Timelines and Deadlines.
 - ▣ Five Golden Rules to Avoid Deposit Disputes.
 - ▣ What in the World is Reasonable Wear & Tear?
- Final Test!

But first...



**What does every tenant ask
when they move out?**

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Utah's Security Deposit Laws

(Utah Code Ann. § 57-17-1 to 5)

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Search "Utah Code Ann 57-17-1"

- § 1 - Return or explanation of retainage upon termination of tenancy.
- § 2 - Non-refundable deposit - Written notice required.
- § 3 - Deductions from deposit - Written itemization - Time for return.
- § 4 - Holder of owner's or designated agent's interest bound by provisions.
- § 5 - Failure to return deposit or prepaid rent or to give required notice - Recovery of deposit, penalty, costs, and attorney fees.

Before you Sign a Lease

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- DO NOT give keys or possession before payment.
- First Payment – Consider Certified Funds.
- Amount of Deposit?
 - Industry Standard = 1 Month of Rent.
 - Could be higher (if riskier applicant, etc.).
 - Comply with Fair Housing Laws.
- Non-Refundable deposits MUST be in writing.
- Should I get "Last Month's Rent"?
 - Additional Security Deposit > Last Month's Rent.



During Your Lease

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- How do you use deposits? Follow your lease!
- Do NOT apply to monthly rent (serve a pay or quit).
- What if you use the deposit for damage or repairs?
 - Use the deposit to pay for expenses (keep all receipts),
 - Notify tenant (in writing) that the deposit needs to be replenished,
 - Replenish the deposit, normally with next rent payment (check lease),
 - Application of Payments – Usually refills deposit, fees, lastly to rent, &
 - Default – If they don't pay, serve a pay or quit notice.
- Anytime you have a question...

CHECK YOUR LEASE!

After Your Lease

Five **Golden Rules** to Avoid Disputes

8 **#5 – Follow Your Lease**

- How is the deposit used, applied, and replenished?
- Lease = Ledger (If it's not in the lease, leave it off the ledger).

#4 – Papers > Opinions (more later)

- Document move-in & move-out condition (checklists work).
- Pictures, Pictures, and more Pictures.

#3 – Apply Deposit (NEVER just keep it)

- Courts do not like forfeitures (viewed as disappearing money).

#2 – Pre-Move Out Inspections

- Know they're moving? Meet with them in the property BEFORE they move.
- Review items of concern and create a preliminary checklist.

#1 – Be Reasonable (“Give ‘Em a Break!”)

- If it's in the grey area, don't charge it.
- Is it really worth it? Small claims takes time, effort and money.



After Your Lease - Timelines

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Day	Timeline for Deposits and Notices
0	Tenants “vacate and return possession” to Owner.
30	Owner either (1) returns deposit or (2) provides Deposit Disposition Statement.
31	If Owner doesn't comply – Tenants may give 5 day notice (Notice to Provide Deposit Disposition).
36	Owner must provide Deposit Disposition Statement.
37	Tenants can sue for: <ul style="list-style-type: none">Return of FULL deposit,Civil penalty of \$100, andAttorney fees & costs (if Owner acted in “bad faith”).
These are the MINIMUM timeframes showing the FASTEST this could happen.	



Failure to Comply – 5 Day Notice

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- A “Tenant’s Notice to Provide Deposit Disposition” must include:
 - Names** of landlord and tenant,
 - The **day the tenant vacated** the property,
 - Statement that **the owner has failed to comply**,
 - The **forwarding address** where the deposit statement/refund should be sent, and
 - Must be “**substantially in the following form**” Utah Code Ann. §57-17-3(3)(b)

TENANT’S NOTICE TO PROVIDE DEPOSIT DISPOSITION

TO: _____
(Owner or Community Name)

RE: _____
(Leased Address)

NOTICE IS HEREBY GIVEN THAT WITHIN FIVE (5) CALENDAR DAYS pursuant to Utah Code sections 57-17-3 et seq. the Owner or its agent must provide to the Tenant at the address below a refund

- MUST be served (1) same as eviction notices (Personal, Substitute, Posted or Certified Mail), or (2) according to the lease.

Handling Deposit Refunds

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- **What is required?**
 - “A written notice that itemizes and explains the reason for each deduction.”
 - Use a Deposit Disposition Statement (from www.utahevacationlaw.com or RHA).
 - What about receipts? Not required, but may avoid an escalation or lawsuit.
- **Where is it sent?**
 - The last known address. What if no forwarding address? Send it anyway.
- **What can be deducted from the deposit?**
 - Rent,
 - Cleaning,
 - Damages beyond reasonable wear and tear,
 - Non-refundable portion of deposit (ONLY IF in writing), and
 - “Other costs and fees provided for in the contract”.
- **Pop Quiz – What is the most common dispute from tenants?**



Paper v. Opinion

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Focus on the EVIDENCE the Judge will use to decide...

Paper

- What I say to the Judge: “It really doesn’t matter what the T is saying, these pictures and papers prove our case.”
- Don’t require opinions or major testimony to prove our case.

Opinion

- What I say to the Judge: “I hope you believe my client more than the T.”
- We must rely on witnesses for opinions.
 - Judge to LL – “I hear what you’re saying. I just don’t believe you.”

Good LLs can turn an Opinion Case into a Paper Case

- | | |
|--------------------------|-----------------------------------|
| • Before pictures | • Invoices, receipts, & estimates |
| • After pictures | • Witness statements |
| • Move-in/Out Statements | • Pics, pics, & more pics |

What is “Reasonable Wear & Tear?”

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What is “Reasonable Wear & Tear?”

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Reasonable Wear & Tear:

- ▣ Our Definition – Damage based on ordinary use and exposure over time resulting from the expected deterioration that occurs naturally or organically.
 - Main Point – Things wear out!
 - It's tricky and ambiguous... Normal in one situation isn't normal in another.
 - Purpose of rental?
 - Pets? Several young children? Metal Foundry?
- ▣ Who is responsible for the cost?
 - The Owner.



Damage (Waste):

- ▣ Our Definition – Damage that exceeds reasonable wear and tear through negligence, carelessness, accident, misuse or abuse.
- ▣ Who is responsible for the cost?
 - The Tenant.

Wear & Tear v. Damage

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When could each of these be Damage or Wear & Tear?

	Damage (Waste)	Wear & Tear
Broken Window	Baseball hits window	Foundation shifting
Painting Cost	Unapproved paint, crayons, etc.	General fading or peeling
Clogged Toilet	Flushing foreign objects	Tree roots
Replacing Carpet	Stains, burns, excessive wear	General fading or wear
Holes in Walls	Almost always	Almost never (hanging pics?)
Wood Flooring	Gouges & scratches	Scuffs, general fading or wear
Bathtub Refinish	Chips and broken enamel	Worn enamel over time



Calculating Depreciation

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- ▣ When do you split an expense?
 - ▣ Cleaning? Usually charge 100%
 - ▣ Repairs? Usually charge 100%
 - ▣ Replacing? Often need to depreciate
- ▣ The TWO things you need to know?
 - ▣ #1 – How long did it last? And compare that to...
 - ▣ #2 – How long should it have lasted?
 - Industry standard for depreciation – 7 years
 - Could be adjusted based on the item, quality, warranty, etc.
- ▣ How much is reduced?
 - ▣ Charge lost use (if 2 year old carpet - claim 5/7ths of cost).

Frequently Asked Questions?

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- ❑ **Can you do the work in-house or yourself?**
 - ❑ Legally – Sure, but be careful (consider getting 2-3 professional bids).
 - ❑ Professional Invoices = Judge will consider with magnifying glass.
 - ❑ Owner Invoices = Judge will use a microscope.
- ❑ **Owner gives a deposit disposition notice within 30 days, but still gets a Notice to Provide Deposit Disposition?**
 - ❑ Send it again within five days!
 - ❑ Document it via certified mail.
 - ❑ Also consider emailing a copy as a secondary measure (must also mail).
- ❑ **Business or calendar days?**
 - ❑ Landlord's 30 days = Calendar Days.
 - ❑ Tenant's 5 days – Statute says BOTH (be cautious and go with calendar).

Let's Try This Out...

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You signed a one-year lease with Michael Tyson who left in the middle of the night after 3 years. Monthly rent was \$2,000 but you quickly re-rented it and the new tenant paid \$1,800 in pro-rated rent. The deposit was \$2,000, but you have another \$5,000 in repairs (see spreadsheet). You need to finalize Mr. Tyson's deposit because he is threatening to "Punth you in the fathe".

- ❑ What is Wear and Tear? Damage? Split and Depreciated?
 - **Go through Spreadsheet...**
- ❑ What if you can prove that you sent the Deposit Disposition Statement to the last known address within 30 days, but Mr. Tyson gives you a Notice to Provide Deposit Disposition?
 - **You've complied, but mail it again (certified mail this time), PLUS send it via email.**
- ❑ What if Mr. Tyson sends you an email saying he hasn't received his deposit back?
 - **Emails do not comply with the statute as a "Notice to Provide Deposit Disposition" but act as if it does and send it out again within 5 days (certified mail this time).**
- ❑ What should you do if Mr. Tyson isn't happy with his deposit refund and demands more?
 - **Consider a settlement – Even if you win in court you've lost (for having to go to court).**





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Deposit & Depreciation Test

Invoice Amount	Depreciation Calculation	Total Claim	Description
\$ 2,000.00	10%	\$ 200.00	Lost Rent - 30 day notice not given (\$2,000/mo but new T paid \$1,800 in pro-rated rent)
\$ 50.00	100%	\$ 50.00	Invoice - Locksmith (T didn't return keys upon move out)
\$ 150.00	0%	\$ -	Invoice - Plumber (fixing leak under sink that T didn't report)
\$ 250.00	100%	\$ 250.00	Invoice - Plumber (replacing panel in warped cabinet from leak T didn't report)
\$ 250.00	100%	\$ 250.00	Invoice - Carpet Cleaning (last cleaned 2 years ago)
\$ 1,500.00	29%	\$ 428.57	Invoice - Carpet Replacement (cleaner recommended replacement of 5 year old carpet)
\$ 200.00	100%	\$ 200.00	Invoice - Painter - Patching holes in walls
\$ 1,500.00	0%	\$ -	Invoice - Painter - Painting whole house (last painted 12 years ago)
\$ 100.00	100%	\$ 100.00	Invoice - T broke glass door on stove (5 years old, but we expected 10 years)
\$ 700.00	100%	\$ 700.00	Invoice - Replacing 2 windows broken by T (windows were 20 yrs old, 30 yr warranty)
\$ 300.00	100%	\$ 300.00	Invoice - Deep cleaning (T didn't clean well before they moved out)
\$ 7,000.00		\$ 2,478.57	Subtotal
		\$ (2,000.00)	Refundable Security Deposit (Credit)
		\$ 478.57	Total Balance Owed

Chapter 17 – Residential Renters’ Deposits

57-17-1 Return or explanation of retainage upon termination of tenancy.

Owners or designated agents requiring deposits however denominated from renters leasing or renting residential dwelling units shall either return those deposits at the termination of the tenancy or provide the renter with written notice explaining why any deposit refundable under the terms of the lease or rental agreement is being retained.

Enacted by Chapter 74, 1981 General Session

57-17-2 Non-refundable deposit -- Written notice required.

If there is a written agreement and if any part of the deposit is to be made non-refundable, it must be so stated in writing to the renter at the time the deposit is taken by the owner or designated agent.

Enacted by Chapter 74, 1981 General Session

57-17-3 Deductions from deposit -- Written itemization -- Time for return.

(1) Upon termination of a tenancy, the owner or the owner’s agent may apply property or money held as a deposit toward the payment of rent, damages to the premises beyond reasonable wear and tear, other costs and fees provided for in the contract, or cleaning of the unit.

(2) No later than 30 days after the day on which a renter vacates and returns possession of a rental property to the owner or the owner’s agent, the owner or the owner’s agent shall deliver to the renter at the renter’s last known address:

- (a) the balance of any deposit;
- (b) the balance of any prepaid rent; and
- (c) if the owner or the owner’s agent made any deductions from the deposit or prepaid rent, a written notice that itemizes and explains the reason for each deduction.

(3) If an owner or the owner’s agent fails to comply with the requirements described in Subsection (2), the renter may serve the owner or the owner’s agent, in accordance with Subsection (4), a notice that:

- (a) states:
 - (i) the names of the parties to the rental agreement;
 - (ii) the day on which the renter vacated the rental property;
 - (iii) that the owner or the owner’s agent has failed to comply with the requirements described in Subsection (2); and
 - (iv) the address where the owner or the owner’s agent may send the items described in Subsection (2); and
- (b) is substantially in the following form:

TENANT’S NOTICE TO PROVIDE DEPOSIT DISPOSITION

TO: (insert owner or owner’s agent’s name)

RE: (insert address of rental property)

NOTICE IS HEREBY GIVEN THAT WITHIN FIVE (5) CALENDAR DAYS pursuant to Utah Code Sections 57-17-3 et seq., the owner or the owner’s agent must provide the tenant, at the address below, a refund of the balance of any security deposit, the balance of any prepaid rent, and a notice of any deductions from the security deposit or prepaid rent as allowed by law.

NOTICE IS FURTHER GIVEN that the tenant vacated the property on the ____ day of _____, 20__.

NOTICE IS FURTHER GIVEN that failure to comply with this notice will require the owner to refund the entire security deposit, the full amount of any prepaid rent, and a penalty of \$100. If the entire security deposit, the full amount of any prepaid rent, and the penalty of \$100 is not tendered to the tenant, and the tenant is required to initiate litigation to enforce the provisions of the statute, the owner may be liable for the tenant’s court costs and attorney fees.

Tenant’s Name(s): _____
Mailing Address _____ City _____ State _____ Zip _____

This is a legal document. Please read and comply with the document’s terms.

Dated this ____ day of _____, 20__.

Return of Service

On this ___ day of ___, 20__, I swear and attest that I served this notice in compliance with Utah Code Section 57-17-3 by:
____ Delivering a copy to the owner or the owner's agent personally at the address provided in the lease agreement;
____ Leaving a copy with a person of suitable age and discretion at the address provided in the lease agreement because the owner or the owner's agent was absent from the address provided in the lease agreement;
____ Affixing a copy in a conspicuous place at the address provided in the lease agreement because a person of suitable age or discretion could not be found at the address provided in the lease agreement; or
____ Sending a copy through registered or certified mail to the owner or the owner's agent at the address provided in the lease agreement.

The owner's address to which the service was effected is:

Address _____ City _____ State _____ Zip _____, _____ (server's signature)

Self-Authentication Declaration

Pursuant to Utah Code Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, I declare under criminal penalty of the State of Utah that the foregoing is true and correct. Executed this ___ day of ___, 20___. _____ (server's signature)

(4) A notice described in Subsection (3) shall be served:

(a)

- (i) by delivering a copy to the owner or the owner's agent personally at the address provided in the lease agreement;
 - (ii) if the owner or the owner's agent is absent from the address provided in the lease agreement, by leaving a copy with a person of suitable age and discretion at the address provided in the lease agreement; or
 - (iii) if a person of suitable age or discretion cannot be found at the address provided in the lease agreement, by affixing a copy in a conspicuous place at the address provided in the lease agreement; or
- (b) by sending a copy through registered or certified mail to the owner or the owner's agent at the address provided in the lease agreement.

(5) Within five business days after the day on which the notice described in Subsection (3) is served, the owner or the owner's agent shall comply with the requirements described in Subsection (2).

Amended by Chapter 298, 2018 General Session

57-17-4 Holder of owner's or designated agent's interest bound by provisions.

The holder of the owner's or designated agent's interest in the premises at the time of termination of the tenancy shall be bound by the provisions of this act.

Enacted by Chapter 74, 1981 General Session

57-17-5 Failure to return deposit or prepaid rent or to give required notice -- Recovery of deposit, penalty, costs, and attorney fees.

(1) If an owner or the owner's agent fails to comply with the requirements described in Subsection 57-17-3(5), the renter may:

(a) recover from the owner:

- (i) if the owner or the owner's agent failed to timely return the balance of the renter's deposit, the full deposit;
- (ii) if the owner or the owner's agent failed to timely return the balance of the renter's prepaid rent, the full amount of the prepaid rent; and
- (iii) a civil penalty of \$100; and

(b) file an action in district court to enforce compliance with the provisions of this section.

(2) In an action under Subsection (1)(b), the court shall award costs and attorney fees to the prevailing party if the court determines that the opposing party acted in bad faith.

(3) A renter is not entitled to relief under this section if the renter fails to serve a notice in accordance with Subsection 57-17-3(3).

(4) This section does not preclude an owner or a renter from recovering other damages to which the owner or the renter is entitled.

Amended by Chapter 258, 2015 General Session