

Chapter 3

Security Deposits and Last Month's Rent

Legal Tactics: Tenants' Rights in Massachusetts
Eighth Edition, April 2018

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Protect Your Security Deposit

Tenants' Rights in Massachusetts

How Much Can a Landlord Charge

The law says landlords:

- May only charge for the first and last month's rent, a new lock and key, and a security deposit when you first move in.
- May not ask for a security deposit that is more than your 1st month's rent.
- May not charge other fees, like pet fees, cleaning fees, and application fees.

Protect Yourself Before You Move In

- Get a receipt for any money you pay the landlord when you move in. If they do not give you a receipt, use **Rent Receipt (Form 2)**.
- Only pay in cash if the landlord can give you a receipt right away.
- Start a folder and keep receipts and other documents related to your new apartment in a safe place.
- List and photograph anything that is broken or damaged. Date your photos and keep them in your folder.
- If the landlord does not give you a Statement of Conditions, when you move in, send **Statement of Condition (Form 3)** to your landlord with the list of anything broken or damaged.

Subsidized Housing

The amount a landlord can charge for a security deposit depends on the subsidy you have.

If you have a Section 8 voucher under the *Housing Choice Voucher Program* or the *Project-Based Voucher program*, you can be required to pay up to one **total month's rent**. That is, your share of the rent plus the housing agency's share. If one total month's rent is \$1,000/month, a landlord could charge you \$1,000 for a security deposit.

If you have "project-based" Section 8 assistance in privately owned multifamily housing, the best thing to do is to look at the lease. Project-based Section 8 assistance is not a voucher.

If you have a voucher funded by the Massachusetts Rental Voucher Program or the Alternative Housing Voucher Program, a landlord may charge you a security deposit up to one total month's rent.

Your Landlord's Responsibilities

Landlords must:

- Keep your security deposit in a bank account, separate from their own money.
- Give you a receipt within 30 days of receiving your security deposit. The receipt must tell you what bank your security deposit is in.
- Pay you interest on your security deposit and last month's rent once a year. If they



do not, you can subtract that amount from your next month's rent.

Landlords who disobey any part of this law must return all of your security deposit if you ask for it, even if you still live there.

Protect Yourself While You Are Renting

If your landlord does not pay you interest once a year on your security deposit and last month's rent, you can subtract the amount from your next month's rent.

What Can a Security Deposit Be Used For

After you move out, a landlord may only use your security deposit for unpaid rent or to repair damages you or your guests caused. The damage must be more than "reasonable wear and tear." Landlords are not allowed to use the security deposit for routine painting, cleaning or small repairs.

Protect Yourself When You Move Out

Move your things out, clean the apartment, and fix anything you can.

Inspect the apartment with your landlord and make a list of anything your landlord says needs repair. You can also take photos.

Make a copy of the list. Keep one and give one to the landlord.

Return the keys and give the landlord your forwarding address so she can send you the security deposit.

Getting a Security Deposit Back

If you left your apartment in the same condition as you found it, the landlord must return your security deposit balance, with interest, within 30 days after you move out.

If the landlord does not return your security deposit, send her a letter formally asking her to return 100% of your deposit. You can use **Security Deposit Demand Letter for Tenants Moving Out (Form 6)**.

If the landlord still refuses to return your security deposit, you can sue in Small Claims court. She may have to pay you 3 times the deposit. Learn more at: www.mass.gov/courts/selfhelp/small-claims/

New Owners

You should not lose your security deposit or last month's rent, because of a foreclosure, a sale to a new owner or a new management company.

Keep track of who the new owner is.

If the new owner asks you to pay another security deposit or last month's rent – Say, "No!"

A new owner has 45 days to send you a notice about your security deposit and last month's rent. If 45 days pass and you have not heard from the new owner, write your old landlord and ask her to return your money, plus interest.

If the old landlord does not return your money, you can sue her for 3 times the security deposit that you gave her.



MassLegalHelp.org/Security-Deposits

Legal Tactics: Tenants Rights in Massachusetts May 2017

Security Deposits and Last Month's Rent

by Maureen McDonagh

Italicized words are in the Glossary

The Massachusetts security deposit law protects both you and your landlord.

Once you agree to rent a place, your landlord can charge you a security deposit to protect her property from any damage you might cause. She can also charge you last month's rent to protect her if you move out before paying it.

The security deposit law also protects **you** and landlords must follow the law.¹ This chapter explains your rights if your landlord charges you a security deposit, last month's rent or both.

The most important thing you can do to protect yourself is to **get written receipts** from your landlord for the security deposit and last month's rent. **Only give your landlord cash if she gives you a receipt right away.**

How Much Can a Landlord Request

When you first move in, your landlord may only charge you:

- a security deposit,
- 1st month's rent,
- last month's rent, and
- the cost of a new lock and key.²

A security deposit or a last month's rent cannot be more than the amount of your 1st month's rent.

Example:

If the 1st month's rent is \$1,000, a landlord can charge:

\$1,000	security deposit
\$1,000	1st month's rent
\$1,000	last month's rent
+ \$.....	the cost of lock and key
<hr style="border: 0.5px solid black;"/>	
=	Total a landlord can charge

1. Security Deposit

A security deposit and last month's rent are not the same.

A security deposit is money you pay a landlord to protect her in case you damage the apartment. But a security deposit is **your** money. If you do not damage the property, you should get your deposit back when you leave.

Your landlord must keep your security deposit in a bank account in Massachusetts. The account must be separate from the account she keeps her own money in. And every year she must pay you the interest it earns.

2. Last Month's Rent

Last month's rent protects your landlord in advance if you leave and do not pay rent the last month you are there.

Your landlord does not have to keep your last month's rent money in a separate bank account. But she does have to pay you interest on it every year.

If you pay last month's rent in advance, do not expect to get this money back when you move out. It will pay for your last month.

If you do not pay last month's rent in advance, you must pay for your last month of rent even if a landlord holds a security deposit.

2. Illegal Fees

It is against the law for a landlord to charge tenants any other “moving in” fees, like:

- application or holding deposits,
- amenity or community fees,
- up-front pet fees,
- cleaning fees, or
- credit checks or application fees.³

It is also illegal for a **landlord** to charge you a finder's fee. But if a real estate broker – not the landlord – helps you find your rental unit, that person may charge you a “finder's or broker's fee.” A rental agent can charge a finder's fee only if she is a licensed real estate broker. The broker must provide a written notice to prospective tenants with information about the fee and whether or not it is paid if a tenancy is not created.⁴ To find out if a rental agent is a licensed real estate broker, go to the internet at: www.state.ma.us/reg/boards/re/ and click on “Check a License.”

If a landlord tries to charge you an illegal fee:

- You can refuse to pay it.
- You do not have to rent from that landlord. Find a landlord who follows the law.
- If you do rent from that landlord, get a written, itemized receipt for **everything** you pay. Make sure the receipt, includes the extra fees and what they are for. After you move in, subtract the amount you paid in illegal fees from your rent. Write the landlord a letter that says you have subtracted the illegal fees from the rent. Include the itemized receipt.

3. Discrimination

A landlord that charges a fee or security deposit to some groups of people and does not charge the same fee or deposit to others may be breaking the discrimination laws. It is illegal for a landlord to discriminate against groups the law protects, including: single parents, people of color, people on welfare, people with small children, people with disabilities, and people with Section 8 or other rental assistance. If the landlord tries to discriminate against you, see **Chapter 7: Discrimination**.

4. Illegal Lease Clauses

Your landlord cannot take away your rights under the security deposit law by using a written lease that conflicts with the law. “Your landlord can keep your security deposit if you rent the apartment for less than 6 months,” is an example of an **illegal clause**. Your landlord cannot do this.

If your landlord has you sign a lease with a clause that conflicts with the security deposit law, you have the right to get your security deposit back as soon you ask for it. See **Getting Back Your Security Deposit**.⁵

5. Increases in Deposits

If your rent increases after you move in, your landlord may not increase your security deposit. Your security deposit is limited to the amount of your very first month's rent.⁶

But if the rent goes up and you agree to pay the higher rent, your landlord can ask you to pay more for the last month's rent. So, your last month's rent equals the new higher rent.

Your Landlord's Responsibilities

If your landlord charges you a security deposit, last month's rent or both, she must:

1. Give you written receipts.
2. Give you a statement that describes the condition of your apartment, if she takes a security deposit.⁷
3. Keep your security deposit in a separate bank account.
4. Pay you interest every year on both your security deposit and last month's rent.⁸
5. Keep records of security deposits and repairs.⁹
6. Return your security deposit to you at the end of your tenancy if there is no damage and your rent is paid.
7. Return your security deposit to you if she fails to follow the security deposit law.

1. Written Receipts

The most important step you can take when you move in is to get a complete receipt from your landlord that spells out all the money you gave her and what it is for.

Only give your landlord cash if she gives you a receipt right away. If the landlord refuses to give you a written receipt, use **Security Deposit Receipt and Last Month's Receipt (Form 4)**.

You should get 3 kinds of receipts from your landlord. They must all be written.

- **1st Receipt:** She must give you a written receipt when you give her your security deposit or last month's rent.¹⁰
- **2nd Receipt:** She has 30 days to put your security deposit in a bank and give you a 2nd receipt. This receipt must say where your security deposit is.¹¹
- **3rd Receipt or Statement:** Every year she must give you a statement with the amount of interest you are owed on your security deposit and last month's rent.¹²

Each receipt or statement about your security deposit or last month's rent must include:

1st Receipt for security deposit or last month's rent	Security Deposit	Last Month's Rent
Amount of money received	✓	✓
Date money was received	✓	✓
What the money is for	✓	✓
Name of landlord	✓	✓
Name of person you give the money to if different from landlord	✓	✓
Statement that you are owed interest on the money	✓	✓
Statement that you should give a forwarding address so landlord can send you interest when you move		✓

2nd Receipt within 30 days for security deposit in a Mass bank	Security Deposit	Last Month's Rent
Location and name of bank where your money is	✓	No receipt required
Account number of the fund where your money is	✓	

3rd Receipt or Statement at the end of each year for security deposit or last month's rent	Security Deposit	Last Month's Rent
Statement of the amount of interest you are owed on your deposit	✓	✓

If the landlord does not give you a receipt with this information at the right time, you have the right to get your security deposit back. See **Getting Your Security Deposit Back**.

6. Statement of Condition

As soon as you move in, examine the rental unit right away. If **anything** is not in good condition, make notes about it and take photos. Make sure to put a date on your notes and photos.

If your landlord charged you a security deposit, she has **10 days** to give you a description of your rental unit's condition. This description must be in writing. It is called a "Statement of Condition."

This Statement must list all the existing damage in your apartment when you move in. It must also cover the common areas of the place you are renting. Its purpose is to prevent disputes between you and your landlord when you move out. The statement makes clear the damage already there when you moved in. Your landlord must also sign this Statement.

Read the Statement of Condition carefully. Take time to walk through the apartment with the Statement. Use **Housing Code Checklist (Booklet 2)** to help you understand what the law requires.

If a landlord writes on the Statement of Condition that there are no bad conditions, make sure this is true. If there are things that are not in good condition, write them on the landlord's Statement so it describes the real condition of the place.¹³ Add even small defects to your list like holes in the walls and windows that do not work well. This is to protect you when you move out.

You can also use our **Statement of Condition (Form 3)** and attach it to the landlord's "Statement."

a. Send the Statement to the Landlord

You have **15 days** after you get the landlord's Statement of Condition to send it back. You can:

- Make no changes to the "Statement," sign it and send it back.
- Make changes, attach your own statement, notes and photos, sign it and send it back.

If you do not send it back within 15 days, it means you agree completely with the landlord's Statement.

If you send your landlord a Statement of Condition with your own list of problems, your landlord must return a copy within 15 days. The landlord must say if she agrees or disagrees with what you wrote. And she must sign this statement too.

Keep a copy of everything you send the landlord.

b. If you do not get a Statement of Condition

If you do not get a Statement of Condition within 10 days of moving and there are serious problems in your rental unit, do your own statement.¹⁴ You can use **Statement of Condition (Form 3)**.

Your Statement of Condition is important. It can prevent the landlord from using your security deposit to pay for damage you did not cause.

c. Problems after you move in

If there is a problem with your apartment after you move in, let the landlord know right away and ask her to repair it.

For example, if you move in during August, you might not find out that the heating system is broken until several months later.

It is OK to call, but also send a letter or email.

Keep a copy of the letter or email so you can always prove that you notified the landlord about a problem.

7. Separate Bank Account

a. Security Deposit

A security deposit is your money that the landlord is holding.¹⁵ If your landlord charged you a security deposit, she must keep your security deposit in a bank account in Massachusetts.¹⁶

The account must be separate from the landlord's money. The name on the account must make it clear that the money does not belong to the landlord. The bank account must also be protected from creditors.¹⁷

If a landlord fails to keep your money in a separate account protected from creditors, you have the right to sue your landlord for 3 times the amount of your deposit.¹⁸ See **Getting Back Your Security Deposit**.

b. Last Month's Rent

If your landlord charged you last month's rent, she does not have to put it into a separate account. But once a year she must still pay you interest owed on it.

8. Payment of Interest

If your landlord charged you a security deposit or last month's rent, she must pay you the interest that the money earns.

a. Amount

The landlord must give you all the interest your security deposit and last month's rent earn if the bank pays less than 5% interest.¹⁹

b. When

Your landlord must pay the interest you are owed on your security deposit and last month's rent:

- Once a year, and
- Within 30 days after you move out.²⁰

c. Yearly payment

After each 12-month rental period, your landlord must send you a statement that tells you:

- The bank, bank address, and account number that holds your security deposit and,
- The interest you are owed on the security deposit and last month's rent.

At the same time, the landlord must either:

- Give you the interest you are owed, or
- Explain in this statement that you can subtract the interest from your next rent.²¹

If 30 days pass after the 12 month rental period and you have not received either the interest or the statement, you may subtract the interest owed from your next rent payment.²² It is a good idea to include a letter with your rent payment that explains you are subtracting this interest from your rent payment.

How to subtract yearly interest from rent payment

You pay a \$1,000 security deposit and a \$1,000 last month's rent payment. The interest on the account is 1%,

Your landlord must pay you a total of \$20 in interest for every year that you rent.

If the landlord does not pay you directly, you may subtract this \$20 from your rent payment.

❶ If Interest is 1% on Your Security Deposit and Last Month's Rent

\$1,000	Security Deposit	\$1,000	Last Month Rent
$\times .01$	Interest	$\times .01$	Interest
\$ 10 =	Amount owed	\$ 10 =	Amount Owed

❷ Subtract Total Interest Owed from Your Rent

\$1,000	Rent
$-\$ 20$	Total interest owed tenant on security deposit and last month's rent payment
\$ 980 =	Amount of next rent check

d. Moving out

If your landlord does not pay you the interest you are owed on your security deposit within 30 days of the day you move out, or the last day of your lease, you can sue her for 3 times the amount of the interest owed.

If you win in court, you also have the right to have the landlord pay your lawyer's fees and court costs.²³ See **How to get your security deposit back**.

9. Records of Deposits and Repairs

Your landlord must keep security deposit and repair records for all tenants who have moved in or out in the last 2 years.²⁴ The records must show:

- A detailed description of any damage in an apartment when the landlord took a security deposit;
- When repairs were made; and
- Receipts and the cost of any repairs.

Anyone interested in renting has the right to see these records during normal office hours.²⁵

If you already paid a security deposit and your landlord refuses to let you see the records, you have the right to an immediate refund of your security deposit.²⁶

10. Returning Your Security Deposit

If you leave your rental unit in the same condition as you found it, the landlord **must** return your **entire** security deposit. The security deposit and interest belong to you.

If you have a written lease, a landlord has until 30 days after the last day of your lease to return the deposit, even if you move out before the lease ends.²⁷ If you do not have a written lease, your landlord has until 30 days of when your

tenancy ends. See **When Can I Get My Security Deposit Back - When your tenancy ends**.

11. Following the Law

Your landlord must follow the security deposit law. If she does not, she must return your entire security deposit when you ask for it. The landlord has failed to follow the law if she:

- Does not give you a complete receipt within 30 days of getting your deposit, see **Written Receipts**.
- Fails to put the security deposit in a separate bank account, see **Separate Bank Account**.²⁸
- Does not let you inspect her records of deposits and repairs, see **Records of Deposits and Repairs**.²⁹
- Asks you orally or in writing to give up your security deposit rights.
- Fails to transfer your security deposit to a new owner, see **New Owners**.
- Does not give you an itemized list of damages within 30 days after you move out; or
- Does not return your deposit or any balance owed you, with interest, within 30 days of when you tenancy ends.³⁰ See **When Can I Get My Security Deposit Back - When your tenancy ends**.

If your landlord does not follow the law, you can ask her to return your security deposit - even if you are still living in the apartment. See **Security Deposit Demand Letter (Form 5)**.

Getting Your Security Deposit Back

1. What Can My Security Deposit Be Used For

a. While you are in the apartment

While you are living in the apartment, you and your landlord may agree to use your security deposit to pay for rent or to repair any damage you or a guest may cause. Your landlord can only use a security deposit in this way if you and she both agree to it.³¹ If you both agree, put the agreement in writing. Both of you should sign it. Keep a copy.

b. When you move out

When you move out, your landlord **can use** your security deposit to pay for:

- Repairs for damage that are not "reasonable wear and tear."
- Unpaid rent, unless you legally withheld rent for bad conditions. See **Chapter 8: Getting Repairs Made**.
- Unpaid real estate tax increase, if your contract requires it.³² See **Chapter 5: Rent**.

Your landlord **cannot** use your deposit for:

- Damage that was already there when you moved in.
- Reasonable wear and tear, like routine painting and cleaning, new locks and keys, and small carpentry repairs.³³
- Repair costs that are not documented.
- Phony claims of damage.
- Repair costs that are unreasonably high.

c. Using security deposit to for repairs after you move out

If your landlord wants to use your security deposit for repairs, she has 30 days after you move out to give you a complete list of the damaged items and the cost to repair them.

The list must say that she "swears under penalties of perjury" the list is true and she must sign it.

She must also attach written receipts and estimates for the repairs.³⁴

2. When Can I Get My Security Deposit Back

a. While you are in the apartment

If your landlord fails to follow the security deposit law while you are renting, you have a right to ask her to return the security deposit right away. See **Following the Security Deposit Law**.

You can ask for the entire security deposit back if the landlord:

- Does not give you a complete receipt within 30 days of getting your deposit, see **Written Receipts**.
- Does not let you inspect her records of deposits and repairs, see **Records of Deposits and Repairs**.³⁵
- Asks you orally, or in writing to give up your security deposit rights.

You have a right to ask for 3 times the amount of your security deposit if the landlord:

- Does not put your security deposit money in a separate account or
- Does not transfer it to a new owner.³⁶

To ask for your deposit back, use the sample **Security Deposit Demand Letter (Form 5)**.

b. When your tenancy ends

If there is **damage**, your landlord must give you a detailed list of damages within **30 days** after your “tenancy ends.”

If there is **no damage** or unpaid rent, your landlord must return the security deposit plus interest owed within 30 days after your tenancy ends.³⁷

Your tenancy ends:

- **Do not have lease:** If you do not have a written lease, your tenancy ends the day you move out. And your landlord must return your security deposit within 30 days.
- **Have lease:** If you have a written lease, your tenancy ends when your lease ends. If you move **before** the lease ends, the landlord does not have to return the security deposit until 30 days after the last day of the lease.³⁸ If you move **after** your lease ends, the landlord must return the security deposit 30 days after you move out.

c. After you move out

After you move out, you have a right to ask your landlord to return your security deposit if:

- Your landlord does not give you an itemized list of damages within 30 days after you move out, or
- Your landlord does not return your deposit or any balance owed you, with interest, within 30 days of when your tenancy ends.³⁹

3. How Do I Protect My Security Deposit Before I Move Out

- Give your landlord an address where she can send the security deposit and any interest.

- Take photos of all of the rooms in case you need to prove the condition of the apartment when you moved out.
- Ask the landlord to inspect the apartment with you and to point out any damage she plans to subtract from your security deposit.
- Have your Statement of Condition with you in case you need to show the landlord that the problem existed when you moved in. See **Statement of Condition (Form 3)**.
- If there is any damage that goes beyond “wear and tear,” make a list that you and your landlord can sign. You may be able to reach an agreement with the landlord before you move out.
- If your landlord refuses to inspect the apartment, make your own list of any damage or improvements. Sign and date it, then mail it to her after you move out. **Remember to put in an address where she can send the security deposit.**

4. How Do I Get My Security Deposit Back?

If your landlord does not return your security deposit when she should or she fails to follow the law, you can send her a demand letter.

If you send a demand letter and she still does not return your security deposit, you can take her to court.

a. Demand Letter

You can use a demand letter whenever you have the right to an immediate return of your deposit, even if it is not at the end of your tenancy.⁴⁰

A demand letter gives your landlord a chance to return your deposit without having to go to court. You can use our **Sample Demand Letters (Form 5 or Form 6)**

Send the letter by certified mail, return receipt requested. Keep a copy for your records.

If your landlord does not respond to your demand letter for the return of your security deposit, you can take her to court. You can ask the court for up to 3 times the amount of the deposit, plus interest. If your security deposit was \$1,000, she may have to pay you \$3,000, plus interest, plus your court fees. If you hire a lawyer, the landlord will also have to pay your lawyer's fees.⁴¹ See **Triple Damages**.

For more information about demand letters go to www.mass.gov/ago/consumer-resources/consumer-assistance/93a-demand-letter.html.

b. Taking Your Landlord to Court

You can take your landlord to court if she:

- Fails to respond to your demand letter;
- Fails to return your security deposit, with interest, within 30 days of the day you move out, or 30 days of the last day of your lease;
- Fails to give you a complete list of damages within 30 days after you move out;
- Failed to give you a complete receipt within 30 days of your giving the landlord a security deposit when you first moved in.
- Failed to put the money in a separate bank account that is protected from creditors;
- Failed to transfer a security deposit to a new owner; or
- Asked you to give up your rights orally or in writing.

You can sue for up to \$7,000 in Small Claims court. If your security deposit was less than \$7,000, you can sue for 3 times the deposit, even though 3 times that amount may be more than \$7,000.

You can also sue her for any interest she did not pay you during your tenancy and for the amount

of money you have to pay an attorney to represent you.⁴²

If you sue your landlord for your security deposit and she did **not** give you a complete list of damages within 30 days of your tenancy ending, she cannot claim you caused damage to the apartment. If she wants to sue you for damage to the apartment, she must start a separate case.⁴³

The landlord is not allowed to keep any part of your deposit unless she sends you the list of damage and repairs within 30 days of the day you move out.⁴⁴

c. Triple Damages

If you go to court, the court must award 3 times your security deposit if the court finds that your landlord has failed to:

- Properly deposit a security deposit in a bank account separate from the landlord's funds and protected from creditors;⁴⁵
- Transfer a security deposit to a new owner; or
- Return the security deposit or balance that you have a right to within 30 days of the end of your tenancy.⁴⁶

d. Where to file

Most security deposit cases can be filed as a Small Claims case. Housing Courts, District Courts, and the Boston Municipal Court all have Small Claims sessions.

The Massachusetts Court website has lots of information about Small Claims and forms in multiple languages that you can use at: www.mass.gov/courts/selfhelp/small-claims/.

Also, the Massachusetts Trial Court Law Libraries website has detailed information about Small Claims laws in Massachusetts at: www.mass.gov/courts/case-legal-res/law-lib/laws-by-subj/about/smallclaims.html

If you win a Small Claims case, the landlord can appeal. Most landlords do not appeal. To appeal, the landlord has to give the court a “bond” to start the appeal. The amount of the bond is 3 times the security deposit.⁴⁷ This law is to keep the landlord from using the court to tie up your security deposit in a lengthy lawsuit.

Why Is There a Security Deposit Law

In 1975, **Massachusetts Public Interest Research Group (MassPIRG)** proved that landlords were keeping tenants’ deposits illegally, forcing tenants to sue to get them back. If a tenant sued and won, she could recover the amount of the deposit and court fees, but nothing more. For most tenants, it was not worth the cost and effort of suing. Dishonest landlords knew this and had no reason to obey the law. The worst punishment they could face was to be ordered to pay the deposit they should have paid in the first place.

Because of this research, the state legislature made the security deposit law stronger. Now, landlords who refuse to refund tenants the deposit money within 30 days, if there is no damage, may have to pay 3 times the amount. MassPIRG is a non-profit agency.

New Owners

You should not lose your security deposit or last month's rent payment if the property is sold or foreclosed or if a new management company takes over.

Your landlord should forward your security deposit and last month’s rent to the new owner. But keep track of who the new owner is. If your landlord loses the property to foreclosure, the bank may be the new owner, or a new owner may buy the property.

The new landlord has **45 days** to send you a notice about your security deposit, last month’s rent, and interest owed.

If the new landlord does not send you this notice by the deadline, the old landlord must return your deposit, plus interest.⁴⁸

If 45 days pass and you have not heard from the new landlord, write to the old landlord to demand she return your money, plus interest.⁴⁹ See **Security Deposit Demand Letter for Tenants Moving Out (Form 6)**. If the old landlord does not return your money, you can sue her for **3 times** the amount she owes you.⁵⁰

If the new landlord asks you to pay another security deposit or last month’s rent – Say, “No!”

Then send a letter to the new owner that says:

- You already paid the previous landlord, and
- The landlord was supposed to transfer all security deposits, payments for last month’s rent, and interest to the new owner.

Under the law, a tenant cannot be made to pay a new or additional security deposit or last month's rent payment because someone else has taken over the building.⁵¹ In most cases, the new owner is responsible for your security deposit, last month’s rent, and interest, even if she never received it from the old landlord.⁵²

When you move out, the new owner must pay you. Or she can let you live rent-free for the time that represents the money she owes you.⁵³

If your old landlord lost the property to foreclosure and the new owner does not return the money you are owed, you may have to go to court to get it back. See **Foreclosures**.

For more information about security deposits and foreclosures, see **Chapter 18: Tenants and Foreclosure – How to Get Your Security Deposit Back After Foreclosure**.

Subsidized Housing

If you live in privately owned housing that is subsidized by a state or federal housing program, the landlord must follow the security deposit law. See **Your Landlord's Responsibilities**. But what the landlord can ask for depends on the type of subsidy you have.

1. Section 8 Housing Voucher

If you have a Section 8 voucher under the Housing Choice Voucher Program or the Project-Based Voucher program, your landlord may charge you a security deposit that is up to **one full month's rent**.⁵⁴ A full month is your share of the rent plus the amount the housing agency pays the landlord. If a full month's rent is \$1,000, a landlord could charge your \$1,000 for a security deposit.

A landlord may also charge you last month's rent in advance, but you would have to pay only your share of the rent. For example if the rent is \$1,000 and your share is \$300, a landlord can charge you only \$300 for last month's rent.⁵⁵ The housing agency will pay its share of the last month's rent the last month you are there. It will not pay it in advance.

If your share of the rent increases during your tenancy, the landlord may ask for the amount of the increase to add to the last month's rent that she is holding.⁵⁶

When you move out, the landlord must return your security deposit if there is no damage or unpaid rent. If there is property damage that you, a household member, or a guest caused or unpaid rent this may prevent you from getting back your security deposit. You could also lose your voucher. For example:

- If a landlord claims that you have committed a serious or repeated lease violation, which could be property damage, a housing agency could try to end or “terminate” your Section 8 voucher or it

could refuse to issue you another voucher so that you can move;⁵⁷

- If the housing agency that pays your voucher asks you to fix damage that you, a household member, or a guest caused within a set period of time, and if you don't, the housing agency could try to end or “terminate” your Section 8 voucher.⁵⁸

The best way to protect your security deposit and your voucher is to:

- Take steps listed in **How Do I Protect My Security Deposit Before I Move Out**.
- Immediately tell the housing agency and the landlord that you have moved out if it is before your lease is over so that the housing agency will know to make the last payment.
- If you are at risk of losing your Section 8 voucher because of damage or unpaid rent, you have a right to a hearing.⁵⁹ Try to get help from a local community organization or legal services.⁶⁰

2. Section 8 Multifamily Housing (No Voucher)

If you have "project-based" Section 8 assistance in privately owned multifamily housing (which is not a voucher), how much a landlord can charge for a security deposits can vary slightly depending upon the program. The best thing to do is to look at the lease.

- Some programs provide that the landlord can charge you whichever is greater: either \$50 or your share of the rent plus utilities, which is called the “Total Tenant Payment.”⁶¹ **Example:** If the monthly contract rent is \$1,000 with all utilities included and your share or “Total Tenant Payment” is \$300, a landlord could charge you no more than \$300 for a security deposit. If, on the other hand, your monthly rent share is \$25, the landlord could charge you \$50.

- Other programs provide that the landlord can charge you your share of the “Total Tenant Payment.” They do not have a minimum \$50.⁶²

The federal Section 8 housing programs have no rules about last month’s rent. But it is unlikely that a multifamily owner will require a last month’s rent.

3. Massachusetts Rental Housing Assistance

If you have a voucher funded by the Massachusetts Rental Voucher Program (MRVP) or the Alternative Housing Voucher Program a landlord may charge you a security deposit that is up to **one full month’s rent**. A full month is your share of the rent plus the amount the housing agency pays the landlord. This should be stated in the lease.

4. Public Housing

For federal public housing, the housing authority is allowed to charge a security deposit that is up to one full month’s rent.⁶³ There is no requirement that a housing authority charge a security deposit in state public housing, unless you ask to have a pet.⁶⁴

There are no regulations about last month’s rent in either state or federal public housing.

Help with Deposits

1. Residential Assistance for Families in Transition (RAFT)

RAFT is a government program that helps low-income families avoid homelessness. RAFT can be used to pay for security deposit, first and last month’s rent, bank rent, or utility bills. You must have children living with you or have a disability. The most you can get from the program is \$4,000 in a 12-month period. You can apply for RAFT funds at your regional Housing Education Center.

2. HomeBase

HomeBase is a program that offers a fixed amount to homeless families with children and pregnant women who are eligible for the state’s Emergency Assistance (EA) program. The purpose of HomeBASE is to prevent homelessness or to help people moving out of an EA shelter. HomeBASE can be used for a variety of purposes including paying a security deposit, and first and last month’s rent. Families moving into subsidized housing can use HomeBASE for first month, last month rent, and security deposit.⁶⁵

3. Private Programs

Some towns have private funds to help people in their towns who have low incomes. Ask at your local church or town hall. You may be able to get some help from the Red Cross or the Salvation Army.

Endnotes

1. [G.L. c. 186, §15B](#) applies to most landlords. The security deposit law does not apply to landlords who rent places for seasonal or vacation purposes for 100 days or less. See [G.L. c. 186, §15B\(9\)](#). The security deposit law also does not apply “to a foreclosing mortgagee or a mortgagee in possession which is a financial institution chartered by the commonwealth or the United States.” See [G.L. c. 186, §15B\(5\)](#).
2. [G.L. c. 186, §15B\(1\)\(b\)](#).
3. Under [G.L. c. 186, §15B\(1\)\(b\)](#), the law is clear that a landlord can charge only first month's rent, last month's rent, a security deposit, and the cost of a new lock. A landlord cannot try to escape the requirements of the security deposit law by taking what is really a security deposit and calling it a “cleaning fee” or something else. *Perry v. Equity Residential Management, LLC*, U.S. District Court, District of Massachusetts, Civil Action No. 12-10779-RWZ (August 26, 2014) ([G.L. 186, §15B\(1\)\(b\)](#) does not authorize landlords to charge prospective tenants an application fee, amenity fee, a community fee or an upfront pet fee). Where the landlord seems to be adding a charge that bears no relation to any real work or cost, consult the [Consumer Protection Act, G.L. c. 93A, §§2 and 9](#), and its regulations, [940 C.M.R. §3.17](#).
4. A rental agent can charge a “finder's fee” only if she is a licensed real estate broker or salesperson. [G.L. c. 112, §87DDD½](#) and [256 C.M.R. §7.00\(1\)](#) and [940 C.M.R. §3.17](#).
5. [G.L. c. 186, §15B\(6\)\(c\), \(8\)](#). If a landlord has a tenant sign a lease that violates the security deposit law but doesn't try to enforce the illegal terms, she may still be in violation of the Consumer Protection Act even though the landlord is not subject to penalties under the security deposit law, [940 C.M.R. §3.17\(3\)\(a\)\(1\) and \(4\)\(k\)](#).
6. According to [G.L. c. 186 §15B\(1\)\(b\)](#): “At or prior to the commencement of any tenancy, no lessor may require a tenant or prospective tenant to pay any amount in excess of the following: (i) rent for the first full month of occupancy; and (ii) rent for the last full month of occupancy calculated at the same rate as the first month; and, (iii) a security deposit **equal to the first month's rent** (emphasis added). . . . Also, see [G.L. c. 186, §15B\(1\)\(d\)](#), which states: “No lessor or successor in interest shall at any time subsequent to the commencement of a tenancy demand rent in advance in excess of the current month's rent **or a security deposit in excess of the amount allowed by this section.** . . .” (Emphasis added.) Thus, the security deposit can never exceed the first month's rent.
7. In *Tringali v. O'Leary*, No. 15-ADMS-1003, Appellate Division of the District Court Department Northern Division (June 30, 2105) the court found that the landlord had violated the provision of the security deposit law that required the landlord to provide the tenant with a written statement of conditions at the inception of the tenancy and had failed to provide the tenant with annual interest on her security deposit. Citing [G.L. c. 239, 8A](#), the court also held that the lower court erred in awarding possession to the landlord where the tenant obtained a money judgment in an amount greater than what the landlord owed her.
8. See *Tringali v. O'Leary* in endnote 7, where landlord failed to provide the tenant with annual interest on her security deposit.
9. [G.L. c. 186, § 15B\(2\)\(d\)](#).
10. [G.L. c. 186, § 15B\(2\)\(a\) and \(b\)](#).
11. [G.L. c. 186, § 15B\(3\)\(a\)](#).
12. **Security Deposit:** [G.L. c. 186, §15B\(3\)\(b\)](#). **Last Month's Rent:** [G.L. c. 186, §15B\(2\)\(a\)](#). This section requires interest to be paid no matter how long you remain as a tenant. Interest does not accrue during the last month of your tenancy.
13. [G.L. c. 186, § 15B\(2\)\(c\)](#).

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14. [940 C.M.R. §3.17\(4\)\(e\)](#). Because the landlord's right to take a security deposit is conditioned on providing the Statement of Condition, [G.L. c. 186, §15B\(1\)\(b\)\(iii\)](#), you may demand the deposit back if the landlord does not comply. However, most tenants will choose as a tactical matter not to make this a bone of contention at the very beginning of a tenancy. While the security deposit statute does not state a specific penalty for this particular violation, such is a violation of M.G.L. c. 93A. *See* [Attorney General's Consumer Protection Regulations 940 CMR 3.17 \(4\)\(e\)](#) if the landlord is in the trade or commerce of renting residential property and therefore subject to damages of the greater of actual damages or \$25.00.
 15. [G.L. c. 186, § 15B\(1\)\(e\)](#).
 16. [G.L. c. 186 §15B\(1\)\(e\), \(3\)\(a\)](#). Placing the money in an out-of-state bank does not conform to the statute. *Taylor v. Burke*, 69 Mass. App. Ct. 77, 86 (2007). “[P]rovisions are designed to recognize the ownership of the deposit by the tenant and the landlord’s duty to hold the monies in trust.” *Id.* at 84.
 17. [G.L. c. 186, §15B\(1\)\(e\), \(3\)\(a\)](#). *See also Neibaus v. Maxwell*, 54 Mass App Ct 558 (2002), 560-61, where landlord’s method of holding security deposits for all of tenants in a single account in Massachusetts separately designated as a “Security Deposit Account” did not violate the security deposit law. “The security deposit provisions of [G.L. c. 186, § 15B](#), are designed to insure that tenant monies are protected from potential diversion to the personal use of the landlord, earn interest for the tenant, and are kept from the reach of the landlord’s creditors.” *Karaa v. Kuk Yim*, 86 Mass. App. Ct. 714 (2014) further found that the failure of tenants to provide a Social Security number did not preclude the landlord from establishing a separate account in compliance with §15B.
 18. [G.L. c. 186, §15B\(7\)](#). The tenant is entitled to an award by the court of treble damages for this violation. The penalty is not discretionary. The tenant does not need to prove that the landlord acted in bad faith or that the tenant lost money because of the landlord's actions. *Mellor v. Berman*, 390 Mass. 275, 283 (1983). Note: Not all violations of [G.L. c. 186, §15B](#) provide for triple damages.
 19. [G.L. c. 186, §15B\(3\)\(b\)](#).
 20. **Security Deposit:** [G.L. c. 186, §15B\(3\)\(b\)](#). The statute leaves some question as to whether any interest is payable if you stay in the rental unit less than a year. **Last Month’s Rent:** [G.L. c. 186, §15B\(2\)\(a\)](#).
 21. [G.L. c. 186, §15B\(3\)\(b\)](#).
 22. [G.L. c. 186, §15B\(3\)\(b\)](#).
 23. [G.L. c. 186, §15B\(3\)\(b\)](#) and [G.L. c. 186, §15B\(7\)](#). *Tanella v. Hesson*, 1995 Mass. App. Div. 170 (1995).
 24. [G.L. c. 186, §15B\(2\)\(d\)](#). Any landlord who accepts a security deposit must keep a written record of all deposits she has received from current tenants and from former tenants for two years after their tenancies end.
 25. [G.L. c. 186, §15B\(2\)\(d\)](#).
 26. [G.L. c. 186, §15B\(2\)\(d\)](#).
 27. [G.L. c. 186 §15B\(4\), \(6\)\(e\)](#).
 28. [G.L. c. 186, § 15B\(3\)\(a\); \(6\)\(a\)](#).
 29. [G.L. c. 186, § 15B\(2\)\(d\)\(iii\)](#).
 30. [G.L. c. 186, § 15B\(6\)](#).
 31. [G.L. c. 186, §15B\(4\)\(iii\)](#), last sentence “No deduction may be made from the security deposit for any purpose other than those set forth in this section.”

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32. [G.L. c. 186, §15B\(4\)\(ii\)](#). Also, under [G.L. c. 186, §15B\(4\)\(i\)](#) and [G.L. c. 186, §22\(i\)](#), after a tenancy is terminated, a landlord who is in compliance with the water submeter law may deduct the final unpaid water charges from the tenant's security deposit for a billing period for which the landlord has not yet been billed.
 33. [G.L. c. 186, §15B\(4\)\(iii\)](#).
 34. [G.L. c. 186, §15B\(4\)\(iii\)](#).
 35. [G.L. c. 186, § 15B\(2\)\(d\)](#)
 36. [G.L. c. 186, §15B\(7\)](#). The tenant is entitled to this treble damage remedy whenever the landlord fails to comply strictly with the terms of the statute. The penalty is not discretionary. The tenant does not need to prove that the landlord acted in bad faith or that the tenant lost money because of the landlord's actions. *Mellor v. Berman*, 390 Mass. 275, 283 (1983).
 37. [G.L. c. 186, §15B\(4\); \(6\)\(e\)](#).
 38. [G.L. c. 186, §15B\(4\)](#). *Rendall v. Tarvezjan*, 1984 Mass. App. Div. 13 (N. Dist.), the only reported case on this subject, says that this language means what it says even if you and the landlord agree to an early termination of the lease. However, in that case, the landlord actually did not consent to early termination.
 39. [G.L. c. 186, §15B\(6\)](#).
 40. [G.L. c. 186, §15B\(6\)\(e\), \(7\)](#). In those cases where the landlord's conduct entitles you to get the deposit back while you are still living on the premises, but the landlord refuses to return it after demand, the security deposit law is ambiguous regarding treble damages, but the Appeals Court has interpreted the statute to require such a remedy. *Castenbolz v. Caira*, 21 Mass. App. Ct. 758, 764 (1986); *Young v. Patukonis*, 24 Mass. App. Ct. 907, 909 (1987) (rescript). *Castenbolz* further holds that filing a lawsuit is itself considered a "demand," so that a landlord who is properly sued for the return of the deposit and does not immediately tender it thereby becomes liable for treble damages. *Castenbolz*, 21 Mass. App. Ct. at 764. Also, if the landlord is subject to the Consumer Protection Act, [G.L. c. 93A](#), recourse can be had to its treble damage provisions. [940 C.M.R. §3.17\(4\)\(a\),\(b\),\(e\), and \(k\)](#). See *McGrath v. Mishara*, 386 Mass. 74, 82-87 (1982), regarding the interplay between security deposit statute and Chapter 93A claims. Chapter 93A requires a demand 30 days before filing suit, except where the tenant's claim is asserted by way of counterclaim against the landlord.
 41. [G.L. c. 186, § 15B\(6\)\(e\) and \(7\)](#).
 42. [G.L. c. 186, § 15B\(6\)\(a\)\(e\) and \(7\)](#).
 43. [G.L. c. 186, §15B\(6\)\(b\)](#). This language does not prohibit the landlord from filing a separate lawsuit against the tenant to recover the damages. *Jimvala v. Bizzarro*, 24 Mass. App. Ct. 1, 7 (1987). A landlord cannot condition her return of part of the deposit on your agreement to release her from paying the balance. In *Goes v. Feldman*, 8 Mass. App. 84 (1979), a case decided under the Consumer Protection Act, a trustee who tried to retain \$125 by using a restrictive endorsement on a check was held liable for three times the entire deposit, plus costs and attorney's fees — a total of \$3,187.80.
 44. [G.L. c. 186, §15B\(4\)\(iii\)](#).
 45. [G.L. c. 186, §15B\(1\)\(e\), \(3\)\(a\)](#). The tenant is entitled to an award by the court of treble damage remedy whenever the landlord fails to comply strictly with the terms of the statute. The penalty is not discretionary. The tenant does not need to prove that the landlord acted in bad faith or that the tenant lost money because of the landlord's actions. *Mellor v. Berman*, 390 Mass. 275, 279 and 283 (1983).
 46. [G.L. c. 186, §15B\(6\)\(e\) and \(7\)](#).
 47. [G.L. c. 218, § 23](#). The constitutionality of this statute was upheld in *Hampshire Village Assocs. v. District Court of Hampshire*, 381 Mass. 148, 153 (1980), cert. denied sub. nom. *Rublander v. District Court of Hampshire*, 449 U.S. 1062 (1980).
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48. G.L. c. 186, §15B(5), (7A).
 49. G.L. c. 186, §15B(6)(d).
 50. G.L. c. 186, §15B(6)(d) and (7). See *Castenholz v. Caira*, 21 Mass. App. Ct. 758, 764 (1986).
 51. G.L. c. 186, §15B(1)(d). See *Mall Apartments Realty Trust v. Hilda Hernandez*, Hampden Housing Court, 91-SC-1865, p. 3 (March 16, 1992), where the court found that security deposit law did not insulate purchaser at foreclosure sale from liability for deposits. See also *Cruz v. Cabrera*, Northeast Housing Court, 92-SC-00074, p. 4 (Sept. 25, 1992), where court found buyer at foreclosure sale liable to tenants for the return of security deposit and awarded tenant treble damages, plus court costs (credited against unpaid rent).
 52. Government agencies that take over properties for back taxes may not be responsible for the amount of the security deposit. Some banks may not be responsible while in the process of foreclosing, but may become responsible if they transfer title to themselves. G.L. c. 186, § 15B(5).
 53. G.L. c. 186, §15B(5) (last paragraph), (7A) (last paragraph). In *Vinton v. Demetrio*, 19 Mass. App. Ct. 948, 949 (1985) (*rescript*), the court affirmed that the new landlords could be liable to the tenants for damages even though they took ownership of the property shortly after the tenants had been evicted. The decision does not address their liability for treble damages claimed by the plaintiffs.
 54. 24 C.F.R. §982.313 (Housing Choice Voucher Program); 24 C.F.R. §983.258 (Project-Based Voucher).
 55. For the Housing Choice Voucher Program and Project-Based Voucher programs, there are no HUD regulations on last month's rent.
 56. Previously, HUD regulations specifically did not permit charging last month's rent for the Section 8 program, since the housing agency would reimburse the owner for any vacancy loss if the tenant moved out without prior notice. *Attorney General v. Brown*, 400 Mass. 826 (1987) (issue of whether landlord unlawfully discriminated against Section 8 subsidy holders because of policy of not accepting tenants where last month's rent could not be collected). These regulations were changed in 1995. If an owner insisted that a Section 8 tenant pay full contract rent as a last month's rent, this would likely be in violation of G.L. c. 151B, §4(10).
 57. See 24 C.F.R. §982.551(e) (family obligation not to commit any serious or repeated violation of lease) and 24 C.F.R. §982.552(c)(1)(i) (housing agency right to terminate assistance or deny voucher for breach of family obligations).
 58. See 24 C.F.R. §982.404(b) (tenant maintenance obligations), 24 C.F.R. §982.551(c) (family obligation to comply with tenant Housing Quality Standards requirements), and 24 C.F.R. §982.552(c)(1)(i) (right to terminate assistance for failure to comply with family obligations); *Carter v. Lynn Hous. Auth.*, 450 Mass. 626 (2008) (housing authority Section 8 termination where owner pursued waste claim against tenant)
 59. *Carter v. Lynn Hous. Auth.*, 450 Mass. 626, 634 (2008).
 60. Prior to 1995, owners could pursue claims against the housing agency for a certain amount of vacancy loss, property damage, or unpaid rent if the tenant didn't handle these matters properly. Back then, tenants would want to make sure to contest these claims since it would affect what they had to pay back the housing agency. HUD, however, eliminated these provisions. In some cases, tenants still have repayment agreements with housing agencies for these claims, and a Section 8 voucher participant can face termination, or be denied future assistance, if she fails to comply with such an agreement. See 24 C.F.R. §982.552(c)(v-vii).
 61. 24 C.F.R. 880.608 (Section 8 new construction program); 24 C.F.R. §881.601 (Section 8 substantial rehabilitation); 24 C.F.R. §882.414 (Section 8 moderate rehabilitation program); 24 C.F.R. §886.315 (Section 8 property disposition); 24 C.F.R. §§891.435, 891.635, and 891.775 (Section 202 and Section 811 supportive housing programs). For a general discussion, see; *HUD Multifamily Occupancy Handbook* 4350.3, Chapter 6, §2, and in particular Figure 6-7, which describes what can be charged for each program.

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62. See [24 C.F.R. §883.701](#) (state housing agency set-aside); [24 C.F.R. §884.115](#) (Section 8 state set aside for Section 515 rural housing); [24 C.F.R. §886.116](#) (Section 8 additional assistance or loan management set-aside). For a general discussion, see; *HUD Multifamily Occupancy Handbook* 4350.3, Chapter 6, §2, and in particular Figure 6-7, which describes what can be charged for each program.
 63. 24 (no bold) [C.F.R. §966.4\(b\)\(5\)](#). Check the housing authority's Admissions and Occupancy Plan and its yearly federal Public Housing Authority Plan.
 64. [760 C.M.R. §6.07\(2\)](#).
 65. [760 C.M.R. 65.04\(3\)\(f\)\(2\)\(a\)](#).
