

show me my money



Now that summer is nearly over, how will you always remember your summer rental? I mean, you escaped the boiling crowded streets of Manhattan, the smell of sweat on the subway, and the concrete oven for a few months in the East End's version of paradise. You had a pool, sprawling beaches, outdoor entertainment and barbeques almost every weekend. You toured the vineyards, indulged in local cuisine, and collected shells. You skied, fished, and even went on a whale tour. The house was amazing. You had skylights and decks and a garden that belonged in a castle. Plus, the tennis courts were great to tell your friends about (even though you don't play). Yet, it's now time to return to the city as the concrete cools for another autumn season. Only one last thing before you go, you want your security deposit back. So, how do you get it?

First, you must determine the exact amount of money that you gave in security at the beginning of the lease. Traditionally, the amount of a security deposit is equal to one month in rent. Yet, there is no required amount of security, so it's important to read your lease agreement to know how much money we are talking about.

Beyond the amount of the security deposit, it's also likely that your lease lays the ground rules for the return of the security deposit. For example, your lease may provide the time frame in which the security deposit must be returned to you by the landlord. Additionally, your lease may provide set charges that will be imposed on you from your security deposit - such as a cleaning fee, a repainting fee or even a fee towards unpaid rent. Yet, it's also possible that your lease does not give such specific guidance. In fact, most leases are vague because most local landlords use antiquated standard form leases to rent their homes. Such a lease will likely only state "If Tenant fully performs all terms of this Lease, pays rent on time and leaves the Unit in good condition on the last day of the Term, then Landlord will return the security being held".

So, if you want your security deposit returned, it's imperative to spend the next few weeks creating evidence to prove that you left the rental in "good condition". To accomplish this task, it's a good idea to take before-and-after pictures of your rental unit and to have them signed and dated by the landlord. If you don't have before pictures, don't worry, they are only helpful if you did not receive the rental in "good condition". Another good idea is to request that the landlord performs a joint inspection of the rental with you prior to the date you must vacate. The purpose of this inspection is to establish what repairs must be made before you leave in order to avoid the landlord controlling the performance of those repairs and possibly paying generously to his contractor friends with your deposit money.

Now, assuming that you did leave the rental in "good condition", you should get a full refund plus some interest. Did you know that GOL §7-103 provides that all interest earned on the security deposit, in excess of one percent, belongs to the tenant? Moreover, if your rental was located within a complex that includes six or more units, the security deposit must be deposited in an interest bearing account. Speaking of accounts, the security deposit cannot be commingled with the landlord's personal accounts and if the landlord violates this rule you are entitled to the return of the entirety of your deposit.

In this situation you will probably have to sue the landlord within Justice Court to enforce your rights. If you do, it's important to know that while the lease may only provide a landlord with attorneys fees for a tenant's breach, Real Property Law §234 makes such a lease provision reciprocal, so you can have a lawyer who will be paid for by the landlord. In the alternative, if you do not wish to go to court and you believe that the landlord violated the GOL, you can make a complaint to the Attorney General by filling out the following form: http://www.ag.ny.gov/resource_center/complaints/pdfs/cns003web_rentsecurity.pdf Should the Attorney General successfully prove a violation, the landlord may be responsible for up to \$2,000 in costs. Now that's some leverage to get your money back.



Andrew M. Lieb is the Managing Attorney of Lieb at Law, P.C. and of the firm's NYS Licensed Real Estate School. You can reach Mr. Lieb with questions or comments at Andrew@liebatlaw.com or 631.878.4455. Please see our website at liebatlaw.com to register for FREE real estate continuing education classes.