



Rights of Maine Renters - How to get your security deposit back and what to do if you don't

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Introduction

This article will walk you through the basics of security deposits in Maine, from what you should do before you move in, to what you can do if you don't get your deposit back when you move out. It explains what security deposits are, and steps you can take to make sure you get your deposit back when you move out.

You can use this article if:

- you are renting,
- you plan on renting in the future, or
- you have moved out, and want to know how to get your security deposit back.

If you have other questions about rental housing, you should visit our other guides in the [Rights of Maine Renters series of articles](#).

Common Security Deposit Questions

This video covers some basic tips and things you can do before you move in, while you live somewhere, and when you move out to help you get your security deposit back.

What is a security deposit?

A security deposit is money you give to your landlord when you move in. It is a way for the landlord to make sure they will be paid if you damage the property or don't pay rent. Your landlord can use it to cover any unpaid rent or damages. You may not use your security deposit to cover your last month's rent unless your landlord agrees.

You should get your security deposit back after you move out, unless there is damage to the property or you owe your landlord for rent.

What if my landlord asks for a surety bond instead of a security deposit?

A surety bond is **very different** from a security deposit. A surety bond is something you buy from a surety company. When you move out of the rental, if you still owe your landlord money, or if there are damages to the apartment, the surety company will pay your landlord. The most important differences are:

- You will not get your money back from the surety company, even if you don't owe your landlord anything.
- Your landlord can only give you the choice to use a surety bond. They cannot force you to buy a surety bond. It is your choice!
- The amount of the surety bond can't be more than two months' rent. If you use a surety bond and a security deposit, the total of both of these cannot be more than two months' rent.
- If the surety company has to pay your landlord they can sue you for the amount of money they had to pay. This means that even though a surety bond might be cheaper up front, you could end up paying for the bond, and having to pay the surety company what you owed your landlord.

How much can my landlord charge for a security deposit?

Your landlord cannot charge more than two times your monthly rent. If you live in subsidized housing there may be a different rule about how much your landlord can charge for a security deposit. Check with your [local housing authority](#) or call Pine Tree Legal with questions.

If you live in a mobile home park your landlord cannot charge you more than three times your monthly rent. Read more about some of the different security deposit laws in mobile home parks in the final section of this page.

Does my landlord have to give me back my security deposit?

Yes, except in certain cases, your landlord has to give you back your security deposit in full.

The only reasons your landlord can keep all or part of your security deposit are:

- There are damages to the property that aren't just 'normal wear and tear'
- You owe the landlord rent when you move out

Your landlord can deduct these costs from your security deposit. If these costs are less than your security deposit your landlord still has to return the money that is left over. If these costs are more than your security deposit your landlord could sue you for the difference.

What happens if I have roommates and we all pay part of the security deposit?

Here are some of the most important things to know about security deposits when you are living with roommates:

Usually, the security deposit stays with the property. This means that if you move out before the lease is over, your part of the security deposit will still be held by the landlord. The landlord might choose to give you back your part of the security deposit at that time, but they don't have to. You will need to work out with your roommates what will happen to the security deposit at the end of the lease.

If the property is damaged everyone who lives there is responsible. This means that the landlord can use your part of the security deposit to pay to repair damage done by your roommates or their guests. The landlord can do this even if none of the damage is your fault. You will not be able to get that money back from your landlord, but you may be able to take your roommates to court to get your part of the security deposit back.

What's the difference between 'damage' and 'normal wear and tear?'

To get your Security Deposit back you need to show that you did not cause any damages to the apartment, house, or mobile home that is beyond 'normal wear and tear.'

Normal wear and tear does not have an exact definition under the law, but it means the kind of small things that happen in any home over time. Some good examples include small marks on the walls or faded paint. Household fixtures wear out over the years, and just because something breaks after normal use doesn't mean you have caused 'damage' to the home. It doesn't matter how well you take care of the property you rent, these things are bound to happen, and your landlord can't use your security deposit to fix them.

Some common examples of normal wear and tear are:

- Chipped, faded, or dingy paint
- Worn carpets
- Scuffed or worn finish on a wood floor

Damage is something more serious than normal wear and tear. Damages are things that will need to be repaired before someone else can move in. Some common examples of damages are:

- Kids' crayon art on the walls
- Holes in the walls
- Broken windows
- Leaving trash in the home
- Leaving the rental extremely dirty

You are only responsible for damages caused by yourself, your family, or your guests. If the property is damaged by a storm, fire, vandals, or something else beyond your control, tell your landlord immediately. It is a good idea to keep some kind of written record of the event. A report from a fire marshal or the police are two examples.

Your landlord can't use your security deposit to repair damages that were already there when you moved in. Learn more about how to make sure you don't get charged for these damages in the "Before You Move In." section of this guide.

Does my landlord have to pay me interest when returning my security deposit?

It depends on the type of housing you live in.

- If you live in subsidized housing check your lease or ask the housing authority. Your landlord may have to pay interest on your deposit.
- If you live in a mobile home park you can learn more about your rights in the final section of this page.
- If you don't live in a mobile home park or subsidized housing, your landlord does not have to pay you interest on your security deposit unless you both agreed to that.

What if my landlord sells my building?

If your building is sold (or passes to a new owner for any reason) your landlord must give your security deposit to the new owner or give it back to you.

If your landlord gives it to the new owner, your landlord must mail you a notice telling you:

- The new owner's name
- The new owner's address, and
- How much money was passed on to the new owner

Your former landlord can take money from your security deposit to cover any rent you owe, or any damage repaired before the building was sold.

Does my landlord have to keep my security deposit in any special account?

Yes. Landlords have to keep security deposits in an account that is separate from their other accounts and safe from their creditors. This includes protecting your money from a lender who forecloses on the building and from a trustee in bankruptcy. If you ask, your landlord must tell you the name of the bank where the money is deposited and the account number. [Get a sample request form here.](#)

What if my landlord doesn't follow these "separate account" rules for protecting my deposit?

If your landlord doesn't protect your security deposit, you can take them to court. If you win you can get:

- "actual damages" (your losses)
- \$500, or
- one month's rent

The court will award whichever amount is highest, plus your court costs. Also, the court can order the landlord to pay your lawyer's fees.

What kind of notice do I have to give if I am moving?

If you do not give the right notice your landlord may try to charge you for time after you move.

Tenants at Will (No written lease)

You must give your landlord a **30 day written notice** that you are moving. You should make a copy for yourself to keep. You and your landlord can agree to a shorter notice period, if your agreement is put in writing.

It is a good idea for the period on the notice to end on a day rent is due. This way you can avoid owing any rent for the following month.

If you give a notice that you will be moved out by the 1st of a month but you do not return the keys until the 7th, your landlord may charge you for 7 days of pro-rated rent (the amount of rent you would owe if your monthly rent was divided up by day). You owe rent for any day that you are occupying the rental.

If you have a lease

Look in your lease for a section about moving out and giving notice. Your lease will probably tell you what kind of notice you must give. If your lease is for a set term, such as one year, the

lease may not allow for moving out before the term is up. In that situation you should talk with your landlord and see if you can reach an agreement about moving out during the lease term.

What will happen to my security deposit if I move before my lease is up?

- Your landlord can't automatically take your security deposit or charge you a flat fee for ending your lease.
- If you move before your lease is over, your landlord still has to follow the process described in "When should I get my security deposit back?" below.
- Your landlord may try to charge you rent for the rest of the lease term. This will depend on what the lease says. However, your landlord must try to re-rent your apartment as soon as they know you are moving out. If they re-rent your apartment right away they can only charge you for the time you were there and the time it took to find a new tenant. This is why it is a good idea to give your landlord as much notice as possible that you will be moving.

Put this notice in writing and keep a copy for yourself.

Note: If you are moving out because your landlord has "substantially breached" the lease, the rules are different. A substantial breach means your landlord is not following the agreement in your lease in a way that affects your ability to live there, like if there is a dangerous condition in your unit that your landlord refuses to fix. If you are moving because your landlord is violating your lease, you should give the landlord written notice served in-hand or, after 3 good faith efforts, mailed by first class mail, with a copy left at the landlord's home. The notice should explain your intention to leave based on the landlord's failure to uphold their duties under the lease. If you follow these rules then the lease ends and you have no more responsibilities under the lease.

When should I get my security deposit back?

How long does my landlord have to refund my security deposit?

Your landlord must give you back your security deposit within 21 days unless they have given you notice that they will keep it for 30 days. The law allows the landlord to extend the 21 days to 30 days if your landlord gives you notice in writing.

What if my landlord is keeping some or all of my deposit?

If your landlord is going to keep some or all of your security deposit they need to send you a letter telling you why they are keeping your deposit. The letter must include an itemized list of any damages your landlord claim. The list must include a specific cost for each item.

How will my landlord send me my deposit or letter?

Your landlord will send your security deposit, or the letter telling you why the deposit is being kept, to your ‘last known address.’

Make sure you give your landlord your new address or an address where you know you can get mail so they can send you your deposit or letter. You can also get your mail forwarded from your old address. You can ask about this at your post office, or set up forwarding online at the [USPS website](#).

What if my landlord doesn't give me my deposit back, or doesn't send me a letter?

Visit the “What Can I Do if I Don't Get My Security Deposit Back” section of this guide to learn more about what to do if this happens.

If I take my landlord to court, can they sue me?

Keep in mind before you sue that if you owe your landlord money, they will probably bring these claims against you to counter your claim for return of the deposit. So, if you owe your landlord more money than they owe you, suing in court is probably not a good idea. On the other hand, if your landlord sues you, you can "counterclaim" for return of your deposit and for any other money they owe you.

I live in a mobile home park. Does all of this apply to me?

Almost all of this information applies to you. Here are some important differences:

- Your landlord can charge up to 3 times your monthly rent for your security deposit
- Your landlord has no more than 21 days after you move out to return your security deposit, or send a letter explaining why they are not returning all or part of your security deposit.
- You must get your security deposit back with interest. The amount of interest is either:
 1. The amount of interest your landlord actually earned on your security deposit, or
 2. A ‘reasonable amount of interest’ on the security deposit. A ‘reasonable amount’ is set as the amount of interest the Federal Reserve Bank sets as the yearly interest rate on a 6 month certificate of deposit (CD). This interest rate could change every year.

For more information on your rights as a tenant in a mobile home park, visit our page on [Rights of Maine Renters: Mobile Home Parks](#).

Before you move in

To get your Security Deposit back you want to be able to show that:

1. You paid a security deposit, and;
2. You did not cause any damages to the apartment, house, or mobile home that you rented beyond normal wear and tear.

These are the steps you should take to make sure you can prove this.

Get a receipt or other record showing the amount of security deposit you paid

It could be important that you are able to prove that you paid a security deposit, and how much you paid. You should keep some record of this.

- If you pay in cash, get a receipt from your landlord.
- If you pay by check, keep a copy of the cancelled check you get in your bank statement.
- If you pay online, keep the confirmation email, or take a screenshot and save or print the confirmation of payment.
- If you pay with a money order or some other method, keep the receipt or ask for one from your landlord.

Make a record of the condition of the property before you move in

Just in case your landlord keeps your security deposit and says that you damaged the property, you should keep a record of the condition the property was in before you moved in. You can do this by:

- Walking around the home and looking for any damage. You can ask your landlord to walk around with you, so they see everything, too.
- Talking to your landlord about any damage or problems you find. Sending an email, or writing a letter and keeping a copy of it is a good way to keep a record.
- Take pictures if you can. Save them on your phone or computer, email them to yourself, or print them out. You can hold a newspaper in the bottom corner of the picture when you take it to show when the picture was taken. Try to get the big picture – it can be hard to tell what you are looking at if you zoom in too close.
- Make notes about any damage on your lease or rental agreement before you and your landlord sign. Or, write down the list of problems on a piece of paper, date it, and ask your landlord to sign it. **Note:** This could be difficult, if you don't feel comfortable doing this, just write everything down, sign and date it yourself, and hold on to it with all of your other rental information.

Keeping a record like this will help you when you move out to tell the difference between damage that was already there and damage caused by you, your family, or your guests.

Here is an example of the kind of notes you should take:

- Living room: torn screens in 2 windows
- Kitchen: 1 cabinet missing handle
- Main bedroom: damage to door – loose doorknob and cracked wood
- Bathroom: Cracked wall tile over sink, stained floor near bathtub
- Hallway closet: hole in the wall ~4 sq. inches

Hold on to everything you record or make notes about. Keep all of this information together in one place, like in a file folder or on your computer.

While you live there

After you move in, you should still try to keep on top of any damage done to the property. Here are some basic tips on what you should do if something goes wrong with the property while you live there.

If the property is damaged by something like:

- A storm
- A fire
- An accident (like a neighbor accidentally breaking a window with a baseball)
- A vandal or a burglar

You should tell your landlord immediately. These things are usually not your fault, and your landlord can't use your security deposit to fix them.

If something in the apartment breaks during normal use (like a sink, or the caulking on a bathtub starting to leak), notify your landlord, and take any steps you can to prevent damage to the property. You should take steps to have the problem repaired – depending on your lease, this might be your responsibility, or it might be the responsibility of your landlord.

If you, someone in your family, or one of your guests damages the property, it might be a good idea to fix the damage before you move out. This may end up costing less than your landlord would take out of your security deposit to fix the damage. Some damages you can probably even fix yourself, like:

- Cleaning crayon art off the walls
- Replacing missing or damaged window screens
- Replacing missing cabinet or drawer handles

When you move out

Moving can be difficult and stressful. It's easy to lose track of all the things you need to be doing. Here's a checklist of things you should do when you're moving out to make sure you get your security deposit back:

1. Compare your home to the list of problems and damage you made when you moved in. Look at the pictures you took. If there are any damages beyond normal wear and tear it might be cheaper for you to fix them yourself before you move out.
2. Leave the property reasonably clean. Cleaning costs are something that come up a lot when people move out, and it's better to avoid that problem if you can. You don't need to scrub the house from top to bottom, but you should:
 - Remove all of your things
 - Wipe clean surfaces like countertops and stoves
 - Sweep up anything on the floor
3. Don't leave trash or items you don't want any more in or around the property – your landlord will need to have these things removed, and can take that cost out of your security deposit. If you leave things on the curb free for the taking, and they are still there when you move out, your landlord may have to get rid of them, and they can take the cost of doing that out of your deposit.
 - As you are moving out, it's still ok to leave your regular trash in the trash can or other area for tenant trash collection, like you normally would.
4. Take pictures or videos of the property after you have moved all of your things out, and have cleaned. These pictures will help you show the condition you left the property in when you moved out. Keep these pictures until you get your security deposit back.
5. Make sure you give your landlord the address you will be moving to, or another address where you regularly get your mail. Your landlord will send your security deposit, or letter explaining why they are keeping all or part of your security deposit, to your 'last known address.'
 - Another way to do this is by having your mail forwarded. This way, if your landlord sends the deposit or letter to your old address, it will be passed along to your new address. You can set up mail forwarding through the [U.S. Postal Service website](#).

What can I do if I don't get my security deposit back?

What If My Landlord Doesn't Send a Refund or a Letter?

If, after the 21-30 days, the landlord has not sent you a letter or refund, you need to follow certain steps to protect your rights and make sure you get your deposit back.

The steps you should follow are:

Step 1. Fill out the [Request for Return of Security Deposit form](#). You need to send this request to your landlord before you can sue them.

Step 2. Send the form to your former landlord. Use Certified Mail; Return Receipt Requested. If you aren't sure how to do this, ask about Certified Mail at your local U.S. Post Office.

Step 3. Keep a photo-copy of the form for yourself.

Step 4. Hold on to the Return Receipt when it comes back in the mail.

Step 5. Wait 7 days (from the date your landlord receives it) for your landlord to respond to the notice.

Note: If your landlord did not sign for the first mailing, send another copy by regular mail and wait 10 days (3 days for delivery plus the 7 day notice period).

What If My Landlord Still Won't Return My Deposit?

If your landlord doesn't refund the deposit after the seven day notice is over you can sue your landlord.

What If My Landlord Sends Me A Letter, But Takes Too Much Out of My Security Deposit?

If your landlord sends you a letter on time that tells you that they are keeping some or all of your security deposit, but you think that amount is too high, you can still sue the landlord in small claims court. You should send the landlord a letter warning them you will sue them if they don't return the full amount in 7 days. After the 7 days, if you haven't gotten all the money you think you are owed, follow the instructions below.

Note: You may not get double damages.

How Do I Sue In Small Claims Court?

Small Claims Court is meant to be used by people who need to work out legal problems, and are doing that without a lawyer. We have put together a [toolkit for preparing and filing your claim in small claims court](#). Here, you will find all the forms you need to file in Small Claims Court, and tools that will automatically fill out these forms for you based on your answers to some questions. Visit the toolkit for more information about how it works. **If you are worried about finding and filling out these forms yourself, the toolkit is a good place to start.**

Your [local Maine District Court](#) also has all of the forms you will need to start a Small Claims action against your landlord. They also have an easy to read booklet explaining the Small Claims

Court process. Just ask the Court Clerk for the forms and the booklet. [Or go here to view the online version on their website.](#)

Small Claims Court is for ordinary people. If you cannot pay the filing fee, tell the clerk you want to file an "Application to Proceed Without Payment of Fees" and an "Indigency Affidavit." The clerk will give you forms to fill out. [You can also find fillable versions of these forms on our website.](#) These forms ask for financial information, to show that you cannot afford the filing fee. You can also use our [Small Claims form toolkit](#) to help you fill out these forms.

When you fill out your claim form, ask the court to award you **double** the amount of your security deposit. The Court may award you double the amount if it finds that your landlord acted "wrongfully" by not returning your security deposit after you sent the Request for Return of Security Deposit Form. Also ask for your court costs.

Note: If your landlord lives in your building and there are 5 living units or fewer, then you can still sue to get your deposit back but you cannot get twice that amount.