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Note: None of the information on this booklet is legal advice. For legal advice, contact an attorney.

RECOVERING YOUR SECURITY DEPOSIT

A How-to-Guide with Answers to Your Questions

Prepared by:

FAIR HOUSING RESOURCE CENTER, INC.

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Fair Housing Resource Center has been assisting tenants and landlords since 1999. We are not a branch of the government, but rather a non-profit agency that offers counseling and information in a number of areas, including:

- Discrimination testing & complaint processing;
- Mortgage foreclosure counseling;
- Tenant-Landlord information and mediation.

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Serving Lake County and Surrounding Communities

SAMPLE LETTER

(Forwarding Address Upon Vacating)

March 15, 2007

Landlord's Name
Address
City, OH Zip

Re: 123 Apartment Lane, Painesville

Dear (Landlord's Name):

Pursuant to my written February 28, 2007 Intent to Vacate letter, I am moving out of your apartment located at 123 Apartment Lane, Painesville, on March 31, 2007. Would you please return my security deposit to the following forwarding address:

Jane Doe
789 Home Drive
Painesville, OH 44077

Since the Ohio Landlord-Tenant Law allows a landlord to deduct from the deposit for damages other than normal wear and tear, I would like to inspect the unit with you and document the conditions. Would you please call me at (440) 555-1234 or (440) 555-9876, to set up a time when we can inspect the unit and I can return the keys?

I look forward to hearing from you. I am sure that if we can get together, we will avoid future problems over the return of the deposit. Thank you in advance for you attention to this request.

Sincerely,

Jane Doe

SAMPLE LETTER

(Intent to Vacate)

February 28, 2007

Landlord's Name
Address
City, OH Zip

Re: 123 Apartment Lane

Dear (Landlord's Name):

Pursuant to our agreement, this letter serves as a 30 -day notice of my intent to vacate your rental property located at 123 Apartment Lane, Painesville. I will be moved out on March 31, 2007 and I will furnish the keys to you by that date.

Please call me at (440) 555-1234 or (440) 555-9876 if you have any questions.

Sincerely,

Jane Doe

***This letter follows the statutory notice requirements for a month-to-month lease agreement (30 days). If you have a lease for a period of more than one month, please be sure to check the notice requirements contained in that contract.**

How do I use this booklet?

Fair Housing Resource Center's Tenant-Landlord Information Line answers hundreds of calls per month. Around one quarter of the questions we receive center upon security deposits. What you find in this booklet are the most common questions we hear, and the best answers that we can provide to those questions. It is very difficult to write a comprehensive booklet on security deposits, because every move-out situation is a bit different and must be dealt with on a case-by-case basis. We have organized this booklet as a series of the most common questions tenants ask.

One of the reasons that there is a great deal of confusion regarding security deposits is that many of Ohio courts are in conflict with each other in the interpretation of the section of the state law that regulates security deposits (Ohio Revised Code §5321.16). Generally, when a legal issue is unclear, it will be appealed to the Ohio Supreme Court for a definitive answer. However, because security deposit disputes generally involve a very small sum of money, tenants and landlords have rarely spent the money necessary to pursue an appeal. The effect of this confusion is that for many questions, we cannot provide a clear answer.

It is important that you consult with an attorney before taking court action regarding any legal matter. It is equally important to realize that this booklet was not prepared by attorneys and is not offered as legal advice. It is offered as a quick reference and for general information only. We hope that you use this booklet for the following things:

- To help you decide when it may be worthwhile to consult an attorney and file a claim;
- To help you keep attorney's costs down by minimizing research time;
- To help you take the necessary steps before a court action is necessary.

The Basics

Chapter 5321 of the Ohio Revised Code is this state's Landlord-Tenant Law. Section 5321.16 specifically addresses security deposit practices.

When discussing deposit disputes, it is important to determine first whether or not section 5321.16 applies. Some "deposits" charged by landlords may not be considered a "security deposit" under this statute. On the other hand, some deposits like "pet deposits" or "utility deposits" may be covered by this chapter. Please see page 9 for more information.

Under this section, a landlord may withhold part or all of a security deposit for two reasons:

1. Late or unpaid rent;

2. Any damages that the tenant causes the landlord because of a violation of either the lease or the "Tenant's Duties" section of state law (§5321.05).

The word "damages" is somewhat misleading. It does not simply mean physical damage to the dwelling unit; rather, the word "damages" means any out-of-pocket expense that the tenant causes the landlord by not living up to his or her duties. For example, if a tenant agrees to pay for electric service in a lease, and then fails to pay the final electric bill, that tenant has violated a term of the lease, and caused the landlord "damage." The landlord would be entitled to use part of the deposit to pay for that bill.

When a tenant moves out of a rental unit, the tenant is required to give the landlord written notice of a forwarding or new address. If the tenant does not give the landlord written notice, the tenant gives up the right to ask for double damages and attorney's fees if the tenant has to sue the landlord for return of the deposit.

The landlord must send the deposit refund and a letter itemizing any deductions within 30 days after **both** the rental agreement has ended **and** the tenant has moved out. For example, if a tenant had a rental agreement that ended on May 31, and the tenant

5321.05 Obligations of a Tenant continued...

2925 and 3719 of the Revised Code, or any municipal ordinances that are substantially similar to any section in either of those chapters which relate to controlled substances.

(B) The tenant shall not unreasonably withhold consent for the landlord to enter into the dwelling unit in order to inspect the premises, make ordinary, necessary, or agreed repairs, decorations, alterations or improvements, deliver parcels that are too large for the tenant's mail facilities, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(C) (1) If the tenant violates any provision of this section, other than division (A) (9) of this section, the landlord may recover any actual damages that result from the violation together with reasonable attorney's fees. This remedy is in addition to any right of the landlord to terminate the rental agreement, to maintain an action for possession of the premises, or to obtain injunctive relief to compel access under division (B) of this section.

(2) If the tenant violates division (A)(9) of this section and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(i) of section1923.02 of the Revised Code, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in that division, then the landlord promptly shall give the notice required by division (C) of section 5321.17 of the Revised Code. If the tenant fails to vacate the premises within three days after the giving of that notice, then the landlord promptly shall comply with division (A)(9) of section 5321.04 of the Revised Code. For purposes of this division, actual knowledge or reasonable cause to believe as described in this division shall be determined in accordance with division (A)(6)(a)(i) of section 1923.02 of the Revised Code.

that do not directly affect the case will only frustrate the judge.

14. Collection: If you win your claim, you still must collect from the landlord. The court does not collect a judgment on the spot. If the landlord refuses to pay, you have several options available. With a "certificate of judgment", you may arrange for a lien on the landlord's property, a garnishment of his or her wages, or you may attach a bank account. These processes can be arranged through the Clerk of Courts office. You will have to provide the court with information about the property, salary, or bank accounts you wish to collect from. As a last resort, you may be able to sell the right to collect to a collection agency.

5321.05 Obligations of Tenant

(A) A tenant who is party to a rental agreement shall do all of the following:

(1) Keep that part of the premises that he occupies and uses safe and sanitary;

(2) Dispose of all rubbish, garbage, and other waste in a clean, safe and sanitary manner;

(3) Keep all plumbing fixtures in the dwelling unit or used by him as clean as their condition permits;

(4) Use and operate all electrical and plumbing fixtures properly;

(5) Comply with the requirements imposed on tenants by all applicable state and local housing, health and safety codes;

(6) Personally refrain, and forbid any other person who is on the premises with his permission, from intentionally or negligently destroying, defacing, damaging, or removing any fixture, appliance, or other part of the premises;

(7) Maintain in good working order and condition any range, refrigerator, washer, dryer, dishwasher, or other appliance supplied by the landlord and required to be maintained by the tenant under the terms and conditions of a written rental agreement;

(8) Conduct himself and require persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;

(9) Conduct himself, and require persons in his household

moved out on the June 2, then the landlord would have to mail the deposit return by July 2. July 2 is the first day that **both** the rental agreement has ended and the tenant has moved out.

Additionally, if the landlord charges more than one month's rent in deposits, and the tenant stays in the unit for more than 6 months, the landlord must pay 5% interest on the amount of the deposit **over** the amount of one month's rent. For example, if a landlord charges $500 per month rent, and charges a security deposit of $800, then the landlord should pay 5% interest yearly on $300, or $15.

As you can see, the state law is a set of very general guidelines. In addition to the law itself, various court cases have clarified issues that are not covered by the words of the statute. One example is the concept of "wear and tear", or depreciation of a property that occurs through normal use, as opposed to "damage" caused by a tenant. This concept is now well entrenched in security deposit case law, and will be discussed further on page 12.

Because the law cannot be written so specifically that it covers every conceivable situation in advance, and very few tenants and landlords have pursued disputes all the way to the Ohio Supreme Court, it is difficult for us to answer unusual or complex questions on security deposits. What we can do, however, is report to you the answers to specific questions that prior court cases have provided. For that reason, much of the rest of this booklet is set up in a question and answer format.

What does a landlord need to prove in order to deduct damages from a tenant's deposit?

Until recently, it was generally acceptable for a landlord to do a walk-through inspection at the time of move-in and at the time of move-out to show the amount of damage that the tenant has caused during his or her tenancy. The testimony of the landlord and the documentation of a walk-through list were generally sufficient to prove damages.

However, two Ohio court cases have impacted the amount of evidence a landlord must collect to successfully hold a deposit. In these cases, the courts determined that a landlord not only needs to show the amount of damage a tenant has caused during his or her tenancy, but also, the landlord must show the *reduction in market value of the property* due to the tenant's damage. If the landlord is not able to provide evidence of the relative market value of the property before the tenant moved in, and after the tenant moves out, the landlord is not entitled to claim **any** damages.

The effect of these two decisions is not yet clear. They are both appellate level cases, meaning that they could be overturned if taken to the Ohio Supreme Court. It is also unclear what level of proof a landlord must offer to demonstrate the market value of a property: is a full appraisal required or will the court accept the landlord's estimate of market value?

Another area of difficulty for landlords is damage caused by a tenant's guest. If a tenant's guest causes damage to the apartment, in order to collect, the landlord must be able to show that:

1. The tenant was aware of the guest's negligent acts, **and**;

2. The tenant failed to verbally forbid the guest from continuing, **or**;

3. The guest, having received a warning, failed to heed the tenant's warning.

If the tenant is not in a position to observe the guest's act, then the tenant cannot be expected to issue a verbal warning. If the tenant does warn the guest, but the guest ignores the warning, the tenant has done all that the tenant can be expected to do to prevent the damage. In either case, the tenant is not liable for the damage; the landlord would have to collect directly from the tenant's guest. Lease clauses designed to directly bind tenants to liability for **all** their guests' actions have been found unenforceable.

Remember that we are not attorneys, and not qualified to interpret matters of law. Because these are such complex issues, we recommend that all parties to a security deposit dispute consult an

and prepare yourself for the hearing. The court will notify you of the hearing date at least five days in advance.

12. Get any agreements in writing. If the landlord wants to settle with you before the court hearing, get any agreement in writing. Be sure to get a time-line for repayment in the agreement. You may wish to ask the landlord for your court costs in return for dropping the claim. Be sure to notify the Clerk of Courts office if you reach an out-of-court settlement.

13. The Hearing: If you choose to present your case without the assistance of an attorney, here some things you may wish to keep in mind:

- **Have your documentation ready and complete**. Bring copies for both the judge and the other side. Do not overwhelm the judge with papers, just present items that directly support your case, or directly contradict your landlord's case.

- **Bring any necessary witnesses**. Have your witnesses approach the judge's bench with you when your case is called, and instruct them to remain quiet unless called upon.

- **Dress nicely**.

- **Stay calm**. A small claim can be very frustrating, but it is important that you stay calm and do not interrupt the judge, the landlord, or the witnesses. You will be given a chance to present your side of the story when any testimony raises questions about your claim.

- **Plan your case carefully**. Because you are making the claim, you will be asked to present your argument first. State the facts briefly but completely, starting at the beginning, and offer any documentation to support your case as the issue comes up in the hearing. When an issue comes up that one of your witnesses can testify to, let the judge know. The judge will ask the witness for the necessary information.

- **Stay on the subject**. Even if you feel that the landlord treated you unfairly throughout your tenancy, that information will not be considered by the judge. The judge will only consider the facts of the case, and will not decide against the landlord just because the landlord is "mean". Listening to arguments over issues

days of "termination of the rental agreement and delivery of possession" (ORC 5321.16 [b]). To be safe, start counting from the date where both the lease has expired and you have returned the keys to the landlord, whichever is later. Keep in mind that the deposit return and itemized list only has to be *postmarked* within 30 days. If it is late, you may wish to claim that the entire deposit was "wrongfully withheld". **If you receive a check for only part of what you feel you owe, then either do not cash the check, or write "this does not satisfy my claim" above your signature when you endorse the check.**

9. **Do your own research or contact the Fair Housing Resource Center.** Once you get your itemized list, if you disagree with items that you are being charged for, do research to find out if you have basis for challenging the deduction. You can also contact the Fair Housing Resource Center for assistance. If you find that you have good support for your position, you may wish to send a letter to the landlord explaining your position and asking for the return of the "wrongfully withheld" amount within a certain amount of time (see page 16). A Housing Counselor at Fair Housing Resource Center can help you prepare a demand letter to your landlord. If the landlord does not return the amount you request, you may want to contact an attorney or file a small claims suit yourself.

10. **File a claim.** You must file the claim in the municipal (city) court that has jurisdiction over the apartment you used to live in. If you don't know which court is correct, call your local city or township offices and ask. You will need to contact the Civil or Small Claims Division of the Clerk of Courts office in order to file a claim. Ask if the office uses a form for small claims, or if you will have to type out your own "plea". Depending upon the court, your claim may be called a "complaint", a "plea", or even a "pleading". If the court uses a form, fill in all of the information according to the form. If the court does not use claim forms, ask if you can have a sample plea or a copy of the "local rules" of the court. Use the format of the sample and substitute your information. Itemize the amount you are requesting. An attorney will take care of all of this for you, and offer advice on what you may or may not claim. The Clerk of Courts, **by law**, cannot give you legal advice or tell you what you may or may not claim.

11. **Pay the filing fee.** Even if you have an attorney, you will have to pay a fee for filing the complaint. Check with your local municipal court for filing fee schedules. Turn in your complaint

attorney to review these matters.

If the tenant doesn't give the landlord a return address in writing, does the landlord still have to send an itemization?

Yes. According to at least one Ohio court, the landlord has a duty to make a reasonable effort to locate the tenant. If you a landlord knows where the tenant works, he or she should attempt to contact them there. If the landlord and tenants have mutual friends, an address may be obtainable through them. If all else fails, a landlord should send a letter addressed to the dwelling that the tenant used to rent from. The post office may forward it to a new address. If the envelope is returned as not deliverable, the landlord will have proof of his or her attempt.

As a tenant, how can I best protect my deposit?

The single most important thing you can do to protect your deposit is to give the landlord **written** notice of a forwarding address when you move out. This preserves your right to sue in small claims court for double damages and attorney's fees if the landlord wrongfully withholds the deposit. Of course, you will want to keep a copy of this written notice and proof of delivery for your records.

The process of protecting your security deposit begins prior to moving in. It is very important to document the condition of your apartment **both before you move in and when you move out**. Before signing a lease or paying a deposit, be sure to do a careful inspection of the unit that you will be leasing. If you notice any problems with the unit, talk to the landlord about his or her plans for repair.

If the landlord promises a repair, **make sure that the repair and a deadline for completion are included in the lease!** On the whole, oral promises or agreements must be included in any later written rental agreement in order to be valid. By including the repairs in the lease, you, as the tenant, preserve your ability to terminate that lease or sue for breach of lease if the landlord fails to make the repairs.

Most landlords make a practice of walking through with the tenant and filling out an inspection checklist a few days before move-in. A written document of this sort, signed by both the landlord and the tenant, is very good documentation of the condition of the unit. Upon move-out, the landlord generally walks through again with the same checklist. You can ask to accompany the landlord on this inspection, but the landlord is not required to let you accompany him. If the landlord will not do the exit inspection in your presence, have a neighbor over before you turn in the keys and do your own checklist with the neighbor.

To err on the side of safety, **always take pictures before move-in and upon move-out**. This way you or the court can tell what damages already existed, and what damages were created during your tenancy. Videotaping the property may be ineffective, because few small claims courts have the equipment to play the tapes on.

Can the landlord charge me for cleaning the dwelling?

Sometimes yes, sometimes no. The tenant can be charged for cleaning if the landlord can show that the cleaning had to be done because the tenant did not comply with their duties under state law or the rental agreement. The landlord cannot charge the tenant for cleaning that results from normal wear and tear to the unit. Ideally, tenants should clean the apartment themselves prior to move-out to the extent of which the tenant received it upon move-in.

Oftentimes, landlords will confuse *cleaning an apartment because of a tenant's noncompliance with his/her obligations* with *preparing the apartment in order to re-rent it.* It is a common practice for landlords to do additional cleaning tasks in order to "spruce it up" for a new tenant. A landlord should not charge a vacating tenant for these types of cleaning tasks that go above and beyond a tenant's statutory obligations (section 5321.05). These "spruce it up" measures should be absorbed by the landlord as reasonable business expenses.

For example, imagine that you only moved your belongings out of

From Start to Finish

Step-by-Step Deposit Procedures

For Tenants

1. **Inspect the unit carefully prior to move-in.** Do an inspection with the landlord, and note any damages. Both you and the landlord should sign the inspection form, and both parties should get a copy. If the landlord does not have an inspection form, you can pick one up at our office. Make sure any promises for repair that the landlord makes are included on the lease, with a deadline for completion, and initialed by both you and your landlord. Be sure to take pictures prior to moving your belongings into the rental.
2. **If you pay a deposit, make sure you know what it means.** Your receipt should be very specific, please see page 17.
3. **Take care of the place while you live there!**
4. **Try to repair any damages yourself before move-out.** Generally, it is much cheaper to repair a damage yourself, rather than allowing the landlord to do it.
5. **Clean thoroughly before you move out.**
6. **Provide your landlord with a forwarding address, *in writing*, prior to move-out.** Providing a written forwarding address to your landlord entitles you to "double damages" and attorney's fees if you are forced to sue. You should keep a copy of the notice, and send it registered or certified mail in order to document providing the landlord with a written notice. Or, you may wish to hand it to the landlord in the presence of a witness. **See the Sample Letter on page 27 for an example.**
7. **Document the condition of your apartment upon move-out.** The landlord will make an inspection to determine the amount of damage that occurred in your apartment. You should do the same, although the landlord does not have to allow you to accompany him on the inspection. If there was a move-in inspection, you may wish to retrace the steps of that inspection and mark the inspection form. You also may wish to take photographs, use a video recorder, or ask third-party (non-family member) to inspect the apartment with you.
8. **Start counting the days.** The landlord must return your deposit and provide written itemization of all deductions within 30

ment of intent, they are not punitive and **can** be awarded in small claims . You will need to get an attorney and appeal the decision.

How specific does an itemized list of damages have to be?

The list needs to specifically identify each damage and the cost to repair. The list needs to go into enough detail so that it can be easily determined that each charge is the result of damage caused by the tenant, rather than wear and tear.

If you have any questions about a security deposit invoice provided by your landlord, or if it has been over 30 days and you have not yet received one, you may contact a Housing Counselor at Fair Housing Resource Center, Inc., for assistance.

The counselors at Fair Housing Resource Center hope this booklet has answered some of the questions you may have about getting your security deposit back.

If you need more information or would like our help, please contact our office.

the apartment and failed to clean the unit prior to move-out. You have left the garbage, the food in the fridge, and the moving company tracked mud on the floors. Ohio law (5321.05) states:

> *"Keep that part of the premises that he occupies and uses safe and sanitary."*

Furthermore:

> *"Dispose of all rubbish, garbage, and other waste in a clean, safe and sanitary manner."*

Clearly, your landlord would be entitled to keep a reasonable portion of the deposit to cover the costs of the clean-up in this scenario.

Now imagine that the situation is a bit different. You have cleaned the apartment thoroughly. You disposed of the garbage, the food in the fridge, and cleaned up the mud on the floor. In fact, you think it's cleaner **now** than it was when you first moved in. The landlord should not charge you for general cleaning tasks because you took the necessary steps to make sure you complied with your obligations as a tenant (section 5321.05). The landlord should also not charge you for any "spruce it up" types of cleaning tasks. As long as you have complied with the your obligations as a tenant and brought the apartment back to the condition to which you first received it, cleaning charges should not be an issue.

In any event, if the landlord is going to deduct money for cleaning, he or she needs to specifically list the reason for cleaning and amount of time that it took to do the cleaning in the notice he or she sends to the tenant. One Ohio court disallowed a deduction for general cleaning because the list of damages simply read "$40 -cleaning". The court found that this did not constitute "itemization", and the tenant was awarded double damages of $80 for the wrongful withholding.

What about pet deposits and last month's rent?

Landlords often charge pet deposits, utility deposits, or the "last month's rent" in advance. The question is: should these deposits

be considered part of the security deposit? This issue often becomes important when computing interest to be paid on a deposit, or if a small claims suit is filed.

Fair Housing Resource Center's position is that **all deposits** charged by a landlord should be added together and considered as the security deposit. The Ohio Revised Code defines a security deposit as "any deposit of money or property to secure performance by the tenant under a rental agreement". (§5321.01E) Notice that the law states that **any** deposit of money or property should be considered a security deposit. The only exception to this section may be escrow accounts set up to insure the removal of modifications to interior of units for persons with disabilities.

The purpose of charging the last month's rent in advance is to make sure the tenant will live up to the rental agreement. The same applies to pet and utility deposits. It appears that these deposits meet the definition of a security deposit under the state law, no matter what names they are given by the landlord.

Another type of deposit we see in leases is the so-called "non-refundable pet deposit". **Before continuing, we must take this opportunity to be very clear: if your animal is a service animal, and you have provided your landlord with documentation from a healthcare professional of your need to have this animal, you are not be required to pay a "pet deposit."**

For those tenants who have a pet, and not a service animal, there are two ways to look at these deposits. First, the "non-refundable pet deposit" could be seen as a security deposit with an unenforceable liquidated damages clause. However, challenging a landlord who held such a deposit would be very difficult. The second way to view the "non-refundable pet deposit", and perhaps most reasonable way, is to regard the deposit as a one time fee for permission to have a pet. Clearly, a great deal of confusion would be avoided if the landlord simply called this type of charge a fee rather than a deposit.

Some courts have held the landlord to the double damages provision when the landlord has actual knowledge of where to contact the tenant, even though the tenant has failed to provide written notice of a forwarding address. The landlord has a duty to make a reasonable attempt to reach the tenant with an itemization or refund. If the landlord does not make a reasonable effort, then the tenant can collect double damages whether or not he or she gave written notice of a forwarding address.

However, other courts have ruled that the duty of the tenant to give written notice is mandatory. Even in cases where the landlord has actual knowledge of how to contact the tenant, if the tenant fails to give the written notice of a forwarding address, he or she is simply not entitled to double damages and attorney fees. However, the tenant may still sue for the amount wrongfully withheld.

With these conflicting court opinions, it is always best to err on the side of safety and be sure to provide a written notice with a forwarding address. if you have any question regarding your compliance with the notice provision of the state law, contact an attorney to review your case.

I won my wrongful withholding case, but the referee said she could not award double damages because no punitive damages are allowed in small claims court. What can I do?

Normally, small claims courts cannot award anything more than actual out-of-pocket expenses or damages. Punitive damages, or damages that act as a penalty, are not allowable. Some small claims courts refused to award the double damages under §5321.16, describing the damages as punitive.

However, the Ohio Supreme Court recently clarified the nature of security deposit damages and held that damages under §5321.16 were not punitive. Small claims courts cannot award punitive damages because, in general, to allow recovery of punitive damages, the court would have to find that the defendant acted maliciously or out of ill will. However, the security deposit statute imposes the double damages penalty regardless of the intent of the landlord. Because security deposit double damages lack this ele-

As you can see, the answer to this type of question often hinges on the wording of the deposit receipt. Be sure the following information is on any receipt for a deposit:

- tenant's and landlord's name and address;
- amount and date of payment;
- date until which the apartment will be held
- the amount refundable if the tenant does not move in;
- what portion of the deposit may be applied toward the security deposit.

My landlord sold the house I was living in, and I lived under a new owner for 4 months. Now I have moved out and each owner is claiming that the other owes me the deposit. Who owes me?

That depends on the terms of the sale of the agreement. If the new owner assumed the legal responsibilities of the old owner, or if the new owner received a credit for the security deposit toward the purchase price, then the new owner is responsible for the deposit. If, however, there is no mention of the security deposit in the sales agreement, then the old owner is still responsible.

Since it will probably be difficult to get either owner to disclose the sales contract, you might wish to name both owners in a small claims action.

As a tenant, what do I have to prove in order to collect double damages and attorney's fees?

The state law clearly places the burden on the tenant to provide the landlord, in writing, with a forwarding address. The courts are split on how strictly to interpret this requirement.

Wait, what was that about interest?

The landlord must to pay 5% interest yearly on the overage of deposits greater than the amount of one month's rent (or $50, if your rent is lower than that), and if you have lived at the property for more than 6 months. Here's how it works:

Imagine that you rent from a landlord who charges $400 per month in rent. The landlord charges a $400 security deposit, a $100 pet deposit, and $400 for last month's rent in advance. The total of all deposits is $900. The amount over one month's rent is $500. The landlord should send you a check for $25 (5% of $500) each year that you live there.

In reality, most landlords charge a deposit equal to one month's rent to avoid paying interest, and of the landlords who do charge additional deposits, very few landlords pay interest at all. The only penalty for a landlord refusing to pay interest is that the tenant can sue the landlord for that interest, and the filing fees are generally greater than the amount in dispute.

If the landlord does not send an itemization within 30 days, am I entitled to double my entire deposit?

No. You are still entitled to double damages on the amount **wrongfully withheld,** but not necessarily the entire deposit. An Ohio Supreme Court decision set this precedent. This decision does not mean that a landlord is released from the obligation of sending an itemization notice within 30 days. It simply means that if the landlord fails to send notice, he or she will not be penalized unless the tenant can prove that some part of that deposit was wrongfully withheld.

What if the deduction is listed in the lease?

Many courts in Ohio have disallowed automatic deductions from the security deposit, even when the tenant agrees to it in the

lease. Most often, these deductions are for carpet cleaning, painting, and early termination of the lease.

A clause that lists an automatic deduction from the security deposit is called a **liquidated damages** clause. A liquidated damages clause is an attempt by the landlord to estimate how much a repair will cost before it actually happens.

One Ohio landmark case centered on the issue of a lease clause that listed a $60 deduction from the security deposit for carpet cleaning upon move-out. The court ruled that the clause assumed in advance that the tenant would cause $60 worth of damage to the carpet. The state law only allows a landlord to retain money from the deposit **after** the tenant has caused damages. The landlord provided no inspection or evidence to show that the tenant had done $60 worth of damage. The court ruled that the clause was inconsistent with state law, and the tenant won the case.

In addition to carpet cleaning, clauses that list automatic deductions from, or forfeiture of, the security deposit for moving out during a lease have been found by the courts to be invalid. So called "re-rental fees" of an automatic $150 or $200 were disallowed because the landlords could not prove that the advertising and administrative costs of re-renting were actually that much.

Often, upon move out, the landlord will send a tenant a list of minor cleaning tasks and the deductions that the landlord will make from the deposit if the tenant doesn't do them. Although we know of no specific cases where this issue has been raised, it is fairly clear that these move-out lists are similar to the liquidated damages clauses listed above.

What is normal wear-and-tear?

Normal wear and tear is the result of reasonable use of the apartment by a tenant. Remember that the landlord can only deduct for **damage** caused to an apartment. This damage has to be due to the tenant's breach of the lease or breach of the state law

Center can assist you in writing this type of letter.

I paid a deposit before signing a lease or moving in. Now I've decided that I don't want to live there. Can the landlord keep the deposit?

That depends on what type of deposit you paid. There are two types of deposits that you may have paid; a security deposit or a deposit-to-hold. Hopefully, your receipt will specify what sort of deposit you paid.

A deposit-to-hold is a fee that a tenant pays to the landlord to keep a unit open for a period of time. The landlord's only duty is to not rent the unit to anyone else for a specified period of time. If the landlord holds the apartment for the tenant for the specified time, then the landlord has performed his or her duty and can keep the deposit whether the tenant moves in or not. Most landlords, however, will roll the deposit-to-hold into the security deposit if the tenant moves in.

If a landlord charges a security deposit, however, before you move in, and before you sign a lease, then the full deposit is refundable. In one Ohio court case, a tenant decided not to move into an apartment after paying the deposit and receiving a key. The landlord refused to return the deposit, and the tenant sued. The court awarded the deposit and double damages, noting that §5321.16 allowed the landlord to deduct for "rent past due". Because the tenant did not move in, no rent was due. However, this is a case that took place before a lease was signed. **If you sign a lease, and do not move in, the landlord can hold you responsible for the lease!** In most situations, this will consume your security deposit.

More recently, double damages have not been awarded in situations where the tenant does not move in. One Ohio court determined that double damages were not allowed for a tenant who never moved in, because the court determined that no tenant-landlord relationship existed. In the opinion of the court, the tenant-landlord relationship begins when the tenant moves in, and from that point on, §5321.16 and the double damages allowed by it apply.

date of mailing. If the landlord claims you punched holes in all the walls, you will need to prove that the damage did not occur or was already repaired. The defendant will get the benefit of the doubt in any "my-word-against-yours" scenario.

You will also need to research your claim, especially if you do not employ an attorney. While this booklet can present you with the basic information regarding security deposit issues, we are not attorneys and we do not know all of the various court rules regarding admissibility of evidence and other complex legal issues.

Here are some references that may help you prepare your wrongful withholding case:

- *Going to Court on Small Claims*, by the Ohio State Bar Foundation. Call (614) 487-2050 to order a copy;
- The "local rules" of the court you are filing your claim in. Most courts have a set of local rules that explain filing fees and the format in which the court expects pleadings and claims to be typed;
- *Ohio Landlord-Tenant Law*, by Frederic White, Banks-Baldwin Law Publishing Company (1995);
- Various "Be your Own Lawyer" books, many of which are available in public libraries.

Please keep in mind that the Clerk of Court's office cannot answer legal questions nor give legal advice. If you get confused along the way or feel overwhelmed with preparing your case, you may want to consider employing an attorney.

Isn't there some other way for me to get my deposit back without the hassle of going to court?

Maybe. Once you have prepared your case and finished your research, you might try sending a letter of demand that requests the return of your security deposit. The Fair Housing Resource

(§5321.05). Wear-and-tear is the damage that results from the natural usage of a rental property, and should be considered a business expense by the landlord. Here are some examples of what we generally considered wear-and-tear:

General cleaning, regardless of the tenant's reasonable efforts to thoroughly clean the apartment (see page 8). "Spruce it up" cleaning is usually done by management in order to prepare the apartment for a new tenant, and should not be considered damage. However, if the tenant fails to make reasonable efforts to thoroughly clean, the landlord may charge for cleaning tasks.

Carpet cleaning, when no specific damage was done to the carpet. However, stains, burn, tears, or excessive dirt build-up due to neglect could be seen as a damage.

Nail holes, for hanging pictures. Of course, placing excessive nail holes, such as using 20 nails to hang a poster, could be considered beyond the scope of reasonable use of the apartment. Using glue-backed plastic hangers cause damage if removing them would damage drywall or plaster.

Painting. Unless the tenant has caused damage to the wall that can only be repaired by covering the damage with paint.

For example, if a tenant painted the walls with dark or unusual paint, or if a tenant's children had drawn on the walls, and the marks could not be washed off, the tenant could be held responsible for the damage.

Replacement of light bulbs. Unless the tenant has broken or taken them, burned-out light bulbs are normal wear and tear.

There is no guarantee that a court would find these items to be normal wear and tear if a tenant were to challenge deductions from his or her security deposit. Much would depend upon the structure of the lease, and upon the particulars of the situation.

If I don't give the landlord thirty day's notice before moving, can the landlord keep my deposit?

That depends upon a number of factors. First, what sort of rental agreement do you have? If you have a long-term or one year lease, you cannot terminate that lease early simply by giving thirty days notice. You would have to show some sort of breach of duty by the landlord. If you do move out before the long-term lease is over, the landlord can sue you for the remainder of the lease (once the term of the lease has expired) or until it is re-rented, which ever is greater. This is a common practice for landlords because a tenant's early lease termination constitutes a breach, and landlords will generally withhold a security deposit in order to defer the costs of that breach.

Generally, if you terminate a lease early, your responsibility for rent ends when a new tenant moves in. The landlord should make a reasonable effort to re-rent the apartment. This concept is called **mitigation of damages.** If the landlord does find a new tenant, you could be responsible for a pro-rated amount of rent until the new tenant begins paying rent.

However, don't count on being released from the duty to pay rent if you break a lease. Sometimes apartments in larger complexes sit un-rented for months at a time. Additionally, there are often unexpected delays in the re-renting to an apartment, such as cleaning and preparing the apartment and running a credit check on a new tenant. Also, a few courts have ruled that if a tenant signs a lease, that tenant owes rent for the entire course of a lease, regardless of mitigating factors.

If you are living under a month-to-month agreement, either the landlord or the tenant can terminate the agreement, for any reason, simply by giving the other thirty days notice **before the next rent due date** (§5321.17 ORC). Of course, if you signed a lease that requires you to give **more** than thirty days notice, you must follow the terms of the lease. **See the Sample Letter on page 26 for an example.**

As an example, imagine that you are renting from a landlord on a month-to-month basis. You pay rent on the first of each month. On May 3, you give the landlord thirty days notice that you are moving. This would only give the landlord 27 days notice before your next rental period of June 1. **Therefore, the rental agreement would not terminate until June 30, instead of June 3, and you could be held responsible for June's rent!** If you do not pay this rent, the landlord can hold the month's rent from your deposit. However, if a new tenant moves into the unit in that month of June, you would only be responsible for a pro-rated amount of rent, ending when the new tenant moved in. At any rate, the landlord must show that he or she lost rent because you failed to give proper notice. The landlord cannot just hold the deposit as a penalty if you fail to give your termination notice, even if that penalty is listed in the lease.

If a landlord wrongfully withholds my security deposit, what do I have to do to collect?

In order to collect your security deposit, you would need to file a lawsuit in court against your landlord. Generally, lawsuits involving wrongful withholding of security deposits are filed in your local municipal court in the small claims division. You should also make sure to file the claim in the local court that has jurisdiction over the unit that you used to rent. Check with your local municipal court in order to determine if small claims is the proper place to file your claim.

Keep in mind that attorney's fees are a mandatory part of the award if you gave the landlord written notice of your forwarding address and you win your case. If you have a strong case, an attorney may take your case on what is called a "contingency" basis, which means that he or she would collect their fees from the landlord if your suit is successful.

No matter if you pursue the case with an attorney, or file yourself, you will need to document your claim. You will be making the claim of wrongful withholding; therefore you need to **directly prove** the claim. For example, if the landlord withheld the deposit, claiming that you did not give a proper termination notice, you need to produce a copy of your termination notice and proof of