

ductions from the security deposit, but does not preclude the landlord from taking separate action to recover damages in small claims court (MGO 32.07(9) & 32.07(14)(a)).

There are additional provisions related to photographs that state that at the time the landlord accepts the security deposit s/he must inform the tenant that the tenant has the right to request a list of physical damages and to request the opportunity to view the photographic evidence maintained by the landlord for up to 30 days (MGO 32.07(5)(b) & 32.07(5)(c)).

## Does my landlord have to pay interest?

If your security deposit was more than half of a month's rent, your landlord must pay simple interest from the time you pay the deposit until the time you move out (MGO 32.07(3)). The interest rate changes every year (the rate for 2008 is 0.94%, and for 2009 is 0.75%) and can be found online at <http://www.wdfr.org/ft/banks> (look for the Notice of Interest Rate on Required Residential Mortgage Loan Escrow Accounts). You can also call the City of Madison Building Inspection Unit at (608) 266-4551 to find out the current rate. The interest rate at the time you signed your lease applies for the entire lease period.

If your security deposit was half of one month's rent or less, your landlord does not need to pay interest.

## Can I cash a partial check?

A tenant no longer has to wait to cash a check until the security deposit dispute is settled. Cashing a partial refund check is not considered accepting the amount as full, and it does not waive the tenant's rights to sue for the rest of the deposit (ATCP 134.06(2)(e), MGO 32.07(7)(d)).

## Who should my deposit be returned to?

The landlord is supposed to put all tenants' names on the check unless tenants indicate otherwise in writing (MGO 32.07(7)(c)). The check-out form must provide an obvious place for the tenant's forwarding address (MGO 32.07(5)(d)).

## What if my landlord deducted money from my deposit unfairly?

If the landlord violates one of the rules mentioned in this brochure, you may take the following actions:

### **Write a letter to your landlord**

This letter should include the following:

- a description of the violation of the 21-day limit and/or each deduction that you disagree with
- specific mention of the law or laws that have been violated (usually Wis. Administrative Code ATCP 134.06 or Madison General Ordinance 32.07)
- an explanation that you could take further action, including small claims court for triple the amount wrongfully withheld, court costs and attorney fees
- a reasonable deadline for the landlord to return the total deposit (for example, five days, one week, etc.).

Be sure to keep a copy of the letter for your records.

### **File a complaint with Consumer Protection**

You can easily file a complaint with the Department of Agriculture, Trade and Consumer Protection. The bureau keeps complaint records and will contact the landlord about the violation. To get a complaint form, call (608) 224-4953 or (800) 422-7128 or fill one out online at <http://datcp.state.wi.us>

### **Sue in small claims court**

After the deadline in your letter expires and the landlord doesn't respond, you may sue your landlord in small claims court for triple what was wrongfully withheld plus court costs and reasonable attorney fees (MGO 32.07(10)).

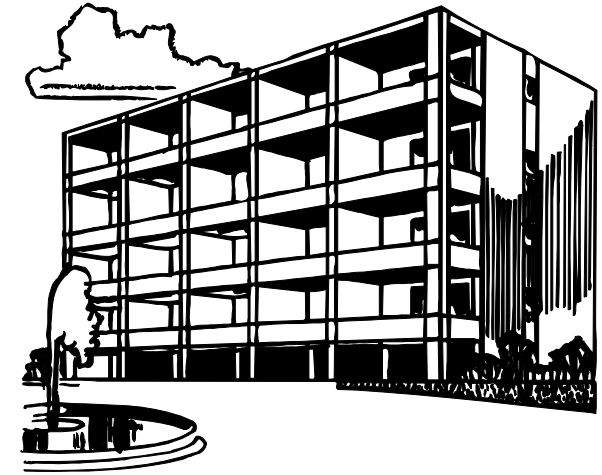
You must go to your county small claims court, fill out a simple "summons and complaint" form and pay a \$85 filing fee. The landlord may not contest your case, may settle, or may countersue you.

## Vocabulary

**Earnest money** Any money an applicant gives a landlord before the application is accepted or denied

**Security deposit** All of the money a tenant pays to a landlord before signing a lease, including any prepaid rent above one month's rent

# Security Deposits in the City of Madison



## Tenant Resource Center

1202 Williamson Street, Suite A  
Madison, WI 53703

**Rental Rights** (608) 257-0006  
**Toll-free outside Dane County**  
1-877-238-RENT (7368)

[asktrc@tenantresourcecenter.org](mailto:asktrc@tenantresourcecenter.org)

**Mediation** (608) 257-2799

**Business Line** (608) 257-0143  
[www.tenantresourcecenter.org](http://www.tenantresourcecenter.org)  
Monday - Friday, 9 am - 6 pm

**Housing Help Desk**  
(in the Dane County Job Center)  
1819 Aberg Avenue, Room 2  
Madison, WI 53704  
(608) 242-7406  
Monday - Friday, 8 am - 4:30 pm

If you need an interpreter, materials in alternate formats, or other accommodations, call our office at (608) 257-0143.

**Si Ud. necesita servicios en español, llame al (608) 257-0143.**

10/09

The **Tenant Resource Center** is a non-profit, membership organization dedicated to promoting positive relations between rental housing consumers and providers throughout Wisconsin. By providing information and referrals, education about rental rights and responsibilities, and access to conflict resolution, we empower the community to obtain and maintain quality affordable housing.

No part of this brochure should be regarded as legal advice or considered a replacement of a landlord's or tenant's responsibility to be familiar with the law. If you need legal assistance, seek the services of a Wisconsin housing attorney.

**If you live outside of the City of Madison, some of these rights do not apply. More information is available at the Tenant Resource Center or online at <http://www.tenantresourcecenter.org>.**

## What is a security deposit?

State law defines a security deposit as “all of the money” a tenant pays to a landlord before signing a lease, including any prepaid rent above one month’s rent. Deposits are kept as a guarantee the tenant will pay the rent and not damage the apartment.

At the time the landlord accepts the security deposit, s/he must inform the tenant of his/her right to request a list of physical damages and to request the opportunity to view the photographic evidence maintained by the landlord for up to 30 days after the current tenant moves (MGO 32.07(5)(b) & 32.07(5)(c)).

## How much can my landlord charge?

Madison law prohibits landlords from charging more than one month’s rent for a security deposit (MGO 32.07(3)).

## How do I protect my security deposit?

### **Fill out a check-in form**

Your landlord is required to give you a check-in form and must allow you **at least** seven days to fill it out. **Make a copy of the completed check-in form for yourself and give the original to your landlord by the deadline.**

Madison law states that landlords who fail to give tenants a check-in form forfeit rights to deduct from the deposit for cleaning or damages (MGO 32.07(6)(7)). If you do not receive a check-in form, make your own or get one from the Tenant Resource Center (also available on our website). Make a copy and send it to your landlord soon after of moving in along with a letter stating that you provided your own form because of your landlord’s failure to provide you with one.

When filling out the check-in form, be thorough. The landlord cannot charge you for any existing damages that you include on the check-in form.

Note problems with your unit such as:

- stained carpets or damaged floors
- cracked windows
- torn or missing screens
- nail holes, cracked paint, peeling wallpaper
- dirty conditions, fixtures and appliances
- stained walls and ceilings
- plumbing, sinks, bathtubs and tiles that are worn, dirty, mildewed or not working properly
- missing light bulbs or glass light covers
- electrical outlets or other items that do not work (light switches, stove burners, oven coils, etc.)
- stained, scratched, or otherwise damaged countertops.

### **Get a witness**

If you have a friend who isn’t living with you, have them witness the conditions at move-in. Have them initial your check-in form or write a separate form about what they saw.

### **Take photos**

Carefully photograph the apartment when you move in, being especially careful to document all damage. Give (or e-mail) one set of photos to your landlord soon after of moving in and keep a second set, digital, hard copies or negatives, for yourself.

### **Make a video**

If you have a camcorder, document the condition of the apartment, especially damaged areas.

## What should I do before leaving an apartment?

Try to schedule a check-out appointment with your landlord. If your landlord agrees to do this, make sure you leave with a signed copy of the check-out form. If the landlord notes things are dirty or damaged, offer to clean or fix them.

If your landlord refuses to go through the apartment with you, complete your own check-out form and take pictures documenting the condition of the apartment. Consider having the same witness who was present for check-in help with the check-out.

If your landlord presents you with a check-out form that indicates damages that you or your guests did not cause, do not sign it. Instead, complete your own check-out form and keep a copy. You should also take pictures to prove the condition of the apartment.

Leave your forwarding address on the check-out form or mail it to the landlord. Keep copies of everything!

Landlords who fail to provide a check-out form similar to the check-in form forfeit their right to deduct for damages or cleaning (MGO 32.07(6)).

## When must my landlord return my deposit?

The landlord has **21 days** after your lease ends to send you either the full security deposit or an itemized list of deductions (ATCP 134.06(2)(a), MGO 32.07(7)).

## What if I move out early?

If you move out before the lease is over, return the keys to the landlord and write a letter stating which day you are moving. Give one copy to the landlord and keep one for yourself. The landlord will have to return the security deposit within 21 days after you “surrender the premises.” You must notify the landlord in writing if you move out early, otherwise you will have to wait until the lease is over to get your security deposit back (ATCP 134.06(2)(b), MGO 32.07(7)).

## What if I don’t receive my deposit or list of deductions?

If the landlord does not return the full deposit or a detailed list of deductions within 21 days after you move out, the landlord forfeits the right to any portion of the deposit and you can sue the landlord in small claims court for triple the amount of the deposit plus court costs and reasonable attorney fees (MGO 32.07(10)).

## What could my landlord deduct? **Standard legal deductions**

- unpaid rent (some exceptions in Wis. Stat. 704.29)
- unpaid utilities owed under the rental agreement or for which the landlord becomes responsible
- damages caused by the tenants or their guests that go beyond “normal wear and tear”

- unpaid mobile home parking fees.

## **Nonstandard legal deductions**

Your landlord can deduct for reasons other than those listed above if you initialed provisions on separate page titled “NONSTANDARD RENTAL PROVISIONS” when you signed your lease. This may include late fees, etc. (MGO 32.07(14)(f)).

## **Illegal deductions**

Landlords may **never** deduct for “normal wear and tear” or for other losses that the tenant is not responsible for under the law even if the tenant signed a nonstandard rental provision authorizing these deductions (ATCP 134.06(3)(b) & (c), MGO 32.07(14)).

## **Carpet Cleaning**

It is illegal to deduct for routine carpet cleaning from the security deposit—even if you signed a lease that states that you must pay for carpet cleaning. Such lease provisions are illegal (MGO 32.11(9)). The only exception is if you damaged the carpet beyond “normal wear and tear.” If your landlord deducted money from your security deposit for routine carpet cleaning, inform your landlord in writing that it is illegal. If your deposit is not returned, file a complaint with Consumer Protection by calling (608) 224-4953, (800) 422-7128 or online at <http://datcp.state.wi.us/core/consumerinfo/cp>. You may also file a complaint with the City Attorney at (608) 266-4511. Be aware that the landlord may still pursue this in small claims court.

## **Photographic Evidence (Madison Only)**

Madison specifically states that charges shall not be deducted from the security deposit for tenant damage waste or neglect unless the landlord has documented such damage with **photographic evidence** to the extent the conditions can be photographed. The photographic evidence must be retained for at least 90 days from the date of return of the security deposit and/or the written itemized statement of deductions (MGO 32.07(14)(a)).

The written itemized statement of deductions must contain a notice that the tenant will be provided copies of photos documenting the damage waste or neglect, if the tenant makes a written request within 30 days of receipt of the statement (MGO 32.07(7)(b)).

The failure of the landlord to take, provide or retain these photographs does preclude the landlord from making de-