

SECURITY DEPOSIT



STATUTORY REFERENCES

Residential Tenancies Act (RTA) sections:

- 1(1)(f) landlord definition
- 1(1)(k) rent definition
- 1(1)(l) residential premises definition
- 1(1)(m) residential tenancy agreement definition
- 1(1)(n) security deposit definition
- 1(1)(t) tenant definition
- 19 inspection report
- 43 amount of security deposit
- 44 trust account
- 45 interest on security deposits
- 46 return of security deposits
- 47 obligations and rights of new landlord

Residential Tenancies Ministerial Regulation sections:

- 1(c) security deposit trust account definition
- 4 inspection reports
- 7 trustee of security deposit trust account

Security Deposit Interest Rate Regulation (all sections)

GUIDELINES

A landlord can ask a tenant to pay a security deposit, which is money paid by a tenant in addition to the rent that is due. The landlord holds the deposit as security for damage, cleaning costs, unpaid rent or other obligations the tenant may have to the landlord. A security deposit is sometimes referred to as a damage deposit. The tenant's basic obligations are to look after the residential premises and pay the rent when it is due. If no rent is owing, no damage has been done and the residential premises has been cleaned, the money **must** be returned with interest after the tenant moves out.

The security deposit is **not** to be used as the last month's rent, which the tenant is responsible to pay.

SECURITY DEPOSIT DEFINITION

A landlord can collect a security deposit at the beginning of the tenancy. A security deposit can be money, property or right paid or given by a tenant that is agreed to by the landlord and the tenant. The security deposit amount should be listed in the tenancy agreement, which should be in writing.

The purpose of a security deposit is:

- To cover the landlord's costs of repairing or replacing physical damage to premises.
- To cover the costs of cleaning because of extraordinary or abnormal use. This does **not** include cleaning associated with normal wear and tear.
- To cover any arrears of rental payments.
- To cover other costs agreed to by the tenant in the residential tenancy agreement, such as legal fees, utilities, late fees, etc.

AMOUNT OF SECURITY DEPOSIT

A security deposit **cannot** exceed what the tenant would pay for the first full month of the residential tenancy agreement. It **cannot** be increased at any time during the tenancy, even if the monthly rent is increased later. (see the next section "Increase of security deposits"). If a residential tenancy agreement contains a clause that requires a security deposit in excess of one month's rent, that clause is illegal and unenforceable. The tenancy agreement **cannot** take away the rights provided by the RTA.

A landlord should give a tenant a receipt for the security deposit and any other payments that are received from the tenant. However, the RTA does **not** require the landlord to provide receipts.

A refundable fee or charge is part of the security deposit. A landlord **cannot** charge additional refundable fees, e.g., for an extra parking stall, if the total of the security deposit and the additional refundable fees to be paid by the tenant exceeds one month's rent. (see Residential Tenancy Agreements ~ Fees and Charges section).

A non-refundable fee or charge that is agreed to in the residential tenancy agreement is **not** subject to the security deposit restrictions. Non-refundable fees **cannot** be deposited into the security deposit trust account. For example, if a landlord charges \$100 per pet as a non-refundable fee for the privilege of having a pet in the premises, this fee will **not** be held by the landlord as security, and will **not** be returned to the tenant. Therefore, this fee is **not** a security deposit as defined by the RTA.

Some residential tenancy agreements include a "late rent charge". If the tenant does **not** pay the late rent charge and if the charge is reasonable, the landlord is entitled to deduct the charge from the tenant's security deposit at the end of the tenancy.

INCREASE OF SECURITY DEPOSITS

A security deposit **cannot** be increased during the term of a tenancy.

PERIODIC TENANCY

If a periodic tenancy agreement has a “0”, “nil”, or “zero” in the space for the security deposit, or, if the space is blank, a landlord **cannot** later charge a security deposit as this would be an “increase”.

For example, if a tenant paid a security deposit of \$800 two years ago, and the rent has since increased on two occasions, first to \$825 and now to \$850, the amount of the security deposit **must** stay at \$800.

If a tenant and landlord expressly state or imply that they intend that the tenancy be renewed or continued after the end of the fixed term tenancy, without signing a new tenancy agreement, the RTA states that the tenancy automatically continues as a periodic tenancy. (see Residential Tenancy Agreement section for Implied Periodic Tenancy). The security deposit increase rules for periodic tenancies then apply to this tenancy.

FIXED TERM TENANCY - RENEWAL

If a fixed term tenancy has a clause allowing it to continue as a periodic tenancy after the fixed term expires, the security deposit **cannot** be increased as this is considered the same tenancy. In this case, all of the conditions of the tenancy would stay the same except the term.

FIXED TERM TENANCY - NEW AGREEMENTS

Both parties can negotiate and agree to enter into a new fixed term tenancy agreement that contains provisions for an increase in the rent and security deposit.

TRUST ACCOUNT

All security deposits collected since August 1, 1992 **must** be deposited in an interest-bearing trust account. The security deposit **must** be deposited into the trust account within two banking days after the tenant makes the payment to the landlord. Security deposits received before August 1, 1992 can be deposited in the trust account, but it is **not** required by the RTA. The trust account has to be at a bank, treasury branch, credit union or trust corporation and **must** contain only security deposit money.

The landlord is the trustee for the tenant's security deposit money and the trust account name **must** include the words “in trust”. The name on the account may refer to the landlord's name, the building name or the tenant's name, etc. An example is “ABC Rental Company, in trust”.

INTEREST ON DEPOSITS

Interest on the security deposit **must** be paid to the tenant annually unless the landlord and tenant agree in writing that it will be paid when the tenancy ends. The interest **must** be compounded annually on the anniversary date of the tenancy if it's **not** paid annually to the tenant.

The rate of interest to be paid is set annually by the Government of Alberta. The formula for setting the yearly interest rate payable on security deposits is 3% less than the cashable one-year guaranteed investment certificates rate in effect on November 1st of the previous year offered by Alberta Treasury Branches Financial.

A landlord may agree in a residential tenancy agreement to pay a higher interest rate. The landlord is then bound to pay the tenant interest on the security deposit and the compounding interest at the higher rate.

SECURITY DEPOSIT INTEREST CALCULATOR

The Service Alberta website contains an online calculator that is programmed to calculate the interest payable on security deposits at the prescribed annual rates.

The calculator is available at: <http://www.servicealberta.gov.ab.ca/interest-chart.cfm>

RETURN OF SECURITY DEPOSITS

The security deposit is considered “delivered” to a tenant on either the date it is handed to the tenant, or his agent, or the date of the postmark. The security deposit refund and statement of account, if there are any deductions, **must** be delivered or postmarked within 10 days of the day the tenant gave up possession of the residential premises.

When a joint tenancy exists, a landlord **must** return the security deposit through a cheque made out to all tenants and **not** to one particular tenant. The RTA is specific in requiring the security deposit to be returned to the tenant, and in the case of a joint tenancy every tenant is equal.

A landlord is entitled to deduct the cost of cleaning above and beyond normal wear and tear as well as for repairing or replacing damaged property to the residential premises. The RTA defines normal wear and tear as the deterioration that occurs over time with the use of the premises, even though the premises receive reasonable care and maintenance.

If there is any rent due and owing at the end of the tenancy, that amount can also be deducted from the security deposit. Some tenants “fail” to pay the rent for the last month of the tenancy, reasoning that the landlord “can use the security deposit to cover the last month’s rent”. This reasoning is incorrect and will almost always lead to additional cost and expense for both the landlord and the tenant if the matter ends up in court or RTDRS.

If a tenant does **not** pay rent for the last month, a landlord can:

- Serve a tenant with a clear 14-day eviction notice for non-payment of rent,
- Obtain a Distress for Rent through a civil enforcement agency, or
- Request an Order for Possession through the courts or RTDRS.

If the landlord is entitled to be reimbursed for cleaning or repair costs and the security deposit **cannot** cover those costs, the landlord can sue the tenant to recover the cleaning and repair costs. If there are amounts set out in the residential tenancy agreement that are due and owing by the tenant for other costs, such as legal fees, utilities, late fees, etc., they can also be deducted from the security deposit.

A landlord **must**, within 10 days of the tenant giving up possession of the residential premises, either pay the security deposit plus interest to the tenant, or provide a statement of account that shows what the costs were,

or provide an estimate of what the costs are expected to be. A final statement of account and any remaining balance **must** be provided to the tenant within 30 days after the tenancy ends.

The statement of account should show the tenant's name, address of rental premises, amount of security deposit, accrued interest, deductions from the deposit and the balance being returned, if any, or the amount owing if a negative balance.

The landlord has to personally deliver or send by registered, certified or regular mail to the forwarding address of the tenant, the security deposit refund cheque and/or the statement of account. If no forwarding address was left with the landlord, the landlord is responsible for attempting to locate the tenant. The cheque/statement of account is to be mailed to the last known address of the tenant, which may be the rented premises. If the mail is returned as undeliverable, the landlord is to keep the returned item for their records, as it is the tenant's money.

Landlords have to keep security deposit records that show the following for each tenant for at least three years after the expiration or termination of the tenancy:

- The date of receipt of a security deposit by the landlord and the amount of the security deposit,
- The date on which the security deposit was deposited in a financial institution and the name and location of the financial institution,
- Particulars of the interest payable and paid to the tenant,
- Particulars of the disposition of the security deposit under section 46, including the manner in which the security deposit or part of it was delivered to the tenant, and
- Make the security deposit records available for inspection by the Director or an authorized person for the purposes of an inspection or investigation.

A landlord has the right to keep part or all of the security deposit to cover costs that result from the tenant **not** meeting their obligations. If the total costs exceed the security deposit and the tenant does **not** pay them, the landlord can go to court or RTDRS to claim for the money owed.

If the tenant does **not** receive either the security deposit, a statement of account or an estimated statement of account within the 10 days after they leave, the tenant should immediately contact the landlord, in writing (and keep a copy), requesting the security deposit and a statement of account. A tenant may proceed through the courts or RTDRS to get the security deposit back if:

- A tenant still does **not** get anything from the landlord after requesting it, or
- A landlord deducts amounts from the security deposit that were **not** specified in the residential tenancy agreement, or
- A landlord deducts amounts from the security deposit that were for normal wear and tear,
- The requirements for inspection reports were **not** complied with, or
- A landlord can also proceed through the courts or RTDRS for remedy.

INSPECTION REPORTS

A landlord **cannot** make deductions from a security deposit for restoring or repairing costs resulting from normal wear and tear, even if there is a clause saying the opposite in the residential tenancy agreement. The RTA protects the security deposit from deductions for normal wear and tear by requiring landlords to complete move-in and move-out inspection reports. These reports allow the landlord and tenant to determine whether there are repairs or extra cleaning required. If the inspection reports are **not** completed, the landlord **cannot** make deductions from the security deposit to cover cleaning or repair costs. However, the landlord can apply to court or RTDRS to recover the charges previously agreed to by the tenant.

Tenants should leave all smoke detector batteries and light bulbs in working order. A tenant is responsible for ordinary cleaning and for cleaning that is the result of extraordinary or abnormal use. (see Inspection Reports section for Sample Cleaning List). Some examples of damages and deficiencies to the physical condition of rental premises for which deductions can be made when inspection reports are properly completed, are provided on pages 30-31, in the Inspection Reports section.

A landlord **cannot** make any deductions from a security deposit for damage, including cleaning, to the residential premises if the landlord and tenant did **not** complete the move-in and move-out inspection reports. These inspection reports **must** be done within one week before or after the tenant moves in, and within one week before or after the tenant moves out. The inspection report **must** include the statements and applicable signatures as required in the Residential Tenancies Ministerial Regulation before any deduction for damages is allowed from the security deposits.

The landlord can complete the inspection report without the tenant if the tenant either refused to, or did **not** take part in, one of two inspection times suggested by the landlord. The suggested inspection times **must** be on two different days that are **not** holidays, and be scheduled between 8:00 a.m. and 8:00 p.m.

The statements for inspection reports that are mandatory in the Residential Tenancies Ministerial Regulation have to be completed. (see Inspection Reports section).

If a landlord believes the tenant has abandoned the residential premises, the landlord **must** still make a reasonable effort to contact the tenant and arrange the inspection. A record should be kept of the attempted contacts. Some examples of reasonable efforts to contact the tenant are checking with references on the application form, their employer, relatives and neighbors.

If there are rent arrears, the security deposit can be used towards the arrears even if inspection reports have **not** been completed. Other deductions, like NSF fees, that are **not** dependent on inspection reports being properly completed, can also be made.

If a landlord does **not** do the required inspection reports, a landlord can apply to court or RTDRS for a judgment for the debt owed by the tenant.

OBLIGATIONS AND RIGHTS OF NEW LANDLORD

Any person who acquires the landlord's interest in the residential premises is subject to the same rights and obligations concerning security deposits as the previous landlord.

In the event that the landlord of the residential premises changes, the new landlord has to deposit any security deposits that are turned over by the prior landlord, into a new security deposit trust account.

If the prior landlord does **not** turn the security deposits over, the new landlord is still responsible for the security deposit refunds. The RTA requires the new landlord to refund the deposits at the end of the residential tenancy agreement. Failure to receive the security deposits from the prior landlord or owner **cannot** be used as grounds for non-return of a security deposit.

For example, if the apartment building goes into foreclosure and the receiver-manager or new owner takes over, the receiver-manager or new owner is responsible for carrying out a landlord's obligations, including refunding security deposits at the end of the residential tenancy agreement.

A buyer of the residential premises is also fully responsible for the security deposit paid by the tenant.

The new landlord is required, within a reasonable time and at no cost to the tenant, to give the tenant a statement setting out the amount of the security deposit and interest that has accumulated as of the date title transfers.

CANADA DEPOSIT INSURANCE CORPORATION (C.D.I.C. ACT) POOLED TRUST ACCOUNTS

The RTA requires security deposits to be placed into interest bearing trust accounts in Alberta within two banking days of receipt. Only security deposit monies can be placed in this trust account. Security deposit trust accounts with banks, trust companies and loan companies are insured to a limit of \$100,000.

The insurance protection for funds deposited in banks, trust companies and loan companies is provided by the C.D.I.C. Act. Funds on deposit are insured up to a limit of \$100,000 in the event of failure of a financial institution. The C.D.I.C. Act does **not** cover funds on deposit with a credit union or Alberta Treasury Branch. However the Alberta Government, through the Credit Union Deposit Guarantee Corporation, protects all deposits with credit unions and also unconditionally guarantees all deposits with Alberta Treasury Branches.

Since security deposit trust accounts with banks, trust companies and loan companies are insured to a limit of \$100,000, certain procedures **must** be followed to ensure funds are protected if the account balance exceeds \$100,000:

1. Inform the bank, trust company or loan company that the trust account is a pooled trust account set up under the RTA. Advise the institution that the account contains funds of more than one party and that these parties change periodically. Whenever a landlord opens a new trust account, they have to provide a similar notification to the bank or trust company.

2. Provide the bank, trust company or loan company with the following information:
 - (a) The number of tenants whose money is in the trust account. Identify them by suite or stall numbers, or similar identification, but **not** by name.
 - (b) The amount that each tenant has on deposit with the landlord in the trust account.

This notification should be given to the landlord's bank, trust company or loan company on or about April 30th each and every year. This will establish beyond doubt that the trust account is in fact pooled. Because the premium payable to C.D.I.C. is calculated at April 30th each year, it is necessary to provide this information to the bank, trust company or loan company to coincide with that date. Provided that landlords follow this procedure on an annual basis, it is understood that each party who has funds on deposit in the trust account will be protected to the \$100,000 limit presently provided under the C.D.I.C. Act.

It is important that landlords follow this process on an annual basis. If the appropriate disclosure has **not** taken place, e.g., been made by the depositor and recorded by the member financial institution, C.D.I.C. will treat the account as part of the depositor's individual holdings, which would be eligible for a cumulative maximum of \$100,000 of insurance coverage. If a tenant suffers a loss of funds that are being held on deposit by a landlord in a pooled trust account, the tenant may be able to claim against the landlord for the loss.

FORMS

Accommodation Inspection Report and Statement of Account forms are available at a nominal cost from a number of organizations including the Landlord and Tenant Advisory Boards, the Calgary Residential Rental Association and the Alberta Residential Landlord Association.

The inspection report has to be in writing and contain everything that the RTA requires. The RTA lists the content for these reports in the Residential Tenancies Ministerial Regulation. Landlords and tenants are free to prepare inspection reports that best suit their particular needs as long as the form has the content from the Regulation. The inspection report **cannot** take away any of the rights, benefits or protections contained in the Act.