

# ask an ATTORNEY



## LANDLORD/TENANT: SECURITY DEPOSIT

Article provided by  
Richard C. Rahnema at the law  
offices of Wachtel Biehn & Malm.

**T**he weather is warming up quickly, which means the temporary winter visitors are leaving quickly...depending on the weather back home. In the previous two months, most visitors have left their residences and the owners of these properties are preparing for the summer crowd. Our office receives numerous calls regarding landlord/tenant issues during this time each year.

The *Arizona Residential Landlord and Tenant Act (ARLTA)* is the law governing most private and residential, rental agreements. *ARLTA* provides a minimum standard regarding rights, responsibilities, and remedies for landlords and tenants. This article is limited to single-family residential dwellings relating to security deposits. It does not include mobile homes or commercial properties.

Litigation (filing a lawsuit) is expensive and time consuming. Typically, unless the matter involves eviction, most landlord/tenant disputes are filed in Small Claims Court, which has a maximum amount of money a person can claim of \$2,500. Avoiding litigation requires landlords and tenants to understand the terms of the lease agreement (before signing). Many people don't review their lease thoroughly enough...however, if each clause of the lease is agreed on, it will save time and money down the road. Additional information at [www.wbmlaw.com](http://www.wbmlaw.com)



**There was no damage and I left the house clean. How do I get my deposit back?**

Tenants have the obligation of leaving the residence in the condition it was received in. If there is no damage, no rent deficiency and the residence is "clean," the landlord is obligated to refund the total amount of the security deposit. If you provided your landlord with a "cleaning deposit" (lease did not indicate it was nonrefundable) it is presumed to be refundable if the premises was clean. It should be noted, a tenant will not be responsible for "reasonable wear and tear" on the property. The tenant is only responsible for damage, rent arrears, and/or cleaning fees. This is usually where the disagreement occurs. Landlord says it is not in the same condition and the tenant

disagrees, usually stating they spent countless hours cleaning and claiming it is in better condition. See the final paragraph for possible solutions.

**What is the maximum security deposit a landlord can request?**

A security deposit is used to protect the landlord against damage to the property, unpaid rent and/or necessary cleaning. Under *ARLTA*, a landlord can only require a security deposit equal to 1.5 times the monthly rent. This amount is a "refundable deposit," meaning if you do everything properly, you will get it back. You must read the lease carefully. The lease must state if a fee is "nonrefundable." For example, if you are paying \$1,000 per month, the landlord may collect a \$1,500 refundable security deposit, a \$500 nonrefundable cleaning fee and a \$100 nonrefundable redecoration fee for a total of \$2,100. The total amount exceeds the \$1,500 (1.5 rule), but the nonrefundable fees (\$600) are permitted under *ARLTA* because it is not considered a "security." Any amount of money which is "refundable" is considered "security." Under *ARLTA*, a landlord can only ask for security to guarantee payment under the lease for damage, unpaid rent and/or cleaning. If the fee is not designated as "nonrefundable," it is classified as a security (you can get it back). If it states "nonrefundable," no matter what you do, you cannot get the money back.

**The lease has ended and I am moving out. What should I do?**

Write the landlord a letter 30 days prior to the move out date informing them of your intentions. Also, request a joint walk through with move out inspection sheets. The landlord must provide written notification the tenant may be present during the move out inspection and the date of inspection. In general, a landlord must provide the tenant with a minimum of two days' notice of the intent to enter the residence.

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**It has been 14 days and I still have not received anything from the landlord. Now what?**

The landlord must abide by the lease agreement and *ARLTA*. Before suing in Small Claims Court, write a letter to the landlord requesting the money or an itemized list of deductions. In this letter, cite the relevant portions of the *ARLTA* and provide a deadline for the response (10 days). Use an exact date, such as May 20, 2013. This will eliminate any guessing whether you were including weekends. After the 10 days has expired, you may sue in Small Claims Court and recover the money wrongfully withheld. Under *ARLTA*, you are entitled to be compensated the money wrongfully withheld plus damages, "equal to twice the amount wrongfully withheld," plus attorney's fees (attorney's not permitted in Small Claims Court) and court costs. Even though the landlord has not returned the money, the landlord has the legal right to counter-claim in Small Claims Court against you, in your lawsuit, if there were repairs, unpaid rent, cleaning, etc.

Landlords and tenants should protect themselves with a detailed move in and move out inspection sheet, which should be signed and dated by both parties. Additionally, take pictures and videos (turn on date and time stamp function). Do not be afraid to point out and have a discussion with the landlord regarding prior damage and cleanliness. If there is a discrepancy before tenancy, you can almost be sure there will be a problem at the end of the tenancy. Litigation is expensive and time consuming. A much better idea is to spend a little more time in the beginning of the tenancy process and include everything in the lease agreement and inspection sheets, opposed to spending money and time fighting in court.