
This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

SECURITY DEPOSIT

1. A landlord may require a security deposit when the landlord and tenant enter into a tenancy agreement.
2. The tenancy agreement may not provide that the landlord automatically keeps all or part of the security deposit at the end of the tenancy.
3. A landlord may issue and serve on the tenant a Notice to End a Residential Tenancy if the tenant fails to pay the required security deposit within thirty days of the date it is required to be paid by the tenancy agreement.
4. A tenant may not apply all or part of the security deposit to rent without the written consent of the landlord.
5. The tenant may agree in writing at the end of the tenancy that the landlord may retain all or part of the security deposit.
6. The right of a tenant to the return of a security deposit is extinguished if the landlord has offered the tenant at least two opportunities for a condition inspection as required by the Act and the tenant has not participated on either occasion.
7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:
 - the landlord does not offer the tenant at least two opportunities for inspection as required by the Act, and/or
 - having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.
8. In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.
9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:
 - to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
 - to file a claim against the deposit for any monies owing for other than damage to the rental unit;
 - to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy
 - to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

17. Security Deposit and Set off

Jul-04

10. The landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit plus interest to the tenant.
11. If the landlord does not return or file for arbitration to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit. Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount and is not doubled.
12. The obligations of a landlord with respect to a security deposit run with the land or reversion. Thus, if the landlord changes, the new landlord retains these obligations.

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the depositunless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.
2. Where the tenant applies for return of the security deposit and the landlord later applies for arbitration for claims arising out of the tenancy and the arbitrations are not scheduled at the same time, the arbitrator will order the return of the security deposit to the tenant and the landlord's claims will be heard whenever scheduled after that, unless the parties and the arbitrator agree to having the landlord's claim heard at the same time.
3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
 - If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
 - If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
 - If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
 - If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
 - whether or not the landlord may have a valid monetary claim.

17. Security Deposit and Set off

Jul-04

4. In determining the amount of the deposit that will be doubled, the following are excluded:
 - any arbitrator's monetary order outstanding at the end of the tenancy;
 - any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit;
 - if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

SET-OFF

1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single Order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the Order.
2. The *Residential Tenancy Act* provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the arbitration fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.
3. If a landlord who does not apply for arbitration within the time required in order to retain the security deposit retains the right to apply for arbitration and subsequently applies in respect of monetary claims arising out of the tenancy and the landlord has not returned the security deposit, any monetary amount awarded will be set off against double the amount of the deposit plus interest.
4. In cases where the tenant's right to the return of a security deposit has been extinguished under section 24 or section 36 of the Act, and the landlord has made a monetary claim against the tenant, the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant's right to the return of the deposit has been extinguished. In this situation, while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the Act.

If the amount awarded to the landlord does not exceed the amount of the deposit and interest, the balance may be retained by the landlord as the tenant has forfeited the right to its return.

For information with respect to pet damage deposits refer to Guideline 31.