

**NEW YORK STATE DEPARTMENT OF LAW
BUREAU OF CONSUMER FRAUDS AND PROTECTION**

**RECOVERING RENT SECURITY DEPOSITS AND INTEREST
IN NEW YORK CITY SMALL CLAIMS COURTS**

The following information is designed to assist consumers considering filing suit in small claims court to recover rent security deposits or interest. The clerks at small claims court will help you perform the steps we suggest. Please note that the Office of New York State Attorney General offers, as an alternative to filing a lawsuit, mediation services to assist tenants in recovering rent security deposits and interest. To access this Office's mediation services, simply file a rent security complaint form with the Office of the New York State Attorney General, Bureau of Consumer Frauds and Protection at 28 Liberty Street, New York, New York, 10005.

At the outset, you should consider whether a small claims action is likely to result in a paid-up judgment. You cannot commence a small claims action unless you can provide the defendant's correct name and address for the clerk to mail a summons. Note that the defendant must reside or do business in the county where the court is located. Try to determine whether the defendant is still in business because, even if you win a judgment, you will be unable to collect on it if the defendant has no funds. Small claims courts can award judgments no higher than \$5,000. In order to recover a larger sum, you will have to bring your suit in civil court.

RENT SECURITY DEPOSITS

If you seek to recover your rent security deposit, note that the landlord is entitled to withhold a sum to cover any unpaid rent and/or tenant-caused damage to the apartment. You should gather any proof you have, such as cancelled checks and receipts, that you paid all rent you owe. If the landlord claims you damaged the apartment, you might demand production of repair receipts. The court might permit you to introduce photographs showing the condition of the apartment when you left it.

RENT SECURITY INTEREST

You are entitled to receive interest on your security deposit if the building has six or more apartments or if, regardless of the size of the building, the landlord placed the deposit in an interest-bearing account. However, you are not entitled to interest on your rent security if both the building has fewer than six apartments and the owner did not place the security in an interest bearing account.

The owner is permitted to deduct 1% simple interest on the deposit as an administrative fee. As an example, if a tenant provides a security deposit of \$400 and the landlord places that deposit in an interest bearing bank account paying 2.5% interest, then at the end of the year the account will have earned \$10.00 in interest. The tenant is entitled to \$6.00 and the landlord may retain \$4.00, 1% of the deposit, as an administrative fee.

Note that the landlord is permitted to add accumulated interest to the rent deposit in order to bring the security deposit up to one month's rent instead of paying the interest to you, but only if you consent. You should consider whether the landlord might raise such a claim in court.

RENT SECURITY PAYMENTS TO FORMER OWNERS

If the building is sold, the landlord must transfer all security deposits to the new owner within five days, or return the security deposits to the tenants. Landlords must notify the tenants, by registered or certified mail, of the name and address of the new owner.

Purchasers of rent stabilized buildings are directly responsible to tenants for the return of security deposits and any interest. This responsibility exists whether or not the new landlord received the security deposit from the former landlord.

Purchasers of rent-controlled buildings or buildings containing six or more apartments where tenants have written leases are directly responsible to tenants for the return of security deposits and interest in cases where the purchaser has “actual knowledge” of the security deposits. This responsibility exists whether or not the new landlord received the security deposits from the former landlord. However, “actual knowledge” (defined in Section 7-108 of the General Obligations Law) is a technical term. If you wish to file a claim against the current owner on this basis, it may be worth the expense of an initial consultation with a private attorney familiar with this area of the law to make sure your claim meets the basic requirements. (If you do not already have an attorney, your county bar association will provide you with referrals.) Otherwise, you will have to identify and locate the former owner to whom you paid the rent security.

THE HEARING

At the hearing, be sure you have all relevant papers in your possession, such as the lease, cancelled checks and receipts. You may also mention Article 7 of the General Obligations Law, which governs rent securities, to the judge or arbitrator.

COLLECTING A JUDGMENT

If you succeed in court, the local sheriff or marshal will help you collect the judgment, but only if you supply information about the location of the landlord’s assets. In most cases, you can readily identify the landlord’s bank accounts where the rent security and rent checks were deposited from your cancelled checks. Try to locate any other assets. In addition, if the judgment is against the current landlord, the small claims court clerk will help you docket the judgment as a lien against the property. This impediment to the sale of the building may induce the landlord to pay your judgment.

The Attorney General cannot assist you in these steps, but we hope you find the information and suggestions helpful.

Dated: 3/13, 9/20