

Chapter 3

Security Deposits and Last Month's Rent

Legal Tactics: Tenants' Rights in Massachusetts
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Security Deposits and Last Month's Rent

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Italicized words are in the Glossary

At the beginning of a *tenancy*, a landlord is allowed to demand certain payments from you before you move into your new apartment. These may include a security deposit and last month's rent payment.

The single most important step that every tenant should take when giving a landlord a security deposit or last month's rent payment is to get a written receipt. A receipt is your best protection. It may save you money and prevent problems between you and your landlord later on.

Because landlords had been known to wrongfully hold on to security deposits and last month's rent payments and force tenants to sue to get their money back, the state legislature passed a security deposit law to protect tenants. This law applies to all landlords, regardless of how many apartments they own.¹ This chapter tells you what these laws are and how you can protect your rights.

How Much Can a Landlord Request

The most a landlord can charge you when you first move into an apartment is:

- First month's rent;
- Last month's rent payment;
- A security deposit; and
- The cost of a new lock and key.²

The last month's rent and security deposit each can be no more than the first month's rent. For example, if your first month's rent is \$1,000, a landlord can charge you \$3,000 (\$1,000 for the first month's rent, \$1,000 for a security deposit, and \$1,000 for a last month's rent payment), plus the cost of a new lock and key.

1. Differences Between a Security Deposit and a Last Month's Rent Payment

A security deposit and a last month's rent payment are not the same thing. A security deposit is money that you pay and expect to get back after you move out. The purpose of this money is to protect the landlord in case you damage the apartment or leave owing rent. In the eyes of the law, a security deposit is your money. For this reason a landlord must keep it in a bank account separate from the landlord's money (and safe in case he goes bankrupt or gets foreclosed on) and must pay you interest every year. When you move out, you do not automatically have the right to withhold your last month's rent simply because the landlord holds a security deposit.

The purpose of a last month's rent payment is to protect a landlord against a tenant's leaving without paying the last month's rent. When you pay last month's rent in advance, you should not expect to get this money back when you move out. Instead, it will pay for your last month in an apartment. Also, a landlord does not have to put your last month's rent money in a separate bank account while she holds onto it. She does,

however, have to pay you interest on it every year.

2. Illegal Practices

a. Illegal Fees

Massachusetts law clearly states that before you move in, a landlord can charge you only first month's rent, a last month's rent payment, a security deposit, and the cost of a new lock and key. Often, landlords try to impose extra charges on tenants. They may call these "holding deposits," "pet fees," "fees for credit checks," "cleaning fees," or "application fees." These extra fees are illegal.³

A separate broker, independent from the landlord, may, however, also charge a "finder's fee" or "broker's fee."

A landlord cannot try to escape the requirements of the security deposit law by taking what is really a security deposit and calling it a "cleaning fee" or something else.⁴ This is also illegal.

The problem is that if a landlord demands these illegal charges and you either accuse the landlord of violating the law or refuse to pay, the landlord may not rent you the apartment. If you want the apartment and can afford to pay the extra fees, get a detailed receipt for whatever you pay and then take the extra fees out of your future rent after you safely move in. When you do this, write the landlord a letter telling her what you are doing and why.

b. Discrimination

You may want to consider whether a landlord is imposing either legal or illegal deposits as a way to keep out certain groups of people whom she doesn't want as tenants. It is illegal for a landlord to discriminate against people because they are single parents, people of color, people on welfare, people with small children, people who have a rental subsidy or people who are members of other protected groups. For more information about illegal discrimination, see **Chapter 7: Discrimination**.

c. Illegal Lease Clauses

Your landlord cannot take away your rights under the security deposit law by using a written lease that conflicts with the law. For example, a lease clause is illegal if it says that the landlord can keep your security deposit if you rent an apartment for less than six months. If a landlord has you sign a lease with a clause that conflicts with the security deposit law, you are entitled to get your security deposit back upon demand. For information about how to do this, see the section in this chapter called **Getting Back Your Security Deposit**.⁵

d. Increases in Deposits

If your rent increases during your tenancy, your landlord may not increase your security deposit. Your security deposit is limited to the amount of your first month's rent.⁶

Your landlord may, however, request an increase for the last month's rent payment if she has terminated your tenancy and you have accepted a new tenancy at a higher rent. In this case, the landlord may lawfully request that the last month's rent payment match the new higher rent.

Security Deposit and Landlord's Responsibilities

If a landlord takes a security deposit, the law says that she has certain obligations. These obligations include providing you with a written receipt, giving you a statement that describes the condition of your apartment, holding your money in a bank account that is separate from the landlord's money, paying you interest every year, and keeping records of deposits and repairs.

1. Providing Written Receipts

Never give a landlord cash without getting a written receipt.

If a landlord demands a security deposit or last month's rent payment, the law requires her to give you a written receipt when she takes your money.⁷ After the landlord deposits the security deposit in a bank, she must give you a second receipt that tells you the name and location of the bank and the account number.⁸ In addition, at the end of each year of your tenancy, the landlord must give you a statement telling you the amount of interest to which you are entitled on your security deposit and last month's rent payment.⁹

The information that must be included in each of these receipts or statements includes:

First Receipt	Security Deposit	Last Month's Rent
Amount of money received	✓	✓
Date money was received	✓	✓
Intended use of the money	✓	✓
Name of person receiving the money	✓	✓
Name of landlord (if different from person receiving the money)	✓	✓
Statement that you are owed interest on the money	✓	✓
Statement that you should give a forwarding address so when you move landlord can send you interest		✓

Second receipt within 30 days after the security deposit is deposited	Security Deposit	Last Month's Rent
Location and name of bank where your money is	✓	
Account number of the fund where your money is	✓	

Statement at the end of each year	Security Deposit	Last Month's Rent
Statement of the amount of interest you are owed on your deposit	✓	✓

All your rights are based on being able to prove that you paid the landlord a security deposit and/or last month's rent payment. For this reason, the most important step you can take to protect your rights is to get a complete receipt at the time you give a landlord any deposit. No responsible landlord should object to giving you a receipt if she knows the law. And, if she does object, use **Form 4: Security Deposit and Last Month's Rent Receipt**. **Never give a landlord cash without getting a written receipt.**

2. Statement of Condition

Within ten days of your giving a landlord a security deposit, the landlord must give you a document called a Statement of Condition. The purpose of a Statement of Condition is to prevent disputes between you and your landlord when you move out about what damage you may have caused and what damage existed when you moved in.

This statement, which must be signed by the landlord, must list all damage existing in your apartment and the common areas of the place you are renting at the time you move in. You then have an opportunity to add damages that exist that the landlord has not included in the list. This includes all Sanitary Code violations

cited by the Board of Health or found by a court.¹⁰

a. Take the Statement of Condition Seriously

If the landlord gives you a Statement of Condition, you are required by law to return it to the landlord within 15 days of receiving it. Make sure that you keep a copy of whatever you send back to the landlord. You may either sign the Statement of Condition without making any changes or you may attach your own list of damages that you believe exist on the premises. Take this task seriously. Check over the apartment carefully before signing the statement, and consult the **Housing Code Checklist** (see **Booklet 2**). Add to your list even small defects, such as holes in the walls and windows that do not work well. If you sign the landlord's statement as is or you fail to send it back within 15 days of receiving it, this means that you agree that the landlord's list is correct and complete. If you send the landlord your own list of damages, the landlord must return a copy, with her signature, within 15 days, noting her agreement or disagreement with your list.

b. What If You Do Not Get a Statement of Condition

If your landlord fails to give you a Statement of Condition, it may not be worth your while to press for one immediately. Except for a possible \$25 penalty, a landlord cannot be punished for failing to give a tenant a Statement of Condition.¹¹ Also, a landlord, who knows the condition of the apartment better than you do when you first move in, may be unlikely to confess to serious code violations if she is aware of them.

If there are any serious problems with the apartment, it is in your interest to put the landlord on notice by filling out your own Statement of Condition and sending it to the landlord shortly after you move in. You can use **Form 3: Statement of Condition**. This is important not only to prevent the landlord from later using your security deposit to pay for

damage that you did not cause, but also to put the landlord on notice of problems that exist in the apartment. Keep a copy of your Statement of Condition in a safe place. You may also want to take pictures of certain problems. Make sure you date your pictures by writing when you took them on the back of each one.

As soon as you become aware of new problems, send the landlord written notice of these problems. For example, if you move in during August, you might not find out that the heating system is broken until several months later. As soon as you notice a new defect, send the landlord a letter telling her about the problem and asking her to repair it. Keep a copy of this letter for yourself as proof that you properly notified the landlord.

3. Holding Funds in a Separate Bank Account

In the eyes of the law, the security deposit is your money unless and until the landlord has the right to use it. To prevent a landlord from using it for her own benefit, a landlord must place it in a Massachusetts bank account separate from her own money, in an "account protected from creditors." The name on the account must make it clear that the money does not belong to the landlord.¹²

If a landlord fails to put your money in a separate "account protected from creditors," you may be entitled to three times the amount of your deposit.¹³

Within 30 days of taking your deposit, the landlord must give you a written statement of the name and location of the bank and the account number where she has placed your money. If she fails to do this, you are entitled to have your security deposit refunded. See the section in this chapter called **Getting Back Your Security Deposit**.

4. Payment of Interest

Because a security deposit is your money and because if you had it, it could be earning interest in a bank, you are entitled to earn interest on it. You are entitled to receive 5% interest per year, except that if the landlord's bank pays less than 5%, you are entitled only to the amount actually earned.¹⁴ Your landlord must pay you this amount at the end of each year of your tenancy and within 30 days after you finally move out.¹⁵

At the end of each year of your tenancy, the landlord should also send you a notice restating where the security deposit is, how much interest she owes you, and that you can deduct this interest from your next rent payment, unless the landlord pays you the interest directly. Usually, landlords do not provide tenants with this notice. If you do not receive the interest or a notice within 30 days after the anniversary date of your tenancy, you have the right to demand that the security deposit be returned to you immediately and to deduct the interest to which you are entitled from your next rent payment.

How Much Interest Does Your Landlord Owe You

If you pay a \$1,000 security deposit and a \$1,000 last month's rent payment and the interest on the account is 2%, your landlord must pay you a total of \$40 in interest for every year that you rent. If the landlord does not pay you directly, you may deduct this \$40 from your rent payment. Here's how the math works.

❶ If the Interest is 2% on Your Security Deposit and Last Month's Rent

\$1,000	Security Deposit	\$1,000	Last Month Rent
$\times .02$	Interest	$\times .02$	Interest
\$ 20 =	Amount owed	\$ 20 =	Amount Owed

❷ Deduct Total Interest Owed from Your Rent

\$1,000	Rent
$-\$ 40$	Total interest owed tenant on security deposit and last month's rent payment
\$ 960 =	Amount of next rent check

5. Keeping Records of Deposits and Repairs

Any landlord who accepts a security deposit must keep a written record of all deposits she has received from current tenants and from former tenants for two years after their tenancies end.¹⁶ These records must include the following information:

- A detailed description of what damage has been done in an apartment where the landlord took a security deposit;
- When repairs were made; and
- How much repairs cost (including receipts proving the cost).

A landlord must make these records available during normal business hours to any "tenant or prospective tenant" who asks to see them.¹⁷ If you pay a security deposit and the landlord then refuses to let you see the records, you are entitled to an immediate refund of the deposit.¹⁸

Last Month's Rent Payments and Landlord's Responsibilities

1. Providing a Written Receipt

Never give a landlord cash without getting a written receipt. A landlord must give you a written receipt including specific information when you make a last month's rent payment. See the chart that describes this information in the section called **Security Deposit and Landlord's Responsibility**.

For this reason, the most important step you can take to protect your rights is to get a complete receipt at the time you give a landlord any deposit. No responsible landlord should object to giving you a receipt if she knows the law. And, if she does object, use the sample receipt

(see **Form 4: Security Deposit and Last Month's Rent Receipt**).

2. Payment of Interest

A tenant is entitled to receive 5% interest on her last month's rent payment every year, except that if the landlord keeps the money in a bank and the bank pays less than 5%, you are entitled only to the amount actually earned.¹⁹ For example, one year after you sign a lease or move into an apartment, and on every anniversary date after that, your landlord must send you a statement telling you how much interest she owes you or a notice telling you that you can subtract this interest from your next rent check. If, 30 days after the anniversary date of your tenancy, your landlord has not sent you this interest or told you that you can subtract it from your next rent check, you may legally subtract it from your next rent check. For an example, see **How Much Interest Does Your Landlord Owe You** in the section called **Security Deposit and Landlord's Responsibility**.

3. Last Month's Rent and Section 8 Housing

Rules on exactly what can be charged vary by program. For the tenant-based voucher program, there is no provision for charging a last month's rent payment (but there is nothing specifically in federal regulations that would prohibit this). If an owner demands a last month's rent, it should be limited to your portion of the rent, since the owner will be paid by the housing agency for its portion of the rent for your last month.²⁰

Getting Back Your Security Deposit

1. When Must a Landlord Return a Security Deposit

A landlord must refund your entire security deposit immediately upon demand in the following situations:

- If the landlord fails to put your money in a bank account separate from the landlord's money;
- If the landlord does not give you a complete written receipt that has all of the information listed in the chart in the section called **Security Deposit and Landlord's Responsibility**; or
- If the landlord does not allow you to inspect the records she is required to keep under the security deposit law.

In each of these cases, you can demand your security deposit back and your landlord must return it to you even though you are still living in the apartment. The reason for this is that if your landlord does not properly account for your money, the law requires her to return it.

A landlord must also return your entire security deposit within 30 days from the day you move out of your apartment. There are two exceptions to this rule. First, if you are a tenant with a written lease, a landlord does not have to return your deposit until 30 days after the "end of the tenancy" as specified in the lease, even if you actually leave sooner.²¹ Second, your landlord can use your security deposit to pay for certain expenses. The next section tells you what these expenses are. Before you leave an apartment, give your landlord an address where she can send the security deposit and any interest.

2. What Can Security Deposits Be Used For

While you are living in the apartment, you and the landlord may agree to use your security deposit to pay for rent or to repair any damage you or a guest may cause. Your landlord cannot use a security deposit in this way unless you and your landlord both agree to it. If you do, put this agreement in writing.

At the end of your tenancy, your landlord may deduct the following expenses from your security deposit:

- Any unpaid rent, unless you legally withheld it for bad conditions;
- Any unpaid increase in real estate taxes for which you are responsible under a valid tax escalator clause in your lease (for more information about tax escalator clauses, see **Chapter 5: Rents**); and
- A "reasonable amount necessary to repair any damage" caused by you, your family members, or guests, beyond any "reasonable wear and tear."²²

Of course, any sentence with two "reasonables" in it invites argument. What one person thinks is reasonable, another person may think is unreasonable. Routine painting and cleaning, new locks, and minor carpentry are generally considered "reasonable wear and tear" and not chargeable as damage. The security deposit law is also supposed to protect you against phony or inflated deductions for damages. For example, the landlord cannot deduct for damages that she says existed when you moved in unless she can prove that she fixed them after you moved in and you caused the damage again. If the landlord wants to make a deduction for repairs, she must give you a complete list of the damaged items and the repair costs needed to correct them within 30 days of your moving out. The list must be signed and sworn to by the landlord "under penalties of perjury," and must be accompanied by written documentation of the actual or estimated repair costs.

If a landlord fails to do any of these things within 30 days of your moving out, the landlord gives up the right to keep any portion of your security deposit. If you end up suing your landlord for the deposit, the law says she is not allowed to argue that you caused damage. If she wants to accuse you of causing damage, she must bring a separate lawsuit.²³ To repeat: Even if the damage is real, the landlord is not allowed to keep any part of your deposit unless she documents it with in 30 days and with written proof.

3. Inspecting Your Apartment

If you have reason to believe the landlord will withhold your security deposit and you are leaving your apartment in good condition, there are some common-sense steps you can take to protect yourself.

Try to have the landlord inspect the apartment while you are present before you move out. Make sure that a friend is present to witness this inspection. As you walk around the apartment, make sure the landlord specifies what damage she intends to deduct from your security deposit. If you have a Statement of Condition, have copies of this statement ready showing what damage was present when you moved in. Do not be afraid to challenge the landlord if you have a basis for doing so. Be polite, but firm. If you reach a satisfactory agreement with the landlord about what should be deducted from your security deposit, get it in writing and make sure both of you sign it. Ideally, try to get your security deposit, or the portion agreed to by you and the landlord, back at that time.

If you think the landlord is being unreasonable about what is "reasonable wear and tear," take pictures of the areas that the landlord claims you have damaged. Take detailed notes describing the conditions and have a friend take notes, as well. If your landlord refuses to conduct an inspection with you, conduct one with a friend. Take pictures and make a list of damages and of improvements that you have made. Write to the landlord informing her of your inspection and your findings. If there is no damage, send your landlord a *demand letter* stating that you expect the entire deposit returned on the day you move out, and that you will collect it at her office on that day. Offer once more to let her inspect.

If you still have reason to believe your landlord will unreasonably withhold your security deposit, consider withholding the last month's rent before you leave. If you have paid last month's rent in advance, you will have to withhold the last two months' rent in order to come out even.

4. Demand Letter

If you do not receive your security deposit or an itemized list of deductions within 30 days of moving out, you have several options. You can send your landlord a letter requesting the immediate return of your security deposit.²⁴ This is called a *demand letter*. See a sample at **Form 5: Security Deposit Demand Letter**.

The purpose of a demand letter is to give your landlord a chance to return your deposit without both of you having to go to court. It also informs the landlord that you have the right to triple the amount of your security deposit (referred to in the law as "treble damages") if she refuses to refund your money within 30 days of your moving out. If you send a demand letter, send it by both *certified mail*, return receipt requested, (so you can prove the landlord received it), and first-class mail. Keep a photocopy for yourself.

If you are writing a demand letter, you should see the information about demand letters on the official website for the state of Massachusetts at: www.mass.gov, then type "demand letter" in the search box.

5. Taking Your Landlord to Court

If a landlord has failed to return your security deposit or has not given you a complete list of the damages she is deducting from your deposit within 30 days of your moving out, you can sue her for three times the amount of the deposit (treble damages). You are also allowed to sue her for any interest that she did not pay you during your tenancy and for the amount of money you have to pay an attorney to represent you.

If you sue a landlord for your security deposit, the law does not allow the landlord to walk into court and accuse you of causing the damage. She must file her own separate lawsuit to make such a claim. The reason is that the security deposit law provides procedures for your landlord to claim and document damages within 30 days

after you move out. If she does not follow these procedures and forces you to sue her, then she must take the consequences. The law does not allow her to use your lawsuit against you.

a. Triple Damages

A court must award three times your security deposit in damages whenever a judge finds that a landlord has failed to:

- Return the security deposit or balance to which the tenant is entitled within 30 days of the end of the tenancy;
- Properly deposit a security deposit in a bank account separate from the landlord's funds and "protected from creditors"; or
- Transfer a security deposit to a new owner.

A landlord cannot use the fact that she did not know the law as a defense. In most cases, you can sue your landlord for the security deposit in the Small Claims session of your local District Court, Housing Court, or Division of the Boston Municipal Court. While small claims suits are limited to claims of no more than \$2,000, as long as your security deposit was \$2,000 or less, you can sue for three times the deposit in Small Claims Court even though the tripled amount may be more than \$2,000.²⁵

Small claims blank complaint forms are available at the courthouse. For more about how to file a small claims form, see the official website for the state of Massachusetts at: www.mass.gov, then type "small claims court" in the search box.

There is one unique feature related to security deposit lawsuits that you need to know. If a tenant wins her security deposit case and a landlord wishes to appeal the court's decision, the landlord must "post a bond." A bond is money that the landlord must pay to appeal the case. In a security deposit case, a landlord must post a bond equal to the triple damages you are claiming, plus interest, court costs, and your attorney's fees.²⁶ This law is designed as yet another incentive for the landlord to refund the deposit rather than prolong litigation by appealing.

Why Is There a Security Deposit Law

In 1975, the Massachusetts Public Interest Research Group (MassPIRG), a nonprofit advocacy organization, conducted a survey that proved that landlords were wrongfully holding on to deposits and forcing tenants to sue to get them back. If a tenant won, she got the deposit back and the cost of filing the lawsuit, but nothing more. The amount of the deposit was often not worth the expense and effort of trying to get it back. Dishonest landlords knew this and had no incentive to obey the law. The worst punishment they would face was to be ordered to pay the deposit that they should have paid in the first place.

In response to the MassPIRG study, the state legislature made the security deposit law stronger. Now, if the landlord refuses to refund your deposit or part of your deposit within the 30 days, you may sue her for three times the amount she owes you. If you win your lawsuit, the landlord is also required to reimburse your court costs and your attorney's fee, if you are represented by an attorney.

Deposits and New Owners

If a new landlord buys your building, your landlord goes bankrupt, a bank forecloses on the property you rent, or a new building management company takes over, you should not lose your security deposit or last month's rent payment. It is vital that you do your

homework when there is any change in ownership or control of your building.

In many cases, tenants routinely lose track of their deposits when the property changes hands. It's not hard to see why. As a tenant, you are most likely to think about your deposit when you are getting ready to move out. If at that point your new landlord denies having received the deposit from the old landlord, you will probably have a difficult time proving that she did receive your money.

Under the law, you cannot be made to pay a new or additional security deposit or last month's rent payment because someone else has taken over the building.²⁷ The old landlord or manager is required to transfer all last month's rent payments and security deposits, with their interest, to the next owner. The next owner then becomes fully responsible for the deposits and must notify you within 45 days that she has them. Until the new landlord gives you this notice in writing or returns the deposits to you, the old landlord remains financially responsible for your deposits.²⁸

If you do not receive this written notice from the new landlord within 45 days of her taking ownership of the building, you should promptly demand in writing that the old landlord refund your money. She must comply.²⁹ If you have to sue the old landlord for your deposits, you can sue her for triple the amount that she owes you.³⁰

Meanwhile, the new landlord—except some foreclosing banks or a government agency that takes over property for back taxes—is still responsible to you for the amount of your deposit, even if the new landlord never actually received it from the old landlord. The new landlord can satisfy this obligation by letting you have free rent for the time period represented by the deposits.³¹ You can also sue the new landlord for the return of the basic deposit, assuming you can still prove you paid it to the former landlord. The law, however, does not allow you to sue the new landlord for treble damages.

For more information about security deposits and foreclosures, see the section called **Getting Your Security Deposit Back After Foreclosure** in **Chapter 21: Foreclosures**.

Security Deposits and Section 8 Housing

If you live in housing subsidized by the federal Section 8 rental assistance housing program, there are several things you should know if your landlord asks for a security deposit.

First, landlords who rent under Section 8 leases are subject to all state laws governing the security deposits. This means that if a landlord takes a security deposit from a tenant, the landlord must give the tenant a written receipt, must deposit this money in a bank account separate from the landlord's funds, and must pay the tenant interest on the tenant's portion of the security deposit. The amount the landlord can ask for as a security deposit might also depend on what type of Section 8 assistance you have.

1. Portable Vouchers

If you can move from one property to another with your Section 8 voucher, that voucher is a "portable" voucher (also referred to as a "tenant-based," "mobile," or "Housing Choice" voucher). If you have a portable Section 8 voucher, the landlord may charge a security deposit in an amount up to one full month's rent, just as she can in the private sector.³²

2. Project-Based Vouchers

If you cannot move from one property to another with your Section 8 assistance, you have a "project-based" subsidy. If you have a project-based subsidy, the landlord may ask for a security deposit of \$50 or your share of the rent payment—approximately 30% of your monthly income—whichever is greater.³³ Thus, if your monthly income is \$1,000 per month, 30% of your monthly income is \$300, and therefore the maximum security deposit that your landlord can charge you is \$300.

Sometimes, landlords will try to collect the full rent as a security deposit from a tenant with a project-based Section 8 subsidy. The full rent is the tenant's portion combined with the *housing authority's* portion of rent. This is illegal. The one exception is if you enter into a Section 8 lease after you have already lived in an apartment and already paid a security deposit based on the full market rent. In this case, a landlord is not required to refund the difference until you move out.

3. Unpaid Rent or Damages

If a tenant under a Section 8 lease moves out and there is unpaid rent or property damage, a landlord has a number of options. She can apply the tenant's security deposit, or, if the damage is more than the tenant's share of the deposit, the landlord can sue the tenant for the balance.³⁴ (Note, however, that if a landlord sues a tenant who has very little or no money to pay any *judgment*, the landlord may never be able to collect this money).

A landlord with a "project-based" Section 8 lease has a third option. She may apply to the housing authority for a damage payment. If a landlord applies to a housing authority for a damage payment after a tenant moves out, this payment cannot exceed the actual cost to repair the damages or two months' rent at the full contract rent minus whatever security deposit she could have legally collected from the tenant (regardless of whether she actually collected it).³⁵ The following example explains how this works.

\$ 1,000 =	Full contract rent for apartment
<u> x 2</u>	
\$ 2,000 =	Two months' rent
<u> - 350 =</u>	Tenant's share of rent or tenant's security deposit
\$1,650 =	Amount landlord may be able to collect from housing authority and amount tenant, in turn, may owe housing authority.

If the housing authority believes that the "project based" landlord's damage claim is valid and it pays the landlord, the housing authority may treat this payment as a debt you owe to the housing authority. Because the law does not specify any procedures that a housing authority must go through before paying a landlord's claims, many housing authorities pay such claims routinely, without investigating the tenant's side of the story. Even if the housing authority appoints an employee to hear both sides and resolve whether the claim should be paid, a tenant has no right to appeal to court if she disagrees. For this reason, tenants need to protect themselves by showing the housing authority that the landlord's claim is not valid, if that is the case.

There may be serious consequences that could hurt you if you fail to reimburse the housing authority for a valid damage claim. If you owe money to the housing authority, it or any other housing authority can refuse to give you a new Section 8 voucher so you can move to another housing unit. It can also refuse to let you back into the Section 8 program if you go off the program for any reason. And the housing authority may refuse to give you a subsidy to allow you to move to a new apartment, approve a new lease, or execute a new subsidy contract.³⁶ If you cannot resolve the problem with your housing authority and former landlord, seek legal advice early, before the housing authority threatens to take action against you for not paying the claim.

Endnotes

1. G.L. c. 186, §15B. There is one exception to this rule. The security deposit law does not apply to landlords who rent places for seasonal or vacation purposes for 100 days or less. G.L. c. 186, §15B(9).
2. G.L. c. 186, §15B(1)(b).
3. Under G.L. c. 186, §15B(1)(b), the law is clear that a landlord can charge only first month's rent, last month's rent, a security deposit, and the cost of a new lock.
4. A rental agent can charge a "finder's fee" only if she is a licensed real estate broker or salesperson. G.L. c. 112, §87DDD½. There is no other authoritative Massachusetts law on the subject of finder's fees, but in any case where the landlord seems to be adding a charge that bears no relation to any real work or cost, consult the Consumer Protection Act, G.L. c. 93A, §§2 and 9, and its regulations, 940 C.M.R. §3.17.
5. G.L. c. 186, §15B(6)(c), (8). If a landlord has a tenant sign a lease that violates the security deposit law, but doesn't try to enforce the illegal terms, although the landlord is not subject to penalties under the security deposit law, she may still be in violation of the Consumer Protection Act. 940 C.M.R. §3.17(3)(a)(1) and (4)(k).
6. According to G.L. c. 186 §15B(1)(b): "At or prior to the commencement of any tenancy, no lessor may require a tenant or prospective tenant to pay any amount in excess of the following: (i) rent for the first full month of occupancy; and (ii) rent for the last full month of occupancy calculated at the same rate as the first month; and, (iii) a security deposit **equal to the first month's rent**. . . Also, see G.L. c. 186, 15B(1)(d), which states: "No lessor or successor in interest shall at any time subsequent to the commencement of a tenancy demand rent in advance in excess of the current month's rent **or a security deposit in excess of the amount allowed by this section**. . ." (Emphasis added.) Thus, the security deposit can never exceed the first month's rent.
7. G.L. c. 186, §15B(2)(a) and (b).
8. G.L. c. 186, §15B(3)(a).
9. G.L. c. 186, §15B(3)(b) and (2)(a).
10. G.L. c. 186, §15B(2)(c).
11. 940 C.M.R. §3.17(4)(e). Because the landlord's right to take a security deposit is conditioned on providing the Statement of Condition, G.L. c. 186, §15B(1)(b)(iii), you may demand the deposit back if the landlord does not comply. However, most tenants will choose as a tactical matter not to make this a bone of contention at the very beginning of a tenancy.
12. G.L. c. 186, §15B(1)(e), (3)(a). Placing the money in an out-of-state bank does not conform to the statute. *Taylor v. Burke*, 69 Mass. App. Ct. 77, 86 (2007). "[P]rovisions are designed to recognize the ownership of the deposit by the tenant and the landlord's duty to hold the monies in trust." *Id.* at 84.
13. G.L. c. 186, §15B(7). The tenant is entitled to this treble damage remedy whenever the landlord fails to comply strictly with the terms of the statute. The penalty is not discretionary. The tenant does not need to prove that the landlord acted in bad faith or that the tenant lost money because of the landlord's actions. *Mellor v. Berman*, 390 Mass. 275, 283 (1983). In *Ciociola v. Clark*, 1983 Mass. App. Div. 185, treble damages were awarded where the landlord merely banked the deposit out-of-state, with the tenant's consent. See also *Buckley v. Daley*, 1983 Mass. App. Div. 291, filed by a tenant while still in the premises. The court found the tenant entitled to recovery of the deposit where the landlord had first put it in a bank account in her own name, then changed it retroactively to a proper escrow account after the tenant demanded its return, and never gave the tenant a receipt conforming to the statute. Despite unequivocal language from the Supreme Judicial Court on this point, some district courts persist in declining to award treble damages in security deposit claims. An internal bulletin to district court clerks and judges issued May 12, 1989, District Court Bulletin No. 2-89, Item 27, addresses this issue and may be persuasive as further support for your position in district court cases.
14. G.L. c. 186, §15B(3)(b).
15. G.L. c. 186, §15B(3)(b). The statute leaves some question as to whether any interest is payable if you stay in the rental unit less than a year.

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16. G.L. c. 186, §15B(2)(d).
 17. G.L. c. 186, §15B(2)(d).
 18. G.L. c. 186, §15B(2)(d).
 19. G.L. c. 186, §15B(2)(a). This section requires interest to be paid no matter how long you remain as a tenant. Interest does not accrue during the last month of your tenancy.
 20. HUD regulations previously specifically did not permit charging a last month's rent payment for the Section 8 program. As stated, now they neither specifically permit nor prohibit such a payment. If an owner insisted that a Section 8 tenant pay full contract rent as a last month's rent, this would likely be in violation of G.L. c. 151B, §4(10).
 21. G.L. c. 186, §15B(4). *Rendall v. Tarvezian*, 1984 Mass. App. Div. 13 (N. Dist.), the only reported case on this subject, says that this language means what it says even if you and the landlord agree to an early termination of the lease. However, in that case, the landlord actually did not consent to early termination.
 22. G.L. c. 186, §15B(4). Under G.L. c. 186, §15B(4)(i) and G.L. c. 186, §22(i), after a tenancy is terminated a landlord who is in compliance with the water submeter law may deduct final unpaid water charges from the tenant's security deposit for a billing period for which the landlord has not yet been billed.
 23. G.L. c. 186, §15B(6). This language does not prohibit the landlord from filing a separate lawsuit against the tenant to recover the damages. *Jinnala v. Bizzeuro*, 24 Mass. App. Ct. 1, 7 (1987). A landlord cannot condition her return of part of the deposit on your agreement to release her from paying the balance. In *Goes v. Feldman*, 8 Mass. App. 84 (1979), a case decided under the Consumer Protection Act, a trustee who tried to retain \$125 by using a restrictive endorsement on a check was held liable for three times the entire deposit, plus costs and attorney's fees, a total of \$3,187.80.
 24. G.L. c. 186, §15B(6)(e), (7). In those cases where the landlord's conduct entitles you to get the deposit back while you are still living on the premises, but the landlord refuses to return it after demand, the security deposit law is ambiguous regarding treble damages, but the Appeals Court has interpreted the statute to require such a remedy. *Castenholz v. Caira*, 21 Mass. App. Ct. 758, 764 (1986); *Young v. Patukonis*, 24 Mass. App. Ct. 907, 909 (1987) (rescript). *Castenholz* further holds that filing a lawsuit is itself considered a "demand," so that a landlord who is properly sued for the return of the deposit and does not immediately tender it thereby becomes liable for treble damages. *Castenholz*, 21 Mass. App. Ct. at 764. Also, if the landlord is subject to the Consumer Protection Act, G.L. c. 93A, recourse can be had to its treble damage provisions. 940 C.M.R. §3.17(4)(a),(b),(e), and (k). See *McGrath v. Mishara*, 386 Mass. 74, 82-87 (1982), regarding the interplay between security deposit statute and Chapter 93A claims. Chapter 93A requires a demand 30 days before filing suit, except where the tenant's claim is asserted by way of counterclaim against the landlord.
 25. G.L. c. 218, §21.
 26. G.L. c. 218, §23. The constitutionality of this statute was upheld in *Hampshire Village Assocs. v. District Court of Hampshire*, 381 Mass. 148, 153 (1980), cert. denied sub. nom. *Rublander v. District Court of Hampshire*, 449 U.S. 1062 (1980).
 27. G.L. c. 186, §15B(1)(d). See *Mall Apartments Realty Trust v. Hilda Hernandez*, Hampden Housing Court, 91-SC-1865, p. 3 (March 16, 1992), where the court found that security deposit law did not insulate purchaser at foreclosure sale from liability for deposits. See also *Cruz v. Cabrera*, Northeast Housing Court, 92-SC-00074, p. 4 (Sept. 25, 1992), where court found buyer at foreclosure sale liable to tenants for the return of security deposit and awarded tenant treble damages, plus court costs (credited against unpaid rent).
 28. G.L. c. 186, §15B(5), (7A).
 29. G.L. c. 186, §15B(6)(d).
 30. G.L. c. 186, §15B(7). See *Castenholz v. Caira*, 21 Mass. App. Ct. 758, 764 (1986).
 31. G.L. c. 186, §15B(5) (last paragraph), (7A) (last paragraph). In *Vinton v. Demetrios*, 19 Mass. App. Ct. 948, 949 (1985) (rescript), the court affirmed that the new landlords could be liable to the tenants for damages even though they took ownership of the property shortly after the tenants had been evicted. The decision does not address their liability for treble damages claimed by the plaintiffs.
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32. 24 C.F.R. §982.313. While there is no provision for charging a last month's rent, there is nothing specifically in federal regulations that would prohibit this. If an owner demands a last month's rent, it should be limited to your portion of the rent, since the owner will be paid by the housing agency for its portion of the rent for your last month. HUD regulations previously specifically did not permit charging last month's rent for the Section 8 program, since the housing agency would reimburse the owner for any vacancy loss if the tenant moved out without prior notice. *Attorney General v. Brown*, 400 Mass. 826 (1987) (issue of whether landlord unlawfully discriminated against Section 8 subsidy holders because of policy of not accepting tenants where last month's rent could not be collected). These regulations were changed in 1995. If an owner insisted that a Section 8 tenant pay the full contract rent as a last month's rent, this would likely be a violation of G.L. c. 151B, § 4(10).
 33. 24 C.F.R. §886.315. For federal multifamily subsidized housing, there is no provision for charging a last month's rent and the rules on what exactly can be charged for a security deposit vary by program. 24 C.F.R. §§ 880.608, 881.601, 883.701, 884.115, 886.116, 886.315, 891.435, 891.635, and 891.775; *HUD Multifamily Occupancy Handbook* 4350.3 CHG-1 (Aug. 2004), Chapter 6, § 2, and in particular Figure 6-6, which describes what can be charged for each program.
 34. G.L. c. 186, §15B(4)(iii)-24 C.F.R. §982.313(e). The statute appears to let a landlord sue for the balance only where the tenant has "wilfully or maliciously" destroyed or damaged property. This limitation, which appears contrary to general tort law principles, has not been discussed in any published decision.
 35. 24 C.F.R. §886.315(d).
 36. *Brauer v. Philadelphia Hous. Auth.*, 495 A.2d 987 (90 Pa. Commw. Ct. 503, 507-08 (1985)) (Housing Authority does not have to offer tenant an opportunity to cure by paying for damages).