

Residential Security Deposit Law Primer for the Developer Who Decides to Self-Manage Residential Apartments

By Nelson Luz Santos, Esq.

You are a real estate developer and have recently developed a mixed-use or residential apartment complex that contains residential apartments. You went through the difficult process of planning, permitting, and building your state-of-the-art development. Now, rather than development and construction, your focus turns to filling each unit with occupants to maximize your return on investment. You are now becoming the owner/landlord. Though there are still many pitfalls on the road ahead, some of the most significant ones can arise when developers decide to self-manage an income-producing property. What you can do and cannot do as a residential landlord is heavily regulated by statutory requirements, common law, attorney general guidelines, and other laws.

The most common problem for landlords relates to the security deposit and typically arises when trying to evict a tenant for nonpayment of rent or other lease breach. G.L. c. 186, § 15B sets out the Massachusetts Security Deposit Law (hereinafter “the Security Deposit Law”). It is absolutely imperative that a landlord understands and executes the Security Deposit Law correctly. Otherwise, the profits of development will slowly be eroded by litigation and settlement costs due to noncompliance.

The Security Deposit Law governs what monies a landlord may accept at the inception of the tenancy, which sounds simple. But even the most minor mistake by the landlord in handling the security deposit may automatically result in penalties, potentially including an award of three times the amount of the security deposit *plus* attorney’s fees and costs incurred by the tenant. In fact, “The legislative history of G.L. c. 186, § 15B, conclusively shows that the Legislature intends any violation of G.L. c. 186, §§ 15B(6)(a), (d), and (e), to result in the imposition of treble damages.” *Mellor v. Berman*, 390 Mass. 275, 283 (1983).

“The Security Deposit Statute is intended to afford protection to both the landlord and the tenant. It protects the landlord by allowing it to charge certain advances of money prior to the commencement of the tenancy; the statute also limits the up-front charges that the landlord legally can collect from the tenant in order to prevent unfair or deceptive charges.” *Jinwala v. Bizzaro*, 24 Mass.App.Ct. 1, 7, 505 N.E.2d 904 (1987).” See also: *Hermida v. Archstone*, 826 F. Supp.2d 380, 386 (2011).

The whole purpose of collecting a security deposit is to allow a mechanism by which the landlord has the funds to make repairs for unreasonable damages--not normal wear and tear--caused by tenants. The security deposit can also be used to reimburse the landlord for unpaid rent at the end of a tenancy. Therefore, the Security Deposit Law’s intended purpose is to help the landlords and protect the tenants. But, in so many cases, the landlord’s mistakes can turn the security deposit into a way for tenants to get big cash awards.

WHAT MONIES CAN A RESIDENTIAL LANDLORD ACCEPT FROM A TENANT AT THE START OF THE TENANCY?

Under the Security Deposit Law, at the start of the tenancy a landlord may request and accept only the following: (1) first month’s rent, (2) last month’s rent, (3) a security deposit, and (4) the cost of a new lock. See G.L. c. 186, § 15B(1)(b)(i)-(iv).

Sounds simple, but it is not. Neither the last month’s rent nor the security deposit can exceed the amount of the first month’s rent. And the cost of a new lock must be reasonable.

THE PROPER WAY ACCEPT A SECURITY DEPOSIT FROM A TENANT

By breaking down the Security Deposit Law into a checklist format, the landlord can use it for its actual purpose and benefit, rather than falling afoul of the Security Deposit Law and having tenants use it to gain monetary damages.

STEP 1: When the landlord accepts the value of one month’s rent (and no more!) as a security deposit, the landlord MUST:

Give the tenant a “receipt” signed by him or her, which must state

- the amount of the deposit and what it is for
- the name of the person receiving it (if an agent receives it, then also the name of the landlord or owner)
- the date on which it was received
- a description of the premises (See G.L. c. 186, § 15B(2)(b).)

Once the landlord has accepted the money, it must be properly handled and deposited. Again, beware: You cannot just deposit a security deposit into any old bank account you may have.

STEP 2: The landlord must hold the security deposit in an account that is

- separate,
- interest-bearing,
- located in a bank in the Commonwealth of Massachusetts,
- not subject to claims by the landlord's creditors, and
- transferable to a subsequent owner. (See G.L. c. 186, § 15B(3)(a).)

STEP 3: WITHIN 30 DAYS from accepting the security deposit, the landlord must give the tenant a receipt, typically referred to as the "Rent and Security Deposit Receipt," provided in conjunction with the written tenancy agreement/lease which was signed at the beginning of the landlord-tenant relationship. The receipt should include:

- the name and address of the bank where the money is located, and
- the amount held and account number. (See G.L. c. 186, § 15B(3)(a).)

STEP 4: At either the time of receiving the money for the security deposit or within 10 days after the tenancy begins, the landlord must give the tenant a "Statement of Conditions Form," signed by the landlord, which must contain a list of all damage then existing, and the following statement in 12-point boldface type at the top of the first page:

"This is a statement of the condition of the premises you have leased or rented. You should read it carefully to see if it is correct. If it is correct you must sign it. This will show that you agree that the list is correct and complete. If it is not correct, you must attach a separate signed list of any damage which you believe exists in the premises. This statement must be returned to the lessor or his agent within 15 days after you receive this list or within 15 days after you move in, whichever is later. If you do not return this list within the specified time period, a court may later view your failure to return the list as your agreement that the list is complete and correct in any suit which you may bring to recover the security deposit." (See G.L. c. 186, § 15B(2)(c).)

STEP 5: Within 15 days from the tenant moving in, the tenant must return a copy of the "Statement of Conditions Form" and any separate list of damages he or she has found, and then the landlord has 15 days to provide a signed agreement or disagreement with the list. (See G.L. c. 186, § 15B(2)(c).)

WHAT HAPPENS AT THE END OF ONE YEAR FROM ACCEPTANCE OF A SECURITY DEPOSIT?

If the deposit is held for more than one year, the landlord must pay the tenant interest on the deposit at either 5 percent or the same rate as that paid by the bank which was holding the deposit, if it is less than 5 percent, together with a receipt indicating the same. (See G.L. c. 186, § 15B(3)(b).) Please note that interest is payable each year on the anniversary date of the tenancy.

The above is only a review of accepting, depositing, and maintaining a security deposit. The Security Deposit Law also has specific procedures and requirements for returning the security deposit at the end of the tenancy, and the rules and procedures of accepting, maintaining, and returning a last month's rent that may also be collected at the inception of the tenancy. Reading G.L. c. 186, § 15B and getting help from qualified professionals are key for any landlord who does not want to suffer the harsh consequences of failure to comply with the Security Deposit Law.

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Nelson Luz Santos

P: 508.532.3525

F: 508.532.3125

E: nsantos@fletchertilton.com

Fletcher Tilton PC
Attorneys at law

FletcherTilton.com