

Idaho's Security Deposit Law Under Idaho Code Sections 6-320 & 6-321:

Any money deposited with a landlord that is not "rent" is a "security deposit."

After the tenant gives the premises back to the landlord at the end of the lease term, the landlord must return either the entire deposit or the **landlord must give the tenant (1) a partial refund and (2) a written statement stating the amounts deducted**, why they were deducted, and how the deductions were spent.

Either the whole deposit or the partial refund and itemized deduction list must be given to the tenant **either within 21 days after the lease ends or, if stated in the lease, within 30 days** after the tenant leaves the premises.

The landlord can only deduct for reasons agreed upon by the tenant in the lease and cannot deduct for normal wear and tear.

Be sure the landlord knows your new address.

It's up to you to let your landlord know how s/he can contact you after you move. Your landlord may claim that s/he had no way of sending you the list of itemized deductions. Change your address with the post office. You can prove the landlord had a way to contact you if you receive forwarded mail at the new address.

What if my landlord keeps my security deposit?

If your landlord has neither returned your deposit nor sent you an itemized list of deductions within the required period, follow these steps:

STEP 1: Write your landlord a demand letter. Be sure to keep a copy!

If your landlord violated the security deposit law by deducting for damages that were done

before you moved in, you should explain that the deductions were too large. Ask that the excessive deductions be returned to you within three days. Your demand letter may look like the following example:

Dear Landlord:

On (DATE), I moved from the apartment at (ADDRESS) that I rented from you, and my lease terminated. I paid you a security deposit of \$ _____ when I moved in. You have not yet refunded this amount, nor sent me an itemized list of deductions made from the deposit. Because 21 days have passed since I left [or 30 days, if your lease provided so], you are now in violation of Idaho Code Section 6-321. I demand that my entire security deposit be returned to me within three days of your receipt of this letter. Kindly send the check for the full amount, payable to me, to (YOUR NEW ADDRESS). If you do not do so within three days of receiving this letter, I intend to sue you under Idaho Code Section 6-320(4). If I must sue you, the judge may award me three times the security deposit and require you to pay my court costs and attorney's fees.

Sincerely,
(YOUR NAME)

STEP 2: Deliver the demand letter to your landlord in either one of two ways:

▲ (1) **Personally Deliver** it to the landlord or the landlord's agent (such as an employee at the landlord's usual place of business). Have a friend or relative go with you as a witness, so the witness can testify in court that the landlord received it. (This is the quickest method).

▲ (2) Go to the post office and **send the letter "certified mail, return receipt requested."** Later, you will receive a postcard showing when the landlord received the letter. The postcard can prove when the letter was delivered.

STEP 3: Give your landlord three days.

Your landlord has **three days** after the day s/he receives the letter to return the deposit (not counting weekends or holidays). If the landlord received your letter after the 21 day (or 30 day) period ended, s/he must return the entire deposit, regardless of damage you may have caused to the place.

▲ If you did damage to the place and your landlord can prove it, you may want to consider **negotiating a compromise** with your landlord. If you agree on a settlement like this with your landlord, you should put it in **writing** and have your landlord **sign** it. **Be sure to keep a copy!**

For example: Jay's landlord, Tess, didn't return a \$1000 deposit or send him an itemized list of deductions, but Tess could prove Jay did \$200 dollars damage to the apartment. Jay could sue her for \$1000, but Tess might be able to sue Jay for \$200. Jay and Tess could agree that Tess return the deposit to Jay, neither would sue.

STEP 4: Sue the landlord.

If the landlord still doesn't return the deposit, you can either sue your landlord in **Magistrate Court**, where you should probably have an attorney, or in **Small Claims Court**, where neither of you are allowed to have an attorney.

To file suit in **Small Claims Court**, go to the local county clerk's office and fill out two forms. You will have to give information such as your name and address and your landlord's name and address. You must also state the nature of your claim,

You can get a copy of the Small Claims Court filing form at: www.courtselfhelp.idaho.gov.

the amount your landlord owes you, and when that amount became due.

Your statement on the Small Claims Form may look like the following example:

"My landlord owes me a debt of \$ _____ for his failure to return a security deposit and failure to send me an itemized list of deductions within the time required by Idaho Code Section 6-321. I demanded the return of the deposit by the attached demand letter, under Idaho Code Section 6-320, and the debt was due three days after the landlord received the letter. Also, I requested the landlord to send me an itemized list of deductions, but some of the deductions are incorrect, your demand letter and statement on the Small Claims Court form will be slightly different than the above examples. You should explain how the deductions violated the law or the lease and demand that the excessive deductions be returned to you.

▲ If you believe that the landlord kept part of your deposit to cover costs of **cleaning** or **repairs that were not needed**, you may state something like this example:

"I am entitled to the return of my deposit or the sum of \$1,000 from the landlord, whichever is greater, because she violated **Idaho Code Section 48-603(16)** by claiming that services or repairs were needed when they were not needed or by providing services or repairs that were not needed."

STEP 5: Go to trial at Small Claims Court.

You will be notified of the date, time and place of the hearing. Be prepared to explain why you are suing. Bring a copy of your demand letter and any proof you have showing how much security deposit you paid (a receipt or cancelled check, etc.). If you are suing because your landlord made improper deductions, bring witnesses or photos to prove it. If the judge finds that the landlord violated the law maliciously or intentionally, the judge might award you three times the damages that you prove you are owed.

Protect yourself from future

Security Deposit problems

Many disputes with your landlord may be avoided if you take these steps:

Before moving in, ask for a written lease.

Keep a copy for your records.

While moving in, make a list of defects. Write down everything that is broken or dirty, even if it seems very minor (like worn carpet, chips in the bathtub, or smudges on the wall). Take photos or video, too. **Send a copy of this list to the landlord.** Notify your landlord in writing about serious defects (like broken windows or heaters) or needed repairs as soon as possible.

When moving out, have your belongings out and the place cleaned before midnight of the date your lease ends. Don't plan on going back the next day to clean unless you have made *written* arrangements in advance with your landlord.

After you move your belongings out and finish cleaning, walk through the place with your landlord. Make sure that you both agree on what is damaged or dirty. Your list will be useful to show what was already damaged when you moved in. If you can't meet with your landlord when you move out, have a friend or family member go through the place with you after you have cleaned and take photos and/or video. If you have to sue the landlord to recover damages later, your friend or family member will be a good witness and your photos/video will be useful evidence.

Also, return all keys you were given. Some landlords claim you have not moved out (and still owe rent) until you return the keys. Don't just leave the keys inside the place. Give them to your landlord.

My lease required me to pay a 'cleaning deposit' and a 'processing fee.' Are these security deposits? Will I get them back when I move?

Under the Security Deposit Law, anything called a "deposit" must be accounted for or returned to you when you move out. However, a "processing fee" or a "non-refundable cleaning fee" might be considered either "rent" (which the landlord gets to keep) or a "security deposit" depending on the written and oral language of the lease. **Before you sign a lease, ask your landlord which fees will be returned to you.**

My lease said if I move out within 6 months, I would forfeit my entire deposit. Is this legal?

Generally, yes. However, if you moved out after five months and left the place in good condition, your landlord's loss (damages) may be much less than your entire security deposit. You could argue in Court that the landlord should not be permitted to keep the entire deposit because his loss was much less than anticipated.

My lease said I had to give one month's notice before moving or forfeit my deposit. I only gave 20 days notice. Now the landlord wants to keep the entire deposit. Is this legal?

Maybe. Deposit deductions should only cover a landlord's actual expenses. If the landlord rented the place one day after you left, then she lost only one day's rent and can deduct only that amount. She might argue that she had to advertise the vacancy earlier than expected and a judge might allow her to deduct advertising expenses. If the landlord tried to find a replacement tenant but was unable to, the landlord may deduct back-rent from your deposit. If your lease was silent as to how much notice to give but you paid rent each month, you can usually end the lease by giving 30 days' notice. If you failed to give 30 days' notice, you might owe back-rent. However, the landlord has a duty to try to find a new tenant.

Idaho Legal Aid Services

Local Offices

Boise345-0106
310 N. 5th St.

Caldwell 454-2591
1104 Blaine St.

Coeur d'Alene 667-9559
410 Sherman Ave., #303

Idaho Falls 524-3660
482 Constitution Way, # 101

Lewiston743-1556
633 Main St., # 103

Pocatello233-0079
150 S. Arthur Ave., # 203

Twin Falls734-7024
475 Polk St., # 4

Statewide Hotlines

Idaho Senior Legal Hotline

1-866-345-0106

(en español 1-866-954-2591)

Idaho Domestic Violence Legal Hotline

1-877-500-2980

TTY (Deaf and Hearing Impaired)

1-800-245-7573

Idaho Rental Assistance & Properties:

1-877-428-8844

www.housingidaho.com

Looking for more information?

Visit www.idaholegalaid.org to find more free forms and information for renters.

Find the Idaho Attorney General's manual, **Landlord and Tenant Guidelines**, at <http://www.ag.idaho.gov>

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Advice for Idaho Renters:

Security Deposits

Read this handout to understand:

▶ **What do Idaho laws say about security deposits?**

▶ **What if my landlord refuses to return my security deposit?**

▶ **How can I protect my rights as a tenant in the future?**

Landlords often try to keep all or part of a security deposit after a tenant moves out. In some cases, a person may be able to get some or all of the security deposit back. Idaho's Security Deposit law, found at **Idaho Code Sections 6-320 and 6-321**, provides a simple, quick way to force landlords to return security deposits owed to former tenants.

*The advice in this handout is very general and there might be special factors in your case. If you have legal questions, contact an attorney. If you cannot afford an attorney, contact the **Idaho Legal Aid Services** office nearest you using one of the phone numbers on the back of this handout. Also, visit us on the web at: www.idaholegalaid.org*