CHAPTER 710-A

SECURITY DEPOSITS ON RESIDENTIAL RENTAL UNITS

§6031. Definitions

As used in this Part, unless the context otherwise indicates, the following words shall have the following meanings. [PL 1977, c. 359 (NEW).]

1. Normal wear and tear. "Normal wear and tear" means the deterioration that occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident or abuse of the premises or equipment or chattels by the tenant or members of the tenant's household or their invitees or guests. The term "normal wear and tear" does not include sums or labor expended by the landlord in removing from the rental unit articles abandoned by the tenant such as trash. If a rental unit was leased to the tenant in a habitable condition or if it was put in a habitable condition by the landlord during the term of the tenancy, normal wear and tear does not include sums required to be expended by the landlord to return the rental unit to a habitable condition, which may include costs for cleaning, unless expenditure of these sums was necessitated by actions of the landlord, events beyond the control of the tenant or actions of someone other than the tenant or members of the tenant's household or their invitees or guests.
[PL 1997, c. 261, §1 (AMD).]

2. Security deposit. "Security deposit" means any advance or deposit, regardless of its denomination, of money, the primary function of which is to secure the performance of a lease or tenancy at will agreement for residential premises or any part thereof.
[PL 2009, c. 566, §20 (AMD).]

3. Surety bond. "Surety bond" means a bond purchased by a tenant in lieu of making a security deposit when the function of the bond is to secure the performance of a lease or tenancy at will agreement for residential premises or any part of residential premises.
[PL 2009, c. 566, §21 (AMD).]

SECTION HISTORY

PL 1977, c. 359 (NEW). PL 1981, c. 428, §11 (AMD). PL 1997, c. 261, §1 (AMD). PL 2007, c. 370, §1 (AMD). PL 2009, c. 566, §§20, 21 (AMD).

§6032. Maximum security deposit

A lease or tenancy at will agreement for a dwelling intended for human habitation may not require a security deposit equivalent to more than the rent for 2 months. [PL 2009, c. 566, §22 (AMD).]

SECTION HISTORY

PL 1977, c. 359 (NEW). PL 2009, c. 566, §22 (AMD).

§6033. Return of the security deposit

1. Normal wear and tear. A security deposit or any portion of a security deposit shall not be retained for the purpose of paying for normal wear and tear.
[PL 1977, c. 359 (NEW).]

2. Return; time; retention. A landlord shall return to a tenant the full security deposit deposited with the landlord by the tenant or, if there is actual cause for retaining the security deposit or any portion of it, the landlord shall provide the tenant with a written statement itemizing the reasons for the retention of the security deposit or any portion of it:

A. In the case of a written rental agreement, within the time, not to exceed 30 days, stated in the agreement; and [PL 1977, c. 359 (NEW).]

B. In the case of a tenancy at will, within 21 days after the termination of the tenancy or the surrender and acceptance of the premises, whichever occurs later. [PL 1977, c. 359 (NEW).]

The written statement itemizing the reasons for the retention of any portion of the security deposit must be accompanied by a full payment of the difference between the security deposit and the amount retained.

Reasons for which a landlord may retain the security deposit or a portion of the security deposit include, but are not limited to, covering the costs of storing and disposing of unclaimed property, nonpayment of rent and nonpayment of utility charges that the tenant was required to pay directly to the landlord.

The landlord is deemed to have complied with this section by mailing the statement and any payment required to the last known address of the tenant.
[PL 1995, c. 52, §1 (AMD).]

3. Penalty. If a landlord fails to provide a written statement or to return the security deposit within the time specified in subsection 2, the landlord shall forfeit his right to withhold any portion of the security deposit.
[PL 1977, c. 359 (NEW).]

SECTION HISTORY

PL 1977, c. 359 (NEW). PL 1985, c. 264 (AMD). PL 1995, c. 52, §1 (AMD).

§6034. Wrongful retention; damages

1. Notice to landlord of intention to bring suit; presumption on failure to return deposit. If the landlord fails to return the security deposit and provide the itemized statement within the time periods in section 6033, the tenant shall give notice to the landlord of the tenant's intention to bring a legal action no less than 7 days prior to commencing the action. If the landlord fails to return the entire security deposit within the 7-day period, it is presumed that the landlord is wrongfully retaining the security deposit.
[PL 1995, c. 52, §2 (AMD).]

2. Double damages for wrongful retention. The wrongful retention of a security deposit in violation of this chapter renders a landlord liable for double the amount of that portion of the security deposit wrongfully withheld from the tenant, together with reasonable attorney's fees and court costs.
[PL 1995, c. 52, §2 (AMD).]

3. Burden of proof. In any court action brought by a tenant under this section, the landlord has the burden of proving that the landlord's withholding of the security deposit, or any portion of it, was not wrongful.
[PL 1995, c. 52, §2 (AMD).]

SECTION HISTORY

PL 1977, c. 359 (NEW). PL 1995, c. 52, §2 (AMD).

§6035. Transfer of security deposit

1. Landlord's termination of interests in dwelling unit. Upon termination of a landlord's interest in the dwelling unit, whether by sale, assignment, death, appointment of a receiver or otherwise, the person in possession of a security deposit, including, but not limited to, the landlord, the landlord's agent or the landlord's executor, shall, upon the transfer of the interest in the dwelling unit:

A. Provide to the landlord's successor in interest an accounting of the amount of each security deposit paid by each tenant and held by the person in possession of the security deposits, transfer

the funds or any remainder after lawful deduction under this chapter to the landlord's successor in interest and provide to the tenant by mail:

(1) Notice of that transfer;

(2) Notice of the transferee's name and address; and

(3) A copy of the accounting of the amount of the security deposit transferred; or [PL 1999, c. 213, §1 (RPR).]

B. Return the funds or any remainder after lawful deductions under this section to the tenant. [PL 1999, c. 213, §1 (RPR).]

If the landlord's interest is terminated by sale, then the accounting and transfer of funds must occur no later than at the real estate closing. A person in possession of a security deposit, including, but not limited to, the landlord, the landlord's agent or the landlord's executor, shall provide written proof of the accounting and transfer of funds to the landlord's successor in interest at the real estate closing.
[PL 2007, c. 332, §1 (AMD).]

2. Release from liability following compliance. Upon compliance with this section, the person in possession of the security deposit shall be relieved of further liability, and the transferee, in relation to those funds, shall be deemed to have all of the rights and obligations of a landlord holding the funds as a security deposit.
[PL 1977, c. 359 (NEW).]

SECTION HISTORY

PL 1977, c. 359 (NEW). PL 1999, c. 213, §1 (AMD). PL 2007, c. 332, §1 (AMD).

§6036. Waiver of provisions

Any provision, whether oral or written, in or pertaining to a lease or tenancy at will agreement whereby any provision of this chapter for the benefit of a tenant or members of the tenant's household is waived is against public policy and is void. [PL 2009, c. 566, §23 (AMD).]

SECTION HISTORY

PL 1977, c. 359 (NEW). PL 2009, c. 566, §23 (AMD).

§6037. Exemptions

1. Federally guaranteed mortgages. Any of the provisions of this chapter relative to security deposits which may be in conflict with the terms of a mortgage guaranteed by the United States or any authority created under the laws thereof, shall not apply to security deposits held by a lessor who appears as the mortgagor in such a mortgage.
[PL 1977, c. 359 (NEW).]

2. Owner-occupied buildings of 5 or fewer units. This chapter shall not apply to any tenancy for a dwelling unit which is part of a structure containing no more than 5 dwelling units, one of which is occupied by the landlord.
[PL 1977, c. 359 (NEW).]

SECTION HISTORY

PL 1977, c. 359 (NEW).

§6038. Treatment of security deposit

1. Requirements. During the term of a tenancy, a security deposit given to a landlord as part of a residential rental agreement may not be treated as an asset to be commingled with the assets of the landlord or any other entity or person. All security deposits received after October 1, 1979 must be held in an account of a bank or other financial institution under terms that place the security deposit

beyond the claim of creditors of the landlord or any other entity or person, including a foreclosing mortgagee or trustee in bankruptcy, and that provide for transfer of the security deposit to a subsequent owner of the dwelling unit or to the tenant in accordance with section 6035. Upon the transfer of the dwelling unit, the new owner shall assume all responsibility for maintaining and returning to tenants all security deposits accounted for and transferred pursuant to section 6035. Upon request by a tenant, a landlord shall disclose the name of the institution and the account number where the security deposit is being held. A landlord may use a single escrow account to hold security deposits from all of the tenants. A landlord may use a single escrow account to hold security deposits from tenants residing in separate buildings if the buildings are owned by different entities as long as the different entities are substantially controlled or owned by a single landlord.
[PL 2009, c. 566, §24 (NEW).]

2. Remedies. Upon a finding by a court that a violation of this section has occurred, the tenant is entitled to recover from the landlord actual damages, $500 or the equivalent of one month's rent, whichever is greatest, together with the aggregate amount of costs and expenses reasonably incurred in connection with the action. The court may also award to the tenant reasonable attorney's fees.
[PL 2009, c. 566, §24 (NEW).]

3. Application. The provisions of subsection 2 apply to all security deposits collected by a landlord after June 1, 2010. As of October 1, 2010, the provisions of subsection 2 apply to all security deposits held by or on behalf of a landlord.
[PL 2009, c. 566, §24 (NEW).]

SECTION HISTORY

PL 1979, c. 315 (NEW). PL 1981, c. 428, §12 (AMD). PL 1999, c. 213, §2 (AMD). PL 2009, c. 566, §24 (RPR).

§6039. Surety bonds

The following terms apply to the purchase of surety bonds by tenants of residential dwellings. [PL 2007, c. 370, §2 (NEW).]

1. Landlord option. A residential landlord may offer a tenant the option of purchasing a surety bond in lieu of providing some or all of a security deposit, but a landlord may not require nor otherwise be required to consent to the purchase of a surety bond by a tenant.
[PL 2007, c. 370, §2 (NEW).]

2. Refund by surety. A surety shall refund to a tenant any premium or other charge paid by the tenant in connection with a surety bond if, after the tenant purchases a surety bond, the landlord refuses to accept the surety bond or the tenant does not enter into a rental agreement with the landlord.
[PL 2007, c. 370, §2 (NEW).]

3. Surety limitation; right of action. The amount of a surety bond purchased may not exceed 2 months' rent for the tenant's dwelling unit. If a tenant purchases a surety bond and provides a security deposit, the aggregate amount of both the surety bond and the security deposit may not exceed 2 months' rent for the dwelling unit. In the event a landlord consents to a surety bond but requires that the surety bond amount alone or in the aggregate with a security deposit exceed 2 months' rent, the tenant has a right of action against the landlord for wrongful assessment of surety bond subject to the following conditions.

A. The tenant shall give notice to the landlord of the tenant's intention to bring a legal action for wrongful assessment of surety bond no less than 7 days prior to commencing the action. If the landlord fails to return the excess assessment within the 7-day period, it is presumed that the landlord wrongfully assessed the surety bond requirement. [PL 2007, c. 370, §2 (NEW).]

B. In a successful action against the landlord, the tenant may recover up to 3 times the excess amount demanded of the surety bond by the landlord, plus reasonable attorney's fees and court costs. [PL 2007, c. 370, §2 (NEW).]

C. In any action brought under this subsection, the landlord has the burden of proving that the landlord's requirement of security was not wrongful. [PL 2007, c. 370, §2 (NEW).]

[PL 2007, c. 370, §2 (NEW).]

4. Notice of rights. The surety or landlord shall deliver to a tenant a copy of any agreements or documents signed by the tenant at the time of the tenant's purchase of the surety bond. The surety or landlord shall advise the tenant in writing of all of the tenant's rights under this section prior to the purchase of a surety bond. This notice must conform to the requirements of Title 24-A, section 2441, subsection 1.

[PL 2007, c. 370, §2 (NEW).]

5. Notice of rights and responsibilities by surety. In addition to the requirements of subsection 4, before a tenant purchases a surety bond a surety shall conspicuously disclose to the tenant in writing the following rights and responsibilities of tenants:

A. The surety bond premium is nonrefundable except as provided in subsection 2; [PL 2007, c. 370, §2 (NEW).]

B. The surety bond is not insurance for the tenant; [PL 2007, c. 370, §2 (NEW).]

C. The surety bond is being purchased to protect the landlord against loss due to, but not limited to, the following: nonpayment of rent, nonpayment of utility charges that the tenant was required to pay directly to the landlord, breach of the rental agreement, storing and disposing of unclaimed property or damages caused by the tenant other than normal wear and tear; [PL 2007, c. 370, §2 (NEW).]

D. The tenant may be required to reimburse the surety for amounts the surety paid to the landlord; [PL 2007, c. 370, §2 (NEW).]

E. Even after a tenant purchases a surety bond, the tenant remains responsible for payment of:

(1) All unpaid rent;

(2) Damage due to breach of the rental agreement;

(3) Damage by the tenant or members of the tenant’s household or their invitees or guests in excess of normal wear and tear to the leased premises, common areas, major appliances or furnishings owned by the landlord;

(4) Utility charges that the tenant was required to pay directly to the landlord; and

(5) The cost of storing and disposing of unclaimed property; [PL 2007, c. 370, §2 (NEW).]

F. The tenant has the right to pay the damages directly to the landlord or require the landlord to use the tenant’s security deposit, if any, before the landlord makes a claim against the surety bond; and [PL 2007, c. 370, §2 (NEW).]

G. If the surety fails to comply with the requirements of this section, the surety forfeits the right to make any claim against the tenant under the surety bond. [PL 2007, c. 370, §2 (NEW).]

The notice required by this subsection must conform to the requirements of Title 24-A, section 2441, subsection 1.

The word "nonrefundable" must be conspicuously placed on the document and must be in a minimum of 16-point, bold-faced type. This word must appear on the first page of the disclosure and must be repeated immediately above the signature line for the tenant.

[PL 2007, c. 370, §2 (NEW).]

6. Use of surety bond. A surety bond does not represent liquidated damages and may not be used as payment to a landlord for breach of the rental agreement, except in the amount that the landlord is actually damaged by the breach consistent with the provisions of this section. Except as provided in this section, a surety may not, directly or indirectly, make any other payment to a landlord. A surety bond may be used to pay claims by a landlord for:

A. Unpaid rent; [PL 2007, c. 370, §2 (NEW).]

B. Damage due to breach of the rental agreement; [PL 2007, c. 370, §2 (NEW).]

C. Damage by the tenant or members of the tenant's household or their invitees or guests in excess of normal wear and tear to the leased premises, common areas, major appliances or furnishings owned by the landlord; [PL 2007, c. 370, §2 (NEW).]

D. Nonpayment of utility charges that the tenant was required to pay directly to the landlord; and [PL 2007, c. 370, §2 (NEW).]

E. The cost of storing and disposing of unclaimed property. [PL 2007, c. 370, §2 (NEW).]
[PL 2007, c. 370, §2 (NEW).]

7. Written list of damages. At least 10 days before a landlord makes a claim against a surety bond subject to this section, the landlord shall send to the tenant by first-class mail directed to the last known address of the tenant a written notice indicating the landlord's intent to make such claim and the tenant's right to dispute the claim and containing a list of the damages to be claimed and a statement of the costs actually incurred by the landlord related to the premises and as otherwise permitted by this section. This notice must further indicate the name and address of the surety and process for disputing a claim. In the case of a written rental agreement, the landlord shall mail such a written notice within the time specified in the agreement, not to exceed 30 days. In the case of a tenancy at will, the landlord shall mail the written notice 21 days after the termination of the tenancy or the surrender and acceptance of the premises, whichever occurs later. If a landlord fails to provide a written notice within the time required by this subsection, the landlord forfeits any right to make a claim against a surety bond or the tenant related to the premises.
[PL 2007, c. 370, §2 (NEW).]

8. Payment of damages by tenant. A tenant may pay any damages directly to the landlord or require the landlord to use the tenant's security deposit, if any, before the landlord makes a claim against the surety bond. If a tenant pays any damages directly to the landlord or requires the landlord to use the tenant's security deposit under this subsection and the payment or the security deposit fully satisfies the claim, the landlord forfeits the right to make a claim under the surety bond for any damages covered by the tenant's payment or the amount deducted from the tenant's security deposit in accordance with this subsection.
[PL 2007, c. 370, §2 (NEW).]

9. Dispute of claim. The tenant may dispute the landlord's claim to the surety by sending a written response by first-class mail to the surety within 10 days after receiving the notice described in subsection 7 of the landlord's claim on the surety. If the tenant disputes the claim, the surety may not report the claim to a credit reporting agency prior to obtaining a judgment for the claim against the tenant.
[PL 2007, c. 370, §2 (NEW).]

10. Action by surety against tenant. In any proceeding brought by the surety against the tenant on a surety bond under this section, the tenant retains all rights and defenses otherwise available in a proceeding between a tenant and a landlord. Damages may be awarded to the surety only to the extent that the tenant would have been liable to the landlord under this section. If a surety, in an action against the tenant, asserts a claim under the surety bond without having a reasonable basis to assert the claim,

the court may grant the tenant damages of up to 3 times the amount claimed plus reasonable attorney's fees and court costs.
[PL 2007, c. 370, §2 (NEW).]

11. Loss of claim by surety. If a surety fails to comply with the requirements of this section, the surety forfeits the right to make any claim against the tenant under the surety bond.
[PL 2007, c. 370, §2 (NEW).]

12. Transfer of premises. If a landlord's interest in the rented premises is sold or transferred, the new landlord shall accept the tenant's surety bond and may not require an additional security deposit or surety bond from the tenant during the rental term that the premises is sold or transferred. At any renewal of the rental agreement, the new landlord may not require a surety bond or a security deposit from the tenant that, in addition to any existing surety bond or security deposit, is in an aggregate amount in excess of 2 months' rent for the tenant's dwelling unit. If the aggregate amount described above is in excess of 2 months' rent, the tenant may bring an action for wrongful assessment of surety bond under subsection 3.
[PL 2007, c. 370, §2 (NEW).]

13. Licensed surety. A surety bond issued under this section may only be issued by an admitted carrier licensed by the Department of Professional and Financial Regulation, Bureau of Insurance.
[PL 2007, c. 370, §2 (NEW).]

SECTION HISTORY

PL 2007, c. 370, §2 (NEW).

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