

29. Security Deposits

Jan-04

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

The *Residential Tenancy Act* permits a landlord to collect a security deposit¹. Under that Act the issue often arises as to what a landlord may collect as a deposit or payment, other than the rent, at the commencement of a residential tenancy. The Act contains a definition of "security deposit"², which also contains exclusions. As a result of the definition of a security deposit in the *Residential Tenancy Act* and the regulations, the following payments by a tenant, or monies received by a landlord, irrespective of any agreement between a landlord or a tenant would be, or form part of, a security deposit:

- The last month's rent;
- A fee for a credit report or to search the records of a credit bureau;
- A deposit for an access device, where it is the only means of access;
- Development fees in respect of a manufactured home site;
- A move-in fee in respect of a manufactured home;
- Carpet cleaning deposit or other monies paid to secure possible future expenses;
- Blank signed cheques provided as security, where the amount could exceed one-half of one month's rent;
- A furniture deposit in respect of furnished premises.

The *Residential Tenancy Act*³ requires that a security deposit must not exceed one-half of one month's rent. If one or more of the above payments, together with other monies paid, exceeds one-half of one month's rent then the remedies afforded by the Act⁴-would be available to a tenant. In addition, the Act⁵ provides that a landlord who contravenes these provisions commits an offence and is liable, on conviction, to a fine of not more than \$5,000.

The *Residential Tenancy Act* defines a "security deposit" as follows:

"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:

- (a) post-dated cheques for rent;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

1 *Residential Tenancy Act*, s. 17

2 RTA, s. 1

3 RTA, s. 19(1)

4 RTA, ss. 19(2) and 67

5 RTA, s. 95

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In addition, the *Residential Tenancy Act*⁶ provides that a landlord must not require that a security deposit be paid except at the time that the tenancy agreement is entered into, and that the security deposit must not exceed one-half of one month's rent. The Act⁷ further provides that if a landlord receives an extra security deposit in excess of one-half of one month's rent, the tenant may set off the excess amount against rent due. In addition, a landlord must not require more than one security deposit in respect of premises despite the number of occupants in those premises.⁸ A tenant may set off all or part of the security deposit plus accrued interest against the rent, but the consent of the landlord is required.

With respect to the return of the deposit after the tenancy has ended, the Act⁹ sets out the applicable time limits and procedure.

With respect to manufactured homes, the *Manufactured Home Park Tenancy Act* provides that a landlord must not require or collect a security deposit in respect of a manufactured home park site tenancy.¹⁰ If a landlord accepts a security deposit from a tenant, the tenant may deduct the amount of the security deposit from rent or otherwise recover the amount.

If a tenant of a manufactured home park under a site tenancy agreement pays a security deposit, the tenant may deduct the amount of the security deposit from rent or recover the amount¹¹. If a landlord fails to comply with the requirements of the Residential Tenancy Act respecting the return of a deposit, the landlord may be liable for double the amount of the deposit. See Guideline 17 for more information.

6 RTA, ss. 19(1 and 20(1)

7 RTA, s. 19(2)

8 RTA, s. 20(2)

9 RTA, s. 38 and 39

10 *Manufactured Home Park Tenancy Act*, s. 17

11 MHPTA, s. 17(2) and 60