

YOUR SECURITY DEPOSIT AFTER YOU MOVE OUT

DOES MY FORMER LANDLORD HAVE TO GIVE ME MY DEPOSIT BACK?

- Your former landlord can deduct certain types of charges from your security deposit after you move out (see below), but they are **required by law** to return your security deposit or explain how it was used within 14 days after the end of your tenancy (the date you officially moved out).
- Generally, your security deposit—or what remains of it, if anything, and an itemization of all charges—will be sent to you via first-class mail, so it is important that you give your former landlord your new address either before or immediately after you move out.
- If you do not provide your new address, your former landlord still **must attempt** to mail your security deposit and/or the required itemization to your last-known address. If that mailing gets returned to your former landlord as undeliverable, they have to report the money they tried to return to you to the State Treasurer as abandoned property, so you have the opportunity to get it back.

Refer to: NEB. REV. STAT. § 76-1416(2).

WHAT CHARGES CAN BE TAKEN OUT OF MY DEPOSIT?

- Your former landlord **can** deduct:
 - Any past-due rent.
 - Unpaid utility charges through the date that you moved out of the rental unit.
 - Any expenses they sustained because of you not following the terms of your lease agreement or tenants' duties under Nebraska's Landlord and Tenant Act. This often includes:
 - Charges for cleaning and repairs because you did not leave the rental unit in the same condition it was at the beginning of your lease, minus ordinary wear and tear.

Ordinary wear and tear generally includes things like worn carpets, faded paint, or a few small nail holes from hanging pictures. Issues like major stains, broken windows or screens, holes in walls or doors, or deep scratches in walls or floors are generally not considered ordinary wear and tear, even if they were caused by an accident and/or a guest you had over.

- Costs the landlord sustained advertising and reletting the rental unit, if you moved out before the end of your lease term.
- Your former landlord **cannot** deduct:
 - An “accelerated” amount for the total remaining monthly rent under a lease agreement.

Note: If you moved out before your lease agreement ended, your former landlord can charge you for rent that accrues between the date you moved out and when they relet the unit to someone else. However, your former landlord is legally required to mitigate their damages, which means they have to use reasonable efforts to lease the rental unit to a new tenant.

- Court costs or attorney's fees.
 - Charges for pre-existing defects or issued that were present at the time you moved in.
 - Charges for ordinary wear and tear, and for old fixtures or appliances that would need to be replaced anyway.

Refer to: NEB. REV. STAT. §§ 76-1416(2), 76-1421(2), 76-1405(1), & 76-1415(1)(c).

WHAT IF MY FORMER LANDLORD DOES NOT RETURN MY DEPOSIT?

- Send a demand letter using the templates provided on the following pages.

Note: After you complete your demand letter—including the certificate of service—make sure that you take a clear picture or make a photocopy of it before mailing it to your former landlord.

- If your former landlord **did not** mail your security deposit—or what remains of your deposit, if applicable, along with an itemization showing how your deposit was spent—within 14 days after you move out, send a letter demanding that they return your deposit and/or provide the required itemization by a specified date.
- If your former landlord **did** timely provide the required itemization but withheld an amount from your deposit or are demanding that you pay them for additional **charges that you disagree with**, send them a letter contesting those charges and demanding that they return the amount at issue or agree in writing to waive the charges by a specified date.

Note: Even if your former landlord uses your entire deposit to cover lawful charges, they still must provide you with an itemization showing exactly how your deposit was spent. If your former landlord believes that you owe more than your deposit covers, they will usually say so within the deposit itemization and provide a date by which the additional amount must be paid. It is important to follow up with your former landlord before that date to contest the amount if you think is wrong.

- If your former landlord does not respond to your demand letter or refuses to return or waive the amount at issue, you can sue them to return some or all of your deposit in Small Claims Court.
 - In Small Claims Court, neither party can be represented by an attorney, and hearings are designed to be more informal and accessible.
 - The Nebraska Supreme Court website has detailed information about Small Claims Court actions: <https://nebraskajudicial.gov/self-help/small-claims/filing-small-claims-case-nebraska>.

There is always a risk when you file a lawsuit against your former landlord that they will file a countersuit against you for additional money. Your former landlord also could hire a lawyer to have the case moved to county court, which has stricter protocols and is more difficult for self-represented parties to navigate. Therefore, it's important to proceed with caution and talk with an attorney first, if at all possible

Refer to: NEB. REV. STAT. §§ 25-2803 to 25-2806.

Important Disclaimer: The information in this handout is for educational purposes only. This handout does not create an ongoing attorney-client relationship between you and the Tenant Assistance Project or the Housing Justice Clinic at the University of Nebraska College of Law. Nothing in this handout should be considered legal advice or used as a substitute for legal advice.



DEMAND TO RETURN SECURITY DEPOSIT

Date: _____

To: _____
Former Landlord's Name

From: _____
Tenant's Name

Landlords are required to return a tenant's security deposit, or what remains of the deposit along with an itemized list of any deductions, within fourteen (14) days after the end of their tenancy, pursuant to NEB. REV. STAT. § 76-1416.

My tenancy at _____
Tenant's Old Address

ended on _____, but I have not received any communication from you
Date Tenant Moved Out

regarding my security deposit.

If you have not mailed my security deposit—or what remains of the deposit along with an itemized list of any deductions—to the below-listed address within seven (7) days, I will pursue other legal remedies.

Tenant's New Address

Thank you for your prompt attention to this matter.

Tenant's Signature

Certificate of Service

The above-signed hereby certifies that a true and accurate copy of the above was mailed first class, postage

prepaid on: _____ to _____ at
Date of Mailing Former Landlord's Name

Former Landlord's Address

DISPUTE OF SECURITY DEPOSIT CHARGES

Date: _____

To: _____
Former Landlord's Name

From: _____
Tenant's Name

Under Nebraska law, a landlord can only apply a tenant's security deposit to past-due rent and the landlord's actual money damages directly resulting from the tenant violating the lease agreement or failing to leave the rental unit in the same condition "excepting ordinary wear and tear, as when the tenancy commenced." NEB. REV. STAT. § 76-1421(2); *see also* NEB. REV. STAT. § 76-1416; *Mason v. Schumacher*, 231 Neb. 929, 943, 439 N.W.2d 61, 70 (1989).

I contest the following charges that were withheld from my security deposit, per the itemization you provided, because they are inconsistent with the above-referenced standards:

Description of Contested Charges

Description of Contested Charges, cont.

Description of Contested Charges, cont.

Description of Contested Charges, cont.

If you have not mailed a written response addressing this dispute to the below-listed address within seven (7) days, I will pursue other legal remedies.

Tenant's New Address

Thank you for your prompt attention to this matter.

Tenant's Signature

Certificate of Service

The above-signed hereby certifies that a true and accurate copy of the above was mailed first class, postage

prepaid on: _____ to _____ at
Date of Mailing Former Landlord's Name

Former Landlord's Address