

32.07 SECURITY DEPOSIT REFUND PROCEDURES.

- (1) The landlord may require as a condition of a rental agreement a security deposit for the purposes provided in Sec. 32.07(14) and for no other purpose.
- (2) (a) In this section 'security deposit' means the total of all payments and deposits given by a tenant to the landlord in a residential tenancy as security for the performance of the tenant's obligations, and includes but is not limited to all rent payments in excess of one month's prepaid rent, all pet deposits, furniture deposits and key deposits.
- (b) The sum of all payments and deposits, held as security deposit shall not exceed the equivalent of one month's rent. A security deposit may not be instituted or increased during the occupancy of any original tenant(s) under the same, an amended, a renewed or a new rental agreement. If, however, the terms of the amended, new or renewed rental

agreement allow as a new condition a pet or a waterbed and the increase in the security deposit is mutually agreed upon in writing between the parties, a security deposit may be instituted or increased provided it does not exceed one month's rent.

- (c) Landlords who charge an amount less than or equal to fifty percent (50%) of one (1) month's rent as a security deposit shall be exempt from the provisions of this ordinance which require the payment of a rent credit.
 - (d) Except as permitted pursuant to Sec. 32.07(8) which provides that a security deposit shall be returned to a tenant or accounted for within twenty-one (21) days of vacation of the premises by that tenant, a landlord may not simultaneously hold a security deposit given by a tenant and a sub-tenant of the same rental premises unless the total of the deposits made by the parties does not exceed the equivalent of one month's rent.
 - (e) Nothing in this subsection shall be construed as prohibiting the voluntary prepayment of rent by a tenant or the prepayment of rent by a tenant pursuant to a mutually agreed upon semesterly, annual or other periodic payment plan, provided the plan contains a bona fide monthly rental payment option which the tenant is free to elect at her or his sole discretion. A bona fide rental payment option within the meaning of this ordinance is one where the total of all payments under the monthly payment option does not exceed by more than five percent (5%) the total of all payments under any of the other periodic payment options.
- (3) Rent Credit. The landlord shall provide a yearly rent credit calculated from the date the security deposit is paid or an earnest money deposit has been applied toward the security deposit according to Sec. 32.10(2)(b) to the date the security deposit is either returned or properly accounted for under Sec. 32.07(8) of the Madison General Ordinances. The rent credit shall be equivalent to the State of Wisconsin Department of Financial Institutions' (DFI) announced interest rate to be paid by Wisconsin's financial institutions for money held in escrow accounts for real estate; and the Mayor shall direct that the rent credit rate and that of the prior twenty (20) years be available to the public at the City Clerk's office, Neighborhood Preservation and Inspection Division, Madison public libraries and on the City's official web page. The interest rate credited shall be the announced rate on the date the security deposit is paid or an earnest money deposit is applied toward the security deposit and the rate in effect on each annual anniversary date thereafter.
 - (a) The rent credit and the date it is received shall be specified in the lease and in any subsequent renewal or given in writing to the tenant at the time of entering into the rental agreement.
 - (b) If not credited to the last month's rent annually or otherwise distributed to the tenant prior to the

termination of the tenancy, the rent credit shall be paid to the tenant or accounted for in writing using the procedures set forth below for the return of the security deposit within twenty-one (21) days after surrender of rental premises and restoration of possession to the landlord.

(c) Voluntary prepayments of rent by a tenant under Section 32.07(2)(e) are not subject to the rent credit provisions set forth in this subsection.

(d) This subsection shall become effective January 1, 2004.

(Repealed and recreated by Ord. 13,414, 10-4-03)

(4) The tenant shall place the dwelling unit in as overall clean condition, excepting ordinary wear and tear, as when the tenancy commenced or as improved by the landlord, the landlord's agents or the tenant pursuant to a written agreement with the landlord. (Former Subsection (5) Renumbered to Subsection (4) and Am. by Ord. 12,533, 2-18-00)

(5) The landlord and tenant shall use a written CHECK-IN AND CHECK-OUT procedure.

(a) The landlord shall furnish copies of check-in and check-out forms to tenants of each dwelling unit. The check-in form shall be provided to the tenant at the beginning of the tenancy and the check-out form shall be provided to the tenant prior to the termination of the tenancy.

(b) Before a landlord accepts a security deposit under Sec. 32.10(3)(b), or converts an earnest money deposit to a security deposit under Sec. 32.10(2)(b) the landlord shall notify the tenant in writing that the tenant may do any of the following by a specified date which is not less than seven (7) days after the start of tenancy:

1. Inspect the dwelling unit and notify the landlord of any pre-existing damages or defects by noting the conditions on the check-in form.

2. Request a list of physical damages or defects, if any, charged to the previous tenant's security deposit. The landlord may require the tenant to make this request, if any, in writing.

(c) If a tenant makes a request under Paragraph (b)2., the landlord shall provide the tenant with a list of all physical damages or defects charged to the previous tenant's security deposit, regardless of whether those damages or defects have been repaired. The landlord shall provide the list within 30 days after the landlord receives the request, or within 7 days after the landlord notifies the previous tenant of the security deposit deductions, whichever occurs later. The landlord may explain that some or all of the listed damages or defects have been repaired, if that is the case. The landlord need not disclose the previous tenant's identity, or the amounts withheld from the previous tenant's security deposit.

(d) All check-out forms shall be comparable to the check-in forms. All check-out forms shall provide an obvious place for the tenant's forwarding address. Check-out forms shall also provide a space for the rent credit due and a space for the landlord's explanation for any portion of the rent credit deemed not due.

(e) Acknowledgement, if any, of receipt of the check-in and check-out forms or combined check-in/check-out form shall be included in a written document entitled "NON-STANDARD RENTAL PROVISIONS", which the landlord provides to the tenant.

(f) The landlord has the burden of proving compliance with all provisions and procedures set forth in this subsection or forfeits all right to any portion of the security deposit.

(Former Subsection (6) Renumbered to Subsection (5) and Am. by Ord. 12,533, 2-18-00)

- (6) Failure by the landlord to offer either the check-in or check-out forms shall forfeit the landlord's right to withhold any amount from a security deposit for alleged cleaning costs or damages.

(Former Subsection (7) Renumbered to Subsection (6) by Ord. 12,533, 2-18-00)

- (7) Every landlord who accepts a security deposit shall, within twenty-one (21) days after a tenant surrenders the rental premises, return, in person or by mail, to the tenant at the tenant's forwarding address or at the tenant's last known address if a forwarding address is not provided to the landlord, either:

- (a) The full security deposit; or
- (b) A written, itemized statement showing the specific reason or reasons for the withholding of the deposit or any portion of the deposit, applicable receipts and estimates including the necessary hours and the wage rate for the work done or to be done any rent credit due. The landlord shall not be held responsible for the inability of the Post Office to complete delivery of a first class letter. (Am. by ORD-07-00015, 2-06-07)
- (c) If a landlord returns a security deposit in the form of a check, draft, or money order, the landlord shall make the check, draft, or money order payable to all tenants who are parties to the agreement, unless the tenants designate a payee in writing.
- (d) A tenant does not waive his or her right to the full amount owed under Subdivision (a) merely by accepting a partial payment of that amount.

(Former Subsection (8) Renumbered to Subsection (7) and Am. by Ord. 12,533, 2-18-00)

- (8) A tenant surrenders the premises under Subsection (7) on the last day of tenancy provided under the rental agreement, except that:
- (a) If the tenant vacates before the last day of tenancy provided under the rental agreement, and gives the landlord written notice that the tenant has vacated, surrender occurs when the landlord receives the written notice that the tenant has vacated. If the tenant mails the notice to the landlord, the landlord is deemed to receive the notice on the second day after mailing.
 - (b) If the tenant vacates the premises after the last day of tenancy provided under the rental agreement, surrender occurs when the landlord learns that the tenant has vacated.
 - (c) If the tenant is evicted, surrender occurs when a writ of restitution is executed, or the landlord learns that the tenant has vacated, whichever occurs first.

(Subsection (8) created by Ord. 12,533, 2-18-00)

- (9) If the landlord fails to provide a written statement within the prescribed period in accordance with Sec. 32.07(7)(b) or fails to comply with the security deposit limits in Sec. 32.07(2)(b) or fails to comply with the rent credit provisions of Sec. 32.07(3), or fails to comply with or otherwise violates Sec. 32.07(14) and (15) concerning the reasons for which security deposits may be withheld, the landlord forfeits all rights to any portion of the deposit.
- (10) If a landlord fails to comply with or otherwise violates the ordinance provisions set forth below, the tenant shall have the right to recover damages in the amount indicated below together with costs including reasonable attorney's fees:

Ordinance Violation	Damages
(a) Failure to comply with the security deposit limit in Sec. 32.07(2)(b).	The money due plus up to twice the amount wrongfully held.
(b) Failure to comply with the rent credit provisions under Sec. 32.07(3).	The money due plus up to twice the amount wrongfully withheld or not provided.
(c) Failure to use check-in/check-out forms under Sec. 32.07(5).	The money due plus up to twice the amount wrongfully withheld.
(d) Failure to return security deposit or provide written statement of reasons for withholding under Sec. 32.07(7)(a) & (b)	The money due plus up to twice the amount wrongfully withheld.
(e) Failure to comply with Sec. 32.07(14) & (15) relating to the reasons for which security deposits may be withheld.	The money due plus up to twice the amount wrongfully withheld.

- (11) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section.
- (12) This section does not preclude the landlord or tenant from recovering other damages to which the landlord or tenant is entitled.
- (13) Any attempted waiver of this section by a landlord or tenant by contract or otherwise is void and unenforceable.
- (14) A landlord may withhold from a tenant's security deposit only for the following:
- (a) Tenant damage, waste or neglect of the premises.
 - (b) Unpaid rent for which the tenant is legally responsible, subject to Sec. 704.29, Wis. Stats.
 - (c) Payment which the tenant owes for utility service provided by the landlord but not included in the rent.
 - (d) Payment which the tenant owes for direct utility service provided by a government-owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment.
 - (e) Unpaid mobile home parking fees assessed against the tenant by a local unit of government under Sec. 66.0435(3), Wis. Stats., to the extent that the landlord becomes liable for the tenant's nonpayment.
 - (f) Other reasons authorized in the rental agreement, which may include one or more non-standard rental provisions authorizing a landlord to withhold from a tenant's security deposit for reasons not identified in Subdivisions (a) through (e). The landlord shall include the non-standard provisions, if any, in a separate written document entitled "NON-STANDARD RENTAL PROVISIONS" which the landlord provides to the tenant. The landlord shall specifically identify and discuss each non-standard provision

with the tenant before the tenant enters into any rental agreement with the landlord. If the tenant signs or initials a non-standard rental provision, it is rebuttably presumed that the landlord has specifically identified and discussed that non-standard provision with the tenant and that the tenant has agreed to it.

Notwithstanding the language above which allows additional reasons for withholding security deposits if those are specified in writing, nothing in this subsection or elsewhere in this chapter shall be construed as authorizing any withholding for normal wear and tear, including activities that are customarily performed by the landlord or the landlord's agents before a new tenancy commences, including, but not limited to, washing windows, shampooing carpets, occasional repainting or reupholstering furniture; or for other damages or losses for which the tenant is not otherwise responsible under applicable law.

- (15) No landlord may intentionally misrepresent or falsify any claim against a security deposit, including the cost of repairs, or withhold any portion of a security deposit pursuant to an intentionally falsified claim.

(Sec. 32.07 Am. by Ord. 10,812, Adopted 1-18-94; Am. by Ord. 12,533, 2-18-00; Former Subsection (4) repealed by Ord. 12,533, 2-18-00)

32.10 EARNEST MONEY DEPOSITS.

- (1) A landlord may not accept an earnest money deposit or security deposit from a rental applicant until the landlord identifies to the applicant the dwelling unit or units for which the applicant is being considered for tenancy.
- (2) Refunding or Crediting An Earnest Money Deposit .
 - (a) A landlord who receives an earnest money deposit from a rental applicant shall send the full deposit to the applicant by first-class mail, or shall deliver the full deposit to the applicant, by the end of the next business day after any of the following occurs:
 1. The landlord rejects the rental application or refuses to enter into a rental agreement with the applicant.
 2. The applicant withdraws the rental application before the landlord accepts that application.
 3. The landlord fails to approve the rental application by the end of the third business day after the landlord accepts the applicant's earnest money deposit, or by a later date to which the tenant agrees in writing. The later date may not be more than 21 calendar days after the landlord accepts the earnest money deposit.
 - (b) A landlord who receives an earnest money deposit from a rental applicant shall do one of the following if the landlord enters into a rental agreement with that applicant:
 1. Apply the earnest money deposit as rent or as a security deposit.
 2. Return the earnest money deposit to the tenant.
 - (c) A person giving an earnest money deposit to a landlord does not waive his or her right to the full refund or credit owed under Subdivision (a) or (b) merely by accepting a partial payment or credit of that amount.
- (3) Withholding An Earnest Money Deposit .
 - (a) A landlord may withhold from a properly accepted earnest money deposit if the prospective tenant fails to enter into a rental agreement after being approved for tenancy, unless the landlord has significantly altered the rental terms previously disclosed to the tenant.
 - (b) A landlord may withhold from an earnest money deposit, under Subdivision (a), an amount sufficient to compensate the landlord for actual costs and damages incurred because of the prospective tenant's failure to enter into rental agreement. The landlord may not withhold for lost rents unless the landlord has made a reasonable effort to mitigate those losses, as provided under Sec. 704.29, Wis. Stats.
 - (c) Upon request by any person giving an earnest money deposit, the landlord shall provide that person with a written statement accounting for all amounts permanently withheld from the deposit.

(Sec. 32.10 Cr. by Ord. 7542, 10-22-81; Am. by Ord. 12,533, 2-18-00)