



Landlord Letter

Five Golden Rules to Avoid Deposit Disputes

One of the LEAST favorite aspects of being a landlord is handling security deposits. Even if you are careful and each charge coming out of the deposit is legally justified, it can still end in a disagreement. Some of those disagreements end in lawsuits.

We are commonly asked – What can I do to avoid these disputes? Most cases never make it in front of a judge, but you should always act as if this case will. Let's walk through Five Golden Rules to help with deposit disputes:

Rule #5 – Follow the Law and Your Lease.

For any deposit dispute, the judge will follow two areas of the law: First, the Utah's statutes (Google "Utah Code Chapter 57-17" for a list of these codes). Second, the judge will follow your lease. Make sure you are aware of these requirements and are following them. Utah law or your lease should outline how the deposit is used, applied, and replenished. For any charge against the deposit, make sure you are following the statutes and your lease before you charge the tenant. If it is not in your lease or in Utah law, it should not be in your ledger.

You should also know that Utah law does NOT cover everything related to deposits, so your lease can be an important tool to fill in the gaps. We would encourage you to use our free lease on our website to make sure you're covered.

Rule #4 – Papers > Opinions

Papers (pictures, invoices, receipts, etc.) are always better than opinions. Do everything you can do document your file. If the tenant left the property trashed, take pictures of EVERYTHING. You should expect the tenant to verbally claim, "I left the property in better condition than when I moved in." You need to SHOW the judge evidence of what happened so the judge can develop their own opinions.

Rule #3 – Apply the Deposit (Don't keep it)

Judges don't mind if you charge a tenant for something caused by the tenant that is permitted in the law or the lease, especially if you have a receipt or invoice that backs up the amount you're claiming. However, judges are often skeptical about "forfeiture clauses," where the lease states "Any breach of this lease results in a forfeiture of the deposit." It is always best to backup and support any charges against the deposit.

Rule #2 – Pre-Move Out Inspections

If you know your tenant is moving (you gave them notice or they gave you notice), consider meeting with them in the property BEFORE they move out. It gives you a chance to review items of concern and create a preliminary checklist of what needs to be done to avoid

(Continued on page 2)

charges against the deposit. It also gives you a chance to assess what cleaning/repairs will need to take place after they're out, so you can begin scheduling that work.

Rule #1 – Be Reasonable

We saved the most important rule for last. If any charges are in the grey area, consider NOT charging the tenant. Be fair and reasonable as you're determining what to charge against the deposit. Avoiding grey area charges can help avoid disputes and lawsuits.

Finishing Up – We can't guarantee that following these rules always will avoid all deposit disputes. But, following these rules will help in two significant areas; (1) You will see fewer disputes, and (2) If any disputes result in any lawsuit, you will have a stronger defense to their claims.

Attorney Jeremy Shorts

hello
JUNE

Know Your Notice

•Nuisance•

Purpose: Used to terminate your lease based on your tenant's actions that constitute a nuisance.

Use this notice when your tenant is interfering with someone else's comfortable and quiet enjoyment of their life or property.

A nuisance can be anything that injures someone's health, is indecent, or is offensive.

*Some typical types of nuisance:
Disturbing neighbors, late and loud parties, smoking, gambling, prostitution, buying/manufacturing/selling drugs.*

Like other eviction notices, it must be served in person, posted or sent via certified mail. It cannot be given verbally, texted or emailed.



Dear Attorney,

The tenant claims to have legally changed their name and asked that I issue the security deposit refund in their new name. What do I do?

When dealing with security deposit refunds, it is always the best practice to issue the refund to the individuals that signed the lease, and to match the names as written on the lease.

That is generally an easy task, but what happens if the tenant that originally signed the lease is now claiming that they have legally changed their name and would like the check issued to them in a different name? You need to be careful and make sure that you are not sending the check to someone else.

The best approach would be to let them know that you are required to issue the check to the individual that signed the lease and need to match

the name on the lease. Provide them with the refund made out to the name or names on the lease. If they continue to push back, then let them know that you are happy to reissue the check once you have appropriate documentation showing the legal name change.

Name changes are usually required to get court approval and are memorialized with a court order which the individual should have copies of to show to individuals as proof of the legal name change. Without the proof of the legal name change, you will need to simply make the check out to the name as it appears on the lease and they will need to figure out how to deposit it.

Quick Tips of Security Deposits

- ✓ Require the initial payment (rent & deposit) to be paid via certified mail, online, or in person.
- ✓ Make sure your lease outlines the terms of the deposit (when it's paid, what it can be used for, and what portion is non-refundable) and don't allow the deposit to be used for rent.
- ✓ Check your lease, but if the deposit has NOT been paid and is past due, consider applying the next rent payment towards the deposit which leaves a balance still owing. Serve a three day pay or quit if needed.
- ✓ Do not assume the tenant will not ask for the deposit back after they have left. Ensure you detail how the deposit was applied and properly notify the tenant of the deposit disposition.

Courtroom Chronicles

Sovereign Citizens generally believe that the government and the courts have no jurisdiction over them unless they consent to the authority of the government and courts. If that sounds crazy, and if you want to kill several hours of time, just search YouTube for “Sovereign Citizen.” From traffic tickets to civil lawsuits, you’ll see hundreds of videos of failed attempts to avoid legal consequences.

In a recent eviction case, the tenant made similar arguments about the court lacking jurisdiction to evict them. When the judge pointed out that there was a signed lease and asked, “Have you paid the rent?” The tenant gave an odd answer and said, “We performed under the lease.” The judge asked, “What do you mean you performed under the lease?”

Did you pay the rent?” The tenant went on a long soapbox speech about how they performed the lease by assigning rent ... to themselves, which pays the rent.

The judge saw through the games and granted the eviction order, but needed to decide how much time for them to move out. The statute used to state eviction orders should be three calendar days unless there are extenuating circumstances. The judge asked “How much time do you need to move out?” The tenant replied, “We need four months.” The judge, sick of the games, said “Okay, it’ll be three days” and signed an eviction order. Sovereign Citizens never win.



SUMMER



Parting Thoughts

- We’re working to build our readership, tell your friends to subscribe to this FREE newsletter. Send us an email info@utahevictionlaw.com.
- Have an eviction question? Email it to us for a future newsletter!
- Help us build our online presence! You can “Like” our Facebook page (www.facebook.com/utahevictionlaw).
- You can also give us a Five Star Google Review (search Google for “Utah Eviction Law”).

Google
REVIEWS

What people are saying about US!!!

“Utah Eviction Law has been amazing to work with! I personally worked with David and he was super professional and took the time to help me with all my questions! ...”

~Ellie —Google Review