

Your Security Deposit

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1. When you move into a rental residence, chances are that you will be required to pay not only the first month's rent in advance, but also a security deposit, to cover the cost of certain physical damage you cause during the tenancy, to cover the costs of unpaid rent, or if you breach the contract and leave early, the costs of re-renting the premises. Upon completion of your tenancy, your landlord should return any portion of the security deposit not needed to cover those costs. So, what are the rules? How best can you protect your security deposit? What can you do if the landlord violates these rules?

2. The Rules: North Carolina Tenant Security Deposit Act

a. The Tenant Security Deposit Act can be found at Article 6 of chapter 42 of the NC General Statutes (42-50 thru 56) <https://www.ncleg.gov/Laws/GeneralStatutesTOC> Here's a summary of what those rules say.

b. *Amount of deposit.* If you have a month to month tenancy, the landlord can charge a security deposit of up to one and one half month's rent. If the term of the lease is longer than one month, the landlord may charge up to two month's rent (NCGS 42-51b). In addition, the landlord can charge a "reasonable nonrefundable fee for pets kept by the tenant on the premises." (NCGS 42-53)

c. *Landlord Deposit Obligations.* Within thirty days after the end of the tenancy, the landlord must "mail or deliver" the security deposit to the tenant, together with an itemized list of any damages for which all or a portion of the security deposit was not returned. If the extent of the landlord's claim against the deposit can not be determined within thirty days, the landlord must nonetheless provide an interim accounting within thirty days and a final accounting within sixty days (NCGS 42-52). The willful failure of the landlord to comply with these laws voids the landlord's right to any portion of the security deposit otherwise permitted (NCGS 42-55).

d. *Landlord Claims Against the Deposit.* Portions of the security deposit can be withheld for:

- Nonpayment of rent;
 - Nonpayment of utilities provided by the landlord;
 - Physical damage to the premises;
 - Damages, such as unpaid rent, caused by the tenant's breach of the lease;
 - Costs of re-renting the premises after tenant's breach;
 - Costs of removal of the tenant's property after eviction; and
 - Court costs to enforce the lease.
- (NCGS 42-51)

e. *Wrongful Withholding of the Security Deposit.* The security deposit can not be withheld for preexisting damage; i.e., damage that predated the tenancy, or for damages beyond ordinary wear and tear. Further, the landlord can not retain an amount from the security deposit that exceeds actual damages (NCGS 42- 52). For example, if it cost \$55 to fix the broken window, the landlord can not withhold \$100 for the broken window. More to the point, if the tenant breaches the lease and leaves with two months remaining in the lease term, and a new tenant moves in within two weeks, the landlord can claim only two weeks rent against the security deposit.

3. The Rules. The Servicemembers' Civil Relief Act.

a. *SCRA Lease Termination.* The Servicemembers' Civil Relief Act (SCRA) is a federal law that provides a variety of important rights and protections to servicemembers (SMs) and their families. One portion of the SCRA (50 USC 3955) allows SMs to terminate a lease early under certain circumstances, such as the receipt of permanent change of station (PCS) orders or orders to deploy.

b. *When is there a right to terminate a lease under the SCRA?*

-The SM entered the lease prior to military service;

-The SM entered the lease while on active duty and thereafter received permanent change of station (PCS) orders; [PCS orders include non-temporary assignment to another duty station, retirement, separation from the service under honorable conditions, or any other orders designated by the Joint Travel Regulation as a PCS order. See JTR Appendix A]

-The SM entered the lease on active duty and thereafter received orders to deploy in excess of 90 days; and

-The SM died on active duty or National Guard service and the SM's spouse requests lease termination within one year of the death (2018 amendment).

c. *What notice does the tenant need to provide to the landlord to terminate a lease under the SCRA?* The tenant must provide written notice to the landlord of intent to terminate the lease. Notice must also include a copy of the orders that give rise to this right, or a letter from the tenant's commanding officer verifying that the tenant has been issued such orders. The websites of each of the Legal Service Support Teams (LSSTs) within Marine Corps Installations East (LSST Lejeune, Parris Island, Cherry Point) contain forms for the tenant demand to terminate the lease early and for the CO verification of orders. Use those web posts as a guide, adjusting as needed to suit your situation. If you have questions, you are encouraged to consult your military legal assistance attorney.

d. *What is the effective day of lease termination under the SCRA?* The lease, and the SM obligation to pay rent, terminates thirty days after the next rent is due. For example, if rent is due on the first day of the month, and the SM provides proper notice of termination on April 26th, the lease, and the obligation to pay rent, end thirty days after May 1st. Termination of the lease obligations of the SM also terminate the obligations of the co-tenant spouse.

e. *Up Front Rent Concessions and the SCRA.* Landlords are prohibited from imposing an early termination charge against a tenant that terminates the lease early pursuant to the SCRA (50 USC 3955e1). Accordingly, if a landlord provided an up-front rent concession; e.g., “first month’s rent free,” that concession is not forfeit because the tenant terminated the lease early under the SCRA. The U.S. Department of Justice has taken enforcement action against property managers for violating this provision of the SCRA. For example: U.S. v Twin Creek Apartments 11 Sep 2018 (D. Nebraska). Property manager required to provide \$76K restitution for the wrongful forfeiture of rent concessions and to pay a \$20 civil penalty. And U.S. v United Communities, LLC. 27 Sep 2018 (D. NJ) Settlement required property manager to pay \$45K restitution for wrongful forfeiture of rent concessions and to pay a civil penalty of \$17,500.

4. How to protect your security deposit.

a. *Do not move into premises that have significant pre-existing damages.* The law says that landlords can not charge you for damages that existed before you moved in. Unfortunately, experience teaches that landlords impose such charges against tenants with a pretty fair degree of frequency. It is then up to the tenant to demand the return of the charge, and if not forthcoming, to take further action, such as a lawsuit against the landlord. Because of its time and expense, lawsuits for the return of security deposits are often not practical, especially if you no longer reside in the area where you need to initiate the suit. Further, landlords will typically tell prospective tenants that all of the problems will be fixed quickly. Unfortunately, such repairs are sometimes made not very quickly at all, or ever, another good reason to make sure that repairs are completed before you move in or sign the lease.

b. *Conduct a meticulous move in inspection.* Before you move in, conduct a meticulous inspection of the premises. Carefully document every carpet stain, window crack, nail hole, broken cabinet, or other damage. Property managers will often provide you with a form for the move in inspection. If the form doesn’t have a place on it for certain problems, document the problems anyway, using supplementary pages if you need to. Make sure you get a copy of your completed move in inspection. Tenants are also well advised to make a photographic record of defects. Sometimes, a property manager will claim that you caused the damage even if the problem was noted on the move in inspection. For example, if you indicated that there were holes in the door or wall, the landlord may claim that you caused *additional* holes in the door or wall. A photographic record can go a long way towards determining which landlord claims are justified and which are exaggerations, or downright false.

c. *Comply with the SCRA.* If you are terminating the lease pursuant to the SCRA, make sure that you comply with all of its notice requirements. Be prepared to document such compliance. Timing matters. If rent is paid on the first day of the month, and you provide proper notice on the 29th of April, the lease ends thirty days after May 1st. If you provide notice on the second day of April, the lease still ends thirty days after May 1st, but now you are stuck paying two month’s rent after notice.

d. *Consider NC State Law concerning lease termination.* North Carolina law (NC Gen Stat 42-45) provides lease termination rights to SMs. While there is a great deal of overlap between the SCRA and NC Gen Stat 42-45, these laws are not identical. Unlike SCRA rights, NC lease termination rights cannot be waived. In those situations in which both NC Gen Stat 42-45 and the SCRA apply, the SM tenant generally pays less by terminating the lease in accordance with the SCRA. However, there are discrete situations in which the SM tenant pays somewhat less under NC law. Additional information concerning the interplay between NC Gen Stat 42-45 can be found in the “Take 1” handout on lease termination posted to the web page of the NC State Bar committee on Legal Assistance for Military Personnel (www.nclamp.gov). You may also discuss these matters with your military legal assistance attorney.

5. What can I do if the landlord wrongfully withholds a portion of my security deposit?

a. *Complain to the landlord.* If you believe that the landlord has wrongfully kept a portion of your security deposit, you should let the landlord know why you think so. Provide any documentation that you have, such as the move in inspection and / or move in photos. If the landlord is violating the SCRA by making you pay excess rent, or by making you forfeit an up-front concession, explain the SCRA to the landlord, or provide a copy of the statute.

b. *Consult your military legal assistance attorney.* Military legal assistance attorneys can explain the law to you and can help prepare a demand letter to your landlord. They can advise of your in-court options. Additionally, if it appears to the military legal assistance office that a particular property manager routinely violates the law or abuses military tenants, that business can be referred for consideration by the Armed Forces Disciplinary Control Board (AFDCB). The Board makes recommendations to the installation commander concerning off limits designation. Your legal assistance attorney can also advise of the utility of other public enforcement agencies in your case.

c. *Complain to the North Carolina Real Estate Commission.* The NC REC accepts on line complaints against the sellers of real estate, as well as against property managers. It does not regulate or take complaints against individual homeowners renting their own home.

d. *Complain to the North Carolina Attorney General.* The NC Attorney General accepts on line complaints against a wide variety of businesses, including landlords and property managers. The office will request a response from the business, which often resolves the matter. If there appears to be a widespread problem, the Attorney General, on behalf of the state, may sue the errant property manager.

e. *Complain to the U.S. Department of Justice.* If you believe that the landlord or property manager has violated the SCRA, you can make a complaint directly to the DoJ, which has been very active in enforcing SCRA lease termination rights.
<https://www.justice.gov/servicemembers>