

# Application Fees and Deposits

**IMPORTANT:** This is an excerpt from the 2010 *Landlord-Tenant Law in Oregon* booklet. It is for general educational use only. **It is not a substitute for the advice of an attorney.** If you have a specific legal question, you should contact an attorney. The information in this booklet is accurate as of May 2010. Please remember that the law is always changing through the actions of the courts, the legislature, and agencies.

**TIME LIMIT WARNING:** Under state and federal laws there are time limits for taking action to enforce your rights. Most lawsuits related to the rental agreement and the Oregon Residential Landlord and Tenant Act must be filed (started in court) within one year of the incident. There may be other — shorter — time limits that apply in other cases. Ask a lawyer about the time limits that could apply in your situation.

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### What is the difference between a fee and a security deposit?

A “**fee**” is a **non-refundable** payment. Landlords can charge you a fee if you are late on your rent (see Question 26), if you bounce a check to the landlord, if you tamper with your smoke detectors, if you violate pet rules, if you break your lease

early, if you are late paying for a utility (see Question 27), if you fail to clean up after your pet or if you violate parking or driving rules. All other fees are now prohibited (ORS 90.302). A tenant can be charged a late fee each time the rent is paid late. These kinds of fees, like the late fee, must be described in the rental agreement. ORS 90.100(13)

A “**Security deposit**” is any **refundable** payment that encourages to tenant to live up to the rental agreement. ORS 90.100(37)

If the tenant follows rules stated in the rental agreement and does not damage the rental unit beyond ordinary wear and tear, then the landlord must refund the security deposit within 31 days after the rental agreement ends. ORS 90.300

See the section on “[Getting Your Security Deposit Back After You Leave](#)” on [www.oregonlawhelp.org](http://www.oregonlawhelp.org) for more information on security deposits.

## When I find a place that I want to rent, can the landlord make me pay in order to apply?

You cannot be charged a fee just to have your name placed on a waiting list, but you can be charged other fees.

**An applicant screening charge** — is a payment that covers the costs of screening tenants, such as reference checks and credit reports. These charges can be collected only if there is a unit that is available for rent (or that will be soon), unless you agree otherwise in writing. The landlord must give you a receipt for the payment. You must be given a written notice before you pay an applicant screening charge. This notice must tell you:

- the amount of the charge; and
- the factors the landlord will consider in deciding on your application; and

- the process the landlord will use in screening, including whether the landlord uses a tenant screening company; and
- that you have the right to send a statement if you think the information the landlord gets is wrong.

The landlord must also give you an estimate of the number of other current applicants who are ahead of you in applying for units of the size you want. This information can help you decide whether it’s worth applying.

If a landlord does not rent to you because of any information the landlord gets from a tenant screening service or credit reporting agency, the landlord must tell you this. The landlord must also tell you the name and address of the screening service or reporting agency. These rules apply even if you did not pay an applicant screening charge. (In addition, if the landlord charges you an application fee and you are denied, or if you request in writing the reason for denial, the landlord must promptly provide you with one or more reasons for your denial (ORS 90.304).)

If the landlord doesn’t do the screening after you’ve paid an applicant screening charge (because, for example, the unit is rented to someone else first), you must be refunded the money within a reasonable time.

If the landlord makes you pay an applicant screening charge without following these rules, you can sue the landlord for the amount of the applicant screening charge plus \$100. ORS 90.295

See “[Can Small Claims Court Help Tenants?](http://www.oregonlawhelp.org)” on [www.oregonlawhelp.org](http://www.oregonlawhelp.org) for information about small claims court.

**A deposit to hold the unit** — is a fee paid before you enter into a rental agreement so that the landlord will hold the rental unit (not rent it to others). There must be a written agreement that describes when the deposit must be refunded to the tenant and when it can be kept by the landlord.

If the tenant and landlord then enter into the rental agreement, the landlord must give back the deposit — either by giving the tenant a refund or by crediting the tenant’s account. If the *tenant* doesn’t take the necessary steps to enter into the rental agreement, the landlord can keep the deposit. If the *landlord* doesn’t take the necessary steps to enter into the rental agreement, the deposit must be refunded within four days. If the landlord charges a deposit without following these rules, the tenant can sue the landlord for the amount of the deposit plus \$100. (See Time Limit Warning at the beginning of this document.) ORS 90.297

## When I rent a place, can a landlord make me pay a deposit?

Yes. A landlord can make you pay a security deposit. (But if you rent week-to-week, you cannot be charged this deposit (ORS 90.100(48)).) You can try to work out the amount of these deposits with the landlord. Some landlords will let you make several payments on the deposit instead of paying it all at once.

Once you have moved in, the landlord cannot, without your agreement, charge a new deposit or increase the deposit you have already paid for the first year after you move in. After the first year, a landlord can charge or increase the deposit but must give you at least 3 months to pay it.

If you paid a deposit, the landlord must return the deposit when you move out as long as you haven’t damaged the place beyond ordinary wear and tear and have given the landlord the required notice, paid the rent, returned the keys, and followed other rules stated in your rental agreement. The one exception to this is that a landlord may deduct the cost of professional carpet cleaning from your deposit. When you pay the deposit, ask for a receipt that shows you paid a “security deposit.” Check the receipt, rental advertisement, canceled check and other writing you may have to see whether the deposit was clearly labeled as a “security deposit” rather than a “fee.” ORS 90.300

When you first rent a place, the landlord may also require you to pay rent in advance, sometimes called a “last month’s rent deposit” (ORS 90.100(22)). See the question on “last month’s rent” in “[When the Tenant Moves Out](#)” on [www.oregonlawhelp.org](http://www.oregonlawhelp.org) for more information.

## Can I get interest payments on a security deposit?

State law does not require landlords to pay interest, but you may ask if your landlord will agree to do this.

## What if my landlord does not return my refundable security deposit?

Within 31 days after you move and return your keys, the landlord must either return all of your deposit or tell you in writing why all of it is not being refunded. If the landlord does not return the right amount of your money or does not give you a written explanation, you may sue, asking for twice the amount wrongfully withheld. ORS 90.300

If the landlord refunds only part of the deposit, you can cash the check and still sue the landlord if you think you are owed more money. But you should be ready to defend yourself against a possible counterclaim by the landlord for property damages. See “[Can Small Claims Court Help Tenants?](#)” on [www.oregonlawhelp.org](http://www.oregonlawhelp.org) for information about small claims court. (See Time Limit Warning at the beginning of this document.) If the landlord has written “full settlement” or “accord and satisfaction” on the back of the check, you should see a lawyer before you cash the check.

Read “[When the Tenant Moves Out](#)” on [www.oregonlawhelp.org](http://www.oregonlawhelp.org) for information on what to do to improve your chances of getting your deposit back when you move out. (See Sample Letter 7 of “[Sample Letters to the Landlord](#)” on [www.oregonlawhelp.org](http://www.oregonlawhelp.org))

## What happens if the place I am renting gets a new landlord?

Sometimes a landlord sells a building that is being rented out. Both tenants and new landlords must follow the terms of the original rental agreement. The new landlord must return any deposits when the tenants move, even if the new landlord did not get the deposit money from the old landlord. The new landlord must also make repairs and follow the rules set out in this booklet.

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