

### **30.01.087 Security Deposits; Pre-paid Rent.**

(Added by Ordinance No. 189581; amended by Ordinance Nos. 189715 and 190064, effective August 21, 2020.) In addition to the protections set forth in the Oregon Residential Landlord and Tenant Act (“Act”) and in Sections 30.01.085 and 30.01.086, the following additional Tenant protections regarding Security Deposits apply to Rental Agreements for a Dwelling Unit covered by the Act. For purposes of this Section, unless otherwise defined in this Section or elsewhere in Chapter 30, capitalized terms have the meaning set forth in the Act.

#### **A. Amount of Security Deposit.**

1. If a Landlord requires, as a condition of tenancy, a Security Deposit that includes last month’s Rent, a Landlord may not collect as an additional part of the Security Deposit more than an amount equal to one-half of one month’s Rent.
2. If a Landlord does not require last month’s Rent, a Landlord may not collect more than an amount equal to one month’s Rent as a Security Deposit.
3. If a Landlord conditionally approves an application subject to an Applicant’s demonstration of financial capacity or to offset risk factors identified by the Applicant screening for tenancy as described in Section 30.01.086, the Landlord may require payment of an amount equal to one-half of one month’s Rent as a Security Deposit in addition to the other amounts authorized in this subsection. The Landlord must allow a Tenant to pay any such additional Security Deposit in installments over a period of up to 3 months in installment amounts reasonably requested by the Tenant.

#### **B. Bank Deposit of Tenant Funds.**

1. Within 2 weeks following receipt of a Tenant’s funds paid as a Security Deposit or for last-month’s Rent, a Landlord shall deposit all of such funds into a secure financial institution account segregated from the Landlord’s personal and business operating accounts. If the account is an interest-bearing account, all interest shall accrue proportionately to the benefit of the Tenant and shall be returned to the Tenant with the unused security deposit in accordance with Subsection B.2. below. If the account bears interest, the Landlord is required to pay such interest in full, minus an optional 5 percent deduction for administrative costs from such interest, to the Tenant unless it is used to cover any claims for damage. For interest bearing accounts, the Landlord must provide a receipt of the account and any interest earned at the Tenant’s request, no more than once per year. The Rental Agreement must reflect the name and address of the financial institution at which the Security Deposit is deposited and whether the Security Deposit is held in an interest-bearing account.
2. A Landlord shall provide a written accounting and refund in accordance with ORS 90.300.

### C. Amounts Withheld for Repair

1. A Landlord may only apply Security Deposit funds for the repair and replacement of those fixtures, appliances, equipment or personal property that are identified in the Rental Agreement ~~and to which a depreciated value is attached in accordance with the depreciation schedule published on the Portland Housing Bureau website. A Landlord may provide documentation reasonably acceptable to a Tenant demonstrating why a different calculation is justified for a particular item.~~
2. A Landlord may claim from the Security Deposit amounts equal only to the costs reasonably necessary to repair the premises to its condition existing at the commencement of the Rental Agreement (“Commencement Date”); provided however, that a Landlord may not claim any portion of the Security Deposit for routine maintenance; for ordinary wear and tear; for replacement of fixtures, appliances, equipment, or personal property that failed or sustained damage due to causes other than the Tenant’s acts or omissions; or for any cost that is reimbursed by a Landlord’s property or comprehensive general liability insurance or by a warranty.
3. Any Landlord-provided fixtures, appliances, equipment, or personal property, the condition of which a Landlord plans to be covered by the Tenant Security Deposit, shall be itemized by description ~~and depreciated value~~ and incorporated into the Rental Agreement.
4. A Landlord may ~~not~~ apply the Tenant Security Deposit to the cost of ~~cleaning or repair or replacement~~ of flooring material ~~except as expressly provided in ORS 90.300(7)(c) and only if repair or additional cleaning or replacement is necessitated by use in excess of ordinary wear and tear and is limited to the costs of repair or cleaning or replacement of the discrete impacted area and not for the other areas of the Dwelling Unit. A “discrete impacted area” is defined as the general area of the dwelling unit where the repair or replacement is needed, which may include an entire room, closet, hallway, stairway, or other defined space, but not beyond.~~
5. A Landlord may not apply the Tenant Security Deposit to the costs of interior painting of the leased premises, except to repair specific damage caused by the Tenant in excess of ordinary wear and tear, or to repaint walls that were painted by the Tenant without permission.

### D. Condition Reports

1. ~~Within 7 days following the Commencement Date, a Tenant may complete and submit to the Landlord a Condition Report on a form provided by the Landlord, noting the condition of all fixtures, appliances, equipment, and personal property listed in the Rental Agreement, and noting damage (the “Condition Report”). Unless the Landlord disputes the Condition Report, and the Tenant and the Landlord obtain third-party validation of the condition of the Dwelling Unit, the Tenant’s Condition Report shall establish the baseline condition of the Dwelling Unit as of the Commencement Date~~

~~against which the Landlord will be required to assess any Dwelling Unit repair or replacement needs identified in a Final Inspection that will result in costs that may be deducted from the Tenant Security Deposit as of termination of the Rental Agreement (the "Termination Date"). An unresolved dispute as to the condition of the Dwelling Unit as of the Commencement Date shall be resolved in favor of the Tenant. If the Tenant does not complete and submit a Condition Report to the Landlord within 7 days of the Commencement Date then the Landlord shall thereafter complete and provide to the Tenant a Condition Report including digital photographs of the premises within 17 days following the Commencement Date. The Landlord shall update the Condition Report to reflect all repairs and replacements impacting the Dwelling Unit during the term of the Rental Agreement and shall provide the updated Condition Report to the Tenant.~~

1. Preparing and Updating the Condition Report and Condition Report Addendum

a. Prior to the Commencement Date, the Landlord will make reasonable efforts to schedule a time which is convenient for both the Landlord and the Tenant for a walk through of the unit to complete a report noting the condition of all fixtures, appliances, equipment and personal property listed in the rental agreement and noting damage (the "Condition Report"). Both the Tenant and the Landlord shall sign the Condition Report. The Landlord shall take pictures of the items noted in the Condition Report and share those photographs with the Tenant.

b. Should the Landlord and Tenant be unable to schedule a mutually convenient time to walk through the unit to complete the Condition Report, the Landlord will complete the Condition Report prior the Commencement Date. The Landlord shall take pictures of the items noted in the Condition Report and share those photographs with the Tenant on the Commencement Date.

c. Within 7 days following the Commencement Date, the Tenant may complete and submit to the Landlord a Condition Report Addendum on a form provided by the Landlord. If the Tenant does not complete and submit a Condition Report Addendum to the Landlord within 7 days of the Commencement Date then the Landlord's Condition Report becomes final.

d. If the Tenant submits a Condition Report Addendum, the Landlord has 7 days to dispute the Condition Report Addendum in writing. If the Landlord fails to timely dispute the Condition Report Addendum, then the Condition Report, as modified by the Condition Report Addendum, shall establish the baseline condition of the Dwelling Unit as of the Commencement Date against which the Landlord will be required to assess any Dwelling Unit repair or replacement needs identified in a Final Inspection (defined below) that will result in costs that may be deducted from the Tenant Security Deposit as of termination of the Rental Agreement (the "Termination Date").

e. If the Landlord disputes the Condition Report Addendum, and the Landlord and Tenant are unable to resolve the dispute as to the condition of the Dwelling Unit at the Commencement Date, the Condition Report and Condition Report Addendum shall be retained by the Landlord. Any unresolved dispute as to the condition of the Dwelling Unit as of the Commencement Date shall be resolved, if necessary, in any court of competent jurisdiction.

f. The Landlord shall update the Condition Report to reflect all repairs and replacements impacting the Dwelling Unit during the term of the Rental Agreement and shall provide the updated Condition Report to the Tenant, and the Tenant may complete or update the Condition Report Addendum to reflect all repairs and replacements.

2. Within 1 week following the Termination Date a Landlord shall conduct a walk-through of the Dwelling Unit at the Tenant's option, with the Tenant or Tenant's representative, to document any damage beyond ordinary wear and tear not noted on the Condition Report (the "Final Inspection"). The Tenant, or the Tenant's representative, may choose to be present for the Final Inspection. The Landlord must give notice of the date and time of the Final Inspection at least 24 hours in advance to the Tenant.

3. A Landlord shall prepare an itemization describing any repair and replacement in accordance with the fixture, appliances, equipment, or personal property identified in the Rental Agreement. The Landlord shall document any visual damage in excess of normal wear and tear with photographs that the Landlord shall provide to the Tenant with a written accounting in accordance with ORS 90.300 (12). To the extent that a Landlord seeks to charge labor costs greater than \$200 to a Tenant, the Landlord must provide documentation demonstrating that the labor costs are reasonable and consistent with the typical hourly rates in the metropolitan region. A Landlord may not charge for the repair of any damage or replacement of malfunctioning or damaged appliances, fixtures, equipment, or personal property noted on the Condition Report.

**E. Notice of Rights.** Contemporaneously with the delivery of the written accounting required by ORS 90.300 (12), a Landlord must also deliver to the Tenant a written notice of rights regarding Security Deposits ("Notice of Rights"). Such Notice of Rights must specify all Tenant's right to damages under this Section. The requirement in this Subsection may be met by delivering a copy of this Section to the Tenant and contact information for the nearest Legal Aid Services of Oregon, or online and physical address of the Oregon State Bar.

**F. Rent Payment History.** Within 5 business days of receiving a request from a Tenant or delivering a notice of intent to terminate a tenancy, a Landlord must provide a written accounting to the Tenant of the Tenant's Rent payment history that covers up to the prior 2 years of tenancy, as well as a fully completed Rental History Form available on the Portland Housing Bureau website. The Landlord shall also provide the Tenant

with an accounting of the Security Deposit as soon as practicable but no later than within the timeframes prescribed by ORS 90.300.

**G. Damages.** ~~A Landlord that fails to comply with any of the requirements of this Section shall be liable to the Tenant for an amount double to the amount of the Tenant's Security Deposit, plus reasonable attorney fees, and costs (collectively, "Damages"). Any Tenant aggrieved by a Landlord's noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and such other remedies as may be appropriate.~~ A Landlord that fails to comply with any of the requirements set forth in this Section shall be liable to the Tenant for an amount up to \$250 per violation plus actual damages, reasonable attorney fees and costs (collectively, "Damages"). Any Tenant aggrieved by a Landlord's noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and such other remedies as may be appropriate.

**H. Delegation of Authority.** In carrying out the provisions of this Section 30.01.087, the Director of PHB, or a designee, is authorized to adopt, amend, and repeal administrative rules to carry out and administer the provisions of this Section 30.01.087.