

ASK THE ADMINISTRATOR

SECURITY DEPOSITS

Based on recent calls from RSA members seeking clarification on New York's Security Deposit Laws, I feel that a reminder on an owner's responsibilities is required at this time.

To begin with, it is essential that all owners of rent-regulated buildings know that a tenant's security deposit **must** be deposited into a segregated bank account (check with your bank on how to accomplish this BEFORE the tenant moves in). Furthermore, regardless of whether an apartment is rent-stabilized or fair market, an owner may only collect one month's security from the tenant. If you collect more than one month's rent in security at the beginning of the lease, then you may be liable to the tenant for double the amount you received in additional punitive damages for violating the law.

In June 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA) rammed through the State Legislature by progressive, anti-owner lawmakers, incorporating non-regulated apartments into the same set of rules as regulated apartments. As a result, property owners are no longer allowed to collect more than one month rent as security. Additionally, owners can no longer require the payment of more than the first month's rent from the tenant, as in collecting what was previously referred to as "first and last month's rent."

When a tenant leaves an unregulated apartment, the owner must return the tenant's security within 14 days, or give the tenant an itemized receipt showing damages caused by tenant and the amount that was taken out of the security. Failure on the part of the property owner to do any one of these two things within the 14-day period will automatically trigger the tenant's right to receive the security deposit

back in full, regardless of whether there was any damage. Please be advised that the security may only be applied to: damages as noted above, unpaid rent, owner's expenses of storing tenants' property not taken when the tenant vacated, or any unpaid utility bills provided that item is part of the lease.

Going forward, under the HSTPA, an owner must offer a new tenant an initial inspection of the apartment. This is to be done after the lease is signed and before occupancy. I encourage you to take pictures and videos of the apartment to avoid claims after the tenant moves in as to the condition of the apartment. Likewise, at the end of a tenant's tenancy, an owner must advise the tenant in writing of the right to an inspection of the property before the tenant vacates and the tenant has the right to be present. I encourage you to take photos and videos at this point as well. Even if there are damages caused by the tenant, failure to comply with the above laws may prohibit the owner from applying the security to damages. Additionally, the owner may have to pay the tenant (in addition to returning the security) a penalty of double the security deposit.

Finally, an owner who does not comply with the HSTPA and the 14-day rule may find themselves under investigation by the State Attorney General. You may ultimately pay a significant fine to the and can be fined for future violations. ■



Article provided by Howard Stern, Esq., Administrator of the RSA Legal Plan for small property owners, who is solely responsible for its content.