Q: What will happen to my security deposit if, for some reason, I am unable to pay my rent? A: If you fail to fulfill your obligations under the lease, including your obligation to pay rent, the landlord or agent may evict you from the property. The court proceeding is known as “summary ejectment.” In addition to having you removed from the property, the landlord or agent may recover from you any unpaid rent, late fees, and, of course, the cost of repairing any physical damage which you may have caused to the property—but not damage due to ordinary wear and tear. In addition, if you leave behind any of your personal property (furniture, clothing, etc.), the landlord may also recover from you the cost of storing your property. If your security deposit will not cover the landlord’s damages for unpaid rent, physical damage to the property, and storage of your personal property, you will be liable for payment of any remaining costs. If a civil judgment is entered against you by the court, it could adversely affect your credit rating.

Q: What will happen to my security deposit if I vacate the property before the end of my lease? A: In addition to any physical damage which you may have caused to his property, the landlord may also deduct from your security deposit any actual damages caused by your moving out of the property before the end of your lease term; however, they may not charge you a “termination fee” or impose any other penalty or forfeiture of deposit for your early termination and must use their best efforts to fill the vacancy as soon as possible. For example, your rent is $600 per month and you move out of the landlord’s property two months before the end of your lease. If it takes the landlord one month to re-rent the property, $600 may be deducted from your security deposit as lost rent for the period during which the property was vacant. The landlord may also use the security deposit to recover any reasonable fees or commissions charged by a licensed broker to re-rent the property.

Q: Is there a deadline by which the landlord or agent must return my security deposit? A: Within 30 days after the termination of your tenancy, the landlord or agent must send you either a full refund of your deposit or a written itemized accounting of any deductions along with any remaining refund amount. Where the full amount of damage cannot be determined within 30 days, the landlord or agent must send you a written interim accounting of deductions claimed, followed by a final accounting no later than 60 days following the end of the tenancy. So, it is important to give your landlord or agent a full forwarding address. If you cannot be located, the landlord or agent must hold any refund due for at least six months in their trust account. If the landlord or agent fails to refund your deposit or make the required accounting, you can sue for recovery of the deposit and reasonable attorney fees. The failure to make the accounting as required under the Act is a forfeiture of the landlord’s right to retain any portion of the deposit.

Q: What will happen to my security deposit if the ownership or management of the property that I rent is transferred to someone else? A: If the landlord who collected your security deposit transfers ownership of the property to someone else during the term of your lease, they must either refund your security deposit to you, or transfer your deposit to the new owner (after making any allowable deductions) and notify you in writing of the new owner’s name and address. In either case, your deposit must be refunded or notice given to you of the new owner’s name and address within thirty days of the transfer. Likewise, if you have paid your security deposit to the landlord’s agent and the agent discontinues managing the property during the term of your lease, the agent must either transfer your deposit to the landlord/owner or, with the owner’s permission, transfer your deposit to the new manager. In either case, the agent to whom you paid your security deposit must notify you of the new location of your deposit and, if your deposit is being transferred to the owner, advise the landlord of their responsibilities to you under the Tenant Security Deposit Act (NC Gen. Stat. § 42-50 et seq.).
Questions and Answers on: TENANT SECURITY DEPOSITS

Each year, hundreds of thousands of North Carolinians rent houses, apartments, mobile homes, and other dwellings as their residences. For the first-time tenant—and some veteran renters—this can be a confusing and somewhat unsettling experience. The more you know about the process of renting residential real estate, the better you will be able to protect your interests and carry out your responsibilities under your rental agreement.

This booklet addresses an important aspect of the rental process which generates many questions from tenants—tenant security deposits.

1. How much security deposit can I be charged?
   Q: To ensure that your security deposit is safe during your tenancy, you must be notified in writing where your security deposit has been placed (typically, this notification is given in the lease). If your security deposit is moved to a different bank or savings and loan during your tenancy, you must be notified in writing of the new location.

2. What happens to the security deposit while I'm a tenant?
   Q: Any security deposit placed in a trust account must be maintained in a licensed and insured depository institution authorized in North Carolina. Within 30 days following the beginning of your lease term, the landlord or agent must notify you in writing where your security deposit has been placed typically, this notification is given in the lease. If your security deposit is moved to a different bank or savings and loan during your tenancy, you must be notified in writing of the new location.

3. Can my landlord charge me a “pet fee”?
   Q: Yes, in addition to the security deposit, your landlord may also charge you a non-refundable fee if you plan to keep a pet in the property or on the grounds. The “pet fee” can be any “reasonable” amount that the landlord wishes to charge.

4. What constitutes “ordinary wear and tear.”
   Q: What constitutes “ordinary wear and tear” must be determined on a case-by-case basis. For example, if you are the most recent tenant in the property, the landlord cannot charge you to replace such items as carpet, plumbing, or appliances which need replacement because they are old and worn out. In fact, you cannot be charged for even contributing to the normal wear and tear of such items. On the other hand, if you caused the item to wear out because of your mistreatment of it, you may be charged for the amount you have paid all rent due, the landlord (or agent) may deduct from your security deposit only the actual cost of repairing any damage which you have done to the property. You cannot be charged for damage caused by “ordinary wear and tear.”

5. Can my security deposit be placed in an interest-bearing account?
   Q: Yes, under certain conditions. If a real estate agent is managing property for the owner, they may place your deposit in an interest-bearing account only if they have your written permission and the written permission of the owner. If your lease authorizes the agent to place your security deposit in an interest-bearing account, the authorization in the lease must be stated in a clear and conspicuous manner. The interest may be paid to you, to the landlord, or to the agent, and depends upon your agreement with the landlord.