

## Article VI. Security Deposits

### § 129-43. Findings of fact; statement of purpose.

#### A.

The Village of New Paltz has a significant tenant population.

#### B.

Equitable landlord-tenant relations are a matter of public welfare.

#### C.

Prompt, reasonable return of security deposits is an important factor in tenants being able to obtain subsequent housing.

#### D.

The issue of return of security deposits is a source of potential conflict between landlords and tenants which may result in a burdensome effect on the court system.

### § 129-44. Definitions.

As used in this article, the following terms shall have the meanings indicated:

#### **LANDLORD**

The person who has the right to exclusive possession of certain premises and who, for consideration under a rental agreement, agrees to relinquish that right to another temporarily, retaining a right of reversion of the premises upon termination of such agreement.

#### **NORMAL WEAR AND TEAR**

The deterioration which occurs, based on the use for which the residential unit is intended, without negligence, carelessness, accident or abuse of the premises or equipment or chattels by the tenants or members of his/her household or their invitee or guests. The term "normal wear-and-tear" does not include sums or labor expended by the landlord in removing from such residential unit articles abandoned by the tenant such as trash. If a rental unit was leased to a tenant in a habitable condition or if it was put in a habitable condition by the landlord during the term of the tenancy, "normal wear-and-tear" does not include sums required to be expended by the landlord to return the rental unit to a habitable condition, unless expenditure of those sums was necessitated by action of the landlord, events beyond the control of the tenant or actions of someone other than the tenant or members of his/her household or their invitee or guests.

#### **RENTAL AGREEMENT**

A written or oral agreement embodying and fixing the terms and conditions for the transfer of possession and the use and occupancy of premises, whether or not for a definite period of time.

#### **RESIDENTIAL UNIT**

Any premises which are used for residential purposes under the terms of a rental agreement.

#### **SECURITY DEPOSIT**

The total of all payments and deposits given by a tenant to the landlord as security for the performance of the tenant's obligations.

#### **SURRENDER OF PREMISES**

A tenant's voluntary relinquishment of his or her renter's legal rights and return of possession of the leased premises to the landlord, upon landlord's consent.

#### **TERMINATION OF TENANCY**

The severance of the Landlord and Tenant relationship, which is either effectuated through: i) written notice from the landlord based on a lease violation; ii) written notice from the landlord based on the end of a month to month term; iii) written notice from the landlord based on a lease violation; or iv) an order of a court of competent jurisdiction. Such termination of tenancy does not relieve either the landlord or tenant of their respective contractual obligations in existence at the time of termination.

**TENANT**

A person entitled to exclusive possession and occupancy of a residential unit and the right of use of the appropriate appurtenances as provided in a rental agreement, including any other person 18 years of age or over who shares such unit with the knowledge and consent of the landlord.

**§ 129-45. Ownership of security deposit; trust provisions.**

Whenever a tenant shall deposit with the landlord a security deposit, such deposit, or any portion thereof, until repaid or rightfully applied for obligations of the tenant to the landlord, shall continue to be the money of the tenant and shall be held in trust by the landlord with whom such deposit shall be made and shall not be mingled with the personal moneys or become an asset of the landlord.

**§ 129-46. Notification to tenant.**

Whenever a tenant shall provide to the landlord a security deposit, the landlord shall provide to the tenant a written receipt for the security deposit and shall further inform the tenant, in writing, of the location where the deposit is held; if the deposit is being held in a banking organization, the name and address of the banking organization in which the security deposit is being held; and a statement as to whether or not the deposit is being held in an interest-bearing account.

**§ 129-47. Obligation of tenant to clean premises.**

Upon the expiration of the Rental Agreement or the time that a tenant surrenders possession of the residential unit, whichever occurs later, the tenant shall have the obligation of placing the residential unit in an overall clean condition as it was when the tenancy commenced, excepting normal wear and tear.

**§ 129-48. Return of security deposit by landlord to tenant.**

**A.**

Within twenty-one (21) days after the termination of tenancy or the surrender of the premises, whichever occurs later, the landlord shall return to the tenant the full security deposit deposited with the landlord by the tenant or, if there is actual cause for retaining the security deposit or any portion of it, the landlord shall provide to the tenant a written statement specifying the reasons for such retention, including a good faith estimate of the costs to be incurred for each item of damage or if said damage has already been repaired, documentation (e.g. receipts, invoices) of the costs incurred for each item of damage. The written statement specifying the reasons for the retention of any portion of the security deposit shall be accompanied by a full payment of the difference, if any, between the security deposit and the amount retained. Failure to return the security deposit or provide the aforesaid written statement within twenty-one (21) days of termination of the tenancy or surrender of the premises shall preclude the landlord from any right to retain all or a portion of the security deposit unless good cause is shown for said failure by landlord. Nothing contained in this section shall preclude the landlord from retaining all or a portion of the security deposit to cover the costs of storing and/or disposing of unclaimed property, for nonpayment of rent and for nonpayment of utility charges which the tenant was required to pay directly to the landlord.

B.

If there is a provision in a rental agreement that a tenant is responsible to reimburse or apply from a security deposit any amounts due from any violations issued to the landlord pursuant to the New Paltz Village Code or the New York State Building and Fire Code for the property or residential unit being rented as a result of the actions of tenant or members of his/her household or their invitees or guests, it shall be the landlord's responsibility to give the tenant notice of that ticket in a timely fashion as a condition to enforce that provision, and in order to help the tenant correct and prevent the condition for which the violation was issued. Timely notice shall be no later than three weeks from the date the violation is sent from the Village to the landlord. Failure to provide such notice shall serve as the landlord's waiver of reimbursement or application of security deposit for any ticket for which notice was not given.

C.

Nothing in this section shall be construed to imply other than it is the landlord's responsibility to return the tenant's security deposit or balance as soon as reasonably possible.

§ 129-49. Wrongful retention of security deposit.

Absent good cause shown by the landlord, should the landlord fail to return the security deposit or provide the aforesaid written statement within the twenty-one (21) day period established in §129-48(A) herein, the landlord shall be liable to the tenant for an additional twenty five percent (25%) of the entire security deposit in landlord's possession. Furthermore, in the event that the landlord willfully and without good cause fails to return all or a portion of the security deposit, a court may award to the tenant up to triple the amount of that portion of the security deposit wrongfully withheld from the tenant, together with reasonable attorney's fees and court costs. In determining whether to award such treble damages and/or attorney's fees, the court may consider the past practices of the landlord regarding return of other security deposits. Treble damages and/or attorney's fees shall not be awarded pursuant to this section where a landlord has made a good-faith estimate or has properly documented (e.g. with receipts, invoices) the amounts which properly should be withheld from the security deposit and has returned to the tenant the balance of the security deposit in a timely manner. Should the landlord, within the aforesaid twenty-one day period, fail to return the entire security deposit or fail to provide the aforesaid written statement specifying the reasons for the retention of all or a portion of the security deposit, accompanied by full payment of the difference between the security deposit and the amount retained, it shall be presumed that the landlord is willfully and without good cause retaining the security deposit.

§ 129-50. Burden of proof.

In any court action brought by a tenant for the return of the security deposit, the landlord shall bear the burden of proving that the withholding of the security deposit or any portion of it was justified.

§ 129-51. Waiver of provisions void.

Any attempted waiver of the terms of this article by a landlord or tenant, by contract or otherwise, shall be deemed to be against public policy and shall be considered void and unenforceable.