# A 51-STATE SURVEY OF SECURITY DEPOSIT LAWS:

## Except for Attorney Fees, Minnesota is Mostly on the Slightly Pro-Tenant End of the Spectrum

### Introduction

Disputes over return of security deposits are the most common or one of the most common disputes between residential landlords and tenants. For many low- or moderate-income tenants, the security deposit represents a significant fractions of their savings. Given the unequal bargaining power of residential landlords over their tenants, unscrupulous landlords are inclined to unfairly withhold deposits or delay their return for long periods unless the law makes doing so costly. The tenant is unlikely to have the bargaining power to get the lease to include a favorable time frame for return of the deposit. Moreover, if the tenant's only recourse for non return is to sue on a contract basis, unscrupulous landlords are motivated to keep deposits figuring at worst they get sued, lose the case, and have to pay the deposit plus minor court costs. If they win just a few of the cases or a few tenants don't sue the unscrupulous landlords come out ahead.

This doesn't mean all landlords are unscrupulous. Many are highly moral persons and others value their business reputations as a tool to fill vacancies. However, enough are unscrupulous and the bargaining-power differential so significant that literally every U.S. state imposes some control over residential security deposits on top of simply enforcing leases (contracts).

I was curious where Minnesota stands among the 51 states (including the District of Columbia as a "state"). I put together two charts[1] summarizing the laws in each state. Chart 1 summarizes the law in each state.[2] Chart 2 groups the states on each issue, sort of summary of a summary.

### The Four Major Issues I Examined

My four major concerns involved tools the tenant has to motivate the landlord to return the deposit promptly and without spurious deductions. The tools fall into four categories:

---

[1] Available at https://birnberglegalwebsite.files.wordpress.com/2019/06/sec-dep-chart-1-a.pdf and https://birnberglegalwebsite.files.wordpress.com/2019/06/sec-dep-chart-2-a.pdf

[2] To state the obvious, the summaries are subject to two caveats. First, other than for my home state of Minnesota, I read no case law construing the statutes. Second, a summary is just that and cannot always account for the nuances in the actual statute. Confronted with an actual case, one should read the actual statutes and case law.

[1] An attorney-fee provision. [2] A maximum time the landlord has to return the deposit. [3] A penalty for delayed return. [4] A penalty for bad-faith withholding, withholding of part or all the deposit for reasons the landlord knows or pretty much knows are wrong or unreasonable.

[1] In the absence of an attorney-fee statute, the vast majority of tenants will have to litigate their claims in small-claims court (what Minnesota calls "conciliation court") without an attorney. Most security-deposit cases are fact-intensive and for this reason and others, attorney fees can quickly dwarf the amount of the deposit. Even if the tenant "wins" the case, only her attorney comes out ahead. As a result, many states' consumer-protection laws provide the winning consumer with a claim for attorney fees on top of the judgment she wins. These laws include a variety of residential-tenant-protection laws. As the two charts show, 19 states provide the winning tenant in some or all security-deposit cases with a claim for attorney fees; another 8 provide either side that wins a landlord-tenant case with attorney fees. Minnesota is in the minority of 24 states that do neither.

[2] In five states the return period is only 14 days and in another seven is between 15 and 21 days, including Minnesota at 21 days. The most common return period is "one month", i.e. either literally "one month" or 30 days or in the case of Oregon 31 days; that one-month period is the case in 23 states. The other fifteen states have longer periods (counting New York's unique "reasonable"/undefined period as long).

[3] Minnesota and 30 other states have a meaningful penalty for missing the deadline. Another 13 states have a penalty that usually amounts to nothing. In those states, failure to return the deposit renders the deposit forfeited to the tenant but nothing stops the landlord from counterclaiming or otherwise suing the tenant for the claims that it could have withheld from the deposit, so on net the tenant wins no more than if there was no forfeit rule.[3] In seven states that have a deadline, the landlord suffers no penalty for ignoring it.

[4] The fourth issue is bad-faith withholding. This covers the wily landlord who says to himself, "I'll be sure to account for the deposit by the deadline but what stops me from withholding for reasons I know are bogus or are pretty darn sure are bogus? Let the tenant fight it out." Just over half the states cover this. Of those, 21 impose a penalty of doubling or tripling the tenant's claim

[3] In rare procedural postures in bankruptcy cases or involving bad pleading by the landlord's attorney, the "penalty" actually matters. For example, see *Johnson v. Schoen*, No. A03-887 (Minn. Ct. App. 3/30/2004), in which the landlord's attorney neglected to make a claim in district court for unpaid rent. The *Schoen* case is available here: https://mn.gov/law-library-stat/archive/ctapun/0403/opa030887-0330.htm

or something similar, a strong incentive to the landlord to obey the law. Another five, including Minnesota, impose a monetary penalty, ranging from $200 to $500. In Minnesota, the penalty is "up to $500". These amounts are typically much less than the tenant's underlying claim, making the penalty relatively mild. In the other 25 states there is no bad-faith penalty.

The Other Three Issues I Examined

The other issues I looked into were these: [a] Is the landlord required to pay interest on the deposit. [b] Is there a cap on the deposit? [c] Must the landlord segregate ("escrow") the deposit in a separate bank account or similar place?

[a] My view is that interest is a minor issue because the sums involved are small, especially these days when market interest rates are low. Minnesota requires 1% interest, making it one of only 18 states requiring interest and one of the highest of those since most states that do require interest only require the going bank rate on savings deposits or a similar figure.

[b] Again, my view is that rate caps are a minor issue. Market forces tend to limit deposits to one or two months (the typical statutory standard) and a low cap tends to harm applicants with bad credit whom the landlord will only accept with a higher deposit. For a minority of tenants, the caps do help. Minnesota is one of about half the states (26) with no cap.[4]

[c] About two-fifths (20) of the states require the landlord to put the security deposits into a separate "escrow" account. Minnesota is in the majority (31) that do not.

The obvious ideas behind an escrow requirement are [i] if the landlords segregate deposit money it will not disappear, [ii] landlords will be less likely to make up reasons to withhold deposits simply to cover up the fact that they "cannot" pay, and [iii] tenants will be first in line if the landlord goes insolvent. As with the other requirements, to be effective the statute/s should include some front-end motivation to make landlords segregate deposits. If judgment is entered against the landlord but the landlord has hidden his money or placed it beyond the reach of the tenant, it's too late for the civil justice system to help the tenant. One type of front end motivation is the criminal-justice system. E.g., in Oklahoma and Connecticut disobeying the

[4] This rule is for stick-built homes. Landlords of manufactured-home parks are limited to deposits of no more than two months of lot rent. Minn. Stat. § 327C.02.

escrow law is a crime[5]. Another is executive-branch regulation such as in Connecticut whose banking commissioner has injunctive enforcement powers.[6]

A related protection is a non-escrow rule that still gives the tenant a priority claim to her deposit. For example, Cal. Civ. Code § 1950.5(d) provides:

> (d) Any security shall be held by the landlord for the tenant who is party to the lease or agreement. The claim of a tenant to the security shall be prior to the claim of any creditor of the landlord.

This provision helps the tenant with a claim so long as the landlord has money somewhere even if the landlord commingles deposits with other funds. Minn. Stat. § 504B.178 includes the first sentence of the California statute and at least one court has (correctly) construed section 504B.178 to provide the tenant with a priority claim, even in a receivership situation.[7]

Conclusion

On most issues other than attorney fees, Minnesota law is roughly in the middle of the pack in protecting tenants but toward the pro-tenant end of the spectrum. The omission of an attorney-fee provision in Minnesota law should be changed.

[5] See Okla. Stat. Ann. tit. 41, § 115 (possible six-month jail term & fine of twice the misappropriated amount) and Conn. Gen. Stat. § 47a-2 115(k)(1) (possible 30-day jail term & fine of $500).

[6] See Conn. Gen. Stat. Ann. § 47a-2 115(k)(2).

[7] See *Nat'l Corp. for Housing Partnership v. Liberty State Bank*, 836 F.2d 433 (8th Cir. 1988) (construing Minn Stat. § 504B.178, then codified at Minn Stat. § 504.20), available at https://scholar.google.com/scholar_case?case=3040892282490475116&hl=en&as_sdt=6,24