



MEMORANDUM NO. 09-08-02

TO: Section 8 Owners and Management Agents

FROM: Vona Johnson, Director *Vona*  
Rental Housing Management

SUBJECT: Clarification to Vacancy Claim Processing

DATE: August 7, 2009

To comply with SDCL 43-32-24, management agents/owners are required to either return the security deposit or furnish a written statement with the specific reason for withholding all or any portion of the security deposit within 14 days of the termination of tenancy.

Please review the attached copy of the South Dakota codified law regarding security deposits.

SDHDA is implementing the following change to our Special Claims processing procedures, specifically the Regular Vacancy Claims. Previously, if the tenant's security deposit was withheld for unpaid rent or damages, but an Unpaid Rent or Damage Claim was not filed, the portion of the security deposit withheld was included on line 11 of the Regular Vacancy claim and the claim was reduced by this amount.

Effective immediately, we will no longer deduct the amount of a security deposit retained on a Vacancy Claim if the following criteria are met:

- \* If all, or any portion, of the security deposit was withheld to cover unpaid rent which had accrued prior to the move-out date, the claim must include: 1) a copy of the tenant ledger showing the applicable month(s) and amount of rent owed, and 2) a copy of the Security Deposit Disposition statement that was sent to the tenant within 14 days of the move out.
- \* If all, or any portion of the security deposit was withheld to cover damages to the unit, the claim must include: 1) a copy of the Security Deposit Disposition statement which was sent to the tenant within 14 days of the move-out, and 2) an itemized list of the damages and repair costs for each item. Note: Eligible damages do not include items that are the result of normal wear and tear or other routine costs such as ordinary cleaning, carpet shampooing, etc.



If a Vacancy Claim is submitted along with the documentation listed above, any withheld security deposit amount shall be applied in the following order:

- 1) Toward unpaid rent;
- 2) If anything remaining, toward tenant damages;
- 3) If anything remaining, toward the vacancy.

If the Vacancy Claim is submitted without the above-referenced documentation, SDHDA shall continue to reduce the claim by the amount of the security deposit withheld.

If you have any questions regarding this matter, please feel free to contact Kenda or Beth at (605) 773-3181.

VJ:bt

Attachments



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## South Dakota Codified Laws

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43-32-24. Return of security deposit after termination of tenancy--Withholding--Itemized accounting--Forfeiture of withholding rights--Punitive damages. Every lessor of residential premises shall, within two weeks after the termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the security deposit to the tenant, or furnish to the tenant, a written statement showing the specific reason for the withholding of the deposit or any portion thereof. The lessor may withhold from such deposit only such amounts as are reasonably necessary to remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement or to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted. Within forty-five days after termination of the tenancy, upon request of the lessee, the lessor shall provide the lessee with an itemized accounting of any deposit withheld.

Any lessor of residential premises who fails to comply with this section shall forfeit all rights to withhold any portion of such deposit.

The bad faith retention of a deposit or any portion of a deposit by a lessor of residential premises in violation of this section, including failure to provide the written statement and itemized accounting required by this section, shall subject the lessor to punitive damages not to exceed two hundred dollars.

**Source:** SL 1976, ch 267, § 3; SL 1984, ch 281, § 1.

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### Chapter 43-32

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