

# Springman, Braden, Wilson & Pontius, P.C.

## Legal Services for Evictions/Collections

- ✓ Contingency fee collections
- ✓ Document reviews
- ✓ Collect as much as possible
- ✓ Flat Fee Evictions
- ✓ Small Claims Defense
- ✓ General legal advise

*“Don’t let bad tenants take you to the cleaners”*

### “Security Deposits” September 2015 Page 1

We hope that all of our valued clients have had a fun, safe, and hopefully relaxing summer. It’s been busy as usual around here – with many new questions asked and issues faced by our valued clients during Colorado’s continued population boom. We want to welcome all of our new clients to the firm, and extend a big thank you to our existing clients for their continued trust and support of SBWP. We very much look forward to continuing to assist with all of your ongoing landlord/tenant matters in the future. The end of the summer oftentimes means the end of leases. When transitioning properties, it is important to remember the importance of the security deposit accounting. Below are some of the most frequent questions we received about deposits, and how they are to be handled. Again, thank you, and we hope to hear from you soon.

1. **Landlord:** We messed up and blew the deadline to MAIL a security deposit accounting statement to the residential tenant’s last known address. The tenant just sent us an email, demanding his deposit back. What should we do now?

**SBWP:** If you have, in fact, blown your deadline (which is 1 month after move out/termination of lease, unless your lease says something different, but no more than 60 days), then you have lost your legal right to retain the deposit. CRS 38-12-103 (2). If the tenant made a proper demand for return of security deposit (which should include a threat to sue you), then you still have 7 days from the date of the demand to refund the deposit. If you refund the deposit within that 7 day period, you will not be liable for treble damages and attorney fees. You cannot simply mail the accounting statement within the 7 day period. Too late. You must REFUND the money (make sure to put “under protest and with reservation of rights” in the memo line of the refund check). Mishkin v Young, 107 P.3d 393 (Colo. 2005).

2. **Landlord:** Since I missed the deadline to mail an accounting statement, does this mean the former tenant does NOT owe me money anymore? The deposit wasn’t even close to covering all the damages he owes me, including two months’ lost rent.

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### “Security Deposits” September 2015 Page 2

**SBWP:** NO, just because you missed the deadline on mailing the deposit reconciliation/accounting statement, this does not mean the tenant is off the hook for rent/damages. If you receive a proper 7 day demand, you can send the deposit back within 7 days to avoid treble damages and legal fees, but clearly tell the tenant that this money is sent , **“under protest and with reservations of rights.”** Write that in the memo line of the refund check. Also tell the tenant in a letter enclosed with refund check that this refund in no way precludes you as the landlord from pursuing the former tenant in collection for all monies owed. Tell the former tenant what he owes now. Turner v Lyons, 539 P.2d 1241 (1975)

3. **Landlord:** Someone told me a 7 day letter must be sent certified mail, to be valid? Is that true? Can’t I just ignore this email demand?

**SBWP:** NO, Colorado law does not require a 7 day demand to be sent certified. While there was no such thing as “email” when the deposit law was passed long ago, it is absolutely possible that a Court would find that an email qualifies as a 7 day demand. Don’t risk it. Send the money back under protest and avoid the claim for treble penalties.

4. **Landlord:** I see that this tenant originally gave us a letter at the time of move out, telling us it was okay to keep his deposit and apply it toward the damages. That’s why we never sent the deposit accounting statement. Does that change anything?

**SBWP:** Yes! There is a special exception to the accounting law that says if the tenant agrees in writing that you can keep the deposit, then you as the landlord do NOT have to send the deposit accounting. Heather Ridge v Mgt Co v Benson, 558 Pd. 435 (Colo. 1976). So you have done nothing wrong and you don’t have to refund the deposit after all.

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