

**§ 7-108. Deposits made by tenants of non-rent stabilized dwelling units.** 1. This section shall apply to all dwelling units in residential premises, unless such dwelling unit is specifically referred to in section 7-107 of this title.

1-a. Except in dwelling units subject to the city rent and rehabilitation law or the emergency housing rent control law, continuing care retirement communities licensed pursuant to article forty-six or forty-six-A of the public health law, assisted living providers licensed pursuant to article forty-six-B of the public health law, adult care facilities licensed pursuant to article seven of the social services law, senior residential communities that have submitted an offering plan to the attorney general, or not-for-profit independent retirement communities that offer personal emergency response, housekeeping, transportation and meals to their residents:

(a) No deposit or advance shall exceed the amount of one month's rent, unless the deposit or advance is for a seasonal use dwelling unit as provided for in subdivisions four and five of this section, or unless the deposit or advance is for an owner-occupied cooperative apartment as provided for in subdivision six of this section.

(b) The entire amount of the deposit or advance shall be refundable to the tenant upon the tenant's vacating of the premises except for an amount lawfully retained for the reasonable and itemized costs due to non-payment of rent, damage caused by the tenant beyond normal wear and tear, non-payment of utility charges payable directly to the landlord under the terms of the lease or tenancy, and moving and storage of the tenant's belongings. The landlord may not retain any amount of the deposit for costs relating to ordinary wear and tear of occupancy or damage caused by a prior tenant.

(c) After initial lease signing but before the tenant begins occupancy, the landlord shall offer the tenant the opportunity to inspect the premises with the landlord or the landlord's agent to determine the condition of the property. If the tenant requests such inspection, the parties shall execute a written agreement before the tenant begins occupancy of the unit attesting to the condition of the property and specifically noting any existing defects or damages. Upon the tenant's vacating of the premises, the landlord may not retain any

amount of the deposit or advance due to any condition, defect, or damage noted in such agreement. The agreement shall be admissible as evidence of the condition of the premises at the beginning of occupancy only in proceedings related to the return or amount of the security deposit.

(d) Within a reasonable time after notification of either party's intention to terminate the tenancy, unless the tenant terminates the tenancy with less than two weeks' notice, the landlord shall notify the tenant in writing of the tenant's right to request an inspection before vacating the premises and of the tenant's right to be present at the inspection. If the tenant requests such an inspection, the inspection shall be made no earlier than two weeks and no later than one week before the end of the tenancy. The landlord shall provide at least forty-eight hours written notice of the date and time of the inspection. After the inspection, the landlord shall provide the tenant with an itemized statement specifying repairs or cleaning that are proposed to be the basis of any deductions from the tenant's deposit. The tenant shall have the opportunity to cure any such condition before the end of the tenancy. Any statement produced pursuant to this paragraph shall only be admissible in proceedings related to the return or amount of the security deposit.

(e) Within fourteen days after the tenant has vacated the premises, the landlord shall provide the tenant with an itemized statement indicating the basis for the amount of the deposit retained, if any, and shall return any remaining portion of the deposit to the tenant. If a landlord fails to provide the tenant with the statement and deposit within fourteen days, the landlord shall forfeit any right to retain any portion of the deposit.

(f) In any action or proceeding disputing the amount of any amount of the deposit retained, the landlord shall bear the burden of proof as to the reasonableness of the amount retained.

(g) Any person who violates the provisions of this subdivision shall be liable for actual damages, provided a person found to have willfully violated this subdivision shall be liable for punitive damages of up to twice the amount of the deposit or advance.

2. (a) In circumstances where any sum of money or any other thing of value deposited as security for the full performance by a tenant of the

terms of his lease is not turned over to a successor in interest pursuant to section 7-105 of this chapter, the grantee or assignee of the leased premises shall also be liable to such tenant, upon conveyance of such leased premises, for the repayment of any such security deposit, plus accrued interest, as to which such grantee or assignee has actual knowledge.

(b) For purposes of this section, a grantee or assignee of the leased premises shall be deemed to have actual knowledge of any security deposit which is (i) deposited at any time during the six months immediately prior to closing or other transfer of title in any banking organization pursuant to subdivision two-a of section 7-103 of this chapter, or (ii) acknowledged in any lease in effect at the time of closing or other transfer of title, or (iii) supported by documentary evidence provided by the tenant or lessee as set forth in paragraph (c) of this subdivision.

(c) With respect to any leased premises for which there is no record of security deposit pursuant to subparagraph (i) or (ii) of paragraph (b) of this subdivision, the grantee or assignee of the leased premises shall be obligated to notify the tenant thereof in writing no later than thirty days following the closing or other transfer of title to the fact that there is no record of a security deposit for said leased premises and that unless the tenant within thirty days after receiving notice provides him or it with documentary evidence of deposit, the tenant shall have no further recourse against him or it for said security deposit. For purposes of this subdivision, "documentary evidence" shall be limited to any cancelled check drawn to the order of, a receipt from, or a lease signed by any predecessor in interest, if such predecessor's interest in the leased premises existed on or after the effective date of this section. Except as otherwise provided by subparagraphs (i) and (ii) of paragraph (b) of this subdivision the grantee or assignee of the leased premises shall not be charged with actual knowledge of the security deposit where the tenant fails within the thirty-day period to provide said documentary evidence. Where the grantee or assignee of the leased premises fails to notify the tenant as specified in this paragraph within thirty days following the closing or other transfer of title, the tenant shall be entitled to produce documentary evidence at any time.

(d) The grantee or assignee of the leased premises shall have the right to demand that the grantor or assignor thereof establish an escrow account equal to one month's rent for any leased premises for which there is no record of a security deposit pursuant to paragraph (b) of this subdivision to be used for the purpose of holding harmless the grantee or assignee in any case where, at a date subsequent to the closing or other transfer of title, the tenant gives notice pursuant to paragraph (c) of this subdivision.

(e) The liability of a receiver for payment of any security deposit plus accrued interest pursuant to this subdivision shall be limited to the amount of such deposit actually turned over to him or it pursuant to subdivision one of section 7-105 of this chapter and to the operating income in excess of expenses generated during his or its period of receivership.

3. Any agreement by a lessee or tenant of a dwelling waiving or modifying his rights as set forth in this section shall be absolutely void.

4. A dwelling unit shall qualify as a seasonal use dwelling unit for the purpose of paragraph (a) of subdivision one-a of this section if it meets all of the following conditions:

(a) The lease expressly provides that: (i) the dwelling unit is registered as a seasonal use dwelling unit, indicating the local or county government agency with which it is registered; (ii) the occupancy of the tenant is only for seasonal use not to exceed one hundred twenty days or a shorter period provided for in the lease; and (iii) such tenant has a primary residence to return to, the address of which is expressly provided in the lease.

(b) Such dwelling unit is registered with the appropriate local government or county registry as a seasonal use dwelling as provided for in subdivision five of this section.

(c) Such dwelling unit is not rented as a seasonal use dwelling unit for more than one hundred twenty days during each calendar year.

5. In order for a dwelling unit to qualify as a seasonal use dwelling unit for the purpose of paragraph (a) of subdivision one-a of this

section, the local government with jurisdiction for building administration over such unit or the county in which such unit is located shall have adopted a seasonal use dwelling unit registry and such unit shall be registered by filing a copy of the seasonal use lease and such additional information as the local government or county that administers such registry may require. Such local government or county shall revoke the seasonal use dwelling unit registration of any dwelling unit that does not adhere to the conditions provided for in subdivision four of this section.

6. A dwelling unit shall qualify as an owner-occupied cooperative apartment for the purpose of paragraph (a) of subdivision one-a of this section if it meets all of the following conditions:

(a) the tenant is the dwelling unit owner, purchaser or shareholder of such a cooperative housing corporation;

(b) such tenant has or will have after purchase exclusive occupancy of such dwelling unit individually and with the permitted occupants pursuant to a proprietary lease or occupancy agreement and established and delimited rights under such lease or agreement; and

(c) such dwelling unit is not subject to the provisions of article two, article four, article five, or article eleven of the private housing finance law. For the purposes of this paragraph, "deposit or advance", as used in paragraph (a) of subdivision one-a of this section, shall not include any payments or advances that are part of the purchase price of the unit or shares.