



Can I collect last month's rent in addition to a two-months' rent security deposit?

By John Wait, General Counsel

QUESTION: We received a tenant application from someone who has had some financial difficulty in the past, but they seem to be in a more stable place recently. My landlord is willing to accept the tenant for a yearlong lease if we collect a deposit equal to two-months' rent and also collect the last months' rent. Since the rent is not part of the deposit, can I do this for the landlord?

ANSWER: No.

Even though you indicate that the last months' rent is not part of the "security deposit," it nevertheless remains true that you are collecting the last months' rent for additional *security* for the landlord. Calling it something else does not change its purpose. Since the purpose of the funds is to provide security to the landlord, it is part of the tenant's security deposit.

Section 42-51(b) of the Tenant Security Deposit Act states that the "security deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one and one-half months' rent if a tenancy is month to month, and two months' rent for terms greater than month to month. These deposits must be fully accounted for by the landlord as set forth in G.S. 42-52." Since you are contemplating a yearlong lease, you cannot collect and keep more than two months' rent for a security deposit.

Tell your landlord that they must comply with the Tenant Security Deposit Act, or else N.C.G.S. § 42-55 will void any chance they might have to assess the deposit once the tenancy is over. If the tenant has a pet (not an assistance animal), then the landlord may consider a pet deposit instead under N.C.G.S. § 42-53, which is a non-refundable deposit that does not count as a security deposit under N.C.G.S. § 42-51(b).

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