



New Mexico Legal Aid, Inc.

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Apply for legal help: 1-833-LGL-HELP (1-833-545-4357)

Main office: (505) 243-7871

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Trying to Get Your Security Deposit Back

This information packet includes the following:

- Portions of the New Mexico Legal Aid Renters Guide about Security Deposits & Going to Court
- Demand Letter Asking for Return of Security Deposit
- Complaint by Resident for Return of Deposit to file in court.

You can find the entire Renters Guide by clicking [HERE](#)

Renter's Guide

DEPOSITS AND RETURN REQUESTS



www.newmexicolegalaid.org

P.O. Box 25486 ♦ Albuquerque ♦ New Mexico ♦ 87125-5486

Acknowledgments

The illustrations in this edition of the Renter's Guide are by Rini Templeton. Rini generously contributed her artwork to the advancement of social justice in our society. Many thanks for her beautiful, sensitive and thoughtful legacy. More of Rini's art and information about her life is available at www.riniart.org.



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Chapter 5



DEPOSITS

Deposits are a very important part of every rental agreement. The landlord can ask for the first month's rent, the last month's rent, and a number of deposits. Remember, these deposits and prepaid rents are negotiable. Also, the law provides the tenant a number of protections for the return of the deposits.

A. Refundable deposits vs. non-refundable fees

A deposit is *money the tenant pays in advance to protect the landlord*. The law is clear that if the property is not damaged, the tenant is entitled to get the deposit back (NMSA § 47-8-18(C)). For example, if the landlord charges a pet deposit, the deposit is to protect the landlord for the additional wear and tear the pet may cause at the apartment. If, however, the pet does not cause any unusual wear and tear, the tenant is entitled to the return of the pet deposit.

If the landlord charges the tenant a *holding deposit*, that deposit is to protect the landlord if the tenant doesn't move in. However, the landlord is not entitled to double rent (NMSA § 47-8-18(B)). So, if the tenant does move in, the tenant is entitled to the return of the deposit or to have it applied to the first month's rent. Similarly, if the landlord is able to rent to someone else right away, the tenant is entitled to the return of the portion of the holding deposit equal to the rent the landlord received from the tenant who did move in.

A *fee*, however, is different. It is a charge for something the landlord does for the tenant or for the tenants generally. A landlord, for example, may charge an application fee when someone applies for

an apartment. This fee is supposed to cover the landlord's costs in doing credit and background checks and other investigations to determine whether the applicant is an acceptable renter. Even if the applicant decides not to take the apartment, he or she will not necessarily be entitled to the return of the fee, unless the applicant can convince a court that the fee is wholly unreasonable given the landlord's actual costs.

Sometimes, landlords will call something a fee that is really a deposit. The most common example is a cleaning fee to cover costs of making the apartment ready for the next renter after the tenant leaves. This is really a deposit, because if the tenant cleans the place before moving out, the landlord will not have performed any service to earn the fee. When the tenant moves out, the tenant should treat the cleaning fee as a damage deposit. If it is not returned to the tenant, follow the guidelines on damage deposits in this chapter.

B. The damage deposit

A damage deposit is the money paid to protect the landlord against tenant-caused damage to the rental housing that goes beyond normal wear and tear (NMSA § 47-8-18(C)). Usually the deposit money is turned over to the landlord at the time the rental agreement is finalized, and it is returned or accounted for after the tenant moves out. Although the landlord may also use the damage deposit to cover unpaid rent, damages and advertising costs if the tenant violates the terms of the tenant rental agreement (NMSA § 47-8-35), this deposit is not the same as the last month's prepaid rent required by the landlord (NMSA § 47-8-18(B)). A landlord may not have any obligation to refund the prepaid rent if

the tenant voluntarily moves out before the lease ends or if the tenant is evicted. The landlord must, however, return that portion of the tenant's damage deposit which exceeds the damages the landlord actually suffered.



The most common situation involving damage deposits, however, is where the landlord claims the tenant did real damage to the rental unit. Broken furniture, torn or heavily soiled carpeting, and other problems requiring costly repairs often are claimed by landlords as the basis for keeping damage deposits

rather than returning them. Often, however, the tenant caused nothing more than *normal wear and tear*, which is not chargeable against the deposit (NMSA § 47-8-18(C)).

1. What is the most that can be charged for a damage deposit?

A landlord may not charge a tenant more than one month's rent as a damage deposit on any kind of lease with a term of less than one year (NMSA § 47-8-18(A)(2)). Remember, prepaid rent for the last month is not the same as a damage deposit, so the tenant can be charged both prepaid rent *and* a damage deposit, even though the total amount is more than one month's rent. The deposit cannot be treated as the last month's rent unless the landlord and tenant agree to this in writing.

If there is a written lease for a term of a year or more, the landlord may charge any amount as a damage deposit. However, if the landlord charges a deposit that amounts to more than one month's rent, the landlord must pay interest on the full amount of deposit for as long as the landlord keeps it (NMSA § 47-8-18(A)(1)).

2. What does the deposit cover?

Many tenants are surprised when the landlord won't give them back their deposit when they move out. Sometimes a landlord will keep it even when the tenant has done no damage. The problem often comes from what is legally considered damage.

The damage deposit covers only those damages the tenant has caused the landlord to actually suffer. These damages may be lost rent, physical damage to the apartment requiring repairs or replacements, or other business-related expenses that the landlord had because the tenant violated terms of the lease (NMSA § 47-8-35). If, for example, the tenant moves out without giving proper notice, and the landlord has trouble getting a new tenant, the landlord may withhold that portion of the deposit covering lost rent and costs involved in getting the place ready to rent to someone else.

3. What is normal wear and tear?

Normal wear and tear is damage or deterioration by ordinary and reasonable use of the property. It is the normal loss in value that occurs when something is used. A landlord, for example, should expect to have to repaint walls every few years, especially in the kitchen. Furniture normally gets worn with age. Walls acquire small nail holes, and carpets get worn. (Some rental agreements do, however, prohibit putting nails into the walls. If the rental agreement does prohibit any nail holes, then nail holes would be an item of damage.)

The law requires the landlord to pay to fix ordinary wear and tear. Normal use of the property by the tenant and guests of the tenant is not something the landlord can claim as damages. However, the tenant must pay for accidental damages done to the property. If the landlord can prove that the tenant intentionally damaged the property, the tenant may be charged for the cost of repairs, plus two times the monthly rent as a penalty (NMSA § 47-8-48 (C)). Wear and tear does not include cleaning made necessary by a tenant's failure to clean when moving out or other failure to keep the rental unit clean. A tenant's obligation to clean (NMSA § 47-8-22) generally includes sweeping and washing floors, shampooing carpets, disposing of all trash and making sure that the kitchen, bathroom and all appliances are properly cleaned. The tenant should take pictures when moving in and moving out to show the condition of the rental. Pictures should include the tops and insides of sinks, stoves,

cabinets, refrigerators, and toilets. Having a witness look at the place at move-out time is helpful, too.

4. When should the damage deposit be returned?

Within 30 days after the tenant moves out, the landlord must make an itemized list of all deductions from the deposit that he or she claims were damages caused by the tenant. The landlord must send this list of deductions to the tenant. The landlord must also send any part of the deposit remaining after deducting the cost of the damages listed (NMSA § 47-8-18(C)). If the landlord does not send both the list and any refund within the 30 days, the tenant is entitled to the full deposit and the landlord loses any right to compensation for damages the landlord claims the tenant caused to the property (NMSA § 47-8-18(D)).

Remember, the landlord must mail the list of deductions and the deposit to the tenant's last known address (NMSA § 47-8-1(C)(3)). If the tenant has not provided a new address, the landlord will use the address of the rental unit. If the landlord has any other addresses, such as a work address or emergency contact, the landlord should also send the notice to those places. If the notice of damages only goes to the rental unit after the tenant moves out, the tenant may not receive it. If the tenant is not going to have a permanent address after moving out, it is wise to give the landlord a forwarding address such as the tenant's employer or someone the tenant trusts to receive mail. If the tenant does have a new permanent address, it is important to file a change of address with the post office.

This can be done in person or on line at www.usps.com. This is a free service. Ignore websites that offer this service for a fee.

If the landlord does not provide a deduction list or return the full deposit, the tenant should demand the full deposit back. If the landlord sends the tenant

a list of deductions claiming damages that the tenant feels are unreasonable or simply the results of normal wear and tear, the tenant should demand the full deposit back. There is a Demand Letter for Return of Security Deposit in the Appendix to this guide which can be used for this purpose.

If the landlord still does not return the tenant's deposit, the tenant may take the landlord to small claims court (Magistrate or Metropolitan) and sue for the deposit (NMSA § 47-8-18(D)). The judge should order the landlord who has not complied with the law to turn over the full deposit and pay the tenant's court costs and attorney fees. In a lawsuit for the return of the tenant's deposit, the landlord who has not complied with the law cannot claim any damages against the tenant in a counterclaim. If the judge finds that the landlord kept all or part of the deposit in bad faith (not just by mistake), the judge must award the tenant an additional \$250 civil penalty (NMSA § 47-8-18(E)).

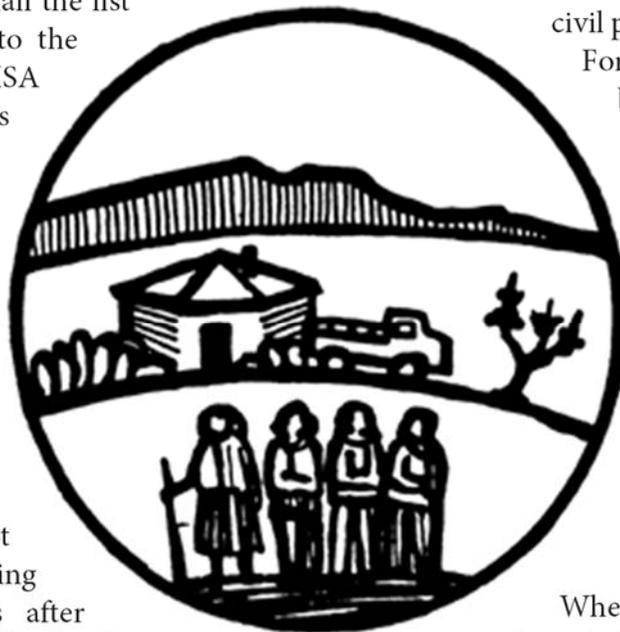
For more information on how to bring a lawsuit for the tenant deposit, see Chapter 16 on "Going to Court."

The landlord can keep the deposit to cover unpaid rent or utilities without having to send the notice regarding deductions.

5. Getting back the full deposit

When the tenant moves in, the tenant should get a *receipt* for each deposit the tenant has paid to the landlord. With a receipt, or at least a canceled check, the tenant will have evidence he or she paid the deposit, and that will make it easier to get the deposit back if the tenant has to go to court to get it.

Before actually moving in, the tenant should inspect the rental dwelling. Look for damaged furniture, dents or holes in the walls, broken glass, spots on the floors or carpeting, and generally look the place over for anything that might be looked at as damage to the place. (See the move-in rental unit checklist format in the Appendix to this guide.)



It is a good idea to do this walk-through with the landlord and reach agreement on the checklist. Both the tenant and the landlord should initial the checklist and keep a copy of it. The checklist can be used to negotiate with the landlord to get repairs, but more importantly, the list will give the tenant a record of the condition of the rental dwelling at the time the tenant moved in. If the apartment is furnished, the tenant should also make a list of all the furniture in place at the time the tenant moves in, so that later on the landlord can't claim that something is missing.

If it isn't possible to have the landlord sign off on the checklist, get a couple of witnesses to inspect the rental unit and sign the list. It is also a good idea to take photographs and date them (use the date function on the camera or have the developer do this when the film is processed).

If the tenant discovers more damages after living in the unit for a few weeks, make an additional list. Keep a copy of the new list and send a copy to the landlord.

If the tenant later gets into a dispute with the landlord over the condition of the rental unit on the move-in date, these lists and photographs could be important evidence to use in showing the tenant's side of the story. Keep the checklist, photographs, and the deposit receipts together, so that they can be found easily.

The tenant should get and keep a receipt for every rent payment made, including prepaid rent. Just like with the deposit receipt and checklists the tenant kept when moving in, the tenant should keep all of the rent receipts together in one place. If there is a dispute over rent, these receipts will be extremely important.

The tenant should leave the rental unit clean and in the same condition as it was when the tenant moved in. *The best way to prove the unit is clean is to take photographs at the time the tenant moves out.* Also, take the checklist made when the tenant first moved in and go over it again, making sure everything is in pretty much the same condition. If the landlord and the tenant agree that there are no damages, get the landlord to sign the checklist when the tenant moves out, indicating that the place is in the same condition it was when the tenant moved in.

If the tenant and the landlord agree that something has been damaged while the tenant lived in the place, they can sign a list of the agreed damages (NMSA § 47-8-7). The list should set out the amount of damages the landlord claims. If the tenant disagrees about some of the damages, make a separate list showing which damages the tenant and the landlord disagree on.

It is best to get all disagreements set out before the tenant leaves, so the landlord will not later claim more damages. If the tenant's lease has language stating the landlord's inspection will be made after the tenant vacates, that language should be crossed out and changed to read "at the time the tenant vacates." (Always have landlord initial any change in the lease language.) If this change is not made, the tenant may get stuck with a larger damage estimate made by the landlord.

The suggestions in this section may seem complicated, but they are important. Issues involving damages to a rental dwelling are often difficult and sometimes involve going to court. Disputes over damages usually wind up being the landlord's word against the tenant's word. If the tenant has photographs and written evidence and gets the landlord to agree about damages in before the move-out date, the tenant will have a much better chance of getting back the deposits.



Chapter 16



GOING TO COURT

Unfortunately, landlord-tenant disputes often end up in court. The most common landlord-tenant cases are evictions, which the law in New Mexico calls a *petition for writ of restitution*. In the case of evictions, landlords bring these actions to get court orders to remove tenants. Or, if the tenant has been illegally locked out of the apartment, the tenant can also file a petition for a writ of restitution restoring the apartment to the tenant (NMSA § 47-8-46).

Other common cases involve suits by tenants to recover damage deposits, where landlords have failed to follow the law or unreasonably withheld the deposits. Other cases involve landlords claiming past due rent or excessive damages caused by tenant after vacating the unit. A single case may involve all of these claims at the same time.

Most frequently the court dealing with these disputes will be the local Magistrate Court. In Albuquerque, it will be the Metropolitan (“Metro”) Court. The information in this guide is aimed at helping the landlord and tenant understand how those courts work in civil cases, the category to which landlord-tenant cases belong. This guide does not discuss criminal cases.

A. Legal counsel

Representation by a lawyer is usually not required in court. In some cases, landlords or tenants can represent themselves without a lawyer. It is a good idea, however, to at least talk to a lawyer before going to court on a landlord-tenant case. The tenant will want to know what defenses or counterclaims can be raised in the case. The landlord will want to make sure that he or she has followed all of the steps required by the law.

People with very low income can call their local legal aid office. People ineligible for free legal services can

consult their local lawyer referral service to find a lawyer. In hiring a lawyer, be sure to discuss all fee arrangements at the first meeting. Some lawyers do not charge a fee for the first consultation.

B. Some definitions

A person bringing suit against another person in court is called the *plaintiff*. The person being sued is called the *defendant*. A plaintiff or a defendant representing himself or herself is said to be a *pro se* party in the lawsuit.

A lawsuit starts with the filing of a *complaint* or *petition* in court. Magistrate and Metropolitan Courts have forms for complaints and petitions that the plaintiff can simply fill out (NMSA § 47-8-42). Lawsuits under the Uniform Owner-Resident Relations Act or the Mobile Home Park Act can also be filed in the local District Court (NMSA § 47-8-10). The procedures in the District Courts are more complicated than the Magistrate or Metropolitan Courts. This guide does not discuss procedures for District Court.

The next document in a lawsuit is the *summons* (NMSA § 47-8-43). This document is endorsed by the court clerk and tells the defendant a suit has been filed and that the defendant has a certain amount of time to answer the complaint or the petition. The summons will be attached to the complaint or the petition for *service of process*. Service of process means that the defendant must be notified of the lawsuit by having the complaint (or petition) and the summons delivered to him or her so that the defendant will know there is a lawsuit. Sometimes, the summons will include a *notice of hearing*, which tells the defendant the date, time, and place of a trial. In eviction actions, it is common that a notice of

hearing will be part of the summons (NMSA § 47-8-43).

The defendant has the right to tell his or her side of the story by filing a written *answer* to the complaint or petition (NMSA § 47-8-43). Magistrate and Metropolitan Courts have forms for answers, and the defendant can fill out the form and file it with the court. If the tenant receives a notice of hearing, the tenant should, but is not required to file a written answer explaining why the tenant disagrees with the complaint or petition. The tenant must appear in court on the date and time set out in the notice of hearing.

In cases involving damages or other issues, the court's final decision is called the *judgment* (NMSA § 47-8-46).

C. Court procedures

The first step in filing suit is to go to the courthouse in person. The court clerk will explain procedures and may assist a plaintiff in filing his or her complaint. But the court clerk *cannot* give any legal advice. There is a *filing fee*, which the plaintiff must pay at the time the complaint is filed with the court (NMSA § 34-6-40). If the tenant cannot afford the filing fee, the tenant can ask the court to waive the fee by filing a *Motion For Free Process*.



The summons and complaint cannot be served by the plaintiff directly. There may be a *service of process fee* if the plaintiff wants the sheriff to serve (deliver) the summons and the complaint. It is also possible for the plaintiff to hire a private process server or have a friend serve the court papers. If the plaintiff chooses to use that type of service, there will not be a service of process fee. However, if someone other than the sheriff will serve the papers, the plaintiff must get forms for a return of service and instructions on how to fill out the return from the court clerk.

Eviction actions are quick, and the trial date will be set at the time the landlord files the petition for a writ of restitution. The trial will be set between 7 to

10 days from the date the court papers are served on the defendant (NMSA § 47-8-43(A)(1)). Even if the defendant files a written answer, he or she must also appear at the time set for trial. If the defendant fails to appear, the court can issue a judgment granting everything requested by the plaintiff, including evicting the defendant from the rental unit.

If the tenant is filing for a writ of restitution to get back into the rental unit, the hearing date will be set three to five days after the service of the summons and petition on the landlord (NMSA § 47-8-43(A)(2)).

If the court orders the writ of restitution requiring the tenant to leave, the judge will give the tenant up to 7 days to move (NMSA § 47-8-43(B)).

D. Disqualifying a judge

If a party feels that he or she does not want the assigned judge to hear the case, it is possible to have the judge disqualified. The parties will know the name of the judge hearing the case because it will appear on the notice of hearing. In New Mexico, each party has the right to *bump* a judge without giving any particular reason, but the party must file a *notice of excusal* to do it (Rule 1-088.1, New Mexico Rules Annotated). The clerk's office has a form for this purpose. The notice of excusal must be filed not later than three days after service of the petition in an eviction action (Rule 2-106 & Rule 3-106(C)(3), NMRA). If the tenant asks the judge to do something (such as grant a continuance), the tenant loses the right to bump the judge without giving a reason. Any later statements of disqualification must be based on good cause (Rule 21-400, NMRA). For example, the tenant might want to disqualify the judge if the judge is a friend of the landlord or has had dealings with the tenant in the past and has demonstrated a bias against the tenant.

E. The trial

Trials in Magistrate and Metropolitan Courts are less formal than in District Court. There are several issues to consider about a trial in either court. Magistrate Courts do not have a *record* (a taped or written history of the trial), and any appeal from the Magistrate Court will involve a whole new trial (called a *de novo* appeal).

1. The record

In Metropolitan Court, appeals are *from the record* (Rule 3-706, NMRA). The Metropolitan Court will only make a formal record (a tape or CD recording) if one of the parties asks for it (Rule 3-708(A), NMRA). The clerk's office has a form for this purpose. You must file the form with the court before or at the start of the hearing. If a recording is not requested, it will be very difficult to show what errors were made at the trial if either party has to appeal. The court will not charge to have the trial recorded, but there is a charge for getting a copy of the recording if it is needed for an appeal (Rule 3-706(E), NMRA). The Metropolitan Court in Albuquerque currently provides recordings on CD. If your court case is in Metropolitan Court, it is very important to request a recording before the trial begins.

2. Jury trials

Another important issue to consider is whether to ask for a jury trial. Either the plaintiff or the defendant may ask for a jury to hear the case. The plaintiff makes the request for a jury trial at the time the complaint is filed. The defendant makes the request for a jury at the time the answer is filed. A defendant who wants a jury in an eviction case must file an answer before the trial date and include the request for jury in the answer. There is a fee for having a jury trial, and the fee is charged to the person making the request (Rule 1-038, NMRA; Rule 2-602, NMRA; and Rule 3-602, NMRA).

3. Interpreters

Courts are required to provide an interpreter free of charge to any party who requests one for the trial. The request should be made as soon as the party is aware that an interpreter will be needed, since it may take some time to locate or schedule one (NMSA § 38-9-3 and NMSA § 38-10-3).

4. Trial preparation

Anyone involved in a trial in a landlord-tenant case should be well organized and well prepared.

- Keep all *court papers* in order and bring them with you to court.
- Be prepared to *tell the judge* why you think you should win your case. Write an *outline* of the facts and points to be made, so that you

can relate the events in chronological order when you testify at the trial.

- Collect *evidence*—rent receipts, the lease, copies of notices and letters, housing code violation reports, photos, etc. In addition to the originals, make two copies of every piece of evidence, one for the court and one for the other party.
- Ask the court clerk for a *recording* of the hearing, if your case is in Metropolitan Court. (See “The record,” above in this chapter.)
- Arrange in advance for any *witnesses* to appear in support of your case, and practice answering the questions which will be asked in court.

A witness can be *subpoenaed* (given an official command to come to court), and it is always a good idea to have a subpoena issued by the court and served if you have any concern that the witness might not show up at the hearing. Witnesses who are subpoenaed are entitled to a \$75 fee for appearing in court.

5. Trial presentation

At the trial, the plaintiff tells his or her story first. This is because the plaintiff has the *burden of proof* to show why he or she should win. Then the defendant puts on his or her case. Each side will put on witnesses. Usually the plaintiff and the defendant are witnesses, together with other people who have knowledge of the facts of the case. The defendant gets to ask questions of the plaintiff's witnesses, and the plaintiff has the same opportunity to ask questions of the defendant's witnesses. This is called *cross-examination*. All witnesses will tell what they know after the court has made them swear to tell the truth.

In eviction cases, the landlord will usually be asking for a money judgment (back rent and/or damages) as well as a court-ordered eviction. Damage claims are often not heard at the time of the eviction trial, but they are left *open* to be heard at a later date, after the tenant has been forced to move. In some cases, the tenant may want a later trial on damages, too. However, if the issue of damages may affect the claims raised by the landlord for eviction, the tenant should

insist that the damage issues be part of the eviction trial.

When the housing is subsidized (Section 8, public housing, HUD, USDA or LIHTC), the tenant should always ask the judge for a payment plan for any unpaid rent. (See Chapter 14 of this guide for more information about subsidized housing.)

6. The judgment

After the trial, the judge will enter a decision about who won and who lost at the trial. This decision is called the *judgment* in the case, and it will be on a form prepared by the court. It will say what the loser must do. If the judge decides that the tenant must move out, the judgment will be for a writ of restitution specifying the date the tenant must be out of the rental unit. The tenant should explain to the judge whatever hardships this will involve. The judge can give the tenant three to seven days to leave the rental unit (NMSA § 47-8-46).

If the case involves a good-faith dispute over whether the tenant properly abated rent, and the landlord wins, the tenant may be given three days from the date of judgment to pay the back rent. If the tenant pays the rent within the three days, the writ of restitution will be dismissed (NMSA § 47-8-33(E)). This is called a *conditional writ*.

If the tenant wins, the judgment will note that the petition for a writ of restitution is denied. The judgment may also include an award of damages to the tenant for any claims the tenant made and won (NMSA § 47-8-48). As noted above, however, damage claims often are heard at a separate, later date than the eviction trial.

In addition to the relief awarded in the judgment, the winning party may be entitled to other money. The judge may award the winner court costs (such as filing and service fees) and in some cases, where the winning party has hired an attorney, the court may award attorneys' fees (NMSA § 47-8-48(A)).

F. Appeal

The losing party may appeal to the District Court if he or she disagrees with the judge's decision. An appeal from the lower court (Magistrate or Metropolitan Court) must be filed in District Court

within fifteen days by filing a *notice of appeal* with the District Court. The notice of appeal must also be served on the winning party (*appellee*) and filed in the lower court. The person appealing is called the *appellant*. There is a filing fee that must be paid to the District Court (Rule 1-072, NMRA, and Rule 1-073, NMRA). The appellant can ask the District Court to waive or reduce the filing fee if he or she cannot afford to pay it. You can get the forms to have the filing fee waived or reduced from the District Court clerk's office by asking for a "Motion for Free Process and Affidavit of Indigency."

When the tenant is evicted, an appeal can *stay* (meaning to stop temporarily) the eviction from taking place while the appeal is pending. To stay the eviction, the tenant must:

1. File the appeal in District Court and file a copy in the lower court (Metropolitan or Magistrate) before the eviction date written in lower court's judgment.
2. During the appeal, you must pay all rent that comes due after the eviction date. For example, if the eviction date in your appeal is June 15 and your rent is \$600 per month, you must pay \$300 rent to the landlord (the half month's rent for June 15 to June 30) within 5 days after filing the appeal, and then pay full rent for July, August and each month after that, when due, until your appeal is decided. The rent must be paid to the landlord or a private escrow company. Some landlords do not like to accept rent during the appeal. In that case, you can pay rent to a private escrow company, or ask the court to let you to pay the rent to the court clerk. If you do not pay rent during the appeal, the landlord can give you a three-day notice (see Chapter 6 of this guide on "When the tenant doesn't pay the rent"). If you do not comply, the landlord can file a motion in the court to evict you.

The law also allows the appellant to post an appeal bond to *stay execution* of a money judgment during the appeal. This kind of stay temporarily prevents the appellee from garnishing the appellee's wages or bank accounts or from executing on (seizing) the appellee's personal property, until the appeal is over. NMSA § 47-8-47(B). This kind of stay is not as

important to low-income tenants because (1) their wages are too low to garnish, (2) their public benefits are exempt from garnishment, and (3) most low-income people do not have sufficient personal property for execution. Therefore, before posting an appeal bond, you should first get legal advice to see if it is really necessary. It is important to realize that staying the eviction (as described in above) and staying collection of the money judgment (as described in this paragraph) are two separate procedures, and you can choose to do one or the other or both. For example, if you cannot afford an appeal bond but you can afford to pay the ongoing rent, you can choose only to stay the eviction, and thereby remain in your unit while the appeal is taking place. The fact that you do not also post an appeal bond does not prevent you from doing this.

An appellant must comply with the court rules, or the appeal may be dismissed. This guide does not cover all of the rules for an appeal. You should consult a lawyer immediately upon filing a Notice of Appeal.

G. After court

If an eviction has been ordered and not appealed, a writ of restitution empowers the sheriff to carry out the eviction (NMSA § 47-8-46). The sheriff will order the tenant out of the unit and may either order the tenant to remove personal property immediately or lock up the unit and advise the tenant to arrange for removal of the property, giving the tenant only a few minutes to gather important documents or other personal effects. There are strict time limits for making arrangements to remove all personal property. After those time limits, the landlord may be able to dispose of the property as he or she wishes. (See Chapter 10 of this guide on “The Tenant’s Property.”)

For any final judgment which includes an award of money, a *writ of execution* may be issued by the court, instructing the sheriff to carry out the judgment. If the losing side does not comply

voluntarily with the terms of the judgment, the sheriff may be able to seize money or property to satisfy the judgment (Rule 1-065.1, New Mexico Rules Annotated; Rule 2-801, NMRA; Rule 3-801, NMRA).

Certain things are exempt from judgment collections, such as:

- Personal property up to the value of \$500
- Tools of the trade up to the amount of \$1,500
- One motor vehicle up to the value of \$4,000
- Jewelry up to the value of \$2,500
- Clothing, furniture and books
- Medical equipment being used for the health of the person (NMSA § 42-10-1; NMSA § 42-10-2)
- Up to sixty thousand dollars (\$60,000) in equity in the person’s own home (NMSA § 42-10-9)
- Life insurance and health insurance plans (NMSA § 42-10-3)

Anyone seeking to exempt their eligible property from seizure must file a *claim of exemptions* with the court, listing what property is being protected. The clerk can provide the form (NMSA § 42-10-13). This should be done immediately after the judgment has been entered. It must be done before any sale of the property takes place.

A judgment may also be satisfied by garnishment (NMSA § 35-12-1) against wages or bank accounts. If a judgment debtor earns wages which exceed a certain amount, the debtor’s employer may be served with a *writ of garnishment*, and the debt is withheld from the debtor’s wages (NMSA § 35-12-3). Income from public benefits such as welfare, Social Security, and veteran’s benefits cannot be garnished, even if deposited in a bank account (NMSA § 35-12-7). If these types of income are being garnished, contact an attorney immediately.

Information about the court system is available at www.nmcourts.gov. This website includes general information about the courts in New Mexico, links to legal research information and links to websites for New Mexico courts, including the District Courts and the Bernalillo County Metropolitan Court. The Magistrate Courts’ website includes a very useful manual explaining the Magistrate Court Rules and Procedures.

**DEMAND LETTER FOR SECURITY DEPOSIT
NOT RETURNED WITHIN 30 DAYS**

Date _____

TO:

Landlord's name: _____

Address: _____

City, State, Zip: _____

Dear Sir or Madam:

On _____ (date of move), I moved out of the rental property located at _____ (address).

The law in New Mexico requires a landlord to return deposits or else supply the tenant with a written list of deductions and the balance due, if any, within 30 days after a tenant moves out. As you have failed to do this, you must return my entire deposit. If you do not return my deposit, I can file an action in court and you may also have to pay a penalty of \$250. (New Mexico Statutes Annotated Section 47-8-18)

Please return my deposit promptly to avoid court action, possible attorney's fees and cost or a penalty. I will wait seven days before taking any further action.

My deposit should be mailed to:

Sincerely,

Tenant's signature

Tenant's name

STATE OF NEW MEXICO
COUNTY OF _____
IN THE _____ COURT

_____, Plaintiff

v.

Case No. _____

_____, Defendant

COMPLAINT BY RESIDENT FOR RETURN OF DEPOSIT¹
(Uniform Owner-Resident Relations Act)

The plaintiff alleges:

1. Plaintiff entered into a rental agreement with Defendant for property located at:

2. As part of the rental agreement, plaintiff delivered to defendant one or more deposits totaling \$_____.

3. Plaintiff vacated the above premises on _____ (*date*), and defendant retained all of part of plaintiff's deposit.

4. Defendant:

(check one)

mailed written notice to plaintiff of the amounts deducted from plaintiff's deposit within thirty (30) days after the date plaintiff vacated the premises or the date the rental agreement terminated. A copy of the notice is attached as Exhibit A of this complaint.

did not mail written notice to plaintiff of the amounts deducted from plaintiff's deposit within thirty days of the date plaintiff vacated the premises or the date the rental agreement terminated.

5. Defendant kept the following amount of the deposit: \$_____.

6. Plaintiff is asking for the return of the following amount: \$_____.

(check if applicable)

7. Plaintiff requests a _____ language interpreter.

Plaintiff requests judgment against defendant, as follows:

1. Damages as may be determined by the court;

2. Costs of this action;

3. Reasonable attorneys fees;

4. A civil penalty if provided by law²;

5. Such other relief as the court may deem reasonable.

Signed

Dated: _____

Name (*print*)

Address (*print*)

City, state and zip code (*print*)

Telephone number

USE NOTES

1. *This form is used for cases in which the resident is claiming a return of deposit. A complaint for return of deposit is not required to be heard within ten (10) days.*

2. *See Paragraph E of Section [47-8-18 NMSA 1978](#) for civil penalty.*

[Approved by Supreme Court Order No. 05-8300-005, effective March 21, 2005.]