



# LEGAL AID SOCIETY OF HAWAI'I



## SECURITY DEPOSITS: FILING AND REPRESENTING YOURSELF IN SMALL CLAIMS COURT

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This brochure provides basic information on how to represent yourself when you are suing in small claims court for your security deposit.

The information in this brochure applies to private landlord-tenant rentals. It does not apply to Public Housing or special housing (e.g., UH housing, day-to-day hotels, or homeless shelters).

The information in this brochure does not replace legal advice or counsel. Whenever possible legal counsel should be retained.

For more information on your matter, call Legal Aid Society of Hawai'i's hotline.

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## WHAT IS SMALL CLAIMS COURT?

Small Claims Court is a less formal court process which handles claims for \$5,000.00 or less. In Small Claims Court lawyers can represent people in every kind of case except security deposit disagreements between a residential landlord and tenant. Be aware however that while the law says you are not allowed to be represented by an attorney for a security deposit claim; many judges do not remember this law or enforce it. If you represent yourself in Small Claims Court, it is a good idea to take with you a copy of the law (provided for you at the back of this document) to show the judge, should the other side bring in a lawyer.

The District Court has concurrent jurisdiction (i.e. has the power to hear the case also) over disputes involving security deposits in situations where the landlord filed a Summary Possession action against the tenant in District Court.

What this means for the tenant is that the District Court will hear the dispute about the security deposit as part of the damages portion of the eviction, rather than the small claims court. If you file a complaint in the Small Claims division for return of your security deposit while you are being evicted, your claim will be “joined” with the other Summary Possession.

If you’ve moved out and your landlord didn’t file a complaint in District Court to have you evicted, but there is merely a dispute over your security deposit, then you can file a claim in Small Claims Court.

If you have more questions about the Small Claims Court process, call or visit the District Court on your island.

## HOW DO I FILE IN SMALL CLAIMS COURT?

### I. PICK UP AND FILL OUT A STATEMENT OF CLAIM

This step sounds easy, but actually has several parts to it. To successfully file your statement of claim, you must complete the following:

a) Pick up the forms at Court;

To file a claim in Small Claims Court, you begin by filling out a **Statement of Claim and Notice [Disagreement About Security Deposit-Residential]** form available at the court. A Statement of Claim states what your claim is against your landlord.

Your hearing will take place in the District Court closest to the place you rented. However, your forms may need to be filed at a different location.

For example, on Oahu, all paperwork and filing of documents must be done at the Honolulu District Court, but your hearing may be held at another District Courthouse. You can call the district court on that island if you have additional questions on the procedures -- each island is different. You could also go visit them and pick up their forms.

You can pick up these forms at the District Court on your island or they be available on the Court's website [http://www.courts.state.hi.us/self-help/courts/forms/court\\_forms.html](http://www.courts.state.hi.us/self-help/courts/forms/court_forms.html).

Oahu:

Honolulu District Court, Kauikeaouli Hale, 1111 Alakea Street, Honolulu, HI 96813. Forms can be found at Judicial Services on the Third Floor

Maui:

2145 Main Street, Hoapili Hale, Wailuku, Hawai'i 96793

Hawai'i Island:

Hilo: State Building, Room 205, 75 Aupuni Street, Hilo, Hawai'i 96720

Kona: Keakealani Building, Room 219, Kealakekua, Hawai'i 96750

Kamuela: Waimea Civic Center, Kamuela, Hawai'i 96743

b) Type or handwrite the forms;

The Statement of Claim can be typed or handwritten. If you are confused about how to fill out the form, you can get help from the Court Clerks. The clerks can help you fill in the blanks, but they can't tell you what to say or give legal advice. Don't sign the papers yet.

c) Make copies of the forms;

d) File the forms at the Court;

After your forms are typed and notarized, you must make copies and go down to the Court to "file" it. This means you turn it in to the clerks who date-stamp and approve it. The clerk will take all the forms you filled out and officially file your claim.

e) Pay the \$35 filing fee.

This may be waived in some circumstances. Ask the court clerks for more information.

## II. "SERVE" YOUR LANDLORD WITH COURT PAPERS

Once you file a claim, you are called the plaintiff, and the opposing party (landlord) is called the defendant. As the plaintiff, you must legally notify the defendant about this claim by giving him/her a copy of the Statement of Claim and the Notice to appear in court. (The court clerk prepares a Notice which states the time and place your landlord needs to appear in Court.) This process of notifying the defendant is called "serving" the defendant a summons.

**You, as the plaintiff, must "serve" the defendant a copy of the Statement of Claim and the Notice to court date. You must notify the defendant at least 48 hours before the date of the hearing. You must fill out the Return of Service form or Certificate of Service.**

You can serve your landlord in one of the following ways, so long as the defendant (your landlord) lives within the judicial circuit that the district court belongs to (i.e. Honolulu):

a) You can send the Statement of Claim and notice to the defendant by registered or certified mail with return receipt requested to be delivered to addressee only.

Remember, the defendant **must receive** this mail at least 48 hours prior to the hearing date.

If you choose this option, then on the hearing date, the plaintiff **MUST** present to the judge the receipt for registered or certified mail issued by the post office when the papers were mailed and the return receipt showing the date of delivery and the signature of the defendant. Without these receipts, you may not be able to prove to the satisfaction of the court that the papers were delivered to the defendant.

You are responsible for paying for the cost to send the letters. If you win, the Court **may** order your landlord to reimburse you. Remember to keep receipts of these fees if you want the court to reimburse you.

b) You can use a Private Party or Process Server to Personally Serve the Defendant.

### CHOOSING A SERVER

The person who delivers the packet is called your “server.” Your server can be a process server or anyone over 18 years old, as long as the adult is not a part of this court action. This means that you cannot use any roommates or family members if their names are listed on the court papers.

If you hire a process server, you must pay and you will be charged for additional mileage if the server has to try more than once.

If you do not use a process server, make sure that the person you choose is reliable and understands what he/she must do.

### WHAT YOUR SERVER MUST DO

When your server goes to your landlord or landlord’s attorney, your server will need to:

(1) give your landlord or landlord’s attorney a date-stamped copy of the *Complaint for Damages and Summons*,

AND

(2) have your landlord/landlord’s attorney sign the *Return of Service* form.

After your landlord/landlord’s attorney signs the *Return of Service* form, you or your server must take this form to District Court and turn it in to a court clerk. If the landlord refuses to sign, this should be noted in the special circumstances portion of the form.

Remember, the server must deliver these documents at least 48 hours before your hearing date.

## **WHEN WILL MY CASE BE HEARD IN COURT?**

The court clerk will set a hearing date **not less than 5 days and not more than 30 days from the date you filed the Statement of Claim.** This could vary if the court grants you a “continuance.” A continuance is when you ask the Court to postpone the hearing, and the Court approves this request. You can sometimes get a continuance, for example, if you do not serve the defendant by the hearing date. To file a continuance, fill out a “Motion for Continuance” form, which is available at the court.

## **WHAT IF THE DEFENDANT DOES NOT SHOW UP AT THE COURT HEARING?**

If the defendant has been properly served with the summons, the plaintiff may win judgment by default. This means that because the defendant didn't show up, the judge rules automatically in the plaintiff's favor, and awards the plaintiff what the plaintiff claimed. The judge may require the plaintiff to present evidence to prove that defendant was properly served.

## **WHAT IF I DO NOT SHOW UP AT THE TIME AND PLACE OF THE HEARING?**

If the plaintiff does not show up at the right time and place of the hearing, the case may be dismissed. It is unlikely, but if the case is dismissed "with prejudice," the plaintiff cannot file a new suit on the same claim.

## **IF I LOSE, CAN I APPEAL THE DECISION?**

There is **NO RIGHT OF APPEAL** for the plaintiff or the defendant from a judgment of the Small Claims Division.

### **GETTING READY FOR COURT: SOME TIPS ON PREPARATION:**

The Court process can be difficult or easy depending on how well you prepare yourself before the hearing. The Courtroom and court process can be intimidating. The more you prepare yourself and organize what you want to say, the easier it will be. It is essential to organize what you have to say and the evidence you wish to show the judge. By thinking ahead, you'll be in a better position to present your case. Remember, judges are under pressure to process cases quickly, and you can help yourself by being well-prepared. The following are several tips you can do to help you become organized.

**A. Make a list of facts and main points you must prove. Then list how you could prove these to the Judge. Organize your documents in the order you plan on proving them.** (For example, if you have several pieces of evidence, make sure you put them in order and can find them quickly when you are in a courtroom setting.)

Be aware that the judge may jump in at any time, and start asking questions.

The following list shows common problems in a security deposit dispute, and lists how you could prove them. Remember, this list is not tailored for your case. There may be some headings that do not apply to you. Use it as a guideline, and think of additional examples specific to your case.

#### **1. I don't owe any back rent, I paid all applicable rent.**

Show all rent receipts, canceled checks, and your rental agreement.

**2. When I left the dwelling, I left it in the same or better condition than when I moved in. The dwelling is clean and rentable.**

Show dated photos of your apartment when you checked out. Bring a witness to vouch for the cleanliness of the apartment.

**3. I left a forwarding address.**

Show a dated copy of the form or letter you used to give your landlord a forwarding address.

**4. The damage the landlord is speaking of is normal wear and tear, and not negligence or abuse.**

Bring a witness to testify as to the cleanliness of the apartment, and/or a witness who saw the apartment before or right as you moved in. Show dated photos of your apartment when you moved in and when you moved out. Prove how the condition of the apartment was due to normal use, as opposed to abnormal use.

Show copies of accurate Check-in and Check-out lists if you have them. Bring in certified documentation on how old the building is from the city & county building department.

**5. I paid my security deposit.**

Show canceled check for security deposit. Show receipt for your security deposit.

**6. I gave the landlord sufficient advance notice of my termination date.**

Show the dated copy of the termination letter you sent to your landlord. (If you are on a month-to-month, your landlord must have been sent notice at least 28 days before you moved out. If you are on a lease, your move out date is stipulated in the agreement. If you break your lease, your notice may not be legally sufficient. *Remember, if you moved out before your lease expired, your landlord may counter-sue you for any unpaid rent you may owe by leaving early.*

If you moved out because of a health or safety threat, bring copies of correspondence showing you tried to get your landlord to remedy the problem. Or bring witnesses or doctor's reports to verify it was a valid medical concern.

**7. The damages in the apartment were the result of the landlord's negligence in repairing items within the apartment.**

Show a copy of the letter you sent to the landlord to get the condition repaired. (i.e. a letter to fix a leaky window pane, which damaged the carpet underneath).

**8. I returned the keys.**

Bring a witness who saw you return the keys or a statement signed by the landlord stating he/she received the keys from you when you vacated.

**9. The landlord was served 48 hours notice before the court date.**

Show the return receipt from the mail or show the evidence of the Return of Service.

**B. Next, think of what your landlord would say. In other words, what are his points against you? Then think of how you can best defend yourself against his arguments.**

The following are examples to help you think of what a landlord might say. It is not tailored for your case, so use it as an example.

**1. Your landlord could argue that there were damages**

The paint on the wall was dull and darkened. The kitchen chairs have holes in them. The drapes were ripped. I had to get everything redone, and buy new chairs and drapes.

**Possible way to respond:**

Hawaii law states that the landlord is responsible for normal wear and tear. The difference between wear and damage is that wear relates to normal use and damage to beyond normal use. There were no scratches, holes, paint splatters, or other evidence of abnormal use. The dullness and darkness occurred over time, under normal use, and thus should be considered wear and tear. The chairs and drapes were old and thin to begin with, so under normal use they became so worn that they finally showed their age. Collect any witnesses that can verify this.

**2. The landlord could argue that you owe money for the number of days it took your landlord to clean the apartment after you moved out:**

Because I had to repaint the entire apartment, it took 14 days to get the apartment ready for a new tenant. Under the lease, it clearly states that I can charge for the number of days it takes to get the apartment in a fit and rentable condition.

**Possible ways to respond:**

Because the dullness and darkness was due to ordinary wear and tear, I shouldn't have to pay for either the cost to repaint or the time it took him to repaint the dwelling.

AND/OR

The 14 days rent was not included in the original accounting given to me. Because it is after the 14 day period he is allotted, I cannot be held responsible for those charges.

AND/OR

Most of the 14 days it took to repaint the apartment was spent looking for a painter and buying paint. I should only be responsible for the actual painting time. At most, to paint the interior of a one bedroom apartment, it should only take 2 days. I should only be responsible for paying 2 days rent.

**3. The landlord could argue for repayment on the basis of the Check-In and Out Lists:**

I have a check-in inspection and a check out inspection. There is a noticeable difference between the two. I have receipts for all the cleaning and repair bills that I have incurred. I am owed the full amount of these receipts.

**Possible way to respond:**

I have the same check-in report, and I have a check out inspection signed by a disinterested third party. This check out inspection is more trustworthy because the third party would not have the bias of either me or the landlord. Note there is very little difference between the original check-in inspection and the unbiased check out inspection. What difference there is can be attributed to ordinary wear and tear. Thus the cleaning and repair receipts were incurred by the landlord purely for his undeserved benefit. Not only is he trying to force me to pay for the wear and tear by completely renovating the apartment, but he is also trying to force me to pay for items that are not damaged and do not need cleaning,

In summary, be prepared to prove your side of the case, as well as, be prepared to respond to the other side's arguments.

**C. Sit Through a Small Claims Court Hearing Session Before the Date of your Hearing.**

This will give you first-hand information about the way small claims cases are handled, and will let you know what to expect when you go.

**D. On The Date of your Hearing, Schedule Enough Time to Get to Court.**

This is extremely important! Allow for traffic and parking delays. It is often confusing trying to find the right courtroom, so arrive early. A list of the day's small claims cases (called a "court calendar") is usually posted outside the courtroom. If you don't find your name or cases listed on the court calendar, check with the small claims clerk.

*Remember, if you are in the building BUT are not in the right room at the right time, your case may be dismissed.* Also, cases are not always called in the order listed on the court calendar, so be sure to stay in the courtroom.

**E. Understand the Courtroom. Present Your Case Calmly and Briefly.**

When the judge is ready to hear your case, the clerk will call the names of all of the plaintiffs and defendants in the case. You and the other parties and witnesses should then go forward to the table in front of the judge. Judges usually ask the plaintiff to tell his or her side first, and then the defendant. Some judges may begin the hearing by asking questions of each party to learn more about the facts or to cover areas the judge knows are important.

Usually, you'll only have a few minutes to explain your side, so present the most important points first. You can use your written outline. Be sure to have all your evidence and important documents with you. Tell the judge you have them, and ask the clerk or court officer to give them to the judge.

Be brief in making your points. It is helpful to be objective and unemotional. Answer the judge's questions honestly and thoroughly. If you don't understand the question, politely ask the judge to explain what s/he means.

When the judge is asking the other side to explain, don't interrupt or argue, even if you disagree. Later the judge will give you time to reply.

If you win, ask the judge to award you court costs. Keep receipts to show for your filing fees and service fees.

**IF I HAVE ANY OTHER QUESTIONS, WHO CAN HELP ME?**

For further information, ask or call any of the clerks of the Small Claims Division of the District Court on your island. See page 2 for the phone numbers.

**REMEMBER: This pamphlet is meant to give you general information and not to give you specific legal advice about your case. The law often changes. Each case is different. For more information or assistance call Legal Aid at 1-800-449-4302 or access additional information at <http://www.legalaidhawaii.org>.**