

MODEL LEASE CLAUSE

Spell Out Tenant's Duty to Replenish Security Deposit

Although it's something you'd like to avoid, it might make sense to draw on a tenant's security deposit rather than go to court to deal with cash flow problems or temporary financial setbacks. But if you do this, you need to ensure that the tenant replenishes the depleted funds as soon as reasonably possible and that you have the necessary legal remedies if it fails to do so. Here's a Model Lease Clause you can adapt to accomplish these objectives. Show this clause to your attorney before using it in your leases.

TENANT DUTY TO REPLENISH SECURITY DEPOSIT

- a. Restoration of Used Portion of Security Deposit.** In the event that Landlord applies, uses, or retains all or any portion of the security deposit, Tenant shall restore the security deposit to 150 percent of its original amount in two equal installments: (i) the first of which shall be due from Tenant to Landlord within [*insert number, e.g., 30*] days (**TIME BEING OF THE ESSENCE**) after Tenant's receipt from Landlord of a written notice referencing this section; and (ii) the second of which shall be due from Tenant to Landlord within [*insert number, e.g., 30*] days (**TIME BEING OF THE ESSENCE**) after the due date for the first installment. If Landlord fails to timely receive the first payment by its due date, the second installment shall automatically and immediately become due and payable
- b. Repayments Are Additional Rent.** The payments Tenant is required to make to Landlord to restore the security deposit or any additional security required under the terms of this Lease under the immediately preceding paragraph shall be deemed additional rent and Tenant's failure to make such payments within [*insert number, e.g., 30*] days (**TIME BEING OF THE ESSENCE**) after Landlord's demand therefor shall: (i) constitute a material monetary default by Tenant; and (ii) automatically and without any further notice obligate Tenant to pay Landlord interest, late fees, and all other delinquency service charges on the unpaid security deposit or security that Landlord would otherwise be entitled to receive if the unpaid security were overdue and delinquent rent.
- c. Landlord Remedies.** The immediately preceding section shall: (a) supplement and in no way replace any and all other rights and remedies that Landlord may have under this Lease, at law or in equity; and (b) in no way be construed to extend the deadline due date by when either the replenishment of depleted security deposit or other security or the payment of any additional security required by the terms of this Lease is required to be paid by Tenant to Landlord.