

This excerpt is provided by the Rental Housing Association of Northern Alameda County. www.rhanac.org 510-893-9873

First Month, Last Month, Lost Deposit

A tenant phones his ex-landlord to get his security deposit back. But nobody returns his calls. Why is this story so familiar?

LAILA WEIR, East Bay Express
March 30, 2005

Antony Mayo of Oakland says his landlords promised to return his \$800 security deposit after he moved out. He lives in subsidized housing, and needed the cash to cover the deposit on his next apartment, but weeks turned to months, and the property owners remained incommunicado. In the end, Mayo never got paid.

It's a refrain familiar to just about anyone who's ever been a renter. Four organizations contacted for this story -- Housing Rights, Inc., the Oakland Tenants Union, the Berkeley Rent Stabilization Board, and the East Bay Community Law Center -- report that stiffed tenants are among their most frequent callers. "We get calls every day from tenants who can't get their security deposits back," says Laura Lane, director of housing and eviction defense at the Law Center.

Lane and her counterparts say students -- especially foreign students or others likely to move away after leaving an apartment -- and low-income renters like Mayo are the most vulnerable to security deposit theft. For many, losing that thousand or so bucks can be a true hardship. "It's usually more than a month's income," the lawyer notes.

Mayo brought his problems to the Law Center, which first recommended small-claims court. But its staffers soon realized they were getting numerous calls about the same property owners, and decided to pursue a class action. The center filed the suit last April against two companies -- Marwil Investments and Rent Razor -- and their associates Mark Wilton, Benjamin Mallah, and David Bonde, all of whom were involved in renting the apartments where Mayo and the other tenants lived, the suit contends. According to Lane, Wilton and Mallah owned as many as two hundred other units.

The suit specifies seven low-income renters, including Mayo, who claim they received neither a refund nor an accounting of how the landlords used their money, as the law requires. In pursuit of their deposits, all of the tenants chronicle endless runarounds that landed them back at square one.

The attorney for Bonde and Rent Razor declined to comment while the matter is in litigation, but in a cross-complaint, these defendants blamed Wilton and Mallah for any damages suffered -- while denying that the plaintiffs suffered any damages. In a separate

Craig Larotonda /
Revelation Studios



For low-income people, losing a security deposit can be a major hardship.

This excerpt is provided by the Rental Housing Association of Northern Alameda County. www.rhanac.org 510-893-9873

response, Marwil Investments, Wilton, and Mallah claimed that all the named tenants left their apartments damaged and owed back rent. "There were sums owed outstanding either equal to or in excess" of their deposits, says the landlords' attorney, Jerry Hauser.

In a cross-complaint, Marwil provides copies of accounting statements it says were sent to three of the plaintiffs once they moved out, stating how their deposits were applied and listing additional outstanding charges. Michael Quirk, attorney for the three plaintiffs in question, declined to comment. But Lane, who represents Mayo and three other renters, counters that her clients can demonstrate they left their apartments in good condition and owed no rent. "For at least one of our clients, Defendants have produced a fraudulent move-out statement created more than a year after the tenant vacated the premises," she alleges in an e-mail. "Not only does the tenant have evidence that the damages alleged in the move-out statement are untrue, but Defendants have provided no explanation for why they did not mail the purported 'move-out' statement to the tenant as state law requires."

Mayo, forty, sits at a small table by a window in the tidy little apartment where he now lives. A cheerful blue and yellow cloth covers the table, and the cooking pans are stacked neatly next to the stove behind him. Photos of his three sons adorn the living room wall. An imposing man with a shaved head and an athlete's build, he recalls his story in a gentle yet firm voice.

He became eligible for government housing assistance in 2001 and began looking for an apartment that accepted subsidized tenants. He found one through a rental agency called Rent Razor, whose representative, David Bonde, accepted part of his deposit on behalf of property owner Marwil Investments, which is registered under Wilton's name. Mayo says he subsequently paid the remainder to Khalid, the onsite building manager at his new place.

About a year and a half later, he decided to move because he felt the neighborhood was unsafe. "It didn't seem like it was the right environment for myself and the safety of my child," recalls Mayo, whose toddler son lived with him part-time. He says he waited for someone from the landlord's office to come inspect his apartment for damage on move-out day -- his right under state law -- but no one showed. Still, he says, his landlords promised his money back.

Property owners can legally withhold deposit money for unpaid rent, cleaning fees, or to repair damage a tenant has caused, but they may not charge for normal wear and tear that requires, say, painting or new carpets. Within 21 days, landlords must either return the full deposit or give the tenant an itemized account of how they spent any money that was withheld.

Mayo says he waited 21 days without a peep from the landlords. He then began calling Khalid, who assured him that property manager Ben Mallah would call back. Several fruitless calls to Khalid later, Mayo headed out to Lafayette to confront the owner of Marwil Investments face to face. He soon discovered that the address on his rental papers was a Mail Boxes Etc. franchise. "I'm saying, 'Oh, son of a bitch. You sons of bitches

This excerpt is provided by the Rental Housing Association of Northern Alameda County. www.rhanac.org 510-893-9873

don't even have an office, anything," Mayo says, shaking his head. He doesn't sound angry so much as bewildered.

So Mayo turned to Bonde of Rent Razor, who had taken his first deposit payment. At first, he says, Bonde put him off with friendly excuses. But when he went back, having received no response from his former landlord despite Bonde's reassurances, the rental agent allegedly changed his tune. "He said, 'You know what; you get the F out of my office! You don't come here no more. Don't ask me anything about that.' He was just -- oh man, he just went *off*. I mean, he just went ballistic on me. And I'm like, you know, 'Hey!'" -- Mayo laughs incredulously, looking up with raised eyebrows -- "I got paperwork to show that I gave my deposit to you."

Two years later, Mayo insists he no longer cares about the money. "They had me thinking I'm nobody, and that made me upset," he now says. "You just can't look at somebody and say, 'You poor and everything; you don't have nothing and you can't fight back.' ... I just care about what's right for other people that think they ain't got power."

He means people like Rosa Bassard, listed in the suit as a 79-year-old plaintiff who lives on Social Security. Bassard repeatedly requested return of her \$1,200 deposit after moving out -- to no avail -- and received no accounting from the landlords, the suit alleges. The other five tenants are described as low-income women between 27 and 48. "These landlords own so much property, they're so rich, and they're stealing this money from the poorest people in our community," attorney Lane says. "Eight hundred dollars at a time, they're stealing money from poor people."

Hauser, the attorney for Wilton and Mallah, wouldn't discuss Mayo's particulars. "I can't really comment on one tenant's case," he says. "It's not my intent to litigate it -- and I think it's wrong to litigate it -- in the newspapers."

But while the lawyers and courts can sort out individual cases, the ones that make it this far are very rare. Tenants routinely accuse landlords of deposit theft. While many simply give up, the few with the time and chutzpah typically go the small claims route. Officials at the Hayward Justice Center, which handles many of Alameda County's small claims, estimate that more than one-third of the thousand-plus small claims they have handled in the past six months involved tenants suing landlords, usually over a security deposit.

Steve Edrington, executive director of the Rental Housing Association of Northern Alameda County, concedes that some landlords don't follow the law, but points out that the problems go both ways: "For every tenant complaint there's a landlord complaint about tenants leaving and there's not enough security deposit to cover the losses."

Edrington also notes that it's difficult for property owners to force ex-tenants to pay overdue rent or damages, even if the landlord wins a small claims judgment.

This excerpt is provided by the Rental Housing Association of Northern Alameda County. www.rhanac.org 510-893-9873

That point, too, applies to both sides. A small-claims victory simply means the plaintiff gets an order telling the defendant to disclose his assets and pay up. If the loser ignores the judgment, which happens often, the winner can return to court to try to force disclosure of assets, and then ask the county to place a lien on the defendant's property. This puts landlords at a disadvantage, Edrington claims, since renters typically have few assets worth going after.

But tenants, especially unsophisticated ones, face a big hurdle from the outset: To haul a landlord into court, the renter must first serve the defendant with a summons. That means either personally handing court papers to the property owner, hiring a process server to do it, or paying the court to mail the documents to the landlord -- an option that's only viable if the landlord mails back a signed receipt. "It's very difficult," Lane says. "Many landlords only have these P.O. boxes where the tenants mail their rent."

Tammy Millard-Dyer, who apparently moved to Oregon after vacating a Marwil-owned apartment, wrote the court a letter about her claim against Wilton and Mallah. It was a plaintive expression of an individual feeling lost in the system: "I have not been able to get a copy of the court papers to the defendant in the proper amount of time," she wrote. "My mom has been trying to call the defendant's place of business but has been unsuccessful. ... It's also hard to get a straight answer when you call the line up there at the courthouse. Either you get a recording or they can't really be of much help, it's really ridiculous. ... So, now again it's a problem for me to get this business handled. These people know they are wrong in not giving me my rent deposit back."

Eleven days later, neither side appeared in court. Case dismissed.