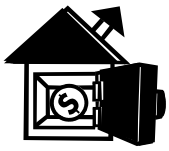
Answering Your Tenant's Complaint for Return of Security Deposit



Note: Use this form and instructions to answer a complaint your past tenant has filed against you in court to get a security deposit back.

These instructions and forms may not be right for your case. They cannot take the place of advice from a lawyer. Talk to a lawyer if you have **any** questions.

Print the forms in this packet single-sided, with writing on only one side of the page. Do not change the forms. If you change the forms, you might lose language you need.

Who Can Use These Forms?



You can use the forms if your tenant filed a Complaint for Return of Security Deposit to make you pay the security deposit back.

WARNING: You **cannot** use this form if you rented to the Plaintiff under the name of a corporation, partnership, or other business entity. Rule 2(a) of the Montana Justice and City Court Rules allows a "person" to file suit without an attorney, but requires an agent or a business entity (such as a corporation or LLC) to file suit through an attorney.

WARNING: Do NOT use this packet if the tenant filed this case under the court rules for small claims. Under the small claims rules, you won't file an answer. The tenant's complaint should say when your hearing will be. You will tell the judge your side at the hearing.

What Forms Will I Need to Answer a Complaint for Return of Security Deposit?



- Answer
- Judgment
- Affidavit of Inability to Pay (not included in this packet, so ask the clerk of court for a form if you cannot afford to pay the filing fee)

The **Answer** tells the court if you admit or deny the information in the Complaint. The Answer also describes some affirmative defenses that may be true for you.

Read more about affirmative defenses on page 2.

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The **Judgment** is for the judge to fill in, except for the caption that you will fill in. It tells you the judge's decision. When the judge decides your case, the judge may choose to fill out the Judgment that is part of this packet. Or the judge may choose to write out his or her own Judgment and not use this form.

Important: These forms do not let you tell the court you have a counterclaim. A counterclaim is when you ask the court to order your past tenant to pay money or do something based on the security deposit.

For example, your tenant may have filed a Complaint asking the court to make you give back the security deposit. But the damages to the rental may be more than the amount of the security deposit. If you do not ask the court for that money now in a counterclaim, you may not be allowed to ask for it later, even if you file a new lawsuit. If you think you have a counterclaim, do **NOT** use these forms. Talk to a lawyer.



Use the **Affidavit of Inability to Pay** to ask the court to not pay the fees the court charges to file your Application. The form is not included in this packet. If you cannot afford to pay the filing fee for the Application, ask the clerk of court for an Affidavit of Inability to Pay. Courts may use different names for this form. The Affidavit will require you to provide information about your income and expenses. The court will review your Affidavit and decide if you have to pay the filing fee.



Important: File your Affidavit of Inability to Pay early! You must file your Affidavit before you can file your Answer without paying the filing fee. You need to give the judge enough time to review your Affidavit. If the judge has not approved your Affidavit, the clerk of court may not accept your Answer without payment of the fee, even if it is the last day you can file your Answer.



What Words Do I Need to Know?

A **Plaintiff** is someone who files a lawsuit in court.

If your past tenant has filed a lawsuit asking the court to make you give back the security deposit, your past tenant is the Plaintiff.

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A **Defendant** is someone who is being sued. If you are being sued by a tenant to make you pay back a security deposit, you are a Defendant.

With an **Affirmative Defense** you tell the court that, whether or not you deny your tenant's claims, there is a different reason you are not responsible or only partly responsible for whatever the tenant is asking for. Check the box next to any affirmative defense that applies to you. If you say you have an affirmative defense, be prepared to support it with evidence and laws at the hearing. Evidence means witness testimony or other proof that what you say is true.

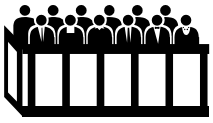


How Long Do I Have To Answer?

You have 20 days after you were served with the Complaint to file your Answer with the clerk of court. If you do not file your Answer within 20 days, your past tenant can ask the court for a default judgment. If the court gives your past tenant a default judgment, you will never have the chance to tell the judge your side of the story. Your past tenant will win just because you did not file an Answer in time, and you will have to pay the security deposit back to your tenant, or file an appeal of the default judgment.

Where Should I File My Answer?

File your Answer at the same court where your past tenant filed the Complaint. You can find the name of the court at the top of the Complaint.



Can I Have a Jury Trial?

You have a right to a jury trial, but you do not have to have one. If you tell the court that you want a jury trial, you may have to pay for the costs of the jury trial. Costs of a jury trial include a stipend and travel expenses paid to each juror. Jury trials can be expensive. The State will not pay for the cost of the jury for you. It may also take longer to get your hearing if you request a jury

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trial. If you choose not to have a jury trial, a judge will decide your case. If you want a jury trial, print "I REQUEST A JURY TRIAL" under the word "Answer" on the first page of your Answer. If you write this, you are telling the court that you can and will pay the jury costs for the hearing. The court may ask you about this, especially if you filed an Affidavit of Inability to Pay.

How Do I Use These Forms?



1 Fill in the Answer Form

☐ In number 1, admit the parts of the Complaint that are true;

☐ In number 2, deny the parts of the Complaint that are not true;

☐ In number 3, deny the parts of the Complaint you don't know about.

> **If the paragraphs in the Complaint are numbered**, list the paragraph numbers. For example, in number 1 of the Answer form, you could list "2, 5, 6, 8," which would tell the court you admit those paragraphs of the Complaint are true. If a paragraph is only partly true, write out the part you admit and the part you deny.
>
> **If the paragraphs in the Complaint are not numbered**, write the parts of the Complaint you are admitting, denying, or saying you do not know about. For example, suppose the Complaint says the security deposit was $500, you have not returned any of it, and the tenant needs the money for medical bills. In your Answer, you could admit the security deposit was $500 in number 1, deny that you have not returned it in number 2, and say you do not know if the tenant needs the money for medical bills in number 3.

☐ Check the boxes on the Answer form for affirmative defenses that are true. Read page 3 of this packet to learn about affirmative defenses.

> **WARNING:** If you admit everything in the Complaint and do not have an affirmative defense, there won't be a hearing, and the judge will order you to pay back the security deposit to the tenant. By admitting everything, you are telling the judge that you agree with what the past tenant has said in the Complaint. If you agree, there is no reason for the judge to hold a hearing to find out what is true.

☐ Sign the Answer.



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☐ Fill in and sign the top of the Proof of Service in front of a notary public. Write in the date that you will file and mail your Answer.

2 Fill in the Caption of the Judgment Form

☐ Fill in only the caption on the Judgment form. The judge will fill in the rest. The caption should name the same Plaintiff(s) and Defendant(s) as the caption in the Complaint. The caption looks like this:

In the (c*heck **one** box and fill in the blank for the court where you are filing*)**:**

☐ **Justice Court of _____County,**
(*county of court where you are filing*)

☐ **City Court of _____,**
(*city of court where you are filing*)

☐ **Municipal Court of _____,**
(*city of court where you are filing*)

☐ **____ Judicial District Court of _____County,**
(*number*) (*county of court where you are filing*)

State of Montana

_____, (*name of your tenant*) Plaintiff, v. _____, _____, (*write Defendants named in Complaint*) Defendant(s).	Cause No.: _____ Dept. No.: _____ (*filled out by court*) **Name of Form**

3 Make Copies

☐ Make two copies of your completed Answer including any attachments.

☐ Make one copy of the Judgment form.

4 File the Forms at the Courthouse



☐ Go to the office of the court where your past tenant filed the Complaint.

☐ If you can not afford the fee for filing your Answer, ask the clerk of court for an Affidavit of Inability to Pay. This form may be called something different in your court.

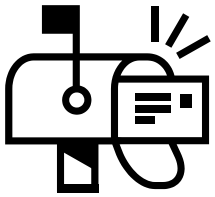
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☐ File your original Answer (including any attachments) with the clerk.

☐ Ask the clerk to stamp your two copies of the Answer as "Filed" on that date. One copy is for you to keep, and take to your hearing. You will mail the other copy to the tenant that filed the Complaint.

☐ Give the Judgment form to the clerk. Ask the clerk to lodge the Judgment form in the file. Lodging means that the clerk will not officially file the form, but will just keep it inside the court file so the judge can look at it in the future. If the clerk will not lodge the Judgment form, keep it in a safe place until your hearing.

5 Mail your Answer



☐ On the same day you file your Answer, mail a stamped copy of your Answer to the tenant who filed the Complaint. This should be the date in your proof of service. Use the address in the top left hand corner of the first page of the Complaint. Or the address may be somewhere else in the Complaint, usually the first or last page. If your past tenant has a lawyer, this will be the lawyer's address.

☐ It is a good idea to have proof that you actually mailed your Answer to your past tenant or your past tenant's lawyer. You can get proof by using the United States Postal Service Certificate of Mailing. The post office charges more for the Certificate of Mailing than a regular letter. The post office receipt that you get from the post office is your proof that you actually mailed your Answer to the correct address on a certain date. Keep the receipt, and take it with you to your hearing.

6 Wait for an Order Setting Hearing

☐ After you file your Answer, the court will notify you in writing of the date, time and place of the hearing. Sometime after the hearing, the judge will decide if you have to pay the security deposit back.

☐ If you want witnesses to testify at your hearing, you may need to subpoena them before the hearing. A subpoena orders a person to

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come to court even if the person does not want to. Once you know the hearing date, you can ask the clerk of court for subpoena forms.

7 Go to Your Hearing

- ☐ Bring your stamped copy of your Answer and any other papers you filed with the court to your hearing. Also bring the Judgment form if the clerk would not let you lodge it when you filed your Answer.
- ☐ Arrive at the courthouse at least 15 minutes before your hearing will start. Dress like you were going to an important job interview.



- ☐ To find the right courtroom for your hearing, ask the clerk of court's office. In some courts, you will have to check in with the clerk before going to your courtroom. After you have talked with the clerk, go to your courtroom and wait for the judge to say your name and case number. Call the judge "Your Honor."
- ☐ Be prepared to tell the judge your side of the case, including why you have not returned all of the security deposit and why you think you should not have to return it. Tell the judge if you have brought witnesses who will testify about the rental's condition when the tenant moved out. Show the judge any papers or photos that help prove you should not have to return all of the security deposit.
- ☐ If the clerk would not let you lodge the Judgment form when you filed your Answer, you may need to give it to the judge. At the beginning of the hearing, when the judge asks if you are ready, say "Your Honor, I have a proposed judgment form for your consideration." Then ask if the judge wants you to hand the Judgment form to him or her. You judge may or may not take the Judgment form from you. It is okay if the judge does not want the Judgment form.

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Where Can I Get More Information?



The laws of Montana are called the Montana Code Annotated or "MCA." The laws about security deposits begin in the MCA at Title 70, Chapter 25, Section 101. An easier way to write one of those laws is: § 70-25-101, MCA. The symbol § means section. You can find the MCA at your local library or on the Montana State Law Library website at www.lawlibrary.mt.gov. Click on the "Laws" option near the top of the page and then click on "MCA."



Where Can I Get Legal Help?

These organizations may be able to help you:

- **Montana Legal Services Association** (MLSA) gives free legal help to low-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.

- **The State Bar Lawyer Referral and Information Service** (LRIS) refers people to Montana lawyers who might be able to help. Call LRIS at 1-406-449-6577.

- **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at www.lawlibrary.mt.gov. Or you can contact a Reference Librarian at (800) 710-9827 or by email at mtlawlibrary@mt.gov.

Please take a short survey about these forms.

When you are done with the form, please take our online survey at this address: http://www.surveymonkey.com/s.aspx?sm=fCBbhbbJj4MdOWw_2fjsCjlg_3d_3d



Or you can access the survey on the "Forms" page of the State Law Library website, at www.lawlibrary.mt.gov. Your answers will help make the form better. Thank you!

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_____
(*your name*)

_____
(*your mailing address*)

_____
(*city*) (*state*) (*zip*)

_____
(*your phone number*)
Defendant Pro Se

In the (*check **one** box and fill in the blank for the court where you are filing*)**:**

☐ **Justice Court of _____County,**
(*county of court where you are filing*)

☐ **City Court of _____,**
(*city of court where you are filing*)

☐ **Municipal Court of _____,**
(*city of court where you are filing*)

☐ **____ Judicial District Court of _____County,**
(*number of district*) (*county of court where you are filing*)

State of Montana

_____, (*name of your past tenant*) Plaintiff, v. _____, _____, _____, (*name(s) of Defendant(s) in Complaint*) Defendant(s).	Cause No.: _____ Dept. No.: _____ (*filled out by court*) **Answer**

I am a Defendant in this case. I answer the Plaintiff's Complaint as follows:

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1. I admit the following parts of the Complaint (*list the paragraph numbers or write the parts of the Complaint that are true*): _____

_____

_____

2. I deny the following parts of the Complaint (*list the paragraph numbers or write the parts of the Complaint that are not true*): _____

_____

_____

3. I deny the following parts of the Complaint because I do not have enough information to admit or deny them (*list the paragraph numbers or write the parts of the Complaint that you do not know about*): _____

_____

_____

4. I deny everything I did not admit.

I also have the following defense(s) (*check **all** boxes that are true*):

☐ It has been less than 30 days since the tenant moved out of the rental, and section 70-25-202, MCA, gives me 30 days to notify tenant about the deposit. There were (*check **all** boxes that are true*):

- ☐ Damages to the rental
- ☐ Cleaning left undone
- ☐ Unpaid rent
- ☐ Unpaid utilities

☐ It has been less than 10 days since the tenant moved out of the rental, and section 70-25-202(2), MCA, gives me 10 days to notify tenant about the deposit when there were no damages to the rental, cleaning left undone, unpaid rent, or unpaid utilities.

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☐ I gave the tenant written notice of the cleaning that needed to be done before I charged for cleaning the rental, as is required by section 70-25-201(3), MCA. The tenant failed to complete the cleaning. A copy of the notice is attached to this Answer (*attach a copy of the notice of cleaning that you gave to the tenant*).

☐ The tenant moved without giving me advance notice of moving. Section 70-25-201(3), MCA, allows me to deduct cleaning charges from the deposit without first sending the tenant a 24-hour notice.

Request for Relief

I respectfully ask the Court:

1. That the Plaintiff take nothing by the Complaint; and

2. For any other relief that is proper, including awarding court costs to me, if I paid any court costs.

Date: _____ (*mm/dd/yyyy*)

Signature: _____ (*sign your name*)

Printed Name: _____ (*print your name*)

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Proof of Service

(*to be filled out and signed in front of a notary public*)

STATE OF MONTANA

:ss

County of _____
(*county where you sign this*)

I state that I sent, or am sending as soon as I have filed my Answer, a full and complete copy of my Answer to the Plaintiff by first class mail, postage prepaid, on _____.
(*date you mailed or are mailing the Answer to your past tenant*)

This is the address I am using to mail a copy of my Answer to the Plaintiff:

Name: _____
(*Plaintiff's name*)

Address: _____
(*Plaintiff's address*)

_____
(*city*) (*state*) (*zip*)

Signature: _____
(*sign your name*)

Printed Name: _____
(*print your name*)

(*rest of form to be filled out by notary public*)

SIGNED AND SWORN to before me this _____ day of _____, 20____ by _____.

(SEAL)

_____
Name (*printed*): _____
Notary Public for the State of Montana.
Residing at _____
My Commission Expires_____

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In the (*check **one** box and fill in the blank for the court where you are filing*)**:**

☐ **Justice Court of _____County,**
(*county of court where you are filing*)

☐ **City Court of _____,**
(*city of court where you are filing*)

☐ **Municipal Court of _____,**
(*city of court where you are filing*)

☐ **____ Judicial District Court of _____County,**
(*number of district*) (*county of court where you are filing*)

State of Montana

_____, (*name of tenant*) Plaintiff, v. _____, _____, _____, (*names of Defendant(s) in Complaint*) Defendant(s).	Cause No.: _____ Dept. No.: _____ (*filled out by court*) **Judgment**

(*Rest of form to be filled out by court*.)

A Complaint for return of a security deposit was filed in this case. The final hearing was held on:_____. Defendant _____ appeared in person, and Plaintiff:

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☐ Appeared in person ☐ Did not appear.

☐ With counsel.

☐ Without counsel.

Based on the testimony and evidence presented, the court makes the following:

Findings of Fact:

1 The Plaintiff rented the Defendant's property located at this address:

_____

_____.

2 Plaintiff paid Defendant a security deposit of $ _____.

3 The rental agreement between Plaintiff and Defendant ended on this date:

_____.

4 More than 30 days have passed since the rental agreement ended.

5 The Defendant:

☐ Has not returned the security deposit to the Plaintiff.

☐ Has returned $_____ of the security deposit, but this is not the correct amount.

☐ Has returned $_____ of the security deposit but did not give the Plaintiff a list of deductions from the security deposit.

☐ Has returned the security deposit to the Plaintiff.

Conclusions of Law:

1 The Defendant:

☐ Owes the Plaintiff the full amount of the security deposit because the Defendant failed to provide the Plaintiff with a written list of cleaning

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and damage charges within 30 days after the Plaintiff's tenancy ended, and there were no deductions for anything other than cleaning and damage, in violation of Montana Code Annotated §§ 70-25-203 and -204.

☐ Owes the Plaintiff a partial refund of $_____. Here is how this refund was calculated:_____
_____
_____.

☐ Does not owe the Plaintiff any part of the security deposit because all of the Defendant's deductions were proven and allowed under Montana Code Annotated § 70-25-201.

Order:

This Court Orders that:

☐ The Defendant must pay the Plaintiff $_____ as indicated above, and the costs of suit in the amount of $_____, for a total judgment of $_____, together with interest at the rate of ten percent (10%) per annum from the date of this judgment until paid in full. Plaintiff is granted the right of execution on the judgment.

☐ The Plaintiff takes nothing by this lawsuit.

☐ Other:_____
_____
_____.

This is a final judgment.

Date signed:_____ Judge: _____

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