



# TENANT

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## RESOURCE CENTER

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## Earnest Money Deposits

### Applicable Laws

[Wisconsin Statutes ch. 704](#)

[Wisconsin Administrative Code ATCP ch. 134](#)

[Madison General Ordinance ch. 32](#)

### Definition

An earnest money deposit is a payment from a *prospective tenant* (an applicant) to the landlord around the time of applying for a rental unit. It is money given *before* entering into a rental agreement. The law defines an earnest money deposit as the “total of any payments or deposits . . . given by a prospective tenant to a landlord in return for the option of entering into a rental agreement in the future, or for having a rental agreement considered by a landlord.” ATCP 134.02(3).

Earnest money deposits are distinct from security deposits. They are sometimes referred to as an “application fee.” But the landlord must comply with the laws about earnest money deposits even if called an application fee.

### Receipt

Landlords are required to provide a written receipt to a person who pays an earnest money deposit. The only exception is if the applicant paid by check, the check includes a note that it is for an earnest money deposit, and the applicant does not request a receipt. ATCP 134.03(2), MGO 32.06(3).

# What Happens With the Earnest Money Deposit

Depending on the next steps, the landlord must refund, credit to rent or a security deposit, or withhold (keep) the earnest money deposit. ATCP 134.05(2)-(3).

The full earnest money deposit must be **refunded** (by first-class mail or delivery) to the applicant by the end of the next business day after any of the following:

- The landlord rejects the application
- The applying tenant withdraws their application *before* the landlord makes a decision about whether to approve the application
- The landlord does not approve the application three business days after accepting the earnest money deposit, or if agreed to by the landlord and applicant in writing, a later time period of up to 21 days.

The landlord must **refund or credit** the earnest money deposit to rent or a security deposit if the landlord approves the application.

The landlord may **withhold** the amount of the earnest money deposit to cover the landlord's actual costs and damages if the applicant decides not to rent the unit after the landlord accepts their application. However, the landlord must attempt to mitigate their damages (meaning try to find another tenant to rent the unit) if they are withholding an amount to cover lost rent. The landlord may not withhold the deposit if they changed the terms of the rental agreement from the original terms offered.

**NOTE:** If the landlord refunds the earnest money deposit, they may withhold the amount to cover the credit check fee (actual costs up to \$25) and the background check fee (actual costs up to \$25 and can only be charged for residents outside of Wisconsin).

### Chart showing this information

<b>Next Step After Giving Landlord Earnest Money Deposit</b>	<b>Legal Requirements for What Landlord Must Do With the Deposit</b>
Landlord rejects application	Refund deposit the next business day (may withhold lawfully charged credit check and/or background check fees)
Tenant withdraws application before landlord makes decision about application	Refund deposit the next business day (may withhold lawfully charged credit check and/or background check fees)
Landlord does not approve within application 3 business days (or if agreed to in writing, up to 21 days)	Refund deposit the next business day (may withhold lawfully charged credit check and/or background check fees)
Landlord approves the application	Refund the deposit  OR  Credit the deposit to a security deposit or rent  (landlord may withhold lawfully charged credit check and/or background check fees)
Tenant decides not to rent the unit after landlord approves	Withhold an amount of the deposit to cover the actual costs and damages incurred (subject to mitigation if covering lost rent)