



CHAPTER

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SECURITY
DEPOSIT

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Security Deposit

NEGOTIATE 12 KEY POINTS IN SECURITY DEPOSIT CLAUSE

Although leases provide remedies for many types of breaches, it can be hard to collect money later from an erstwhile tenant. Two major financial issues for owners are lease defaults and damage to space. If you've dealt with one or both of these potentially very expensive issues in the past, you know the importance of having both a security deposit amount large enough to cover expensive problems and a clause in the lease that will protect you from having to spend your own money rectifying them.

But be prepared for a tough negotiation—many tenants will fight hard to not have large sums of money in your possession that are technically not benefitting them in any way, when they could be using or investing that cash themselves. Others might have difficulty coming up with the cash for a deposit and fear that they'll lose it if they have to go dark, so they'll try to negotiate the lowest possible deposit. Here's what you need to know about negotiating a security deposit clause that's in your best interest.

Understand Essential Security Deposit Provisions

As with many leasing issues, negotiations will depend largely on the type of tenant you're dealing with. For example, be aware that big, national tenants with good credit may refuse to give you a security deposit. You may not have much of a choice in that scenario, but you should insist on get-

ting one from smaller franchised and local tenants. Make sure that, like our *Model Lease Clause: Spell Out How Tenant's Security Deposit Will Be Handled*, your security deposit clause includes the following important points:

Key Point #1: Tenant must pay deposit at lease signing. Require the tenant to pay the security deposit when it signs the lease [Clause, par. a]. Try to get it even sooner—when the tenant accepts the letter of intent. Either way, don't agree to let the tenant give you the security deposit at a later point in time after it's already occupying the space, or after you've finished any buildouts. By that time, you'll have lost some of your negotiating power on an important issue that the tenant will fight for.

Key Point #2: Access to deposit will be triggered by any tenant default. Say in the clause that you can access the security deposit whenever the tenant defaults—whether it's a monetary or non-monetary default [Clause, par. b]. But expect the tenant to insist that you agree to give it notice and a chance to cure—that is, fix—the violation before you can access the security deposit.

A savvy tenant may object to letting you access the security deposit if it commits a non-monetary default—especially a minor one—because it's difficult to place a value on non-monetary defaults. As a compromise, ask the tenant to agree that you can access the security deposit for monetary defaults and only non-monetary important “material” defaults.

Key Point #3: Reasons for applying deposit. To avoid arguments with a tenant about the circumstances under which the security deposit can be applied, get the right in the lease to apply the security deposit to the following:

- Any unpaid amounts the tenant owes you under the lease, such as base rent or additional rent;
- Any payments that the tenant fails to make to others, as required under the lease, such as insurance premiums;
- Any loss or damages you suffer as a result of any tenant default—for example, a rodent problem resulting from the tenant’s failure to throw out its garbage; and
- Costs you incur in connection with taking back the space early, such as attorney’s fees and reletting costs [Clause, par. b].

Key Point #4: Deposit won’t affect remedies. Protect your right to draw from the deposit at your discretion when the tenant defaults under its lease. Make it clear that drawing on the security deposit isn’t a prerequisite to resorting to your lease remedies (such as suing for damages or evicting the tenant) [Clause, par. c]. These terms will stop the tenant from arguing that you must sue it before drawing from the deposit. And they will ensure that you can resort to your lease remedies without losing your right to draw from the deposit later. That way, the tenant can’t argue that by, for example, filing a lawsuit against it, you gave up your right to draw from the deposit.

Consider that it may make more sense for you to draw from the security deposit than to take other legal action against the tenant in the following situations: if you’re having cash-flow problems and need money immediately; if the tenant is desirable but just suffering from a temporary financial setback; or if you’re worried that a lawsuit against a tenant would give potential buyers and lenders a bad impression of your building or center.

Key Point #5: Deposit isn’t cap on damages. If you discover that the security deposit ends up not being enough to cover the damages the tenant caused, you’ll want to be able to sue it for the difference. Protect your right to sue for the balance of what the tenant owes you after you have deducted its security deposit by clarifying in the clause that the security deposit isn’t a cap on your damages.

And specify that the security deposit is not a preset amount that the tenant has agreed to pay you as its sole damages if it violates the lease [Clause, par. d]. That way, the tenant won’t be able to argue that the security deposit is the full amount of damages you can collect for any lease violation.

Key Point #6: Deposit isn’t advance payment of rent. Sometimes departing tenants think that they can use the security deposit to pay their last month’s rent. State in the clause that the security deposit isn’t an advance payment of rent [Clause, par. e]. You need this protection because you never know what kind of damage a tenant will do to your space during its tenancy, and then move out, leaving you without funds to fix the space.

Key Point #7: Tenant must replenish drawn deposit money. Say in the clause that if you draw on some or all of the security deposit during the lease, the tenant must replenish the deposit to its original amount. Otherwise, there may not be enough left in the deposit to protect you. Set a replenishment deadline—for example, within five days after your demand. Be sure to describe the replenishment amount as “additional rent” so that you can charge the tenant late fees and interest if the replenishment amount isn’t paid on time. Also, say that failure to replenish the security deposit will be considered a lease default [Clause, par. f].

Key Point #8: Tenant must fully comply with lease to get back deposit. Don’t simply agree to return the security deposit as soon as the lease ends. Require the tenant to fully comply with the terms and conditions of the lease in order to get back its deposit. That way, you’ll be able to keep part or all of the deposit if the tenant fails to: pay all of the rent and any other charges—such as operating expenses—and all third-party invoices relating to the space (such as utility charges); repair any damage it caused to the space; and return the space to you in the condition required by the lease. It’s crucial to specify that you—not the tenant—will make the determination of whether it met the conditions [Clause, par. g].

Key Point #9: When deposit must be returned. Give yourself time after the lease ends to return any unused portion of the security deposit—for example, 20 days to 60 days after the lease ends—if the tenant has complied with the lease terms and conditions [Clause, par. g]. Be prepared for the tenant to negotiate to recoup its money as fast as possible.

Model Lease Clause: Spell Out How Tenant's Security Deposit Will Be Handled

The following security deposit clause contains key points about how to effectively hold, spend, and return a cash security deposit you collect from a tenant. To get maximum security deposit protection when collecting one from a tenant, ask your attorney about adapting this clause for your lease.

SECURITY DEPOSIT

- a. Payment of Security Deposit.** Tenant shall, upon execution of this Lease, deposit with Landlord as security for the faithful performance and observance by Tenant of the terms, provisions, covenants, and conditions of this Lease, and any modification, extension, or renewal thereof, the sum of \$[*insert amt.*] (such security deposit shall hereafter be called the "Security").
- b. Application of Security.** If Tenant defaults in its payment of Rent or performance of any of its other obligations under this Lease, and any renewals or extensions thereof, Landlord may, at its sole option, whether before or after enforcing its remedies against the Tenant under Clause [*insert # of remedies clause*] hereof, retain, use, or apply the whole or any part of the Security to the extent required for payment of any:
- (i) Base Rent;
 - (ii) Additional Rent;
 - (iii) Any other amounts Tenant is obligated to pay under the Lease;
 - (iv) Any amount that Landlord may expend or may be required to expend by reason of Tenant's Default of this Lease;
 - (v) Loss or damage that Landlord may suffer by reason of Tenant's default, including, without limitation, any damages incurred by Landlord or deficiency resulting from the reletting of the Premises, whether such damages or deficiency accrues before or after summary proceedings or other reentry by Landlord; or
 - (vi) Costs incurred by Landlord in connection with the cleaning or repair of the Premises upon expiration or earlier termination of this Lease.
- c. Remedies Not Affected by Security.**
- (i) In no event shall Landlord be obligated to apply the Security. In addition, the application of the Security is not a prerequisite to Landlord's right to resort to its remedies against Tenant under Clause [*insert # of remedies clause*] hereof or by law or in equity; and
 - (ii) Landlord's right to resort to its remedies under Clause [*insert # of remedies clause*] hereof, including, but not limited to, its right to bring an action or special proceeding to recover damages, or to obtain possession of the Premises, whether before or after Landlord terminates this Lease for nonpayment of Rent or for any other reason, or by law or in equity, shall not be affected by Landlord's decision not to apply the Security.
- d. Security Does Not Limit Damages.** The Security shall not be a limitation on Landlord's damages or other rights and remedies available under this Lease, or at law or equity; nor shall the Security be a payment of liquidated damages.
- e. Security Is Not Advance on Rent.** The Security shall not be an advance payment of the Rent.
- f. Restoration of Used Portion.** If Landlord uses, applies, or retains all or any portion of the Security, Tenant shall restore the Security to its original amount within [*insert #, e.g., 5*] days after written demand from Landlord. Any amount required to be restored by Tenant under this Section shall constitute additional rent. Tenant shall be in Default of this Lease if Tenant fails to timely comply with this Paragraph.

(continued)

CLAUSE: SECURITY DEPOSIT (continued)

- g. Return of Security.** Subject to Paragraph h hereof and provided that Landlord has determined, in its sole discretion, that Tenant has fully and faithfully complied with all the terms, provisions, covenants, and conditions of this Lease, and any modification, extension, or renewal thereof, Landlord shall return any unused part of the Security to Tenant within *[insert #, e.g., 60]* days after the later of: (i) the expiration or earlier termination of the Lease; or (ii) the date Tenant has fully vacated the entire Premises.
- h. Delivery of Security to Assignee.** If Landlord, in its sole discretion, has sufficient evidence that the Security has been assigned to an assignee of this Lease, Landlord shall deliver the Security to the assignee and Landlord shall thereupon be released by Tenant from all liability for the return of the Security to Tenant.
- i. Sale or Lease of Landlord's Interest.** In the event of a sale or foreclosure of the Property or the *[Building/ Center]* or any part thereof which includes the Premises, or a lease of the *[Building/ Center]*, Landlord shall have the right to transfer the Security to the purchaser or tenant, as the case may be, and Landlord shall thereupon be released by Tenant from all liability for the return of the Security; and Tenant agrees to look solely to the purchaser or tenant for the return of the Security.
- j. Security Does Not Make Lease Effective.** The acceptance by Landlord of the Security submitted by Tenant shall not render this Lease effective unless and until Landlord delivers to Tenant a fully executed copy of this Lease.

Key Point #10: Deposit can be returned to assignee.

Generally, the security deposit will be returned to the tenant. However, if the tenant assigned the lease, the assignee may claim that it's entitled to the deposit. But the fact that the tenant assigned its lease doesn't necessarily mean it assigned the security deposit, too.

To avoid getting caught in a battle between an irate tenant and assignee over who's entitled to the security deposit—and getting sued if you hand over the money to the wrong party—require the assignee to provide sufficient evidence that it is entitled to the deposit.

Also say that you have the right to give the deposit to either the assignee or the tenant, as you choose. Specify that you'll be released from all liability for the return of the security deposit to the tenant if you return the deposit to the assignee [Clause, par. h].

Key Point #11: Deposit can be transferred if building/center is sold. If you decide to sell your building or center before the tenant's lease ends, you'll want to transfer the security deposit to the new owner (or to the lender after a foreclosure). Make sure the lease gives you this right. And ensure that after the transfer, you'll have no further responsibility for

the deposit and that the tenant must look only to the buyer for the security deposit's return at the end of the lease [Clause, par. i]. Otherwise, you'll remain responsible for the security deposit. Expect the tenant to demand some assurance that the buyer will assume responsibility for the security deposit.

Key Point #12: Payment of security deposit doesn't make lease effective. There may be times when you'll decide not to sign the lease after you've collected the security deposit. If this happens, the tenant might argue that your acceptance of the security deposit was an acceptance of the lease. To prevent such an argument, say in the clause that your acceptance of the security deposit from the tenant won't put the lease into effect and that the lease won't become effective until you sign it and deliver it to the tenant [Clause, par. j].

To attract tenants, you may have to be flexible and willing to compromise with regard to the security deposit. Before agreeing to forgo collecting a cash security deposit, explore other alternatives, such as getting a letter of credit, security interest in its personal property, or personal guaranties or indemnities.

GET RIGHT TO INCREASE SECURITY DEPOSIT AFTER KEY EVENTS

Security deposits are essential for commercial real estate owners to protect their interests when leasing space to tenants. That's because a security deposit can be used in a number of ways to minimize the effect when a tenant doesn't meet its lease obligations. But a security deposit amount that seems adequate at the start of the lease may not cover damages from a tenant's breach later. For example, you may agree during the lease to let the tenant change its use, and discover only after the tenant moves out that this change caused damage to the space; if the security deposit is too small, it won't cover the full cost of the repairs.

Leaving yourself room for security deposit flexibility is key, so that you don't discover too late that the amount of the security deposit is too small to protect you. An airtight security deposit clause that will serve your interest for the duration of the lease should, like our *Model Clause: Make Security Deposit Fit Needs Throughout Lease Term*, include eight potentially costly events that would allow you to increase the tenant's security deposit.

Specify Game Changers in Lease

Typically, there are eight events that would justify a security deposit increase. Get the right to an increase if any of the following occurs:

#1: Change in use. At some point, the lease might be amended because the tenant wants to make a "material"—that is, important—change to its use clause [Clause, par. a(i)]. For instance, instead of an accounting office, the tenant wants to use the space for a print shop. But that new use might result in additional damage to the space (for example, the tenant's heavy printing equipment may cause excessive wear and tear to the floors). So you may need extra money in the security deposit to repair the damage. The key is to make sure that you alone get the right to determine whether the use change is material.

#2: Alteration of space. It's not uncommon for a tenant to perform alterations to the space [Clause, par. a(viii)]. You'll need extra money in the security deposit in case any construction liens are filed on the space or its fixtures or if you need to fix any damage to the space caused by the work.

#3: Shift in financing. The tenant could also request a transfer of the lease or a sublet to a financially weaker party. When a tenant requests your approval of an assignment or a sublet, and you determine that its prospective assignee or subtenant is financially weaker than the tenant, you need to protect yourself in the event that you approve the change [Clause, par. a(ii)]. You'll want extra money in the security deposit because a financially weaker assignee or subtenant is more likely to fail to cover all of its financial obligations to you.

#4: Drop in tenant's net worth. You discover that the tenant's net worth drops below an amount that's acceptable to you [Clause, par. a(iii)]. If the tenant's net worth drops, it may be a sign that the tenant is having financial problems. To alleviate your concerns about its financial stability, the tenant should give you more security. Then you have more protection if the tenant later becomes financially shaky.

#5: Drop in guarantor's net worth. If you discover that the guarantor's or the indemnitor's net worth drops below an amount that's acceptable to you—or the guarantor or the indemnitor goes bankrupt, violates the guaranty or indemnity, or dies—that should also trigger an increase [Clause, par. a(iv)]. Because the purpose of the guaranty or indemnity is to provide additional security, an increased security deposit can act as a substitute for the guaranty or indemnity if the guarantor or indemnitor can no longer be relied upon.

#6: Chronic lease violations. If the tenant violates the lease more than once during a 12-month period, there should be consequences. Even if the tenant cures—that is, fixes—its lease violations, increasing the security deposit will show the tenant that violations will cost it. That may deter such behavior in the future. Start out by saying that a second violation within 12 months triggers the increase [Clause, par. a(v)]. (For a strong tenant or a tenant that will be valuable to your center, consider agreeing to a three-default trigger.)

Don't give in if the tenant argues that your right to increase the security deposit should be triggered only if the tenant doesn't cure the lease violation. This stops the tenant from repeatedly violating the lease and then curing the violation before you can do anything. Also, don't limit the provision to only

material violations; you and the tenant could end up arguing over which violations are material and which aren't.

#7: Expanding space. If you give the tenant an option to expand its space and it exercises the option, say that your security deposit should likewise expand [Clause, par. a(vii)]. Otherwise, the security deposit may be inadequate to protect you.

#8: Lease renewal. If you give the tenant an option to renew and it exercises the option, make sure you increase the security deposit in proportion to any renewal rent hike [Clause, par. a(vi)]. Otherwise, the security deposit may be inadequate to protect you.

Understand Options for Calculating Increase

How much should the security deposit increase? When deciding on how much to increase the security deposit in the previous situations, you have two options to consider.

Option #1: Unlimited increase. The first is to specify that it will be an unlimited increase. Start off your negotiations with the tenant with this hardball approach. That is, don't put a specific dollar amount increase in the lease. Instead, get the right to increase the security deposit as much as you see fit if any of the eight events occurs. To do this, say in the clause that you can increase the security deposit by an amount that you've determined, in your sole discretion, is necessary to protect your interests [Clause, par. b].

Option #2: Limit an increase. The second approach is to limit the increase, which savvy tenants will expect you to do because there are no controls on how much you could increase the security deposit. If the tenant demands some limit on the increase, offer this compromise: After a triggering event, you'll increase the security deposit to a set amount; three times the original security deposit or three months' minimum rent, whichever is higher, is reasonable.

When a tenant tries to negotiate a smaller increase, keep in mind that you'll want enough security to

cover lease violations, rent or space increases, or extra wear and tear to the space if there's a use clause change or alterations damage. After all, you're the one taking on the risk if you agree to an amount that won't cover those events.

- ◆ **PRACTICAL POINTER:** If you use the hardball approach to calculate the increase, as a precaution, remember to ask your attorney if the amount of the security deposit increase that you select will be enforceable. Otherwise, for example, you and the tenant could later get into a dispute over your demand for a security deposit increase, and a court could rule that your increase is so high that it's an unenforceable penalty.

Set Time for Payment of Increase

When you're negotiating how quickly the tenant must pay the security deposit increase, try to negotiate immediate payment. Start off by saying in your clause that the tenant must pay the security deposit increase immediately, upon your demand [Clause, par. b]. If the tenant argues that it's unreasonable to require immediate payment, you can compromise by giving the tenant a few days to make the payment. Ten days is a reasonable amount of time.

There are two options for what form the security deposit increase may be paid: cash or letter of credit. So how should you decide? You may want to require the tenant to pay you in cash if the existing security deposit is in cash. But keep in mind that if a tenant goes bankrupt, you'll have easy access to a letter of credit, but not to a cash security deposit.

Get Termination Right for Refusal to Pay

Make sure that you have the right to terminate the lease if the tenant doesn't promptly pay the security deposit increase. This will give the tenant a strong incentive to pay the security deposit on time. Have the lease terminate within a set time—for example, 10 days—after you notify the tenant of the termination. Also, require the tenant to move out of the space within that same time period and pay rent until the lease terminates [Clause, par. c].

Model Lease Clause: Make Security Deposit Fit Needs Throughout Lease Term

To protect yourself from being on the hook for expenses that a tenant's inadequate security deposit won't cover, you can draft your lease to include eight events that should trigger an increase in the security deposit. Show this clause to your attorney before using it in your leases.

LANDLORD'S RIGHT TO INCREASE SECURITY DEPOSIT

- a. Right to Increase Security Deposit.** Without limiting Landlord's other rights and remedies provided for in this Lease or at law or equity, Landlord shall have the right to increase the Security Deposit upon the occurrence of any of the following events:
- (i) Clause *[insert # of use clause]* of this Lease is at any time amended to accommodate a material change, as determined by Landlord in its sole and absolute discretion, in the permitted uses initially specified therein;
 - (ii) Tenant requests Landlord's approval of an assignment or sublet to an entity whose creditworthiness, economic strength, or financial status, in Landlord's sole and absolute discretion, is weaker than the creditworthiness, economic strength, or financial status of Tenant at the time of such request;
 - (iii) Landlord determines, in its sole and absolute discretion, that the creditworthiness, economic strength, or financial status of Tenant falls below a level then acceptable to Landlord;
 - (iv) Landlord determines, in its sole and absolute discretion, that the creditworthiness, economic strength, or financial status of Guarantor or Indemnitor falls below a level then acceptable to Landlord; or a bankruptcy proceeding is filed by or against Guarantor or Indemnitor; or Guarantor or Indemnitor breaches the Guaranty or Indemnity; or, if Guarantor or Indemnitor is an individual, Guarantor or Indemnitor dies;
 - (v) Tenant is in default under this Lease more than *[insert #, e.g., 2]* times within any twelve (12)-month period, irrespective of whether or not such default is cured;
 - (vi) Tenant exercises its option to renew this Lease or its option to extend the Term in accordance with Clause *[insert # of renewal/extension option]* hereof;
 - (vii) Tenant exercises its option to expand the Premises in accordance with Clause *[insert # of expansion option]* hereof; or
 - (viii) Tenant, or its contractors or agents, performs alterations at the Premises.
- b. Amount of Increase.** If any of the events listed in Paragraph a hereof occur, then Landlord may increase the Security Deposit by an amount that Landlord determines, in its sole and absolute discretion, is necessary to protect its interests. Such increase shall constitute additional rent under the Lease and shall be paid by Tenant, immediately upon demand by Landlord.
- c. Landlord May Terminate Lease if Tenant Fails to Comply.** If Tenant fails to comply with the provisions of Paragraph b hereof, such failure shall be a material default of this Lease and Landlord may, without liability, terminate this Lease on written notice to Tenant, in which event, the Term and the tenancy hereby created shall terminate on the *[insert #, e.g., 10th]* day after such notice is given (the "Termination Date") and Tenant shall within such *[insert #, e.g., 10]* -day period vacate the Premises and surrender them to Landlord in the state required under this Lease, with Landlord having the right, at Tenant's sole expense, to reenter and repossess the Premises discharged of this Lease and to expel all occupants and to remove all property therefrom. All Rent shall be due and payable by Tenant without reduction or abatement until the Termination Date.

PROTECT YOURSELF WHEN LETTING TENANTS TAP SECURITY DEPOSIT TO PAY RENT

The tenant security deposit is the piggy bank that you don't want to break open while the lease remains in effect, unless it's absolutely, positively necessary. And with COVID-19 cases resurging and the prospects of business shutdowns looming, we may be getting close to that absolutely, positively necessary point.

As many landlords learned during the first wave of the COVID-19 outbreak in spring, applying cash from the security deposit to some or all of a tenant's unpaid rent is one of the things you can do to ride out the crisis until things get back to some semblance of normal. But if you do opt for the security deposit solution, make sure you get the tenant to give you the appropriate legal protections. Here's how to do that.

LEGAL SITUATION

The legal game plan is to ensure the tenant repays the security deposit drawdown amount as soon as reasonably possible and preserve your remedies in case it doesn't. Hopefully, the below provisions for accomplishing these objectives are already in your current lease. If not, you may have to negotiate an amendment setting out new rules regarding the security deposit. In either situation, there are six protections a landlord needs. We'll review those protections and give you a *Model Lease Clause: Spell Out Tenant's Duty to Replenish Security Deposit* that incorporates them, which you can adapt and use in your leases.

1. Tenant Duty to Replenish

Make sure the lease or lease amendment requires the tenant to replenish all of the money you draw from the security deposit to cover the unpaid rent [Clause, par. a].

2. Replenishment Amount

Rather than simply restoring the security deposit to the original amount, landlords may want to ask the tenant to pay additional funds as consideration for allowing it to use the security deposit to pay rent [Clause, par. a].

3. Replenishment Date

Demanding immediate replenishment defeats the purpose of allowing a cash-starved tenant to use the security deposit to pay rent. By the same token, the longer the security deposit remains in a reduced state, the greater the landlord's risks. So, the sides will have to meet somewhere in the middle so that the tenant gets the time it needs to repay without unduly exposing the landlord to peril during these times of great financial uncertainty. One possibility is to allow the tenant to replenish the security deposits in installments over time [Clause, par. a].

4. Failure to Pay Is Material Default

To ensure recourse to all necessary lease remedies, make it clear that the tenant's failure to repay the depleted security deposit amount on time constitutes a material default under the lease [Clause, par. b].

5. Repayments Are 'Additional Rent'

Make it clear that repayments constitute "additional rent" so you can charge late fees, interest, and delinquency services charges. This advice comes directly from a New York attorney who was involved in a case where a tenant made a substantial drawdown of its security deposit to pay rent and didn't replenish the proceeds on time. The landlord charged the tenant late fees, interest, and services charges, but the tenant claimed it didn't have to pay them because the replenishment payment wasn't "additional rent." "A clarification to the late fees and interest clause stating that these charges apply to an unpaid security deposit supplement would have done a lot to prevent this dispute," the attorney relates [Clause, par. b].

6. Landlord Retains Other Remedies

Specify that exercising your right to charge the tenant late fees, interest, and delinquency services charges is a supplement rather than a substitute to your other lease and legal rights and remedies. Also clarify that in exercising those rights, you are in no way extending the deadline due date for the tenant to replenish the security deposit [Clause, par. c].

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 #, 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 #, 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 #, 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: (i) 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 (ii) 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.