

1 HOUSE BILL 331

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Elizabeth "Liz" Thomson

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10 AN ACT

11 RELATING TO PROPERTY; DEEMING LANDLORDS TO HAVE COMPLIED WITH
12 THE REQUIREMENT TO RETURN TENANT DEPOSITS AND ITEMIZED
13 STATEMENTS OF DEDUCTION BY MAILING THE STATEMENT AND ANY
14 PAYMENT BY CERTIFIED MAIL.

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 47-8-18 NMSA 1978 (being Laws 1975,
18 Chapter 38, Section 18, as amended) is amended to read:

19 "47-8-18. DEPOSITS.--

20 A. An owner is permitted to demand from the
21 resident a reasonable deposit to be applied by the owner to
22 recover damages, if any, caused to the premises by the resident
23 during [~~his~~] the term of residency.

24 (1) Under the terms of an annual rental
25 agreement, if the owner demands or receives of the resident

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1 [such] a deposit in an amount greater than one month's rent,
2 the owner shall be required to pay to the resident annually an
3 interest equal to the passbook interest permitted to savings
4 and loan associations in this state [~~by the federal home loan~~
5 ~~bank board~~] on such deposit.

6 (2) Under the terms of a rental agreement of a
7 duration less than one year, an owner shall not demand or
8 receive from the resident [such] a deposit in an amount in
9 excess of one month's rent.

10 B. It is not the intention of this section to
11 include the last month's prepaid rent, which may be required by
12 the rental agreement as a deposit as defined in Subsection [D]
13 E of Section 47-8-3 NMSA 1978. Any deposit as defined in
14 Paragraph (1) of Subsection A of this section shall not be
15 construed as prepaid rent.

16 C. Upon termination of the residency, property or
17 money held by the owner as deposits may be applied by the owner
18 to the payment of rent and the amount of damages [~~which~~] that
19 the owner has suffered by reason of the resident's
20 noncompliance with the rental agreement or Section 47-8-22 NMSA
21 1978. No deposit shall be retained to cover normal wear
22 and tear. In the event actual cause exists for retaining any
23 portion of the deposit, the owner shall provide the resident
24 with an itemized written list of the deductions from the
25 deposit and the balance of the deposit, if any, within thirty

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1 days of the date of termination of the rental agreement or
2 resident departure, whichever is later. The owner is deemed to
3 have complied with this section by mailing by certified mail
4 the statement and any payment required to the last known
5 address of the resident. Nothing in this section shall
6 preclude the owner from retaining portions of the deposit for
7 nonpayment of rent or utilities, repair work or other
8 legitimate damages.

9 D. If the owner fails to provide the resident with
10 a written statement of deductions from the deposit and the
11 balance shown by the statement to be due, within thirty days of
12 the termination of the tenancy, the owner:

13 (1) shall forfeit the right to withhold any
14 portion of the deposit;

15 (2) shall forfeit the right to assert [~~any~~] a
16 counterclaim in [~~any~~] an action brought to recover that
17 deposit;

18 (3) shall be liable to the resident for court
19 costs and reasonable [~~attorneys'~~] attorney fees; and

20 (4) shall forfeit the right to assert an
21 independent action against the resident for damages to the
22 rental property.

23 E. An owner who in bad faith retains a deposit in
24 violation of this section is liable for a civil penalty in the
25 amount of two hundred fifty dollars (\$250) payable to the

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