



Add comment

Stephen Boerner

424 North New St

Bethlehem, PA 18018

October 14, 2024

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Luther J. Rollins, Jr.

Amarlu Enterprises

231 Government Ave. S.W., #3097

Hickory, NC 28603

Re: FORMAL DISPUTE OF SECURITY DEPOSIT CLAIM AND DEMAND FOR  
RETURN OF PERSONAL PROPERTY

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RT, FL 33711

There are no headings in this document.

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Your Notice purports to justify withholding my entire security deposit of \$4,500 based on an inspection allegedly conducted "on or about September 4, 2024." The Notice lists several claims of damage or issues with the property, which I will address individually in Section IV of this letter. However, before delving into the specific claims, it is necessary to address the overall deficiencies in your Notice and actions, which render your claim on my security deposit legally invalid.

Given the seriousness of these issues and the clear violations of Florida law, I request that you respond to this letter within 15 days of receipt, indicating your preferred option for resolution as outlined in Section VIII of this letter. Failure to respond within this timeframe may result in legal action to recover my security deposit and damages for unlawful retention of personal property.

### **III. Non-Compliance with Florida Statute §83.49(3)**

#### **A. Failure to Provide Proper Notice**

Your Notice fails to comply with Florida Statute §83.49(3)(a) in several critical aspects:

##### **1. Lack of Specificity and Itemization:**

Florida law requires that a landlord provide an itemized list of damages with specific costs associated with each item. Your Notice falls far short of this requirement. For example:

- a) You mention "damage to the walls of the premises" without specifying the location, extent, or nature of the damage.
- b) You claim "missing and damaged artwork, furnishings, and housewares inventory list items" without itemizing which specific items are missing or damaged.
- c) You allege "excessive garbage and trash" without detailing the amount, location, or cost of removal.

This lack of specificity makes it impossible for me to adequately assess or respond to your claims, which is the very purpose of the notice requirement under Florida law.

## 2. Use of Future Tense Language:

Your Notice uses speculative language about future costs, stating that "extensive cleaning will be required" and implying that repairs will be necessary. This use of future tense is improper under Florida law, which requires that a landlord provide actual costs incurred, not speculative future expenses.

Furthermore, this speculative language contradicts the fact that the property was listed for rent and available for viewings as of October 4, 2024, suggesting that any necessary cleaning or repairs were either minimal or had already been completed.

### 3. Absence of Supporting Evidence:

Your Notice fails to include any supporting documentation such as photographs, receipts, or invoices to substantiate your claims. This lack of evidence further undermines the validity of your claims and violates the spirit of transparency intended by Florida's security deposit laws.

### 4. Failure to Meet Statutory Requirements:

Florida Statute §83.49(3)(a) explicitly requires an itemized statement of the reasons and amounts for any claim against the security deposit. Your Notice does not include any breakdown of individual costs, making it impossible for me to determine whether the amounts claimed are reasonable or appropriate.

Legal Precedent:

The importance of specificity in security deposit claim notices has been upheld in Florida courts. In *Williams v. Edwards*, 642 So.2d 124 (Fla. 1st DCA 1994), the court held that a landlord's failure to provide specific reasons and amounts for claims renders the notice insufficient, entitling the tenant to the return of their deposit. Similarly, in *Durene v. Alcime*, 448 So.2d 1208 (Fla. 3d DCA 1984), the court emphasized that compliance with notice requirements is a condition precedent to a landlord's retention of any portion of the security deposit.

## B. Invalidity of Claims Due to Lack of Inventory List

Your Notice references "missing and damaged artwork, furnishings, and housewares inventory list items." However, this claim is invalid and unenforceable for the following reasons:

1. **No Specific Inventory List Provided:** Upon careful review of the lease agreement, I found no specific inventory list of the landlord's personal property (such as furnishings, artwork, or housewares) provided within the document. While the lease does refer to "all furnishings and personal property" as being included with the property, it does not itemize what those furnishings or personal property items are.

2. Absence of Separate Inventory Documentation: At no point during my tenancy was I provided with a separate inventory list detailing the specific items of furniture, artwork, or housewares that were considered part of the rental property.
3. Lack of Baseline for Comparison: Without an initial, itemized inventory, it is impossible to substantiate claims of missing or damaged items. There is no baseline against which to compare the condition of the property at the end of the tenancy.
4. Unreasonable Accountability: Holding me accountable for items that were never clearly defined or documented at the start of my tenancy is unreasonable and potentially unlawful.
5. Burden of Proof: The burden of proving the existence, condition, and value of any items claimed to be damaged or missing lies with you, the landlord. Without a detailed inventory list, you cannot meet this burden of proof.

#### Legal Precedent:

In *Johnson v. Baker*, 388 So.2d 1056 (Fla. 4th DCA 1980), the court held that without an inventory or evidence of the property's condition at the beginning of the tenancy, a landlord cannot prove that a tenant caused damages. This principle extends to claims of missing items as well.

Furthermore, in *Durene v. Alcime*, 448 So.2d 1208 (Fla. 3d DCA 1984), the court emphasized the importance of proper documentation in landlord-tenant disputes. The absence of a detailed inventory list significantly weakens any claim related to personal property items.

### C. Request for Disclosure of Security Deposit Details:

Pursuant to Florida Statute §83.49(2), and as included in the signed lease agreement on page 10 of 20, which requires landlords who own or manage five or more rental units to disclose the location and status of the security deposit within 30 days of receiving it, I hereby request that you confirm:

1. The number of rental units you own or manage in the state of Florida.
2. Whether my security deposit was placed in a separate bank account, and if so, whether the account is interest-bearing or non-interest-bearing.

This information is crucial to ensuring full compliance with Florida law and transparency in our landlord-tenant relationship.

### D. Pattern of Landlord Negligence and Tenant's Reasonable Actions



It is crucial to note that your failure to address maintenance issues began early in the tenancy and established a pattern of negligence that influenced my subsequent actions regarding property maintenance. As detailed in Addendum A, which provides a comprehensive timeline of maintenance requests and actions taken during the tenancy:

#### 1. Initial Maintenance Request Ignored:

On or about October 2023, at the early onset of the lease, I encountered a severely clogged kitchen sink drain, rendering the left portion of the two-bucket sink unusable. I promptly submitted a maintenance request regarding this issue.

#### 2. Tenant's Reasonable Response:

Given the urgency of the problem and your lack of response, I was forced to address the issue myself. Using my basic knowledge of clogged plumbing systems and a \$15 liquid solution, I successfully unclogged the drain and restored functionality to the sink.

#### 3. Established Pattern of Landlord Negligence:

This early instance of neglect set a precedent for how I had to handle future maintenance issues. Your demonstrated unwillingness to comply with your legal obligations to maintain the premises under Florida Statute §83.51 led me to take on necessary maintenance tasks to ensure the habitability of the property.

#### 4. Justification for Tenant's Actions:

The above situation explains and justifies my decision to address other maintenance issues throughout the tenancy, including the pruning of the jackfruit tree and other repairs you have questioned in your Notice. I understood that my maintenance needs were a low priority for you, which lowered my expectations for future support.

#### Timeline of Events:

Please refer to Addendum A for a detailed timeline of maintenance requests, follow-ups, and actions taken throughout the tenancy. This timeline is supported by email correspondence, text messages, and receipts, all of which are included in Addendum C.

This pattern of negligence not only violates Florida Statute §83.51 but also demonstrates a breach of the implied warranty of habitability. It provides context for my actions throughout the tenancy and should be considered when evaluating any claims against the security deposit.

## IV. Detailed Rebuttal of Your Claims

I will now address each of your claims individually:

### 1. Damage to the Walls of the Premises

Your claim: You allege damage to the walls without specifying the nature, location, or extent of the damage.

Response: I deny causing any damage to the walls beyond normal wear and tear. Without specific details or photographic evidence, it is impossible to assess the validity of this claim. Furthermore, Florida law (e.g., *Fipps v. Robinson*, 612 So.2d 689 (Fla. 1st DCA 1993)) establishes that tenants are not responsible for normal wear and tear.

### 2. Removal of Wood Cabinets, Shelving, Counters Without Prior Written Consent

Your claim: You allege unauthorized removal of fixtures.

Response: I acknowledge removing certain temporary fixtures that I installed for organizational purposes. I was prepared to restore the premises to its original condition or compensate for the alterations, but my attempts to discuss this matter with you went unanswered.

### 3. Excessive Garbage and Trash Left on the Premises

Your claim: You allege excessive garbage and trash without specifying the amount or location.

Response: Any trash present was due to a delay in garbage collection caused by a severe storm. All trash was placed in the designated area. I had arranged for additional trash removal services, which were canceled due to the storm. This situation was beyond my control and does not constitute negligence on my part.

#### 4. Spoiled Food Left in the Refrigerator

Your claim: You allege spoiled food in the refrigerator.

Response: Any remaining food items were minimal and did not cause damage to the appliance. Minor cleaning of appliances is typically considered part of the normal turnover process and does not warrant withholding from the security deposit.

#### 5. Missing and Damaged Artwork, Furnishings, and Housewares Inventory List Items

Your claim: You allege missing and damaged items without specifying which items.

Response: This claim is baseless and unenforceable for the following reasons:

a) No Inventory List Provided: As previously stated, no inventory list was ever provided, either within the lease agreement or as a separate document. The lease merely refers to "all furnishings and personal property" without itemization.

b) Lack of Specificity: Your claim fails to identify which specific items are allegedly missing or damaged, making it impossible for me to respond adequately.

c) No Baseline for Comparison: Without a detailed inventory at the start of the tenancy, there is no way to determine what items were present or their condition when I took possession of the property.

d) Burden of Proof: The onus is on you, as the landlord, to prove the existence, condition, and value of any items claimed to be damaged or missing. Without a detailed initial inventory, you cannot meet this burden of proof.

e) Unreasonable Expectation: It is unreasonable and potentially unlawful to hold me responsible for items that were never clearly defined or documented at the start of my tenancy.

f) Documented Attempts to Retrieve Property: As shown in Addendum C, I made documented attempts on September 25, 2024, and September 27, 2024, to retrieve my personal property, which you ignored. The screenshots of these communications are attached.

Given these facts, any claim related to missing or damaged furnishings, artwork, or housewares must be dismissed entirely. Moreover, as noted earlier, you have retained my personal property without consent, which is addressed in detail in Section V of this letter and itemized in Addendum B.

#### 6. Unauthorized Cutting of Jackfruit Tree in Backyard

Your claim: You allege unauthorized pruning of a jackfruit tree.

Response: Any pruning done was necessary due to overhanging branches posing a safety risk. Regular yard maintenance was part of my responsibilities as per the lease agreement. The pruning was done in good faith and in accordance with standard horticultural practices. Moreover, given your established pattern of non-responsiveness to maintenance issues (as evidenced by the kitchen sink incident), I reasonably believed that addressing this safety concern myself was necessary and appropriate.

#### 7. Tenant's Proactive Maintenance

It is important to note that throughout the tenancy, I took a proactive approach to maintaining the property due to your consistent failure to address maintenance issues.

This includes:

[I WILL INSERT LIST OF MAINTENANCE TASKS PERFORMED, DATES, AND ASSOCIATED COSTS]

These actions were taken to ensure the property remained in good condition and to prevent more serious issues from developing. They should be viewed as beneficial to the property rather than as grounds for withholding the security deposit.

## **V. Violation of Florida Statute §715.104 Regarding Personal Property**

### **A. Unlawful Retention and Disposal of Personal Property**

Your actions regarding my personal property left on the premises are in direct violation of Florida Statute §715.104(1), which states:

"After taking possession of the premises... the landlord shall give written notice to the former tenant... stating that the property is considered abandoned and that the landlord intends to dispose of it if not claimed."

You have failed to comply with this statute in the following ways:

1. You did not provide the required written notice regarding abandoned property.
2. You failed to respond to my multiple written requests, dated September 25, 2024, and September 27, 2024, for access to retrieve my personal property.

Your failure to provide the required notice and your lack of response to my documented attempts to retrieve my property constitute a clear violation of the statute.

#### B. Unauthorized Use and Conversion of Personal Property

Your new rental listing advertises amenities that include my personal property, specifically my Weber Spirit E-310 Propane Grill. This constitutes unauthorized use and conversion of my property.

#### Legal Precedent:

In *Goodwin v. Alexatos*, 584 So.2d 1007 (Fla. 5th DCA 1991), the court held that unauthorized retention and use of another's property constitutes conversion, entitling the owner to recover the property's value and potentially punitive damages.



## C. Liability for Damages

Under Florida Statute §715.109:

"A landlord who does not comply with this part shall be liable to the former tenant for actual damages or three months' rent, whichever is greater, and costs of the action."

Given that my monthly rent was \$4,500.00, you could be liable for \$13,500.00 plus costs the action and costs if this matter proceeds to litigation.

## V. Valuation of Personal Property Unlawfully Retained

The following items of my personal property were unlawfully retained and are valued as follows:

1. Weber Spirit E-310 Propane Grill (with Cover): \$550.00
2. Jay Turser Acoustic Guitar: \$374.39
3. 55-inch Roku TV: \$400.00
4. Portable Air Conditioner (LG 7000 BTU): \$300.00
5. Office Desk Chairs (2x): \$525.00
6. Original Canvas Painting: \$750.00
7. Other Personal Items: \$325.00

Total Value: \$3,224.39

These items were left at the property due to the landlord's refusal to grant me access to retrieve them. Documentation of the items' fair market value and receipts is provided in Addendum B.

## **VI. Proposed Options for Resolution**

### **Option 1: Immediate Settlement**

- **Payment to Me:** You pay \$3,224.39 for the value of my personal property.
- **Retention of Security Deposit:** I allow you to retain the full \$4,500.00 deposit without further dispute.
- **No Further Legal Action:** I will consider the matter resolved and waive any claims for statutory damages, attorney's fees, or additional compensation.

This option spares you from potential liabilities exceeding \$9,000.00, including damages for wrongful retention of property under Florida law.

### **Option 2: Compliance and Reconciliation**

- **Provision of Detailed Documentation:** You provide an itemized list of damages with actual costs, supported by receipts, invoices, and photographic evidence.
- **Adjustment of Claims:** We reconcile the amounts, and you return any unsubstantiated portion of the deposit to me, along with \$3,224.39 for my personal property.
- **Legal Compliance:** You demonstrate full compliance with Florida Statutes.

This option requires significant effort on your part and may result in a larger amount owed to me.

### Option 3: Legal Action

Initiation of Lawsuit: I will file a lawsuit seeking:

- **Return of the Security Deposit:** Any portion wrongfully withheld.
- **Value of Personal Property:** \$3,224.39.
- **Statutory Damages:** Potentially exceeding \$9,000.00 under §§83.49 and 715.104.
- **Attorney's Fees and Court Costs:** As provided by law.
- **Punitive Damages:** For willful and malicious conduct.

This option exposes you to significant financial liability, legal costs, and reputational harm.

## VII. Deadline for Response

Please respond to this letter within 15 days of receipt, indicating your acceptance of Option 1 or Option 2. Failure to respond appropriately will result in immediate legal action without further notice.

## **VIII. Preservation of Evidence**

You are hereby instructed to preserve all evidence related to this matter, including but not limited to:

- All communications between us.
- Photographs and videos of the property before and after my tenancy.
- Receipts and invoices for any repairs or replacements.
- Rental listings and advertisements.

Failure to preserve evidence may result in sanctions under Florida law.

## **IX. Legal Representation**

While I am currently representing myself, I am prepared to engage legal counsel specializing in landlord-tenant law to pursue this matter aggressively.

## **X. Conclusion**

Your actions have you in violation of multiple Florida statutes, causing me financial harm. Accepting Option 1 allows for a swift resolution, minimizing costs and avoiding litigation. I urge you to consider the risks you face.

Failure to resolve this matter within 15 days will result in legal action, where I will pursue the return of the security deposit, compensation for personal property, and potential statutory and punitive damages exceeding \$9,000.00 under Florida law.

I trust that you will recognize the seriousness of this matter and respond promptly.

Sincerely,

Stephen Boerner