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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 93 ADM-10

TO: Commissioners of
 Social Services

DIVISION: Economic
 Security

DATE: April 12, 1993

SUBJECT: Public Assistance Consolidated Policy on Securing Housing

SUGGESTED DISTRIBUTION: Income Maintenance Directors
 Food Stamp Directors
 Staff Development Coordinators
 WMS Coordinators

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ATTACHMENTS: None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
91 ADM-45	91 ADM-45	352.6	143-b	PASB	92 LCM-112
90 ADM-7	90 ADM-7	352.31(d)	143-c	XIII-D-2-	91 LCM-129
90 INF-2	90 INF-2		Chapter 165	all	
	92 LCM-112		of the Laws	XIII-D-9.2	
	91 LCM-129		of 1991		
			Article 7		
			of the		
			General		
			Obligations		
			Law		

I. PURPOSE

This directive consolidates public assistance policy on securing housing.

II. BACKGROUND

For many years, Section 143-c of the Social Services Law and 18 NYCRR 352.6 have provided authority for Social Services Districts (SSDs) to enter into security agreements with landlords or their agents, to establish security escrow accounts or to pay cash deposits. In the past several years, there have been various changes in law and regulation relating to security for rental property. These changes have been transmitted to SSDs in several releases which are consolidated in this ADM.

III. PROGRAM IMPLICATIONS

This directive should provide a ready reference for SSDs on rent security issues.

IV. REQUIRED ACTION

A. Public Assistance

1. Eligibility Requirements for Providing Security

Security can only be provided when an applicant/recipient (A/R) is unable to obtain suitable permanent housing without it. The A/R must also meet one of the following criteria:

- a. The A/R is moving to a less expensive property and the amount for security and moving expenses is less than the amount of a two-year difference in rentals; or
- b. The A/R is moving because of a disaster and/or a vacate order has been placed against the premises by a health agency or code enforcement agency; or
- c. The A/R has to move because of a serious medical or physical handicap (verified by a specific medical diagnosis); or

- d. The A/R is rendered homeless as a result of having been put out by another occupant with whom the A/R was living; or
- e. The A/R is moving from temporary to permanent housing; or
- f. The A/R is moving from an approved relocation site or to an approved cooperative apartment; or
- g. The A/R is in a living situation which harms the mental or physical health of the A/R or a member of the A/R's family and the need to move is urgent, and not issuing security would harm the health, safety and well-being of the A/R or a member of the A/R's family.

2. The Three Different Ways of Providing Security

a. Security Agreements

SSDs must first attempt to secure a landlord or the landlord's agent against damages to the rental property caused by the A/R or non-payment of rent by means of a written security agreement between the landlord or the landlord's agent and the SSD. This is the only method allowed by law to secure a public housing unit for A/Rs.

While there is no state mandated security agreement form, there are certain elements that must be included in the agreement which an SSD develops. This includes, but is not limited to, the following:

- (1) the date of the agreement;
- (2) the name and address of the landlord or the landlord's agent;
- (3) identification of the premises subject to the agreement;
- (4) the amount of money the agreement represents;
- (5) the conditions under which the SSD would make payment under the agreement (i.e., non-payment of rent and A/R caused damages);
- (6) the conditions under which the SSD would not make payment under the agreement (i.e., loss of rent due to A/R vacating premises without notice);
- (7) the name and address of the SSD representative to whom request for payment should be made;

- (8) the procedures an SSD will use before a claim is paid (i.e., an investigation of the apartment for damages);
- (9) A/R case name and number;
- (10) the time limit in which a claim must be submitted (i.e., 15 days after A/R vacates premises);
- (11) how long the agreement is binding after the A/R's PA case closes. For example, six months after the case is closed might be a reasonable time period. This would allow the landlord or the landlord's agent time in which to obtain a cash security deposit from the A/R (in installments if necessary) to replace the security agreement.

b. Escrow Account

SSDs can secure housing by depositing money into an escrow account which is not under the control of the landlord or the landlord's agent. This account is subject to the terms of an agreement between the landlord and the SSD. This method is not available for A/Rs in public housing.

c. Cash Security Deposits

If a rental cannot be secured using the above two methods and other suitable permanent housing in the area cannot be secured, SSDs can issue a cash deposit to be held as security against non-payment of rent or for damages caused by the A/R on behalf of an A/R (who is otherwise eligible).

NOTE: In no case can temporary residence in a shelter, including those defined in Parts 900 or 1000 of Department regulations, a hotel/motel or any other such emergency or transitional residential facility be considered suitable housing for purposes of denial of a cash deposit. This method is also not available for A/Rs in public housing.

When a cash security deposit is issued, the A/R is required to assign to the SSD any right the A/R may have to the return of the cash deposit and any interest that accrues. Landlords or landlord's agents who receive cash security deposits must comply with Article 7 of the General Obligations Law.

Whenever a cash security deposit is issued, the landlord or the landlord's agent and SSD should sign an agreement detailing the conditions under which the cash deposit can be kept by the landlord or the landlord's agent and the conditions under which it must be returned to the SSD.

3. Recovery/Recoupment of Cash Deposits or Money Paid as a Result of an Agreement or Escrow Account.

a. Recovery/Recoupment From A/R

(1) Non-payment of shelter-allowance.

If, as a result of non-payment of the shelter allowance, the landlord or the landlord's agent keeps all or part of the cash deposit, or if money must be paid to the landlord or the landlord's agent as a result of an agreement, any such amount must be considered to be an overpayment to the A/R, and recovered or recouped.

However, if rent has not been paid due to a legitimate landlord/tenant dispute, a rent strike or as a result of the application of Section 143-b of the Social Services Law (the Spiegel Act), the amount is not an overpayment and cannot be recouped or recovered from the A/R.

(2) A/R Caused Damages.

When a landlord or the landlord's agent keeps all or part of a cash deposit for A/R caused damages or an SSD pays money to the landlord or the landlord's agent for damages under an agreement, any such amount must be considered an overpayment and must be recouped or recovered from the A/R.

However, the SSD can only recover from the A/R if it has conducted, or arranged for, a pretenancy and posttenancy inspection or survey of the premises. The SSD must note and record the condition of the premises during the pretenancy inspection. This record must be signed and agreed to by the landlord or the landlord's agent, A/R and SSD representative. If the posttenancy inspection shows no damages caused by

the A/R, then cash must not be issued or, if a cash deposit has been issued and the landlord or the landlord's agent keeps it for alleged damages, recoupment/recovery cannot be initiated against the A/R. See the next section for a discussion of recovery of the cash deposit from landlords or their agents.

NOTE: Recoupment/recovery must not be started at the time the security is initially authorized to secure an apartment, regardless of the reason new housing is needed. Security can only be recouped or recovered after it is kept by the landlord or the landlord's agent for non-payment of rent or for client caused damages or after cash is paid as a result of a security agreement for those reasons.

b. Recovery from Landlords or their Agents

Article 7 of the General Obligations Law allows landlords or their agents to require security against a tenant's break of a lease or rental agreement. A lease or rental agreement is between the landlord or the landlord's agent and the tenant only. Article 7 also requires landlords or their agents to deposit any money received as a security deposit in a bank or trust company not to be commingled with other funds or to become an asset of the landlord or the landlord's agent. This law provides that until the cash is kept by the landlord or the landlord's agent according to the terms of the lease or agreement (i.e. tenant moves owing rent), the security and any interest that accrues continues to be the money of the person making the deposit. In the case of an SSD paying a cash deposit, the cash deposit continues to be the money of the SSD until it is kept by the landlord or the landlord's agent for non-payment of rent or damages caused to rental property by the A/R.

SSDs who pay cash deposits must make "diligent efforts" to recover such deposits from landlords or their agents who keep them in violation of law.

Examples of when a landlord or a landlord's agent keeps a cash deposit in violation of law would include instances where:

- (1) pretenancy and posttenancy inspections do not confirm a landlord's or the landlord's agent's claims for A/R caused damages;
- (2) the SSD has verification that rent was paid for the period an A/R resided in an apartment and the landlord or the landlord's agent claims unpaid rent;
- (3) the landlord or the landlord's agent keeps the cash deposit for reasons other than those stated in the letter of agreement between the SSD and the landlord or the landlord's agent;
- (4) the SSD has verification that the landlord or the landlord's agent commingled the cash deposit with other funds; or
- (5) the rent was not paid because of a legitimate landlord/tenant dispute, a rent strike or as a result of the application of the Spiegel Act and the landlord has retained the cash deposit.

"Diligent efforts" would include such measures as:

- (1) sending letters to the landlord or the landlord's agent requesting return of the cash deposit held in violation of law;
- (2) referring the matter to a collection agency; and
- (3) suing the landlord or the landlord's agent

B. Food Stamps

Money paid as a cash security deposit to a landlord or the landlord's agent is not counted as income for food stamps. Amounts of public assistance being recouped because a landlord or the landlord's agent kept a security deposit are not counted as food stamp income.

V. SYSTEMS IMPLICATIONS

Upstate WMS

When recovering overpayments as described in Section IV.A.3.a.1 and 2 (Recovery/Recoupment from A/R for non-payment of shelter allowance or A/R caused damages), workers should use Recoupment type 6 on the ABEL budgets.

When SF-8 is used to access the FS input screen from a stored PA budget containing Recoupment type code 6, the corresponding monthly recoupment amount will not be included in the PA grant displayed as income in the FS case.

Downstate WMS

When recovering overpayments as described in Sections IV.A.3.a.1 and 2 (Recovery/Recoupment from A/R for non-payment of shelter allowance or A/R caused damages) workers should prepare a DSS-3573 for PA Recoupments. The Offense Type C (concealment) and the offence Sub-Type must be 17 (forfeiture of security deposit or payments made to the landlord at the former address...).

VI. ADDITIONAL INFORMATION

A. Clients with a History of Damaging Apartments

1. A SSD cannot refuse to issue security when an A/R damaged several prior apartments where security had been issued if the recipient currently meets the criteria in Section IV-A-1.

If these conditions are met and housing cannot be secured without security, then security must be issued.

2. A/Rs with a history of damaging apartments should be offered services or training that would help them deal with their responsibilities as tenants.
3. A landlord or a landlord's agent can evict a tenant for damages, even if the rent has been paid, if the wording of the lease provides for this.

B. Fiscal Implications

When security deposit payments are issued to a landlord or landlord's agent, payment type Q5 is used. However, when the landlord retains the security deposit because of nonpayment of rent or client caused damages, the social services district must amend the IRS-1099 to reflect the security deposit as income to the landlord.

C. Miscellaneous

1. An A/R can have more than one security at the same time (e.g., an A/R is in the process of moving and security is still being held by a landlord or the landlord's agent, but the A/R also requires additional security to secure a new apartment).

2. An SSD can pay an additional month's security to a landlord or the landlord's agent if the landlord or the landlord's agent requires it and the payment will prevent an eviction.
3. If an A/R moves out of an apartment and into a new one without informing the SSD and pays security from borrowed funds, the SSD does not have to reimburse the recipient for the security.

However, there may be extenuating circumstances in which the SSD would reimburse the recipient. For example, an A/R applied for security and should have received it, but due to the SSD's error or delay in processing the request, security was not received in time to secure the apartment. If the A/R then borrowed the money for the security with the understanding that it would be paid back when the district issued security, then the SSD must reimburse the recipient.

4. Security cannot be paid to secure care in a certified or licensed residential facility.
5. There is no regulatory limit on the amount of the security that can be provided.

VII. EFFECTIVE DATE

April 30, 1993

Oscar R. Best, Jr.
Deputy Commissioner
Division of Economic Security