

A Landlord's Guide to Releasing Escrowed Rent in Ohio

By Eric E. Willison and Andrew J. Ruzicho II
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Chapter 1: Understanding the Big Picture

Ohio Revised Code Section 5321.04 lays out various duties which the landlord must perform in relation to residential rental property. Upon a violation of these non-delegable duties (meaning that you can't assign your duties to someone else like the tenant even for a reduction in rent), if the tenant is current on his rent, then pursuant to Ohio Revised Code Section 5321.07 he can send you a letter demanding that you remedy the .04 violation. If you don't remedy it within 30 days or a reasonable time (whichever is sooner) then your tenant can escrow the rental payments with the clerk of courts.

If that happens, you are likely going to receive something from the Court informing you that the rent that a certain tenant is normally paying you is now being paid to the clerk of courts.

Once the rent is escrowed, it will not be released to you without a judge's okay. You are going to have to petition the court to release the escrowed rent to you.

Ohio Revised Code Section 5321.09 establishes the right of a tenant to file an answer and a counterclaim as a response to the landlord's request to release the funds in escrow. Ferrato v. Maurer Realty, 1986 Ohio App. LEXIS 9647 (December 5, 1986) Wood Co. App. No. WD-86-28 unreported. A trial shall be held within sixty days of the date of the filing of the landlord's complaint. Ohio Revised Code Section 5321.09. Laster v. Bowman (1977), 52 Ohio App.2d 379 at 386-387.

There are several reasons which you can assert which will allow the court to release the escrowed rent to you, but you need to lay it out in the proper format. That is what this book is about.

Chapter 2: Strategy Concerns

I. Do You Want to Make a Motion to Release the Escrowed Rent?

It may seem obvious that you would want the rent paid to you as soon as it is due. But there are some advantages to waiting, assuming you are in a financial position that allows it.

A. Close Factual Situation

If there is an issue as to whether or not you have fixed what the tenants are complaining about, and if this going to be hard to prove, you might want to wait until a stronger reason for releasing the escrowed rent emerges if you can afford to do so.

Let's say that the tenants are complaining about other tenants in the building making too much noise. Let's further assume that you have chosen not to evict those other tenants because in talking to them, you sense that the complaining tenant is being overly sensitive to the noise issue. But if you file for release of the escrowed rent, the court will set a hearing on the issue to determine whether or not the noise problem exists, and whether it has been resolved.

At that hearing, it is going to be your word against the tenant's word. You could bring in other tenants to tell the court that even though they live closer to the alleged noise makers that it doesn't bother them, but that is going to be a big hassle, and if those other tenants don't like you for some reason, or are too busy, are they really going to show up and testify in your favor, even if you have sent out a subpoena?

Waiting and letting your tenant escrow the rent has some advantages.

First, if your tenant is looking to stick it to you, letting him escrow the rent is a great idea. A tenant might not be all that motivated to get his rent in to you on time with checks that won't bounce. But if he is paying the clerk of courts, he is going to be motivated (by his desire to stick it to you) to make sure that the checks don't bounce and that he isn't late in paying. This is because he is likely to know that if he bounces a check to the clerk or if he pays the clerk late, then you can use this as the basis of a motion to release the rent from escrow. The tenant's bias against you works for you in this regard because he may well pay the clerk more faithfully than he will pay you. That money isn't going anywhere. It is safe and sound with the clerk's office.

The right time to seek release of the escrow may be when your tenant's lease is at an end, for once he moves out, the escrowed rent must be released to you upon your motion. Weibling v. Rine, 1977 Ohio App. LEXIS 7537 (August 30, 1977) Franklin Co. App. No. 77AP-355 unreported.

Second, if your tenant is a disorganized person, you can be pretty sure that he will be late on his rent with the clerk and/or will bounce a check to the clerk. In either case, the jig is up on the escrow, and you don't have to worry about how hard it is going to be to prove whether or not the condition the tenant is complaining about ever existed or if it did exist, was fixed.

B. The Court May Act Upon Its Own

Don't count on it, but there are times when the Court will release the rent to the landlord even though the landlord made no motion for its release. This occurs when, from the face of the pleadings, it appears that the tenant did not follow the proper escrow procedures.

In the case of Antara v. Wyandot Square Apartments, 1997 Ohio App. LEXIS 1602 (April 15, 2007) Crawford Co. App. No.s 3-96-29 and 3-96-30, the trial court released the rent to the landlord even though the landlord never filed a motion for the release of the escrowed rent. The tenant appealed, but Ohio's Third District Court of Appeals upheld the ruling of the trial court. The Court reasoned that the first written notice received by landlord came with the copies of the application to deposit rent with the court. Since "the statute specifically states that if the court finds that the tenants did not give proper notice or were not current with their rent payments, then the funds should be released", this "outcome is necessary because failure to comply with the requirements of R.C. 5321.07 voids the tenant's right to place the funds in escrow."

The Court also ruled that it was not error to hear the issue of the release of the escrowed rent together with the issue of whether the landlord was entitled to an eviction. The Third District Court of Appeals held that trial courts have the inherent power to control its docket by hearing pending related matters at one hearing.

C. Don't Wait To Fix It Though

But you don't want to wait to fix what the tenant is complaining about, especially if the condition could injure someone. If someone is injured at your rental property, you could be sued for the tort of negligence. Negligence has four elements, 1) Duty; 2) Breach; 3) Proximate Causation; and 4) Damages.

In order to satisfy the first element of a negligence claim, Duty, the tenant must first show that the harm was foreseeable by the landlord. The problem for the tenant in any negligence action is that once the tenant takes possession of the rented premises, the landlord has no idea whether or not a dangerous condition has arisen behind the tenant's locked door. The landlord can plead this ignorance as a defense to a personal injury lawsuit.

But if the tenant can show the landlord that he or she sent a letter to the landlord warning him that the carbon monoxide sensors in the apartment were going off whenever the furnace kicked on, it is going to be pretty darned hard for the landlord to say he didn't know about the problem after everyone in the building is overcome by such fumes from a defective furnace when that letter comes to light. So fix the problem as soon as you can, but you might want to wait to seek release of the escrowed rent.

Chapter 3: The Relevant Statutes

I. The Landlord's Duties to the Tenant

It all starts with Ohio Revised Code Section 5321.04 which lays out the landlord's duties to the tenant in Ohio and states in pertinent part as follows:

A) A landlord who is a party to a rental agreement shall do all of the following:

- (1) Comply with the requirements of all applicable building, housing, health, and safety codes that materially affect health and safety;
- (2) Make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;
- (3) Keep all common areas of the premises in a safe and sanitary condition;
- (4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by him;
- (5) When he is a party to any rental agreements that cover four or more dwelling units in the same structure, provide and maintain appropriate receptacles for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of a dwelling unit, and arrange for their removal;
- (6) Supply running water, reasonable amounts of hot water and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;
- (7) Not abuse the right of access conferred by division (B) of section 5321.05 of the Revised Code;
- (8) Except in the case of emergency or if it is impracticable to do so, give the tenant reasonable notice of his intent to enter and enter only at reasonable times. Twenty-four hours is presumed to be a reasonable notice in the absence of evidence to the contrary.
- (9) Promptly commence an action under Chapter 1923. of the Revised Code, after complying with division (C) of section 5321.17 of the

Revised Code, to remove a tenant from particular residential premises, if the tenant fails to vacate the premises within three days after the giving of the notice required by that division and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(i) of section 1923.02 of the Revised Code, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in that division. Such actual knowledge or reasonable cause to believe shall be determined in accordance with that division.

(B) If the landlord makes an entry in violation of division (A)(8) of this section, makes a lawful entry in an unreasonable manner, or makes repeated demands for entry otherwise lawful that have the effect of harassing the tenant, the tenant may recover actual damages resulting from the entry or demands, obtain injunctive relief to prevent the recurrence of the conduct, and obtain a judgment for reasonable attorney's fees, or may terminate the rental agreement.

What the above statute translates out to is that as a landlord of residential property, you have a legal obligation to keep the premises in a fit and habitable condition. You must therefore abide by all of the duties in R.C. 5321.04, together with any duties imposed upon you by the lease agreement, and any local housing or safety codes as well.

II. Tenant's Right To Escrow Rent

If you violate your duties under Ohio Revised Code Section 5321.04, then the tenant will turn to Ohio Revised Code Section 5321.07 which states as follows:

(A) If a landlord fails to fulfill any obligation imposed upon him by section 5321.04 of the Revised Code, other than the obligation specified in division (A)(9) of that section, or any obligation imposed upon him by the rental agreement, if the conditions of the residential premises are such that the tenant reasonably believes that a landlord has failed to fulfill any such obligations, or if a governmental agency has found that the premises are not in compliance with building, housing, health, or safety codes that apply to any condition of the premises that could materially affect the health and safety of an occupant, the tenant may give notice in writing to the landlord, specifying the acts, omissions, or code violations that constitute noncompliance. The notice shall be sent to the person or place where rent is normally paid.

(B) If a landlord receives the notice described in division (A) of this section and after receipt of the notice fails to remedy the condition within a reasonable time considering the severity of the condition and the time necessary to remedy it, or

within thirty days, whichever is sooner, and if the tenant is current in rent payments due under the rental agreement, the tenant may do one of the following:

(1) Deposit all rent that is due and thereafter becomes due the landlord with the clerk of the municipal or county court having jurisdiction in the territory in which the residential premises are located;

(2) Apply to the court for an order directing the landlord to remedy the condition. As part of the application, the tenant may deposit rent pursuant to division (B)(1) of this section, may apply for an order reducing the periodic rent due the landlord until the landlord remedies the condition, and may apply for an order to use the rent deposited to remedy the condition. In any order issued pursuant to this division, the court may require the tenant to deposit rent with the clerk of court as provided in division (B)(1) of this section.

(3) Terminate the rental agreement.

(C) This section does not apply to any landlord who is a party to rental agreements that cover three or fewer dwelling units and who provides notice of that fact in a written rental agreement or, in the case of an oral tenancy, delivers written notice of that fact to the tenant at the time of initial occupancy by the tenant.

(D) This section does not apply to a dwelling unit occupied by a student tenant.

So upon your breach of your R.C. 5321.04 duties, the tenant who is current on his/her rent may deposit that rent with the clerk of courts after writing you a letter informing you of the problem and waiting a reasonable amount of time to fix the problem, or thirty days, whichever is sooner.

III. General Bases for Motion for Release

A. Inapplicability to the Landlord With Three or Fewer Units

The first general basis for a release of the escrowed rent is that the rent escrow law protects smaller landlords. If the landlord is a party to rental agreements that cover three or fewer units, *and if the landlord discloses this to the tenant in the written rental agreement (or in a writing sent to the tenant in the case of an oral lease)*, then the landlord can argue that it is improper for the tenant to escrow the rent with the court. If this argument applies to you, then you can petition the court for release of the escrowed rent.

B. Insufficient Time Period of Notice

The tenant must give the landlord 30 days or a reasonable amount of time, whichever is sooner, to the landlord to fix the problem. This means that the longest that a tenant has to wait is 30 days, but if the court determines that the waiting period should be shorter, then the tenant may be

able to escrow after fewer days. So if the tenant has escrowed the rent after giving you very little notice for a pretty major job, you may be able to argue that the court should release the escrowed rent to you.

Tenants fall into this trap sometimes when they put off sending in the notice to repair until late in the month, and then they want to start escrowing at the next possible opportunity, which would be the start of the next month.

Let's look at a case wherein Ohio's Second District Court of Appeals examined the issue of how long a "reasonable amount of time" was.

In the case of Timbercreek Apartments v. Myles, 1999 Ohio App. LEXIS 2385 (May 28, 1999) Montgomery Co. App. No. 17422, the tenant gave notice to the landlord of several problems in writing on June 30, 2006. These problems, to quote from the tenant's letter to the landlord were: "fifteen-year-old stained carpet with holes, ceiling damaged by a defective roofing job, shower with a gaping hole that exposed pipes, fifteen-year-old refrigerator with a defective motor, and an air conditioner that caused the circuit breaker to "throw.""

The tenant demanded in his notice to remedy that all of the problems be fixed by the next day, and then began to escrow the rent on July 6, 2006 when the landlord had not yet fixed the problem. The landlord argued that he did not have enough time to fix the problem with only six days notice, and the Second District Court of Appeals agreed. The Court held that:

Myles was not authorized by law to escrow the July rent because his R.C. 5321.07(A) notice was ineffectual in that it demanded repairs within an unreasonably short period of time.

So there is legal authority in Ohio for the proposition that one to seven days of notice to fix several problems is not sufficient time under the statute. If the tenant mails you the notice, you will want to bring that up to the court, since mailing time will be considered by the court in calculating whether there was a reasonable amount of notice given. Further, if there were any weekends or holidays during a short notice period, you will want to point these out to the judge as well.

C. Failure of Tenant to Give Notice

If the tenant never complained to the landlord about the need to remedy the conditions, then the tenant has not complied with R.C. 5321.07 and the escrowed rent must be released. Some landlords have argued that this requires that the tenant present into evidence at court a copy of the written notice sent out to the landlord. They argue that the failure to present such evidence to the court at the hearing on whether or not to release the escrowed rent mandates a release of the escrowed rent.

But Ohio's Second District Court of Appeals has held that the tenant's testimony that she sent out such notice is sufficient proof that it was sent out (if believed by the factfinder, of course). The Court ruled that:

First, CMB contends that Baker was not entitled to the relief afforded by R.C. 5321.07 because, "despite [Baker's] testimony of what she says she mailed, without the actual, or at least an exact copy of the alleged written notice itself, the trial court could not have properly determined whether or not Baker complied with the statute." We disagree. Baker's testimony, without more, was sufficient evidence from which the trial court could have concluded that she had mailed to CMB the written notice required by R.C. 5321.07(A), assuming that it found her to be credible. The trier of fact is entitled to deference on issues of credibility because of its ability "to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77 at 80. Moreover, CMB did not present any evidence that the certified mailings that it had received had contained some other type of notice or document. The trial court's implicit finding that Baker had satisfied the written notice requirement of R.C. 4321.07(A) was not against the manifest weight of the evidence.

The case on this was CMB Partnership v. Baker, 2000 Ohio App. LEXIS 2315 (June 2, 2000) Montgomery Co. App. No. 18159 unreported at 6-7. So the fact that the tenant has no documents to show that she sent out the notice will not stop the trial court from keeping the rent in escrow if it believes the tenant.

III. Specific Statutory Bases for Release of Escrowed Rent

A. Full Release of Rent

Ohio Revised Code Section 5321.09 allows the landlord to apply for the release of escrowed rent and states in pertinent part as follows:

(A) A landlord who receives notice that rent due him has been deposited with a clerk of a municipal or county court pursuant to section 5321.07 of the Revised Code, may do any of the following:

(1) Apply to the clerk of the court for release of the rent on the ground that the condition contained in the notice given pursuant to division (A) of section 5321.07 of the Revised Code has been remedied. The clerk shall forthwith release the rent, less costs, to the landlord if the tenant gives written notice to the clerk that the condition has been remedied.

(2) Apply to the court for release of the rent on the ground that the tenant did not comply with the notice requirement of division (A) of section 5321.07 of the Revised Code, or that the tenant was not current in rent payments due under the rental agreement at the time the tenant initiated rent deposits with the clerk of the court under division (B)(1) of section 5321.07 of the Revised Code.

(3) Apply to the court for release of the rent on the ground that there was no violation of any obligation imposed upon the landlord by section 5321.04 of the Revised Code, other than the obligation specified in division (A)(9) of that section, any obligation imposed upon him by the rental agreement, or any obligation imposed upon him by any building, housing, health, or safety code, or that the condition contained in the notice given pursuant to division (A) of section 5321.07 of the Revised Code has been remedied.

(B) The tenant shall be named as a party to any action filed by the landlord under this section, and shall have the right to file an answer and counterclaim, as in other civil actions. A trial shall be held within sixty days of the date of the filing of the landlord's complaint, unless, for good cause shown, the court continues the period for trial.

(C) If the court finds that there was no violation of any obligation imposed upon the landlord by section 5321.04 of the Revised Code, other than the obligation specified in division (A)(9) of that section, any obligation imposed upon him by the rental agreement, or any obligation imposed upon him by any building, housing, health, or safety code, that the condition contained in the notice given pursuant to division (A) of section 5321.07 of the Revised Code has been remedied, that the tenant did not comply with the notice requirement of division (A) of section 5321.07 of the Revised Code, or that the tenant was not current in rent payments at the time the tenant initiated rent deposits with the clerk of court under division (B)(1) of section 5321.07 of the Revised Code, the court shall order the release to the landlord of rent on deposit with the clerk, less costs.

(D) If the court finds that the condition contained in the notice given pursuant to division (A) of section 5321.07 of the Revised Code was the result of an act or omission of the tenant, or that the tenant intentionally acted in bad faith in proceeding under section 5321.07 of the Revised Code, the tenant shall be liable for damages caused to the landlord and costs, together with reasonable attorney's fees if the tenant intentionally acted in bad faith.

So this statute gives the landlord the right to petition the court for the release of the escrowed rent. The tenant may answer with his own filing if he or she wants to argue the point, and the court must hold a hearing on the matter within 60 days of the landlord's motion for release of the escrowed funds.

1. Procedural Bases for Release of Escrowed Rent

First, there may not be anything to argue about. Often the escrow of the rent will motivate the landlord to fix the problem right away. If the tenant agrees at the hearing under Ohio Revised Code Section 5321.09(A)(1) that the problem has been fixed, then the clerk must release the escrowed rent to the landlord.

2. Merit Bases for Release of Escrowed Rent

But if there is going to be a fight over whether or not the problem complained about was fixed or not, then the landlord can make several arguments. First, he can argue that the tenant did not give the proper notice to remedy the problem before escrowing the rent. Second, he can argue that the tenant was not current on the rent at the time he escrowed the rent. Third, he can argue that there was no breach of Ohio Revised Code Section 5321.04, or of the lease agreement, or of any applicable health and/or safety code.

a. Remedy of Condition

If the tenant can show that there was a breach of Ohio Revised Code Section 5321.04, or of the lease agreement, or of any applicable health and/or safety code at the apartment, then the landlord is going to have to argue that the breach was fixed by the time the case comes on for a hearing. The best evidence of this are repair bills, testimony of the person performing the repair, and, if possible, pictures of the before and after condition of the area to be repaired.

Be wary of cases where the tenant is complaining of things that are not easily photographed or videotaped, like smells, drafts, or noises. With these, live witness testimony from the repair person is going to be key.

b. Tenant Not Current on Rent

If the landlord can show that the tenant was not current on the rent at the time the tenant escrowed the rent, then this will serve as a basis for the release of the escrowed funds. This means keeping good, legible, organized, and easy to understand records of who paid what and when, and bringing them into court.

c. No Breach of R.C. 5321.04, Applicable Codes, or Lease Agreement

If the landlord can show that at the time the tenant escrowed the rent there was no violation of the landlord's duties to keep the premises in a fit and habitable condition under Ohio Revised Code Section 5321.04, or of applicable health and safety codes, or that there was no violation of the lease agreement, then the landlord may use this as a basis for a petition for release of the escrowed rent.

The best evidence here might be pictures of the item complained about, receipts for purchase (it may be hard for a court to believe that a refrigerator purchased three months ago is already broken), testimony from other tenants if the condition complained about is in a common area, testimony from the landlord or the landlord's repair person who might have seen the item up close.

Naturally, if the tenant is arguing that there has been a breach of the lease allowing him to escrow the rent, you will want to bring in a copy of the lease agreement to show that the lease does not require the landlord to furnish or repair that item. Be careful here though. Just because the lease says that the landlord does not have to fix the furnace if it goes out in January, this does not

mean that the Court will enforce such a provision. Contractual clauses which are contrary to the Ohio Landlord Tenant Act of 1974 will not be enforced, nor will clauses in rental agreements which are found to be unconscionable.

If the tenant is wrongly arguing that a local building or health and safety code is being violated, then you will want to bring in a copy of that code section to show the court that it does not say what the tenant says it does.

It is no defense for the landlord to claim that the violation of Ohio Revised Code Section 5321.04 the tenant is complaining about isn't actually bothering anyone at the time. For instance, some landlords will argue that the fact that the air conditioner doesn't work in January will not serve as a basis to escrow the rent.

But in The case on this was CMB Partnership v. Baker, 2000 Ohio App. LEXIS 2315 (June 2, 2000) Montgomery Co. App. No. 18159 unreported at 6-7, Ohio's Second District Court of Appeals rejected a landlord's argument that he did not have a duty to fix the air conditioning because it was broken during a cooler part of the year.

Further, in the case of Howard v. Simon (1984), 18 Ohio App.3d 14, the tenant complained that the air conditioner at the rented apartment was not working. The landlord had a policy of turning off the system to the entire building when the landlord felt that the temperature was cool enough. Ohio's Eighth District Court of Appeals held that R.C. 5321.04(A)(4) requires an air conditioner to perform when needed, regardless of outside temperature). Howard at 15-16.

The Court, in rejecting the landlord's arguments that he should be able to control when the tenants could use their air conditioning, reasoned as follows

R.C. Chapter 5321 is remedial and intended to provide tenants with greater rights. Shroades v. Rental Homes, Inc. (1981), 68 Ohio St.2d 20. The Act would furnish no protection to the tenant if read to merely require the landlord to have a system in working order. An air conditioner which is turned off results in the same uninhabitable conditions as one which is broken. Howard at 15-16.

Particularly difficult to prove or disprove are smells at the rented premises. In the case of Liggins v. Westminster Arms, 1998 Ohio App. LEXIS 6247 (December 22, 1998) Franklin County App. Nos. 98AP-377 and 98AP-378, unreported, Ohio's Tenth District Court of Appeals held and reasoned as follows:

The lease agreement between the parties does not guarantee appellant a smoke-free environment. Nor is there a statutory obligation that a landlord must ensure that no marijuana smoke be detectable in a tenant's apartment. Therefore, whether appellant could pursue relief against the landlord for her discomfort caused by the marijuana smoke depends on whether her covenant of quiet enjoyment was breached.

Appellant cites no law that, because marijuana is an illegal substance, if she can smell it in her apartment, regardless of its strength, she has automatically suffered

substantial impairment to the beneficial use of her apartment. The trial court's findings note that no witness at trial, other than appellant, noticed an odor of marijuana in her apartment. On this evidence, the court did not abuse its discretion when it found no interference by appellee with appellant's enjoyment of her apartment, and no violation of an obligation owed appellant. Liggins at 10-11.

Landlords are not strictly liable (meaning liable without a showing of some sort of fault) for violations of Ohio Revised Code Section 5321.04. In Ohio's Fourth District Court of Appeals there was a question of who was at fault for water pressure problems in the apartment complex.

The landlord argued that it was the City of Athens water system and the tenants argued that it was the landlord's plumbing. The trial court held that it didn't matter who was at fault because Ohio Revised Code Section 5321.04 held the landlord strictly liable for the problem. But the Fourth District Court of Appeals held that this was error. The Appeals Court reasoned that it did not "believe the legislature intended the landlord's Section 5321.04(A)(6) obligation to supply running water to render landlords strictly liable for any interruption or reduction in the flow of water, be it caused by act of God, by the City of Athens, or by tenants themselves." The case on this is Stewart v. Kalman, 1982 Ohio App. LEXIS 14104 (August 16, 1982), Athens Co. App. No. 1109, unreported.

B. Partial Release of Rent

The Ohio Legislature knew when it passed R.C. 5321.07 that this might jam up some landlords who have regular bills which must be paid each month (mortgage, taxes, insurance). It is in no one's interest for a landlord to lose a piece of property to foreclosure while the funds for saving it sit in escrow with the court.

Further, the legislature knew that by holding the funds needed to fix the problem in the escrow account, the landlord may be put in a Catch 22 situation. A landlord short of money can't fix the problem for lack of funds, and the continued existence of the problem keeps the landlord short of funds.

Thus the landlord may petition the Court to release a portion of the escrowed rent in certain limited circumstances. Ohio Revised Code Section 5321.10 states as follows:

(A) If a landlord brings an action for the release of rent deposited with a clerk of court, the court may, during the pendency of the action, upon application of the landlord, release part of the rent on deposit for payment of the periodic interest on a mortgage on the premises, the periodic principal payments on a mortgage on the premises, the insurance premiums for the premises, real estate taxes on the premises, utility services, repairs, and other customary and usual costs of operating the premises as a rental unit.

(B) In determining whether to release rent for the payments described in division (A) of this section, the court shall consider the amount of rent the landlord receives from other rental units in the buildings of which the residential premises are a part, the

cost of operating those units, and the costs which may be required to remedy the condition contained in the notice given pursuant to division (A) of section 5321.07 of the Revised Code.

This means that the landlord can argue in a petition to release the escrowed rent that he is having trouble making the mortgage payments, the insurance premiums, the real estate taxes, utility services, repairs, or other customary and usual costs for operating the premises as a rental unit. If the court believes the landlord, then the court can authorize the clerk to release a sufficient amount of the rent to get these important costs paid.

The tenant can counter argue that even though these costs are building up for the landlord, that the landlord has so much money from other rental units that the rent should remain in escrow. Basically, the tenant is going to argue that R.C. 5321.10 is meant to protect landlords put into dire financial straights by the escrow and who might lose the building because of the escrow. But when the landlord is running a building with a great many units, all of which are pouring rent into the landlord's coffers, R.C. 5321.10 should not provide relief.

But the landlord is not out of aces here just because he owns a large building. The landlord may argue that even though he may have 50 units in the building, there are a great many costs to operating those rental units, and that he is barely breaking even. He can also argue that the cost of the repair that the tenant wants is so much that even with all of the money coming in from the other rental units, he is still not going to be able to make the repairs needed without some portion of the escrowed rent released to him (perhaps the place needs a new roof).

Some landlords will hold their buildings as an asset of one of several companies, thus making it appear to the court that ABC Mgmt, LLC is a small company, holding only one building and is in a cash crunch. But that same landlord may also own DEF Mgmt., LLC, GHI Mgmt., LLC, and JKL Mgmt., LLC, each of which also has a building to its name.

C. Need to Include Clerk of Courts as a Party

In defending against the landlord's petition to release the rent, the tenant may file a responsive pleading. In that pleading, he or she may argue that some of the rent should be released to him or her because the landlord's breach of the lease agreement caused the tenant damages.

Ohio's Tenth District Court of Appeals has held that a tenant's action for the release of rent to the tenant must be dismissed, first because the tenant has no possible claim to the rent, but also because the tenant failed to name the clerk of courts (who was holding the money) as a party to the lawsuit. A court has no jurisdiction over a person unless they are served with process in the case.

The same could be argued in the case of a landlord seeking release of the escrowed rent. If the landlord fails to make the clerk of courts a party to the case, then the tenant could argue or the court could find that the court has no power over the clerk to order it to release those particular funds. The statute does not mandate that the clerk be made a party, or the tenant, but perhaps it would be safest to include the clerk as a party in the petition. The case on this is Weibling v. Rine, 1977 Ohio App. LEXIS 7537 (August 30, 1977) Franklin Co. App. No. 77AP-355 unreported.