

A Tenant's Guide To Recovery of Security Deposits Georgia

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Chapter 1

I. Introduction to the Law

A. Two Sources of Law: Common Law and Statutes

There are two sources of law in any state, common law and statutory law. We all know what statutory law is. That is when the legislature gets together and enacts a statute for all residents of the state to obey. But before there is a statute covering a certain area though, there is the common law. Common law refers to court decisions covering that situation. In the absence of statutory guidance, courts tend to follow what other courts have already decided. They do this for reasons of consistency.

Before there was any specific statute in Georgia covering the subject of landlord tenant law, there were cases which determined the rights of landlords and tenants. The earliest cases were in keeping with the holdings of most other states not having landlord tenant laws. Those holdings determined that the tenant had almost no rights, and the landlord called almost all of the shots. The landlord could impose any conditions he wanted to upon the tenant by way of the lease agreement. If the tenant signed the lease agreement, then that was that and the tenant had to live with it.

For instance, if the lease contained no duty on the part of the landlord to repair the rented premises, and the furnace went out in January, then the tenant would be liable for repairing or replacing the furnace. There is an old case (not from Georgia, but it will serve to illustrate the example) where the judge wrote that there "is nothing at common law to prevent a landlord from renting a tumble-down house." The way the courts used to look at it, nobody was holding a gun to the tenant's head and forcing him to sign the lease agreement. If the parties intended that the landlord fix things, then they could have written that into the agreement.

Under the common law, if you placed a security deposit with the landlord, and the landlord did not return it, then you would have to sue for breach of contract. This would involve hiring a lawyer, going to court, winning, and then collecting upon the judgment you recovered. If your security deposit was for only \$750.00, you would very likely spend more in attorney's fees and lost time than you were likely to recover. Landlords knew all about this, and tended to keep security deposits, knowing that few people would sue out of principle.

B. Implied Warranties

But as the law evolved, courts began to realize that many tenants were

unsophisticated people. Some folks have trouble just reading, much less reading a contract with its \$64.00 words like “promissory,” “covenant,” and “estoppel.” Many courts also saw it as unfair that a tenant would have to pay to buy a new furnace for a landlord since the law of fixtures dictates that the tenant could not take the furnace with him when he left.

When a court looks at a contract, it construes the contract in accordance with the plain meaning of the terms, in order to get to what the parties to that contract actually meant to agree upon. Courts have a lot of discretionary power when doing this, and courts in Georgia started to use that discretionary power to imply certain terms into certain contracts, such as residential rental contracts. I use the word “imply” but I should actually say “pretend.”

What the courts will do is pretend that there is a clause in the residential rental agreement whereby the landlord promises that he will put and keep the rented premises in a fit and habitable condition for the tenant. This is called an “implied warranty of habitability.” This gave the tenants the right to claim that the landlord had breached an implied warranty of habitability if he refused to effectively fix a problem around the rented premises.

C. Enactment of the Landlord Tenant Statute

In 1976, the Georgia Legislature enacted the Landlord Tenant Act to be effective after July 1, 1976. The Georgia Landlord Tenant Act is fairly detailed concerning security deposits and the landlord's and tenant's obligations with respect to them. The text of the statute follows below.

1. The Text of the Statute

44-7-30.

As used in this article, the term:

(1) "Residential rental agreement" means a contract, lease, or license agreement for the rental or use of real property as a dwelling place.

(2) "Security deposit" means money or any other form of security given after July 1, 1976, by a tenant to a landlord which shall be held by the landlord on behalf of a tenant by virtue of a residential rental agreement and shall include, but not be limited to, damage deposits, advance rent deposits, and pet deposits.

The term "security deposit" does not include earnest money or pet fees which are not to be returned to the tenant under the terms of the residential rental agreement.

44-7-31.

Except as provided in Code Section 44-7-32, whenever a security deposit is held by a landlord or his agent on behalf of a tenant, such security deposit shall be deposited in an escrow account established only for that purpose in any bank or lending institution subject to regulation by this state or any agency of the United States government. The security deposit shall be held in trust for the tenant by the landlord or his agent except as provided in Code Section 44-7-34. Tenants shall be informed in writing of the location and account number of the escrow account required by this Code section.

44-7-32.

(a) As an alternative to the requirement that security deposits be placed in escrow as provided in Code Section 44-7-31, the landlord may post and maintain an effective surety bond with the clerk of the superior court in the county in which the dwelling unit is located. The amount of the bond shall be the total amount of the security deposits which the landlord holds on behalf of the tenants or \$50,000.00, whichever is less. The bond shall be executed by the landlord as principal and a surety company authorized and licensed to do business in this state as surety. The bond shall be conditioned upon the faithful compliance of the landlord with Code Section 44-7-34 and the return of the security deposits in the event of the bankruptcy of the landlord or foreclosure of the premises and shall run to the benefit of any tenant injured by the landlord's violation of Code Section 44-7-34.

(b) The surety may withdraw from the bond by giving 30 days' written notice by registered or certified mail to the clerk of the superior court in the county in which the principal's dwelling unit is located, provided that such withdrawal shall not release the surety from any liability existing under the bond at the time of the effective date of the withdrawal.

(c) The clerk of the superior court shall receive a fee of \$5.00 for filing and recording the surety bond and shall also receive a fee of \$5.00 for canceling the surety bond. The clerk of the superior court shall not be held personally liable should the surety bond prove to be invalid.

44-7-33.

(a) Prior to tendering a security deposit, the tenant shall be presented with a comprehensive list of any existing damage to the premises, which list shall be for the tenant's permanent retention. The tenant shall have the right to inspect the premises to ascertain the accuracy of the list prior to taking occupancy. The landlord and the tenant shall sign the list and this shall be conclusive evidence of the accuracy of the list but shall not be conclusive as to latent defects. If the tenant refuses to sign the list, the tenant shall state specifically in writing the items on the list to which he dissents and shall sign such statement of dissent.

b) Within three business days after the date of the termination of occupancy, the landlord or his agent shall inspect the premises and compile a comprehensive list of any

damage done to the premises which is the basis for any charge against the security deposit and the estimated dollar value of such damage. The tenant shall have the right to inspect the premises within five business days after the termination of the occupancy in order to ascertain the accuracy of the list. The landlord and the tenant shall sign the list, and this shall be conclusive evidence of the accuracy of the list. If the tenant refuses to sign the list, he shall state specifically in writing the items on the list to which he dissents and shall sign such statement of dissent. If the tenant terminates occupancy without notifying the landlord, the landlord may make a final inspection within a reasonable time after discovering the termination of occupancy.

(c) A tenant who disputes the accuracy of the final damage list given pursuant to subsection (b) of this Code section may bring an action in any court of competent jurisdiction in this state to recover the portion of the security deposit which the tenant believes to be wrongfully withheld for damages to the premises. The tenant's claims shall be limited to those items to which the tenant specifically dissented in accordance with this Code section. If the tenant fails to sign a list or to dissent specifically in accordance with this Code section, the tenant shall not be entitled to recover the security deposit or any other damages under Code Section 44-7-35, provided that the lists required under this Code section contain written notice of the tenant's duty to sign or to dissent to the list.

44-7-34.

(a) Except as otherwise provided in this article, within one month after the termination of the residential lease or the surrender and acceptance of the premises, whichever occurs last, a landlord shall return to the tenant the full security deposit which was deposited with the landlord by the tenant. No security deposit shall be retained to cover ordinary wear and tear which occurred as a result of the use of the premises for the purposes for which the premises were intended, provided that there was no negligence, carelessness, accident, or abuse of the premises by the tenant or members of his household or their invitees or guests. In the event that actual cause exists for retaining any portion of the security deposit, the landlord shall provide the tenant with a written statement listing the exact reasons for the retention thereof. If the reason for retention is based on damages to the premises, such damages shall be listed as provided in Code Section 44-7-33. When the statement is delivered, it shall be accompanied by a payment of the difference between any sum deposited and the amount retained. The landlord shall be deemed to have complied with this Code section by mailing the statement and any payment required to the last known address of the tenant via first class mail. If the letter containing the payment is returned to the landlord undelivered and if the landlord is unable to locate the tenant after reasonable effort, the payment shall become the property of the landlord 90 days after the date the payment was mailed. Nothing in this Code section shall preclude the landlord from retaining the security deposit for nonpayment of rent or of fees for late payment, for abandonment of the premises, for nonpayment of utility charges, for repair work or cleaning contracted for by the tenant with third parties, for unpaid pet fees, or for actual damages caused by the tenant's breach, provided the landlord attempts to mitigate the actual damages.

(b) In any court action in which there is a determination that neither the landlord nor the tenant is entitled to all or a portion of a security deposit under this article, the judge or the jury, as the case may be, shall determine what would be an equitable disposition of the security deposit; and the judge shall order the security deposit paid in accordance with such disposition.

44-7-35.

(a) A landlord shall not be entitled to retain any portion of a security deposit if the security deposit was not deposited in an escrow account in accordance with Code Section 44-7-31 or a surety bond was not posted in accordance with Code Section 44-7-32 and if the initial and final damage lists required by Code Section 44-7-33 are not made and provided to the tenant.

(b) The failure of a landlord to provide each of the written statements within the time periods specified in Code Sections 44-7-33 and 44-7-34 shall work a forfeiture of all his rights to withhold any portion of the security deposit or to bring an action against the tenant for damages to the premises.

(c) Any landlord who fails to return any part of a security deposit which is required to be returned to a tenant pursuant to this article shall be liable to the tenant in the amount of three times the sum improperly withheld plus reasonable attorney's fees; provided, however, that the landlord shall be liable only for the sum erroneously withheld if the landlord shows by the preponderance of the evidence that the withholding was not intentional and resulted from a bona fide error which occurred in spite of the existence of procedures reasonably designed to avoid such errors.

44-7-36.

Code Sections 44-7-31, 44-7-32, 44-7-33, and 44-7-35 shall not apply to rental units which are owned by a natural person if such natural person, his or her spouse, and his or her minor children collectively own ten or fewer rental units; provided, however, that this exemption does not apply to units for which management, including rent collection, is performed by third persons, natural or otherwise, for a fee.

2. Plain Meaning of the Georgia Security Deposit Return Act

a. What constitutes a security deposit under Georgia law?

A security deposit includes money or any other property given by the landlord to the tenant to secure the tenant's obligations under the lease. Security deposit includes those items called a security deposit in the lease as well as damage deposits, advance rent deposits and pet deposits; however, a security deposit does not include earnest money or pet fees that, under the terms of the lease agreement, are NOT to be returned to the tenant.