

A Tenant's Guide To Recovery of Security Deposits Illinois

©2006 by Eric E. Willison and Andrew J. Ruzicho, II

all rights reserved

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 Illinois 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 Illinois, 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 Illinois 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 1973, the Illinois Legislature enacted the Security Deposit Return Act to be effective January 1, 1974. The Security Deposit Return Act applies only to landlords of residential property containing 5 or more units. The Security Deposit Interest Act applies only to landlords of residential property containing 25 or more units. Neither Act covers the smaller landlords who probably make up most of the landlords in the state. The City of Chicago has filled the gap with a tenant friendly ordinance, the City of Chicago Residential Landlord and Tenant Ordinance. The Ordinance has specific provisions concerning the return of security deposits for the residents of Chicago. I've also included the text of that statute below.

The Security Deposit Return 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

765 ILCS 710 and related sections cover the landlord’s duty to return security deposits. It is reprinted in its entirety below, and then I will provide a summary of what it all means for you. It’s hard to read statutes, so I’ll help you out.

(765 ILCS 710/) Security Deposit Return Act. _(765 ILCS 710/0.01) (from Ch. 80, par. 100) _Sec. 0.01. Short title. This Act may be cited as the Security Deposit Return Act.

(765 ILCS 710/1) (from Ch. 80, par. 101)

Sec. 1. A lessor of residential real property, containing 5 or more units, who has received a security deposit from a lessee to secure the payment of rent or to compensate for damage to the leased property may not withhold any part of that deposit as compensation for property damage unless he has, within 30 days of the date that the lessee vacated the premises, furnished to the lessee, delivered in person or by mail directed to his last known address, an itemized statement of the damage allegedly caused to the premises and the estimated or actual cost for repairing or replacing each item on that statement, attaching the paid receipts, or copies thereof, for the repair or replacement. If the lessor utilizes his or her own labor to repair any damage caused by the lessee, the lessor may include the reasonable cost of his or her labor to repair such damage. If estimated cost is given, the lessor shall furnish the lessee with paid receipts, or copies thereof, within 30 days from the date the statement showing estimated cost was furnished to the lessee, as required by this Section. If no such statement and receipts, or copies thereof, are furnished to the lessee as required by this Section, the lessor shall return the security deposit in full within 45 days of the date that the lessee vacated the premises.

Upon a finding by a circuit court that a lessor has refused to supply the itemized statement required by this Section, or has supplied such statement in bad faith, and has failed or refused to return the amount of the security deposit due within the time limits provided, the lessor shall be liable for an amount equal to twice the amount of the security deposit due, together with court costs and reasonable attorney's fees.

(765 ILCS 710/1.1) (from Ch. 80, par. 101.1)

Sec. 1.1. In the event of a sale, lease, transfer or other direct or indirect disposition of residential real property, other than to the holder of a lien interest in such property, by a lessor who has received a security deposit or prepaid rent from a lessee, the transferee of such property shall be liable to that lessee for any security deposit, including statutory interest, or prepaid rent which the lessee has paid to the transferor. Transferor shall remain jointly and severally liable with the transferee to the lessee for such security deposit or prepaid rent.

(765 ILCS 710/2) (from Ch. 80, par. 102)

Sec. 2. This Act takes effect January 1, 1974 and applies to leases executed on or after that date.

(765 ILCS 715/) Security Deposit Interest Act. _(765 ILCS 715/0.01) (from Ch. 80, par. 120) Sec. 0.01. Short title. This Act may be cited as the Security Deposit Interest Act.

(765 ILCS 715/1) (from Ch. 80, par. 121)

Sec. 1. A lessor of residential real property, containing 25 or more units in either a single building or a complex of buildings located on contiguous parcels of real property, who receives a security deposit from a lessee to secure the payment of rent or compensation

for damage to property shall pay interest to the lessee computed from the date of the deposit at a rate equal to the interest paid by the largest commercial bank, as measured by total assets, having its main banking premises in this State on minimum deposit passbook savings accounts as of December 31 of the calendar year immediately preceding the inception of the rental agreement on any deposit held by the lessor for more than 6 months.

(765 ILCS 715/2) (from Ch. 80, par. 122)

Sec. 2. The lessor shall, within 30 days after the end of each 12 month rental period, pay to the lessee any interest, by cash or credit to be applied to rent due, except when the lessee is in default under the terms of the lease. A lessor who willfully fails or refuses to pay the interest required by this Act shall, upon a finding by a circuit court that he has willfully failed or refused to pay, be liable for an amount equal to the amount of the security deposit, together with court costs and reasonable attorneys fees.

(765 ILCS 715/3) (from Ch. 80, par. 123)

Sec. 3. This Act does not apply to any deposit made with respect to public housing.

5-12-080 Security Deposits from City of Chicago Residential Landlord and Tenant Ordinance

(a) A landlord shall hold all security deposits received by him in a federally insured interest-bearing account in a bank, savings and loan association or other financial institution located in the State of Illinois. A security deposit and interest due thereon shall continue to be the property of the tenant making such deposit, shall not be commingled with the assets of the landlord, and shall not be subject to the claims of any creditor of the landlord or of the landlord's successors in interest, including a foreclosing mortgagee or trustee in bankruptcy.

(b) Any landlord or landlord's agent who receives a security deposit from a tenant or prospective tenant shall give said tenant or prospective tenant at the time of receiving such security deposit a receipt indicating the amount of such security deposit, the name of the person receiving it and, in the case of the agent, the name of the landlord for whom such security deposit is received, the date on which it is received, and a description of the dwelling unit. The receipt shall be signed by the person receiving the security deposit. Failure to comply with this subsection shall entitle the tenant to immediate return of security deposit

(c) A landlord who holds a security deposit or prepaid rent pursuant to this section for more than six months, after the effective date of this chapter shall pay interest to the tenant accruing from the beginning date of the rental term specified in the rental agreement **at the rate determined in accordance with Section 5-12-081. (Amendment Effective June 1, 1997)** The landlord shall, within 30 days after the end of each 12 month rental period, pay to the tenant any interest, by cash or credit to be applied to the rent due.

(d)The landlord shall, within 45 days after the date that the tenant vacates the dwelling unit or within 7 days after the date that the tenant provides notice of termination of the rental agreement pursuant to [Section 5-12-110\(g\)](#), return to the tenant the security deposit or any balance thereof and the required interest thereon; provided, however, that the landlord may deduct from such security deposit or interest due thereon for the following:

(1) Any unpaid rent which has not been validly withheld or deducted pursuant to state or federal law or local ordinance; and

(2) A reasonable amount necessary to repair any damage caused to the premises by the tenant or any person under the tenant's control or on premises with the tenant's consent, reasonable wear and tear excluded. In case of such damage, the landlord shall deliver or mail to the last known address of the tenant within 30 days an itemized statement of the damages allegedly caused to the premises and the estimated or actual cost for repairing or replacing each item on that statement, or actual copies of the paid receipts for the repair or replacement. If estimated cost is given, the landlord shall furnish the tenant with copies of paid receipts or a certification of actual costs of repairs of damage if the work was performed by the landlord's employees within 30 days from the date the statement showing estimated cost was furnished to the tenant.

(e)In the event of a sale, lease, transfer or other direct or indirect disposition of residential real property, other than to the holder of a lien interest in such property, by a landlord who has received a security deposit or pre aid rent from a tenant, the successor landlord of such property shall be liable to that tenant for any security deposit, including statutory interest, or prepaid rent which the tenant has paid to the transferor.

The successor landlord shall, within 10 days from the date of such transfer, notify the tenant who made such security deposit by delivering or mailing to the tenant's last known address that such security deposit was transferred to the successor landlord and that the successor landlord is holding said security deposit. Such notice shall also contain the successor landlord's name, business address, and business telephone number of the successor landlord's agent, if any. The notice shall be in writing.

The transferor shall remain jointly and severally liable with the successor landlord to the tenant or such security deposit or prepaid rent, unless and until such transferor transfers said security deposit or prepaid rent to the successor landlord and provides notice, in writing, to the tenant of such transfer of said security deposit or prepaid rent, specifying the name, business address and business telephone number of the successor landlord or his agent within 10 days of transfer.

(f) If the landlord or landlord's agent fails to comply with any provision of [Section 5-12-080](#) (a) - (e), the tenant shall be awarded damages in an amount equal to two times the security deposit plus interest at a rate **determined in accordance with Section 5-12-081 (Amended February 7, 1997)** This subsection does not preclude the tenant from