

A Tenant's Guide To Recovery of Security Deposits Kentucky

©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 Kentucky 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 Kentucky, 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 Kentucky 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 1974, the Kentucky Legislature enacted the Kentucky Landlord Tenant Act. The first few sections of any often act contain statements of legislative purpose and definitions, and the statute here is no exception. A security deposit is defined by Section 383.545(13) as “an escrow payment made to the landlord under the rental agreement for the purpose of securing the landlord against financial loss due to damage to the premises occasioned by the tenant's occupancy other than ordinary wear and tear.”

The purpose of the Act is to encourage landlords and tenants to maintain and improve the quality of housing; and to make uniform the law with respect to the subject of KRS 383.505 to [383.715](#) among those states which enact it.

1. The Text of the Statute

383.580 covers 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.

383.580. Security deposits.

(1) All landlords of residential property requiring security deposits prior to occupancy shall be required to deposit all tenants' security deposits in an account used only for that purpose, in any bank or other lending institution subject to regulation by the Commonwealth of Kentucky or any agency of the United States government. Prospective tenants shall be informed of the

location of the separate account and the account number.

(2) Prior to tendering any consideration deemed to be a security deposit, the prospective tenant shall be presented with a comprehensive listing of any then-existing damage to the unit which would be the basis for a charge against the security deposit and the estimated dollar cost of repairing such damage. The tenant shall have the right to inspect the premises to ascertain the accuracy of such listing prior to taking occupancy. The landlord and the tenant shall sign the listing, which signatures shall be conclusive evidence of the accuracy of such listing, but shall not be construed to be conclusive to latent defects. If the tenant shall refuse to sign such listing, he shall state specifically in writing the items on the list to which he dissents, and shall sign such statement of dissent.

(3) At the termination of occupancy, the landlord shall inspect the premises and compile a comprehensive listing of any damage to the unit which is the basis for any charge against the security deposit and the estimated dollar cost of repairing such damage. The tenant shall then have the right to inspect the premises to ascertain the accuracy of such listing. The landlord and the tenant shall sign the listing, which signatures shall be conclusive evidence of the accuracy of such listing. If the tenant shall refuse to sign such listing, he shall state specifically in writing the items on the list to which he dissents, and shall sign such statement of dissent.

(4) No landlord shall be entitled to retain any portion of a security deposit if the security deposit was not deposited in a separate account as required by subsection (1) of this section and if the initial and final damage listings required by subsections (2) and (3) of this section are not provided.

(5) A tenant who disputes the accuracy of the final damage listing given pursuant to subsection (3) of this section may bring an action in District Court. Tenant's claim shall be limited to those items from which the tenant specifically dissented in accordance with the provisions of subsection (3) of this section, or except as otherwise provided, and if the tenant shall fail to sign the listing or specifically dissent in accordance with subsection (3) of this section, the tenant shall not be entitled to recover any damages under this section.

(6) In the event a tenant leaves not paying his last month's rent and does not demand a return of his deposit, the landlord may, after thirty (30) days, remove the deposit from the account and apply any such excess to the debt owing.

(7) In the event the tenant leaves not owing rent and having any refund due, the landlord shall send notification to the last known or reasonably determinable address, of the amount of any refund due the tenant. In the event the landlord shall not have received a response from the tenant

within sixty (60) days from the sending of such notification, the landlord may remove the deposit from the account and retain it free from any claim of the tenant or any person claiming in his behalf.

2. The Meaning of the Text of the Statute

a. Security Deposit must be kept in a separate account

The Kentucky security deposit statute requires landlords of residential property who require a security deposit to place the tenant's security deposit in a separate bank account. This is important because in subsection four the statute indicates that "no landlord shall be entitled to retain any portion of a security deposit if the security deposit was not deposited in a separate account." So the landlord cannot keep the security deposit if he/she failed to place it in a separate account. The landlord also has a duty to inform prospective tenants of the location of the separate account and the account number.

b. Move-in checklist

Subsection two requires the landlord to present a prospective tenant with a complete listing of any then-existing damages to the rental unit (including the cost of repair of those damages) before the tenant must provide a security deposit to the landlord. The tenant has the right to inspect the unit to determine the accuracy of this listing prior to occupying the rental unit. If the tenant agrees with the listing as presented, both the tenant and landlord must sign it. If the tenant disagrees with the damages listed then the tenant may prepare another written document indicating which items he/she disputes and the tenant must sign this document. If the landlord fails to provide this itemization to the tenant then he/she cannot retain any portion of the security deposit.

c. Move-out checklist

At the end of the tenancy, the landlord must inspect the rental unit and prepare a list of damages to the unit and the cost of repairing such damages. The landlord must present the listing to the tenant for his/her review. If the tenant agrees with the listing, then the landlord and tenant must sign it. By doing so the tenant agrees with the repairs claimed and the estimated costs claimed to perform the repairs. If the tenant disagrees with the listing, he/she must specifically indicate in writing which items he/she disputes and must sign the document. If the tenant fails to either sign the original listing or provide a signed, written disagreement then the tenant cannot bring suit against the landlord for unlawful withholding of his/her security deposit. If the landlord fails to provide this itemization to the tenant then he/she cannot retain any portion of the security deposit.

d. Right to sue for security deposit

If the tenant did dispute the final listing at move-out by providing a signed, written statement indicating which items were disputed then the tenant can maintain a suit in District Court about those disputed items.

e. When tenant fails to pay final month's rent

If the tenant vacates the premises and fails to pay the last month's rent and does not demand a return of the security deposit, then the landlord may withdraw the security deposit from the separate account and apply it to the debt owed.

f. When tenant leaves and is owed refund

If the tenant leaves and has paid all rent but is owed a security deposit refund, the landlord must send written notification to the last known or reasonably determinable address of the tenant of any refund due to the tenant. If the landlord does not receive a response within 60 days from the sending of the notification, the landlord may remove the deposit from the separate account and keep the deposit.