

# **A Tenant's Guide To Recovery of Security Deposits Michigan**

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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 Michigan 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 Michigan, 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 Michigan 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 Michigan Legislature enacted the Michigan Landlord Tenant Act. A security deposit is defined by Section 554.601(e) as "a deposit, in any amount, paid by the tenant to the landlord or his or her agent to be held for the term of the rental agreement, or any part of the term, and includes any required prepayment of rent other than the first full rental period of the lease agreement; any sum required to be paid as rent in any rental period in excess of the average rent for the term; and any other amount of money or property returnable to the tenant on condition of return of the rental unit by the tenant in condition as required by the rental agreement."

According to the statute, a security deposit is any amount of money put on deposit with the landlord or the landlord's agent for the length of the rental agreement or any part of the term of the rental agreement. It includes any prepayment of rent beyond the first full month's rent. It includes any sum of money required to be paid as rent which exceeds the average rent for the term of the lease.

"Security deposit **does not include** either of the following:

- (i) An amount paid for an option to purchase, pursuant to a lease with option to purchase, unless it is shown the intent was to evade this act.
- (ii) An amount paid as a subscription for or purchase of a membership in a cooperative housing association incorporated under the laws of this state. As used in this subparagraph, “cooperative housing association” means a consumer cooperative that provides dwelling units to its members."

The 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**

554.602 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.

### **554.602 Security deposit; amount.**

Sec. 2.

A landlord may require a security deposit for each rental unit. A security deposit shall be required and maintained in accordance with the terms of this act and shall not exceed 1 1/2 months' rent.

### **554.603 Security deposit; notice.**

Sec. 3.

A landlord shall not require a security deposit unless he notifies the tenant no later than 14 days from the date a tenant assumes possession in a written instrument of the landlord's name and address for receipt of communications under this act, the name and address of the financial institution or surety required by section 4 and the tenant's obligation to provide in writing a forwarding mailing address to the landlord within 4 days after termination of occupancy. The notice shall include the following statement in 12 point boldface type which is at least 4 points larger than the body of the notice or lease agreement: "You must notify your landlord in writing within 4 days after you move of a forwarding address where you can be reached and where you will receive mail; otherwise your landlord shall be relieved of sending you an itemized list of damages and the penalties adherent to that failure." Failure to provide the information relieves the tenant of his obligation relative to notification of the landlord of his forwarding mailing address.

### **554.604 Security deposit, disposition; bond.**

Sec. 4.

(1) The security deposit shall be deposited in a regulated financial institution. A landlord may use the moneys so deposited for any purposes he desires if he deposits with the secretary of state a cash bond or surety bond written by a surety company licensed to do business in this state and acceptable to the attorney general to secure the entire deposits up to \$50,000.00 and 25% of any amount exceeding \$50,000.00. The attorney general may find a bond unacceptable based

only upon reasonable criteria relating to the sufficiency of the bond, and shall notify the landlord in writing of his reasons for the unacceptability of the bond.

(2) The bond shall be for the benefit of persons making security deposits with the landlord. A person for whose benefit the bond is written or his legal representative may bring an action in the district, common pleas or municipal court where the landlord resides or does business for collection on the bond.

**554.605 Security deposit as property of tenant.**

Sec. 5.

For the purposes of this act and any litigation arising thereunder, the security deposit is considered the lawful property of the tenant until the landlord establishes a right to the deposit or portions thereof as long as the bond provision is fulfilled, the landlord may use this fund for any purposes he desires.

**554.606 Waiving requirements of act.**

Sec. 6.

The requirements of this act may not be waived by the parties to a rental agreement except as specifically provided herein.

**554.607 Security deposit; permissible uses.**

Sec. 7.

A security deposit may be used only for the following purposes:

(a) Reimburse the landlord for actual damages to the rental unit or any ancillary facility that are the direct result of conduct not reasonably expected in the normal course of habitation of a dwelling.

(b) Pay the landlord for all rent in arrearage under the rental agreement, rent due for premature termination of the rental agreement by the tenant and for utility bills not paid by the tenant.

**554.608 Inventory checklists.**

Sec. 8.

(1) The landlord shall make use of inventory checklists both at the commencement and termination of occupancy for each rental unit which detail the condition of the rental unit for which a security deposit is required.

(2) At the commencement of the lease, the landlord shall furnish the tenant 2

blank copies of a commencement inventory checklist, which form shall be identical to the form used for the termination inventory checklist. The checklist shall include all items in the rental unit owned by the landlord including, but not limited to, carpeting, draperies, appliances, windows, furniture, walls, closets, shelves, paint, doors, plumbing fixtures and electrical fixtures.

(3) Unless the landlord and tenant agree to complete their inventory checklist within a shorter period, the tenant shall review the checklist, note the condition of the property and return 1 copy of the checklist to the landlord within 7 days after receiving possession of the premises.

(4) The checklist shall contain the following notice in 12 point boldface type at the top of the first page: “You should complete this checklist, noting the condition of the rental property, and return it to the landlord within 7 days after obtaining possession of the rental unit. You are also entitled to request and receive a copy of the last termination inventory checklist which shows what claims were chargeable to the last prior tenants.”.

(5) At the termination of the occupancy, the landlord shall complete a termination inventory checklist listing all the damages he claims were caused by the tenant.

**554.609 Itemized list of damages; check or money order; contents of notice of damages.**

Sec. 9.

In case of damage to the rental unit or other obligation against the security deposit, the landlord shall mail to the tenant, within 30 days after the termination of occupancy, an itemized list of damages claimed for which the security deposit may be used as provided in section 7, including the estimated cost of repair of each property damaged item and the amounts and bases on which he intends to assess the tenant. The list shall be accompanied by a check or money order for the difference between the damages claimed and the amount of the security deposit held by the landlord and shall not include any damages that were claimed on a previous termination inventory checklist prior to the tenant's occupancy of the rental unit. The notice of damages shall include the following statement in 12 point boldface type which shall be at least 4 points larger than the body of the notice: “You must respond to this notice by mail within 7 days after receipt of same, otherwise you will forfeit the amount claimed for damages.”.

**554.610 Effect of noncompliance with notice of damages requirement.**

Sec. 10.

Failure by the landlord to comply with the notice of damages requirement within the 30 days after the termination of occupancy, constitutes agreement by the