

The business of security deposits in landlord-tenant laws

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The Business of Security Deposits in Landlord-Tenant Laws

According to *The lease manual: a practical guide to negotiating office, retail, and industrial leases*, published by the American Bar Association, all tenants are required to maintain security deposits and all landlords are allowed to apply these deposits if there are breaches of or defaults under the lease agreement. From both the landlord's and the tenant's perspective, the laws on security deposits must make business sense, however. The landlord has the legal right to use the security deposit amount to repair property that has been left damaged by the tenant. Moreover, if the tenant has failed to pay rent, the security deposit amount represents compensation for the landlord. The lease agreement may include other obligations of the tenant to boot. In cases where the tenant fails to meet those obligations, the landlord has the right to keep a part of or the entire security deposit amount. But, if the tenant does not fail to meet any of the terms of the lease, the landlord must return the entire security deposit amount to the tenant once the latter has vacated the property previously rented. What is more, throughout his or her stay in rented property, the tenant would like to ensure that the security deposit amount "is not subject to claims by the Landlord's creditors..." (Dilman, 2008, p. 203).

Although security deposit laws may differ from state to state, they tend to be built around similar conditions for landlords and tenants in all states. Differences are slight. Studying security deposit law in one state must necessarily provide a gist of security deposit laws in other states. Furthermore, because laws are intricate it is important to focus on a single

state as we endeavor to gather a general idea about them as they apply in all states. Let us, therefore, use the security deposit laws of Georgia as a case study.

Under the Georgia Security Deposit Return Act, a landlord must return all security deposits provided that the tenant has adhered to all of the conditions specified on the lease agreement. Moreover, if the landlord manages at least ten units of property and fails to return a security deposit, he or she is required by law to pay the tenant three times the amount that has been withheld (“Protecting your Deposit”). After all, landlords managing ten or more units of property are in the position to return three times the amount of security deposits they have withheld. If wealthy landlords fail to follow the laws, it is correct for them to be penalized with greater severity seeing that the spirit of corporatism is especially inclined to challenge ethical standards in the absence of imposition of such penalties.

On a similar note, all of the Georgia landlord-tenant laws contained in the Official Code of Georgia, Title 44, Chapter 7, inclusive of security deposit laws, that is, O. C. G. A. §44-7-30 to O. C. G. A. §44-7-37 are based on ethical standards that landlords and tenants are required to comply with (“Protecting your Deposit;” Georgia Department of Community Affairs, 2008). The first couple of statutes on security deposit read:

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. (" State of Georgia Landlord

Tenant Law," 2006).

While the O. C. G. A. §44-7-30 simply defines terms relevant to security deposit statutes in Georgia, the O. C. G. A. §44-7-31 makes it abundantly clear that landlords must not misuse the funds they hold as security deposits on behalf of tenants. Rhodes (2008) writes that landlords – throughout America – do not have a legal claim over security deposit money until and unless the amount is lawfully claimed once the property has been vacated and it is found that the tenant has failed to meet his or her part of the obligations as described on the lease agreement (p. 36). After all, it is unethical for a landlord to use security money he or she has received from a tenant for a vacation. The tenant may decide to leave the rented premises at any time, demanding the security money held by the landlord. Hence, O. C. G. A. §44-7-32 offers an alternative to landlords who do not desire to keep security moneys in escrow accounts (" State of Georgia Landlord Tenant Law;" Georgia Code - Property - Title 44, Section 44-7-35," 2006).

According to this statute, the landlord may choose to " maintain an effective surety bond with the clerk of the superior court in the county in which the dwelling unit is located" (" State of Georgia Landlord Tenant Law"). The

landlord is required to keep the entire security deposit thus or fifty thousand dollars, whichever amount is less. The bond is executed between the landlord and a business that is authorized to act as surety, and it is conditioned upon compliance to O. C. G. A. §44-7-34. The O. C. G. A. §44-7-32 further requires landlords to return security moneys if they enter bankruptcy or in case there is foreclosure of their property (“ State of Georgia Landlord Tenant Law”). More importantly, if a landlord misuses the tenants’ security monies on dream vacations and this is proved as the landlord has failed to keep the money in either escrow accounts or as surety bonds, he or she is not permitted to retain any amount held as security in the event that there are reasons to retain a part of the security deposit (“ Georgia Code - Property - Title 44, Section 44-7-35”). Thus, holding security deposits in either escrow accounts or as surety bonds ensures compliance with ethical standards on the part of landlords. The security money belongs to the tenant, after all, and the landlord does not have the legal right to consider it as income.

An article published on the CBS News website raises an interesting issue regarding interest earned on security deposits. The author states:

But what about the sometimes substantial amount of interest incurred on your money?

In most states, it belongs to your landlord.

Only one-third of all states require landlords to pay their tenants interest on security

deposits. In that case, your landlord typically sets up a separate trust account with your

deposit. The interest rate to be paid will be in your rental agreement (the rate is usually

lower than what the bank pays so the landlord can cover administrative expenses).

(“ Collecting Interest on Your Rental Security Deposit”)

In Georgia, landlords are not required to place security deposit amounts in interest bearing accounts. The law does not require landlords to pay earned interest to tenants either. All the same, the landlord may agree to pay earned interest to the tenant by including this condition on the lease agreement (“ Is the Landlord Required to Give the Tenant Interest Earned on the Security Deposit,” 2009).

Because there are no provisions regarding earned interest in Georgia’s security deposit law, the following articles of the law describe conditions for returning security deposits with perfect business sense. According to O. C. G. A. §44-7-33, the tenant should be provided with a list of damages to the property before he or she pays a security deposit and moves in. The tenant has the legal right to check the accuracy of this list by visiting the property to inspect it. The list should be signed by both the landlord and the tenant if they agree on the accuracy of the list. If the tenant believes that the list is inaccurate, however, he or she must inform the landlord in writing about the items on the list that raise doubts about its accuracy (“ State of Georgia

Landlord Tenant Law”). These pieces of legal writing come into use when the tenant leaves the property and security money must be refunded.

Also according to O. C. G. A. §44-7-33, “[w]ithin three business days” after a property has been vacated, the landlord or his or her estate agent must inspect the property to compile yet another list of damages (“ State of Georgia Landlord Tenant Law”). If there are damages beyond the ones listed before security money was paid, the tenant is charged for these damages (“ State of Georgia Landlord Tenant Law”). The tenant has the legal right to visit the property “ within five business days” to check the accuracy of the new list (“ State of Georgia Landlord Tenant Law”). If the tenant believes that the list is accurate, both the landlord and the tenant must sign the new list. If there are items on the list that raise doubts in the tenant’s mind, however, he or she has the right to disagree in writing. But, if the landlord cannot agree with this piece of writing, the tenant has the right to take the dispute to a court of law in order to recover his or her security money. The dispute taken to court may only involve items on the final list that the landlord and the tenant have disagreed about. If the tenant fails to comply with the statute to recover his or her security money believed to be unlawfully withheld by the landlord, the law gives no right to the tenant to recover the same (“ State of Georgia Landlord Tenant Law”). In this way, the landlord is protected from heeding untruthful claims of the tenant, and ethical standards are upheld. It is entirely possible for the tenant to make a false claim to recover security money. If he or she is not required to take the dispute to a court of law to recover a security deposit, legal authorities

acting as third parties to resolve the dispute may not be involved. There is a possibility that the landlord may be cheated by the tenant this way.

The O. C. G. A. §44-7-34 requires the landlord to refund security money to the tenant within a month of termination of either the lease agreement or occupancy, whichever happens last. The landlord must return all security money unless there is a dispute about the accuracy of the final list of damages prepared in accordance with O. C. G. A. §44-7-33 (“ State of Georgia Landlord Tenant Law”). The O. C. G. A. §44-7-34 also reads:

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” (“ State of Georgia

Landlord Tenant Law”).

This portion of the statute makes the landlord responsible for depreciation of property. It is unethical to charge the tenant for the fact that the property is aging, after all. Moreover, the O. C. G. A. §44-7-34 requires the landlord to present a written statement to the tenant if it is believed that a portion of the security money must be retained because there are damages to the property beyond ordinary depreciation. These damages are listed in

accordance with O. C. G. A. §44-7-33. The O. C. G. A. §44-7-34 requires the list of damages to be delivered to the tenant with the remaining portion of security money in case the tenant has agreed about the accuracy of the list. The list and the refund are required by law to be sent by mail to the address provided by the tenant (“ State of Georgia Landlord Tenant Law”). If the mail is returned to the landlord because the address given by the tenant is incorrect, however, the landlord is required to “ locate the tenant” with “ reasonable effort” (“ State of Georgia Landlord Tenant Law”). But, if the tenant cannot be located the refund becomes property of the landlord ninety days following the date it was mailed (“ State of Georgia Landlord Tenant Law”).

Of course, the landlord is also allowed by law to retain a part of the security deposit for unpaid rent, late payment, nonpayment of bills for utilities, and/or nonpayment of pet fees. If there are disputes about these portions of the security money that the landlord has decided to retain, the tenant is required to resolve the disputes with the involvement of a competent court of law (“ State of Georgia Landlord Tenant Law”). Like the other statutes on security deposits, this ensures that neither the landlord nor the tenant is cheated in the process of security deposit recovery. The landlord may be sued by the tenant if security money is not returned within the period of time specified by law (“ Georgia Security Deposits”). Similarly, the tenant is not permitted to make false claims for a security deposit refund before a court of law intervenes to end the dispute. In this way, ethical standards are maintained and landlord-tenant relationships are regulated. After all, renting of property is a vast enterprise calling for such regulation. More importantly, the entire

country enjoys similar regulations for landlord-tenant relationships, maintaining ethical standards in this essential business.

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