

Warning to All Landlords: Withhold Deposits at Your Own Risk

by CD Publications

New York. Two Section 8 tenants successfully sue their landlord for failing to return their security deposit which the landlord claimed was used to pay for damages.

The tenants sued their landlords because the landlords didn't return their \$3,000 security deposit after terminating their lease. The landlord claim they didn't return the deposit because they used it as an "offset" against the damages the tenant allegedly caused to the property.

The tenants leased the property for approximately one year and were originally supposed to pay \$1,950 in rent per month for the property. But after they signed the lease with the landlord, they entered into a Section 8 assistance program. Section 8 also paid \$1,800 of the \$3,000 security deposit for the tenants.

The landlords testified they had to paint two bedrooms, replace kitchen cabinet knobs and repair two light fixtures after the tenants moved out. They further claimed most of the security deposit was spent to repair damage caused when the water pipes froze inside the house and burst. Even though the pipes froze after the tenants moved out, the landlords claimed they were still liable for damages.

The trial court finds in favor of the tenants for several reasons. The evidence indicated the landlords didn't keep the security deposit in a separate account as a required, and they failed to provide the tenants with notice of where their funds were being kept.

Therefore, the landlords commingled the security deposit funds with their own personal funds. Under New York state law, a security deposit remains the tenant's property until the landlord is lawfully entitled to apply it to damages or to unpaid rent. The landlord has a fiduciary duty to hold the funds for the tenant as a trustee and may not make personal use of the funds.

If the landlord commingles the tenant's funds with his own, the landlord, "forfeits the right to avail himself of the deposit for any purpose." A landlord who commingles the deposit with his personal funds commits a conversion, and the tenant has a right to recover the funds.

The tenant cannot be held liable for any damages cause by the frozen water pipes because they surrendered possession before the pipes froze.

Once the landlords accepted possession, the tenant "had no further liability for rent or damages incurred after surrender" says the court.

Lesson: Many landlords have problems handling their tenant's security deposits, and most states allow tenants to recover double and triple damages plus attorneys' fees when their deposits are wrongfully withheld or landlords don't properly and promptly account for their deposits. (Please check your local state's laws). Landlords may not commingle security deposits with their own funds. Such deposits actually belong to the tenant and must be returned to the tenant at the end of the lease if there are not damages.

Naquia Rhodes and Marcus Rhodes, Plaintiffs, against Bridge Scott Calhoun and Versia L Scott, Defendants. 2005 NY Misc. LEXIS 2145