

Landlord Loses Security Deposit Court Case By CD Publications

Minnesota. A tenant successfully sues a landlord over the landlord's failure to return the tenant's security deposit but loses his attempt to hold the new owner liable years later.

The tenant's former landlord failed to return his \$100 deposit at the completion of his one-year lease in 2001, and the court awarded the tenant \$418 in damages after the tenant sued for the landlord for wrongfully with-holding the security deposit. The tenant, however, was unable to collect the damage award from the landlord.

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In 2004, a new property management company took over the apartment building for a new owner. When the tenant found out about the change in management and ownership, he filed a second lawsuit against the new management company and the new owner for return of the security deposit. The tenant claimed in his lawsuit that the previous landlord transferred management responsibility for the property to the new management company. The tenant said both the new management company and the new owner were responsible for the debts of the old landlord under the state's successor liability statutes.

The trial court found in favor of the new owner and new management company and dismissed the case. The tenant appealed to the district court.

The district court also ruled against the tenant, saying the statute under which the tenant sued only applied to security deposits for current tenants or tenants whose security deposits were transferred. It did not apply to former tenants who moved out before the property was sold.

The tenant failed to allege in his second lawsuit that he was a tenant of the new owner or that the security deposit was ever transferred to the new owner. Absent such allegations, the district court ruled the tenant did not have any claim at all against the new owner.

The district court also held that since the tenant already had a judgment for his security deposit, he could not bring a second lawsuit to litigate the same issue against the new management company.

The tenant appeals again, this time to the appellate court.

The appellate court agrees the tenant failed to allege a claim against the new owner because he did not claim he was the new owner's tenant or that his security deposit was transferred to the new owner. The appellate court finds, however, that the tenant did properly allege that the new management company was "the transferee of management responsibilities for the previous landlord," and the claim should not have been dismissed against the new management company.

Landlords have a statutory obligation to return or otherwise account for a tenant's security deposit and the tenant sufficiently alleged that the previous manager transferred this responsibility to the new management company.

The lower courts did not specifically rule on the sufficiency of the tenant's allegations against the new management company. Accordingly, the lower courts should not have dismissed his claim without determining whether the security deposit responsibility was in fact transferred to the new management company.

The appellate court remands the case back to the trial court and the tenant will have the burden to prove that previous management company transferred the security deposit responsibility to the new management company.

The tenant was entitled to either his security deposit or an explanation as to why it was not returned from his original landlord. Since he received neither, he was entitled to a judgment plus damages.

The tenant has a judgment against his former landlord, and he may be able to convince the court that the new management company assumed responsibility for all of the security deposits. If he cannot prove the new management company assumed responsibility for the payment of the

former landlord's debts, he will still have his first judgment against a landlord who apparently has gone out of business.

The new owner cannot be held liable in this case because the tenant failed to allege the new owner was ever his landlord or that the new owner was somehow responsible for his deposit.

Lesson: The tenant's former landlord has a \$418 judgment against it for not returning a \$100 security deposit. But the tenant will probably not be successful in obtaining a judgment against the new management company with these facts. Hopefully, the new owner thoroughly reviewed the files before purchasing the property to calculate the costs of defending against these types of claims and added it into the purchase price.

Jan Reed, Appellant, vs. Rooms Plus, LLC, et al., Respondents, W.S. Property Management, Defendant. 2005 MN App. Unpub. LEXIS 360. Unpublished opinion rule applies.

Warning to All Landlords: Withhold Deposits at Your Own Risk

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 landlords claim they didn't return the deposit because they used it as an "offset" against the damages the tenants 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. The Section 8 program paid \$1,578 of the rent to the landlord, and the tenants paid \$350 per month to the landlord. 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 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 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 tenants' 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 tenants cannot be held liable for any damages caused by the frozen water pipes because they surrendered possession before the pipes froze.

Once the landlords accepted possession, the tenants "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. 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 no damages. Naquia Rhodes and Marcus Rhodes, Plaintiffs, against Bridget Scott Calhoun and Versia L Scott, Defendants. 2005 NY Misc. LEXIS 2145.

Landlord Law Report is written by a practicing landlord-tenant attorney and contains quick-reading highlights of recent federal and state court decisions on fair housing, premises liability, rent control, lease enforcement, drug use, eviction, handicapped accessibility, building security, lead paint/asbestos, and Section 8 tenants, plus summaries of HUD rulings. Each issue is filled

with advice on how multifamily property owners and managers can be better prepared to protect themselves from expensive and time-consuming litigation.

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