

Tenants Sue Landlord to Recover Security Deposit

By CD Publications

Texas. A landlord does not have to return his tenant's security deposit and is awarded additional damages against tenants who trashed his house during a six year tenancy even though he did not provide them with a complete list of deductions taken from their deposit.

The landlord leased his house to a husband and wife. The lease agreement required the tenants to pay a \$3,700 security deposit and allowed the landlord to deduct reasonable charges for cleaning, deodorizing, damages and any other repair costs from the security deposit.

The lease obligated the tenants to reimburse the landlord for any loss, property damage or repair costs or services to the property caused by the tenants' negligence or improper use of the property. The lease required the landlord to pay the costs to maintain the yard but it made the tenants responsible for watering the yard at reasonable and appropriate times.

The landlord programmed the sprinkler system to water the yard pursuant to his agreement with the tenants and told the tenants the sprinkler system had to stay turned on at all times.

The tenant remained in possession for six years before vacating. The tenants sent their landlord a written 30-day notice informing him that they were vacating and told him the sprinkler system was not working and needed to be repaired. The tenants moved out on the scheduled date.

The landlord notified the tenants almost as soon as they moved out that he would not return their security deposit because the damages exceeded the amount of their deposit. The landlord said the deposit would be applied to the costs he incurred to plant new grass, (the sprinkler system was turned off but not broken), and make repairs throughout the house. The landlord's notice described some of the damages and repairs but not all of them.

The tenants sent their landlord a notice that if he did not return their full deposit, they would sue him. The tenants waited a year before suing their landlord for failing to return their deposit. The landlord filed a counterclaim against the tenants for all of the damages they caused to his property.

The trial court found in favor of the landlord and awarded him \$2,000 in additional damages above the security deposit, interest and \$4,000 in attorneys' fees. The tenants appealed the decision.

The tenants argued on appeal their landlord was required to plead and prove he did not act in bad faith by retaining their security deposit and because he failed to do so, he could not retain their deposit. They also claimed that since he failed to provide them with a full and complete list of all the damage he claimed they caused, he was not entitled to sue them for any damages.

The appellate court agreed the landlord did not have to provide them with an itemized list of all the deductions and that he was entitled to offset the amount of their deposit against the damages. The appellate court said he was not required to plead or prove he was not acting in bad faith either.

The appellate court affirms the trial court's decision and agrees the damages were above and beyond the normal wear and tear standard.

Lesson: The landlord prevailed but now must try and collect from his tenants. The tenants caused a great deal of damage to the property and it did not happen overnight. It appears neither the landlord nor his agent inspected the property during the six year tenancy so they did not know the tenants were not maintaining the property. Landlords should regularly and routinely inspect their property to make sure it is free of dangerous hazards and that it is being properly maintained.

Ralph and Rubye Pulley, Appellants v. Keith Milberger, Appellee. 2006 Tex. App. LEXIS 6446.

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