

Charges against Security Deposits in Ohio

I. Ohio Revised Code Section 5321.16

Ohio Revised Code Section 5321.16 controls the landlord's duty to return security deposits in Ohio. It mandates that once the tenant has moved out, a landlord in possession of written or actual notice of the tenant's forwarding address for the return of the deposit must return the deposit or an written itemization of deductions from the deposit within 30 days. If a dispute arises and the landlord is found to have wrongfully withheld any portion of the deposit, then the tenant is entitled to an award of double damages and attorneys fees.

It should be noted that Ohio does not impose a requirement on the tenant of showing bad faith upon the landlord's part in order to award double damages and attorneys fees. A landlord who was conscientiously wrong about an issue will still have to pay double damages and reasonable attorney's fees. You should remember at all times that you, as the landlord, will have the burden of proof in any court case wherein the tenant is asserting the right to get his security deposit back.

Landlords play a very dangerous game when they view a tenant's security deposit as an extra profit center for their business, or when they think that they can rehab the apartment on the tenant's dime. In the past, a great many tenants did not know their rights and just let things slide. But now with the availability of information on the Internet, and law school legal clinics springing up here and there, you are likely to run into a Tartar at some time or other and I assure you it will be an expensive ride.

A. What Can Be Deducted

A landlord can deduct any amount from the security deposit which is beyond normal wear and tear. The tricky bit is that normal wear and tear is nowhere defined in Ohio law and is likely going to vary quite a bit between tenants. For instance, normal wear and tear for an elderly lady with a caged parakeet in a retirement community is going to be very different from normal wear and tear for five college guys with two dogs in a campus area apartment.

I have seen landlords try to deduct for things like dusting off the coils on the back of the refrigerator. I have seen them try to deduct for cleaning out the insides of plumbing which they admitted was working fine. I have seen them try to deduct for dusting off the blades of ceiling fans.

B. What Can't Be Deducted

1. Clauses Requiring Automatic Forfeiture of Security Deposits

Some landlords figure that they will be smarter than everyone else and simply write into the lease that the security deposit is automatically forfeited. They figure that if the tenant

signs it, that's it, and they get to keep the deposit. The trouble with this approach is that the Landlord Tenant Act has a provision which states that any clause in a rental agreement conflicting with the Act will not be enforced by the Courts. Ohio Courts of Appeal have specifically ruled that automatic security deposit forfeiture clauses are unenforceable.

2. Liquidated Damages/Penalty Clauses

A variation of this strategy is to put clauses in the lease which charge automatic amounts for certain damages. One landlord had a clause in his lease whereby the tenant agreed to pay \$35.00 for carpet cleaning whether the carpets needed to be cleaned or not. The Court of Appeals held that such automatic charges would not be enforceable in Ohio.

3. Acts of Others

Just because the tenant was in control of the apartment when the damages happened does not mean that the tenant can be billed for the damages. The tenants have no control over the actions of third party criminal elements trying to break into the place, so you cannot charge them for damage to a door that was kicked in. Further, you can't even charge them for the negligent acts of their guests if there was no way that the tenant could stop the guest from doing the damage. In one case, an Ohio Court of Appeal held that a tenant who was asleep at the time that her son foolishly started a grease fire while cooking up some French fries could not be legally responsible for the damages.

II. Proving Your Deductions

A. Video Kills

You can have all of the witnesses and paperwork in the world backing up your damages (and you should) but if the tenant shows a video of a clean apartment, you are dead in the water unless you have your own video as well. You need to make a complete tape, showing that good and the bad, not just the highlights. The tape doesn't have to be much longer than five or ten minutes. Be sure to watch the tape before cleaning up and repairing the place because sometimes lighting or lack of it will obscure what you are trying to show.

You should time stamp the tape at the start and at the end with a copy of that day's newspaper shown to the camera so that the headline date is visible. I know that most video cameras have the time and date on them, but those can be set like a watch. Be systematic in doing your tape. Show the floors, walls, and ceilings of each room. Get inside the appliances, closets and drawers.

B. Proving Damages

A videotape is a great starting point, but it only gets you half way. A video tape will show your damages, but proving damages to the court requires further effort. There are two very tricky aspects to proving damages.

1. Degree of Damage Issues

First, how much was the item damaged by the tenant? The tenant is going to argue three things. He is going to argue that the item was already damaged at move in, he will argue that the damage done was reasonable wear and tear, and/or that your asserted repair costs are exorbitant. An example of this would be a \$250.00 charge to repair damaged mini-blinds. The Court is going to see that new mini-blinds cost only \$30.00, and the Court is unlikely to award \$220.00 in labor to hang mini-blinds.

2. Pro-Rated Damages

The second and more difficult issue is pro-rating for the age of an item. Carpet in residential apartments has a certain life expectancy. Even if the carpet was new at move in, and was so terribly damaged after two years that it had to be entirely replaced, the tenant should be credited with two years worth of wear and tear which the carpet would have sustained any way. To keep the example simple, let's assume a carpet with a five year life expectancy. The tenant ruins the carpet after two years at the apartment. New carpet costs \$1,000.00 to install. The landlord's damages will be \$600.00.

If this case goes to litigation over the deposit, it sucks to be you if the tenant had a \$900.00 security deposit and you kept it all thinking that you had \$1,000.00 in carpet damages. The court will award the tenant \$300.00, double it to \$600.00, and then set a hearing to determine what the tenant's reasonable attorneys fees are. It can get even worse if the tenant forces you to admit that you don't know when the carpet was last installed before he moved in. If you can't establish before and after evidence of value, you have failed to meet your burden of proof and the tenant wins.