

PAUL BERNSTEIN, ESQ., ON CHICAGO TENANTS' RIGHTS

Chapter 6: GETTING A REFUND OF YOUR SECURITY DEPOSIT

You followed the suggestions given to you in prior chapters about taking pictures and documenting needed repairs and problems to your apartment. You moved out on time, returned the keys, provided your new address, got a receipt from your landlord acknowledging return of the keys and your new address, and 45-days has come and gone and no security deposit refund, or interest. What now?

If you rented an apartment in the City of Chicago, then most likely you are covered by the Chicago Residential Landlord and Tenant Ordinance (Sometimes referred to as the “**RLTO**” or “**Ordinance**”). The main exception to the Ordinance is that buildings of six units or less where the building is "owner occupied" are not covered.

Section 5-12-080 – Security Deposits

Section 5-12-080 of the Ordinance has a number of provisions to protect tenants as to their security deposits. For example:

Subsection (a) requires the landlord to put your security deposit in a separate account in a federally insured, interest-bearing account in a bank, savings and loan or other financial institution located in Illinois.

Subsection (b) requires the landlord to give you a signed receipt indicating the amount, the name of the person receiving the deposit and if the person giving the receipt is an agent, the name of the landlord for whom the deposit is received.

Subsection (c) requires landlords who hold a security deposit for more than six months to pay you interest.

What is focused on in this chapter is:

Subsection (d) which requires the landlord to return a tenant's deposit, plus interest, within 45 days after the tenant vacates their apartment.

The landlord may deduct from your security deposit, if done in a timely fashion, unpaid rent and a reasonable amount necessary to repair any damage caused to the premises by the tenant or any person under the tenant's control or on the premises with the tenant's consent, "reasonable wear and tear excluded." If the landlord alleges that repairs were required, then provisions under section (d) (2) require the landlord to provide the tenant with details about the repairs within the time limits noted in said sub-section.

Here, I strongly suggest that you read this section of the RLTO for the full text of the Ordinance.

What are your rights if the landlord fails to properly return your security deposit?

But, suppose the landlord has not refunded your security deposit, or made deductions for damages that you are not responsible for or has failed to properly document those deductions or has not complied with the requirements of the RLTO in a timely fashion. Is it worthwhile for you to go to court for such a sum? Will you, as a practical matter, be able to afford to hire a lawyer?

Well, here's where the City of Chicago really went to bat for the citizens of Chicago. Sub-section (f) of this section states that if the landlord or the landlord's agent fails to comply with any provision of Section 5-12-080, then in addition to getting that portion of the security deposit to which you are entitled, the tenant shall be awarded damages in an amount equal to two times the amount of the security deposit, plus interest. Thus, if your landlord failed to return your \$500.00 security deposit, you have a claim for the security deposit plus the damages of an additional \$1,000.00, plus interest.

If a tenant wins their lawsuit, the landlord pays your legal fees!

Well, skeptics may say that even this is not enough to allow you to hire a good attorney. Any lawyer worth his or her “salt” may quickly run up a legal fee for you, on their hourly fee rate, equal to or exceeding the amount of your security deposit. Again, the City of Chicago anticipated this type of problem and went on to provide in Section 5-12-180 of the Ordinance, that if you hire an attorney to represent you to get your money back, and if you win your case, then you are entitled to all court costs and reasonable attorney's fees. Of great importance is the fact that you need not pay the legal fees out of your own pocket and then seek reimbursement from the landlord – NO, to the contrary, you need not pay the legal fees to your attorney, as the successful tenant’s attorney can file a petition with the trial court asking for the tenants’ lawyer’s attorney’s fees to be paid for the reasonable value of the lawyer’s time directly by the landlord.

A decision of the Illinois Appellate Court in the case called “**Pitts vs. Holt**” tells us that lawyers for tenants are entitled to full and proper fees if they have accomplished a good result for the tenant and the time expended was appropriate and necessary in the case and the hourly rate also fair and reasonable..

These are very important tenants' rights and even if your security deposit is a very low amount, given the remedies provided by the City of Chicago Ordinance, no tenant ever need lose their security deposit to a landlord who has failed to follow the law or failed to pay the interest due the tenant on such a deposit.