

An Overview of the Chicago Residential Landlord and Tenant Ordinance and its Punitive Implications for Landlords, Property Managers, and Owners

Rent at Your Own Risk



By Thomas G. Cronin

While the Chicago housing market is still struggling to get its head above water, the demand for rental units in the city has surged. Whether the decision is based on strategy or financial necessity, Chicagoans are renting in higher numbers. Likewise, an increasing number of owners are finding themselves between properties and opting to rent one home out. Consequently, many owners have unwittingly become *de facto* landlords. The Chicago Residential Landlord and Tenant Ordinance (“RLTO”) (Chicago Municipal Code §5-12-010, *et. seq.*) regulates every

rental agreement in Chicago (excluding tenants who rent in owner-occupied buildings of six units or less). The sudden rise in renters has resulted in a growing number of landlords and owners who are either unfamiliar with or entirely unaware of the RLTO and its requirements, and they are increasingly finding themselves victim to its penalties, which, in some cases, carry severe financial consequences.

Landlords can violate the RLTO before a renter even sets foot in her unit. Specifically, Section 5-12-170 mandates that each lease contain a summary of the tenant rights, a summary of the current and previous two years’ security deposit interest rates,

and mandatory porch safety language, which was added in the wake of a deadly 2003 porch collapse in Chicago’s Lincoln Park neighborhood. A landlord’s failure to provide any of this information not only enables the tenant to terminate her lease, but also entitles the renter to recover \$100 in damages. For a landlord, however, having to suddenly find a new tenant often proves more costly.

Another common lapse by landlords involves the failure to disclose previous code violations to the tenant. Per Section 5-12-100, a landlord must advise the tenant about any code violations from the past 12 months that affect the dwelling unit

or common areas. Such failure to disclose enables the tenant to terminate her rental agreement, and a landlord's failure to comply after receiving notice entitles the tenant to recover one month's rent.

The section of the RLTO that contains the most landmines—and most severe penalties—involves security deposits. Landlords must be extremely vigilant in abiding by Section 5-12-080, as the slightest misstep will result in an award of two times the tenant's security deposit, plus interest.

The first mistake a landlord can make involves commingling the security deposit. The law is clear that a security deposit remains the tenant's property. As such, it must be kept in a separate, federally-insured interest-bearing account and apart from the landlord's assets, including rental income.

The most common deposit violation occurs with a landlord's application of interest, or lack thereof. Each year, the controller sets the interest rate to be applied to rental agreements. While interest is owed at the end of each 12-month rental period, some landlords either apply the wrong interest rate or miscalculate the interest from the correct rate. An astonishing number of landlords misinterpret the correct method by applying different rates to correspond to the different years in the lease. However, the RLTO provides that the applicable rate correspond only with the year in which the rental agreement was executed, regardless of what year the tenancy endures. Thus, the appropriate rate to be applied to the deposit for a lease period from December 31, 2011 through December 30, 2012 would be the 2011 interest rate, despite all but one day of the tenancy occurring in 2012.

Another trap-laden area in the RLTO involves the manner in which a security deposit is returned. A tenant's deposit must be returned within 45 days after the tenant vacates the unit, less any unpaid rent not validly withheld and a reasonable amount for damage repairs. While some landlords are oblivious to the 45-day deadline, an even larger number of landlords are unaware of

YLS Open House

You are cordially invited to attend the Young Lawyers Section Annual Open House on Wednesday, May 23, from 5:00-7:00 p.m., at Association Headquarters. The cocktail reception is held each year in appreciation of the judges, lawyers, and other persons who have volunteered their time and effort in support of the YLS during the past year. Complimentary cocktails and appetizers will be provided. RSVP your attendance to yls@chicagobar.org.

YLS Annual Meeting

Join the Young Lawyers Section at its 2012 Annual Meeting on Thursday, June 7, at Fulton's on the River, 315 N. LaSalle St., Chicago. A reception will begin at 11:30 p.m., followed by a luncheon and program at 12:00 p.m. Outgoing YLS Chair Justin L. Heather, Corey Cotter Heather & Richardson LLC, will preside over the Meeting. Incoming Chair Natacha D. von Will, Segal McCambridge Singer & Mahoney Ltd., will be introduced and special awards honoring outstanding Section members will also be presented. Tickets are \$40 per person (held at the door). To make a reservation, call 312/554-2031 or email jbortolino@chicagobar.org.

the meticulous steps they must follow when withholding a portion of the deposit.

Within 30 days, the landlord must "deliver or mail to the last known address of the tenant" an itemized statement of the damages caused and the estimated or actual cost for such repairs, including attachment of receipts. Where an estimate is given, the landlord must provide the tenant with copies of paid receipts within 30 days from the date that the original estimate was sent to the tenant. Failure to abide by any of these guidelines will not relieve the tenant of any liabilities for property damage, but it will subject the landlord to a mandatory penalty of two times the tenant's security deposit. Depending on the amount of the deposit, the landlord will likely owe the tenant more in penalties than what the tenant owes for damage.

While the RLTO's security deposit penalties are severe enough in isolated instances, the sliding scale of liability for landlords or owners of buildings with a large number of rental units, or those who require large security deposits, is perilous. Recently, a Chicago property management company overseeing a building with hundreds of rental units inadvertently applied the wrong interest rate to its tenants' security depos-

its, actually resulting in an *overpayment* of tenants' interest. When factoring the number of tenants and deposit amounts, the company's liability exceeded \$1 million on statutory penalties alone, not including court costs or attorney's fees, all as a result of a simple miscalculation that amounted to a difference of a few cents. In another recent example, a landlord commingled a deposit by neglecting to separate a tenant's security deposit from her first month's rent, which had been paid together as a single wire transfer. The security deposit was more than \$12,000, and within hours of the lease being executed, the landlord was liable to the tenant for an award of twice that amount.

Because Section 5-12-080 of the RLTO has been the subject of a majority of the litigation between landlords and tenants, two new changes to the statute were enacted in its most recent amendment. Under the previous RLTO, if a tenant provided the landlord with his or her first month's rent and security deposit in one check (as is often the case), the landlord was guilty of commingling the instant the check was deposited. With the most recent version, a landlord is able to accept the first month's rent and security deposit in one payment,

but the deposit must be withdrawn and placed into a separate account within five business days.

The second, and more impactful, change to the RLTO relates to the amount of security deposit interest paid to a tenant. A new amendment to the RLTO provides leniency in the event that the amount of interest paid is incorrect, which is a newfound luxury for landlords that did not previously exist. Under the new “honest mistake” amendment, if a landlord timely pays security deposit interest but the amount is wrong, a landlord can avoid the penalty of two times the tenant’s security deposit if: (1) the tenant gives the landlord written notice of the deficient amount; and (2) within 14 days thereafter, the landlord either pays the tenant the correct amount of interest plus \$50.00, or provides a written response setting forth the prior proper calculation. Although landlords still face a penalty in the event of a miscalculation of security deposit interest, because such errors usually amount to a discrepancy of a few cents, the

amended RLTO recognizes the potential for an honest mistake by putting the onus on the tenant and minimizing the landlord’s exposure.

The final RLTO penalty that landlords and owners face involves court costs and attorney’s fees. Section 5-12-180 awards “the prevailing plaintiff” in an RLTO action “all court costs and reasonable attorney’s fees.” The court costs and attorney’s fees are mandatory, regardless of how minuscule the amount recovered by the tenant, and only the determination of the reasonableness of the fees is within the court’s discretion. Thus, if a landlord chooses to fight a tenant’s claim under the RLTO and loses, the tenant’s court costs and attorney’s fees can easily, and disproportionately, exceed the statutory violation amount.

In response to the punitive penalties of the RLTO, an increasing number of landlords and owners are no longer taking security deposits from their tenants. By doing so, however, landlords are relinquishing much, if not all, of their security against

tenants who leave behind unpaid rent or damaged units, especially since litigation to recover the same is almost always more costly. The most efficient way for landlords and owners to avoid such penalties and prohibit tenants from validly breaking their lease is to be cognizant of and ensure strict compliance with the RLTO’s requirements. By doing so, landlords and owners will also harvest and maintain a better relationship with their tenants. ■

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