

# Deposits: What damage?

By Ron Ruggless

School is starting. You've found that ideal apartment and you've dug up that first month's rent. You've even dug a little deeper and come up with enough to pay that substantial damage deposit.

What are your chances for having it returned intact?

Fairly good, providing you don't destroy the place, Jerald Fennell, special assistant state attorney, said referring to the Residential Landlord and Tenant Act which went into effect July 1.

"The damage deposit has always been a topic of large dispute," Fennell said, "and this act definitely clears up some questions as to what the positions of the parties are."

### Defines conditions

It mainly defines the amount of deposit which the landlord can require and the conditions for its return, two aspects of landlord-tenant relations previously considered under common law.

"The damage deposit cannot exceed more than one month's rent," he said, "and only can be retained for rent due and damages to the apartment, which does not include normal wear and tear on the apartment."

Normal wear and tear, according to Fennell, includes any wear on the apartment through normal use. This includes repainting and cleaning, although the tenant must leave the apartment in the best shape possible, just as when he leased it.

"Such things as grease on the carpet and dogs dirtying it up are usually not considered normal wear and tear," he added.

### Return stipulated

Another stipulation in the act allows the tenant, at the termination of tenancy, to demand the return of the damage deposit.

"Once the demand is made for the deposit—and it should be made in writing—the landlord has to reply within 14 days, itemizing any reasons for damage deposit deductions," Fennell said.

"If, after 14 days, the landlord doesn't return the deposit with an itemization, the tenant is legally right to

bring action against the landlord," he said.

"The most important thing in this part of the act, is that it requires the landlord to pay the attorney fees—which range from \$100 to \$200—if the tenant is successful in the action," he added.

"This is important," he said, "because the attorney fees usually exceed the amount of deposit."

### Claims minimal

Damage deposit claims are usually so minimal, though, he said, that they go through small claims court.

An inspection of the small claims court record showed that the act had not yet been tested, as the July 1 effective date makes the law applicable to only leases signed after that date.

It did show, though, that previous damage deposit cases had gone about 50-50 in favor of the tenant.

Poor care of the apartment is not the only reason tenants have lost their damage deposits, according to Fennell.

"Some people living here in Lincoln last year," Fennell said, "found that when their apartment complexes went bankrupt, they couldn't get their damage deposit back."

In order to avoid this, Fennell urged, "The tenant should demand that his damage deposit be maintained in a trust account."

### "Don't always do it"

"All complexes are supposed to have their deposit money held in trust anyway," he stated, "but they don't always do it, as these tenants found out."

To prevent this from happening, Fennell warned, "The tenant should specifically make the damage deposit check out to the apartment's trust account."

"Then they have no choice but to do it," he added.

Basically, in order to be certain of the deposit return, Fennell said, the tenant should take exceptionally good care of the apartment, remove all trash and rubbish before moving and clean the premises well.

"This act is good for the landlords and good for the tenants," he concluded, "but the tenant still must use plain logic in the care of the apartment to assure the deposit return."

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