Security deposit: A step-by-step guide for landlords and tenants

by Amanda Matchett
amatc@msu.edu

Whether you are a landlord, a tenant, or a representative of either, security deposits can cause a headache for everyone. This article will provide a step-by-step guide of the best practices for both landlords and tenants with regard to security deposits. Landlords and tenants have many obligations and rights concerning tenancies, but this article will only cover those related to security deposits.

For Landlords

Step 1: Under Michigan law, creating a lease, make sure to include the name and address of the financial institution where the security deposit will be held. Remember, the security deposit cannot exceed one and a half months of rent.

Step 2: Once the tenant has moved in, provide the tenant with a copy of the lease and two copies of the inventory checklist. The tenant should return the inventory checklist within seven days; keep a copy of the tenant’s completed checklist.

Step 3: Within 14 days after the tenant has moved in, give the tenant your name and the address where you would like to receive rent and any other communications from the tenant. Also, the landlord must provide the name and address of the financial institution or surety bond company where the security deposit will be held, if this information was not provided in the lease or if the tenant did not receive a copy of the lease. Further, you must remind the tenant of his or her statutory duty to provide you with a forwarding address within four days of moving out. All of these things should be sent to the tenant in writing, within 14 days of the tenant moving in.

Step 4: When the tenant moves out, complete a termination inventory checklist to note the condition of the rental unit. Also, within four days of move-out, the tenant must provide you with a written notice of his or her forwarding address; make sure to keep a copy of the address.

Step 5: Within 60 days after the tenant moves out, mail the tenant an itemized list of damages for which the security deposit is being withheld and a check or money order for the difference. Remember, you can only withhold the security deposit to cover: unpaid rent, unpaid utility bills, and or damages to the rental unit beyond reasonable wear and tear which are caused by the tenant. The security deposit cannot be withheld for cleaning fees.

Step 6: Within seven days of receiving the list of itemized damages, the tenant must respond with any disagreement; watch for this in the mail.

Step 7: If the tenant disagrees or more damage has been done, than can be covered by the security deposit, you can file suit before 45 days has passed. You must file suit within 45 days of move out, so if you think that a suit may need to be filed, seek legal help before the 45-day period is over.

For Tenants

Step 1: Before you sign a lease, make sure to read it carefully. With regard to the security deposit, the lease should contain the name and address of the financial institution where the security deposit will be held. Remember, the security deposit is the lawful property of the tenant, so the landlord cannot spend your security deposit money during the tenancy.

Step 2: When you move in, request an inventory checklist and an itemized list of the damage report from the previous tenant.

Step 3: Within the first seven days, you will want to fill out the inventory checklist, keep a copy for yourself, and give a copy to your landlord.

Step 4: When the tenancy has ended, remove all your property, clean the rental unit, and turn in your keys.

Step 5: Within 60 days after move-out, your landlord must return your security deposit and an itemized list of damages (if any of the security deposit is withheld). If you receive an itemized list of damages and part or all of your security deposit was withheld, you have 10 days to respond to the mail with any disagreement.

Step 7: If you believe a suit may be filed against you, or that your security deposit has been wrongfully withheld, seek legal help.

If you have questions or concerns regarding security deposits, whether you are a landlord or tenant, it is best to seek legal help. The Michigan State University College of Law is an excellent resource. The Michigan State University College of Law Rental Housing Clinic is open Monday through Friday, from 10 a.m. to 4 p.m., and can provide general information or representation (call 517-336-8988, ext. 20). Information can also be found at http://www.law.msu.edu/msre/.

Using “self-help” is a costly practice landlords should avoid

by Jessica Wilde
jwilde@msu.edu

Although it seems like a no-brainer to some people, some landlords today are tempted to disregard court procedures and take matters into their own hands when dealing with a tenant’s eviction. This is unlawful interference with the tenant’s possessory interest, otherwise known as “self-help.” It is important to remember that, as a landlord, the use of self-help as a means to eject or evict a tenant is illegal under Michigan law. Landlords should never attempt to actually or constructively remove a tenant themselves. This includes things such as changing locks, turning off utilities, and other acts or omissions which interfere with the tenant’s legal right to possess, use, and enjoy the rental property. The applicable statute provides for six types of unlawful interference which both landlords and tenants should be aware of.

Under Michigan law, any tenant who prevails in court after being ejected or put out of any lands in a forcible and unlawful manner, or held and kept out by force, is entitled to recover possession of the premises and three times the amount of his or her actual damages, or $200, whichever is greater. MCL 600.2918(1). This serves as additional motivation for landlords to steer clear of this type of eviction practice and follow the proper steps to eject a tenant. The use of treble damages in these types of cases is the Legislature’s way of punishing the landlord for his or her willful conduct. Furthermore, any tenant in possession of the premises, whose possessory interest has been unlawfully interfered with by the owner, lessee, licensor, or their agents, shall be entitled to recover for each occurrence, and, where possession has been lost, to recover possession. MCL 600.2918(2). The first type of unlawful interference listed in the statute is the use of force or threat of force. This might involve breaking, tearing down, or removing the door, accompanied by some form of actual or threatened force toward the tenant, creating an apprehension of personal violence. Under no circumstances should a landlord use force, or the threat of force, to keep a tenant out of the premises.

The second form of unlawful interference is the removal, retention, or destruction of personal property by the landlord. Landlords must refrain from taking personal items from the premises which the tenant has right to, in order to induce the tenant’s sevagnation of the premises.

Third, a change, alteration, addition or lockout, or other nuisance to the locks or other security devices on the property, without first providing keys or other unlocking devices to the tenant, amounts to unlawful interference. This provision gives this statute the nickname, the “Anti-lockout Statute.” When the lock of a tenant’s apartment is changed by the owner without providing keys to the tenant, the anti-lockout provision is violated and tenants can be entitled to damages.

A fourth type of unlawful interference very similar to the anti-lockout provision is the boarding up of the premises, or any other obstruction which serves to prevent or deter the tenant’s entry of the premises. MCL 600.2918(2)(d). The fifth form of unlawful interference is causing, by action or omission, the termination or interruption of a service procured by the tenant or which the landlord is under an existing duty to furnish. MCL 600.2918(2)(f). This includes services like heat, running water, hot water, electric, or gas services – services that are so essential that their termination or interruption would constitute a constructive eviction. Terminating services like these may result in a deprivation of the tenant’s use and enjoyment of the premises, or a constructive eviction.

The sixth and final type of unlawful interference is the introduction of noise, odor, or other nuisance to the premises. Landlords should refrain from introducing nuisances to the premises in an effort to encourage the tenant to move out.

As a caveat to the preceding forms of unlawful interference, it is important to note that there are certain situations in which none of them apply. This is when the owner, lessor, licensor, or their agents can establish: action pursuant to a court order; interference with possession temporarily as necessary to make needed repairs or inspections provided by law; or believed in good faith after diligent inquiry that the tenant had abandoned the premises or does not intend to return, and the current rent is not paid. MCL 600.2918(3).

A final note regarding this area of law: “An action regaining possession of the premises must be commenced within 90 days from the time the cause of action arises or becomes known to the plaintiff.” MCL 600.2918(4). An action for damages, on the other hand, must be commenced within one year from the time the cause of action arises or becomes known to the plaintiff.