

GEORGIA CODE
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*** Current through the 2010 Regular Session ***

TITLE 44. PROPERTY
CHAPTER 7. LANDLORD AND TENANT
ARTICLE 2. SECURITY DEPOSITS

As used in this article, the term:

- (1) "Nonrefundable fee" means any money or other consideration paid or given by a tenant to a landlord under the terms of a residential rental agreement which the parties agreed would not be refunded.
- (2) "Residential rental agreement" means a contract, lease, or license agreement for the rental or use of real property as a dwelling place.
- (3) "Security deposit" means money or any other form of security given after July 1, 1976, by a tenant to a landlord which shall be held by the landlord on behalf of a tenant by virtue of a residential rental agreement and shall include, but not be limited to, damage deposits, advance rent deposits, and pet deposits. Such term shall not include nonrefundable fees, or money or other consideration which are not to be returned to the tenant under the terms of the residential rental agreement or which were to be applied toward the payment of rent or reimbursement of services or utilities provided to the tenant.

44-7-31. Placement of security deposit in trust in escrow account; notice to tenant of account location

Except as provided in Code Section 44-7-32, whenever a security deposit is held by a landlord or such landlord's agent on behalf of a tenant, such security deposit shall be deposited in an escrow account established only for that purpose in any bank or lending institution subject to regulation by this state or any agency of the United States government. The security deposit shall be held in trust for the tenant by the landlord or such landlord's agent except as provided in Code Section 44-7-34. Tenants shall be informed in writing of the location of the escrow account required by this Code section.

§ 44-7-32. Surety bond in lieu of escrow account; withdrawal of surety; fees; liability of clerk of superior court

- (a) As an alternative to the requirement that security deposits be placed in escrow as provided in Code Section 44-7-31, the landlord may post and maintain an effective surety bond with the clerk of the superior court in the county in which the dwelling unit is located. The amount of the bond shall be the total amount of the security deposits which the landlord holds on behalf of the tenants or \$50,000.00, whichever is less. The bond shall be executed by the landlord as principal and a surety company authorized and licensed to do business in this state as surety. The bond shall be conditioned upon the faithful compliance of the landlord with Code Section 44-7-34 and the return of the security deposits in the event of the bankruptcy of the landlord or foreclosure of the premises and shall run to the benefit of any tenant injured by the landlord's violation of Code Section 44-7-34.
- (b) The surety may withdraw from the bond by giving 30 days' written notice by registered or certified mail or statutory overnight delivery to the clerk of the superior court in the county in which the principal's dwelling unit is located, provided that such withdrawal shall not release the surety from any liability existing under the bond at the time of the effective date of the withdrawal.
- (c) The clerk of the superior court shall receive a fee of \$5.00 for filing and recording the surety bond and shall also receive a fee of \$5.00 for canceling the surety bond. The clerk of the superior court shall not be held personally liable should the surety bond prove to be invalid.

§ 44-7-33. Lists of existing defects and of damages during tenancy; right of tenant to inspect and dissent; action to recover security deposit

(a) Prior to tendering a security deposit, the tenant shall be presented with a comprehensive list of any existing damage to the premises, which list shall be for the tenant's permanent retention. The tenant shall have the right to inspect the premises to ascertain the accuracy of the list prior to taking occupancy. The landlord and the tenant shall sign the list and this shall be conclusive evidence of the accuracy of the list but shall not be conclusive as to latent defects. If the tenant refuses to sign the list, the tenant shall state specifically in writing the items on the list to which he dissents and shall sign such statement of dissent.

(b) Within three business days after the date of the termination of occupancy, the landlord or his agent shall inspect the premises and compile a comprehensive list of any damage done to the premises which is the basis for any charge against the security deposit and the estimated dollar value of such damage. The tenant shall have the right to inspect the premises within five business days after the termination of the occupancy in order to ascertain the accuracy of the list. The landlord and the tenant shall sign the list, and this shall be conclusive evidence of the accuracy of the list. If the tenant refuses to sign the list, he shall state specifically in writing the items on the list to which he dissents and shall sign such statement of dissent. If the tenant terminates occupancy without notifying the landlord, the landlord may make a final inspection within a reasonable time after discovering the termination of occupancy.

(c) A tenant who disputes the accuracy of the final damage list given pursuant to subsection (b) of this Code section may bring an action in any court of competent jurisdiction in this state to recover the portion of the security deposit which the tenant believes to be wrongfully withheld for damages to the premises. The tenant's claims shall be limited to those items to which the tenant specifically dissented in accordance with this Code section. If the tenant fails to sign a list or to dissent specifically in accordance with this Code section, the tenant shall not be entitled to recover the security deposit or any other damages under Code Section 44-7-35, provided that the lists required under this Code section contain written notice of the tenant's duty to sign or to dissent to the list.

§ 44-7-34. Return of security deposit; grounds for retention of part; delivery of statement and sum due to tenant; unclaimed deposit; court determination of disposition of deposit

(a) Except as otherwise provided in this article, within one month after the termination of the residential lease or the surrender and acceptance of the premises, whichever occurs last, a landlord shall return to the tenant the full security deposit which was deposited with the landlord by the tenant. No security deposit shall be retained to cover ordinary wear and tear which occurred as a result of the use of the premises for the purposes for which the premises were intended, provided that there was no negligence, carelessness, accident, or abuse of the premises by the tenant or members of his household or their invitees or guests. In the event that actual cause exists for retaining any portion of the security deposit, the landlord shall provide the tenant with a written statement listing the exact reasons for the retention thereof. If the reason for retention is based on damages to the premises, such damages shall be listed as provided in Code Section 44-7-33. When the statement is delivered, it shall be accompanied by a payment of the difference between any sum deposited and the amount retained. The landlord shall be deemed to have complied with this Code section by mailing the statement and any payment required to the last known address of the tenant via first class mail. If the letter containing the payment is returned to the landlord undelivered and if the landlord is unable to locate the tenant after reasonable effort, the payment shall become the property of the landlord 90 days after the date the payment was mailed. Nothing in this Code section shall preclude the landlord from retaining the security deposit for nonpayment of rent or of fees for late payment, for abandonment of the premises, for nonpayment of utility charges, for repair work or cleaning contracted for by the tenant with third parties, for unpaid pet fees, or for actual damages caused by the tenant's breach, provided the landlord attempts to mitigate the actual damages.

(b) In any court action in which there is a determination that neither the landlord nor the tenant is entitled to all or a portion of a security deposit under this article, the judge or the jury, as the case may be, shall determine what would be an equitable disposition of the security deposit; and the judge shall order the security deposit paid in accordance with such disposition.

§ 44-7-35. Remedies for landlord's noncompliance with article

(a) A landlord shall not be entitled to retain any portion of a security deposit if the security deposit was not deposited in an escrow account in accordance with Code Section 44-7-31 or a surety bond was not posted in accordance with Code Section 44-7-32 and if the initial and final damage lists required by Code Section 44-7-33 are not made and provided to the tenant.

(b) The failure of a landlord to provide each of the written statements within the time periods specified in Code Sections 44-7-33 and 44-7-34 shall work a forfeiture of all his rights to withhold any portion of the security deposit or to bring an action against the tenant for damages to the premises.

(c) Any landlord who fails to return any part of a security deposit which is required to be returned to a tenant pursuant to this article shall be liable to the tenant in the amount of three times the sum improperly withheld plus reasonable attorney's fees; provided, however, that the landlord shall be liable only for the sum erroneously withheld if the landlord shows by the preponderance of the evidence that the withholding was not intentional and resulted from a bona fide error which occurred in spite of the existence of procedures reasonably designed to avoid such errors.

44-7-36. Certain rental units exempt from article

Code Sections 44-7-31, 44-7-32, 44-7-33, and 44-7-35 shall not apply to rental units which are owned by a natural person if such natural person, his or her spouse, and his or her minor children collectively own ten or fewer rental units; provided, however, that this exemption does not apply to units for which management, including rent collection, is performed by third persons, natural or otherwise, for a fee.

§ 44-7-37. Liability for rent of military personnel receiving change of duty orders

Notwithstanding any other provision of this chapter, if a person is on active duty with the United States military and enters into a residential lease of property for occupancy by that person or that person's immediate family and subsequently receives permanent change of station orders or temporary duty orders for a period in excess of three months, any liability of the person for rent under the lease may not exceed:

- (1) Thirty days' rent after written notice and proof of the assignment are given to the landlord; and
- (2) The cost of repairing damage to the premises caused by an act or omission of the tenant.