security deposits

version 2.2

a chicago landlord's guide to security deposits

domu.com
chicago apartments

Introduction

If you're a landlord, you're lucky if you've never been rudely surprised by a lawsuit claiming you violated the city's notoriously tenant-friendly Residential Landlord Tenant Ordinance. The CRLTO (as it's nicknamed) is a Chicago municipal ordinance whose express purpose is to regulate leasing at the vast majority of dwelling units within the city. It can be found in Chapter 5-12 of the Chicago Municipal Code.

The penalties that the CRLTO imposes on landlords are often grossly disproportionate to the infractions, largely because the ordinance allows tenants to recover their reasonable attorney fees and court costs, often in legal proceedings brought to recover something as nominal as a $100 statutory penalty. What's more, there are dozens of Chicago lawyers who specialize in representing tenants in these types of cases. These lawyers aggressively hunt for clients, knowing that a landlord who may have unwittingly violated the ordinance in even the most minor respect will end up having to pay the tenant's court costs and fees. Over the years, thousands of Chicago homeowners and part-time landlords have been forced to pay hefty sums, routinely totaling in the thousands of dollars, for failing to comply with the CRLTO, even in cases where the tenant was never actually harmed. In fact, any time a tenant contacts a lawyer for advice on a disputed issue with a landlord, the lawyer will check to ensure that every last requirement of the CRLTO was complied with. Inconsquential errors are common, so it's not hard to find a failure of compliance with something.

The most common pitfalls for landlords under the CRLTO stem from the collection and administration of security deposits. Chicago landlords should be aware, however, that security deposits are also regulated under two Illinois statutes, the Security Deposit Interest Act, 765 ILCS 715/0.01, and the Security Deposit Return Act, 765 ILCS 710/.01. The obligations imposed by the CRLTO are generally more onerous than those imposed by the Illinois acts, so, for the most part, landlords will be in compliance with state law by virtue of complying with city law. But not always (as will be explained later in this guide).

As we have written about separately, there has been a gradual movement away from security deposits as a result of the harsh penalties contained in the CRLTO, and the Chicago Association of Realtors even recommends that landlords avoid them. The trend has now been to require tenants to pay non-refundable move-in fees. We at **domu** endorse this trend, but acknowledge that security deposits are not yet extinct in Chicago. So, in the hope of saving landlords from expensive litigation that ultimately raises the cost of living for all tenants, **domu** offers this manual to the Chicago landlord community.

The CRLTO Is Broad In Scope And Exemptions Are Narrow: Do Not Assume That It Doesn't Apply To You!

The CRLTO is extremely broad in scope. Unless a specific exemption applies, anyone who rents out even a single dwelling unit (whether a high-rise condominium, a house, or something in between) is covered by the ordinance. The most common exemption extends to owner-occupied buildings of six units or less, although exemptions also extend to hotels, motels, bed-and-breakfasts, hospitals, monasteries, and apartments occupied by an employee of a landlord whose right to occupancy is conditional upon employment in or about the premises. In addition, the Illinois Security Deposit Return Act applies to any lessor of residential real estate containing "five or more units," whether owner-occupied or not. As a

result, a landlord who resides in building containing five units may be exempt from the CRLTO, but must still comply with the Illinois act.

Over the years, landlords and tenants have battled over the exact scope of the CRLTO, and the courts have made the following rulings:

- *Townhouses are separate buildings.* The exemption for owner-occupied buildings of six units or less does not apply when the tenant lives in a townhouse and the landlord lives next door, even if the townhomes share a common roof. *Allen v. Lin*, 356 Ill. App. 3d 405 (1st Dist. 2005).

- *Coach houses are not separate buildings.* The exemption for owner-occupied buildings of six units or less does apply to a landlord who rents out a coach house behind her own residence, particularly when the coach house is on the same residential lot, shares the same street address, and is partly used by the landlord as a garage and storage space. *Berven v. Marquette Nat'l Bank & Trust*, 915 N.E.2d 84 (1st Dist. 2009).

- *All units count, not just the units that are occupied.* An eight-unit building does not qualify for the exemption accorded to owner-occupied buildings with six units or less merely because four of the eight units happen to be vacant at the time the tenant signs the lease. For CRLTO purposes, the number of units in the building is based on the actual number of units in existence, not the number of units actually occupied. *Meyer v. Cohen*, 260 Ill. App. 3d 351 (1st Dist. 1993).

- *A dwelling unit need not be the tenant's primary residence.* A "dwelling unit" is covered by the CRLTO even if the tenant primarily resides out of town and only occupies the unit during business trips. *VG Marina Management Corp. v. Wiener*, 378 Ill. App. 3d 887 (2nd Dist. 2008).

- *A hermit living in the basement qualifies for the "owner-occupied" exemption.* The exemption for owner-occupied buildings of six units or less does apply if at least one person whose name appears on the title to the property lives on site, even if he lives as a "recluse" in a dark basement with no apparent electricity and never ventures outside. *Detrana v. Such*, 368 Ill. App. 3d 861 (1st Dist. 2006).

- *Extended care facilities are typically exempt.* An apartment building for "independent seniors" qualifies for the "extended care facility" exemption under the CRLTO because, by virtue of its license under the Life Care Facilities Act, it offers personal care and assisted living services. *Antler v. Classic Residence Mgmt. LP*, 315 Ill. App. 3d 259 (1st Dist. 2000). In the same vein, life care facilities have been held exempt from the Illinois Security Deposit Interest Act. *Jackim v. CC-Lake, Inc.*, 363 Ill. App. 3d 759 (1st Dist. 2006).

Management Companies May Be Liable Under Both State And City Law.

The CRLTO expressly defines "landlord" to include an "owner, agent, lessor, or sublessor, or the successor in interest of any of them." *Section 5-12-030(b).* In other words, if you are serving as the managing agent of a property, you should be absolutely certain that the lease clearly identifies the

owner, as well as any person authorized to accept legal process or other notices on the landlord's behalf.

The CRLTO expressly requires that a tenant be provided, at the inception of any tenancy, with the name, address, and telephone number of the property owner or person authorized to manage the premises, as well as any person authorized to accept service of legal process, notices, or demands on the owner's or manager's behalf. *Section 5-12-090*. Any managing agent who fails to disclose the identity of the actual property owner may be held liable for all of the landlord's obligations under the CRLTO.

Because the remedies available to tenants under the CRLTO are so much more generous, Chicago renters typically disregard the Illinois statutes when filing suit. Nonetheless, there may be occasions when renters seek relief under Illinois law rather than the CRLTO. In these instances, management companies will still be held liable if they fail to disclose the identity of the actual property owner. Although both the Illinois Security Deposit Interest Act, 765 ILCS 715/0.01, and the Illinois Security Deposit Return Act, 765 ILCS 710/.01, apply strictly to "lessors," the courts have ruled that a management company qualifies as a "lessor" if the lease is signed by, or exclusively identifies, the management company, without disclosing the identity of the actual owner. *Kutcher v. Barry Realty, Inc.*, 362 Ill. App. 3d 756 (1st Dist. 2005) (interpreting the Illinois Security Deposit Interest Act); *Hayward v. Tinervin*, 123 Ill. App. 3d 302 (4th Dist. 1984) (interpreting the Illinois Security Deposit Return Act.)

There Are Six Requirements Imposed On Landlords Who Collect Security Deposits.

There are six things that landlords must do to avoid liability under the security deposit provisions of the CRLTO:

1. Provide a proper receipt for security deposit funds.
2. Disclose where security deposit funds are held.
3. Avoid commingling.
4. Pay annual interest.
5. Provide proper evidence of repairs.
6. Timely refund security deposits (minus qualified deductions).

Let's examine each of these requirements in further detail.

Provide A Receipt. The CRLTO requires landlords to provide a written receipt indicating the amount of the security deposit received from the tenant, the name of the person who received the deposit, the date on which the deposit was received, and a description of the corresponding dwelling unit. If the security deposit was tendered to a management company, then the agent must identify the landlord on whose behalf the funds were accepted. If the tenant makes a security deposit by electronic funds ransfer, then the landlord may, in lieu of a paper receipt, provide an electronic receipt containing all the

information described above, along with an "electronic or digital signature" (as those terms are defined in the Illinois statutes, 5 ILCS 175/5-105).

Failure to follow each of these steps entitles the tenant to the "immediate return" of the security deposit, *plus damages equaling two times the security deposit, court costs, and attorney fees*. In other words, if a landlord collects a $1,000.00 security deposit and tenders a receipt which inadvertently fails to include the date, the tenant can file a lawsuit and will likely recover not just the security deposit, but an additional $2,000.00 in penalties, plus attorney fees and court costs. See *Solomon v. American Nat'l Bank and Trust Co.*, 243 Ill. App. 3d 132 (1st Dist. 1993) (CRLTO allows tenant to recover damages equaling two times the security deposit, over and above the refund of the deposit).

Disclose The Location. The CRLTO also requires the landlord to identify, in the rental agreement, the name and address of the financial institution where the security deposit is being held. *Section 5-12-080(a)(3)*. If there's no written lease, then the landlord must, within 14 days of receiving the security deposit, notify the tenant "in writing" of the name and address of the financial institution where the funds were deposited. If the funds are ever transferred from one financial institution to another, the landlord must notify the tenant "in writing" of the new location of the funds within 14 days of the transfer. Although failure to comply with this provision does not entitle the tenant to the return of the security deposit, it does expose the landlord to a lawsuit for damages equaling double the security deposit, plus court costs and attorney fees, which essentially renders non-compliance just as painful.

Avoid Commingling. There are endless numbers of ways for landlords to get taken to the cleaners for commingling security deposits. You don't need to wade very deep into the local landlord community to find a war story involving someone who forked over more money in attorney fees and civil penalties than she collected in rent over the course of a year. In many cases, the commingling is temporary, inadvertent, or harmless, but the CRLTO doesn't allow for excuses. In lawyer jargon, this is known as "strict liability."

The ordinance requires landlords to hold security deposits in a federally insured, interest-bearing account in a financial institution located in Illinois, and any commingling of the security deposit funds with other assets belonging to the landlord is strictly prohibited. *Section 5-12-080(a)(1)*. Nonetheless, a landlord may accept both the security deposit and the first month's rent in a single check (or electronic funds transfer) if, within five business days of acceptance, it transfers the security deposit into a separate account that does not contain any assets belonging to the landlord. *Section 5-12-080(a)(2)*.

If the rent and the security deposit were taken in separate checks, the first thing a tenant's lawyer will do is examine the backs of both checks. If the security deposit check appears to have been negotiated into the same account as the rent check, he'll probably start salivating like Pavlov's dog. A landlord or management company that deposits security deposit funds into a general operating account before transferring the money to a segregated account is simply asking for trouble, even with the new five-day grace period. Play it safe! Ask for separate checks and deposit the funds in separate accounts.

Oftentimes, the funds in the interest-bearing, segregated account will earn a higher rate of interest than the City of Chicago requires landlords to pay tenants (as discussed below). When this occurs, the additional interest generated by the account belongs to the landlord. In the old days this created a

catch-22 that left every landlord apprehensive. By retaining the excess interest, the landlord would subject itself to a claim of commingling, since the landlord's assets and the tenant's assets would be commingled as soon as the bank credited the interest to the segregated account. Fortunately, the City Council finally amended the CRLTO to clarify that "a landlord shall not be considered to be commingling the security deposits with the landlord's assets" if there is excess interest in the security deposit account. *Section 5-12-080(a)(4)*.

Pay Annual Interest. The CRLTO requires landlords to pay annual interest on security deposits (or prepaid rent) held for more than six months at a rate specified each year by the city comptroller. *Section 5-12-080(c)*. In the recent past, these rates have been extremely low. For the year 2009, the rate was fixed at 0.12% (or, in banker-speak, 12 basis points). For the years 2010 and 2011, the rate dipped even lower, to 0.073%, then it fell again in 2012, this time to 0.057%. By 2013, it was down to a miniscule .023%, meaning that landlords are required to pay tenants a whopping 23 cents on a $1,000 security deposit. It wouldn't buy a glazed donut, but pity the poor landlord who neglects to make this payment (or provide credit on the next month's rent, assuming the lease didn't just expire). As with most other violations of the CRLTO, this error would set the landlord back $3,000 in civil penalties, not including any liability for the tenant's legal fees and court costs.

Landlords who lease apartments at properties containing 25 or more units, whether in a single building or in buildings located on contiguous parcels, are subject to the Illinois Security Deposit Interest Act, 765 ILCS 715/0.01, in addition to the CRLTO. Under this Act, the landlord is required to pay interest on any security deposit held more than six months. The interest must be paid at the end of each twelve month rental period, unless the tenant is otherwise in default under the lease.

Although the Act doesn't specifically say so, its protections have been held to be "non-waivable," and, thus, a landlord cannot circumvent the Act by inserting into the lease a provision stating that the tenant agrees to relinquish any entitlement to security deposit interest. *Wang v. Williams*, 343 Ill. App. 3d 495 (4th Dist. 2003). ***The Illinois interest rates may be higher than the City of Chicago interest rates, so landlords should check each jurisdiction's rates before acting!***

Unlike the CRLTO, where attorney fees and penalties flow automatically from a violation, the Illinois Security Deposit Interest Act allows the tenant to recover the statutory penalty and attorney fees only upon proof that the landlord "willfully failed or refused to pay." The extent to which mere inadvertence rises to the level of willful failure or refusal is a question of fact to be decided in each case. *Dickson v. West Koke Mill Village Partners*, 329 Ill. App. 3d 341 (4th Dist. 2002).

Do not fail to pay the annual interest, even on pet deposits! Just ask the folks at Regent Realty Group. In October 1996, one of their tenants filed suit complaining that she had not been credited with the annual interest on a $100 security deposit she was required to make for keeping a pet. She sought damages equaling two times the amount of the deposit (or $200), plus attorney fees and court costs. The landlord testified that the failure to pay annual interest on the pet deposit was nothing more than a simple error in judgment and not the product of spite or bad faith. Five years later, a dispute over the annual interest on a $100 pet deposit completed a lengthy sojourn through the judicial system (a journey that started in Chicago and ended in Springfield) when the Illinois Supreme Court laid down the law: "There are no exceptions." *Lawrence v. Regent Realty Group, Inc.*, 197 Ill. 2d 1 (2001). In other words, inadvertence and lack of bad faith do not qualify as valid defenses. A landlord who fails to pay annual interest on a

security deposit, for whatever reason, and no matter how small the deposit, faces a civil penalty equaling double the deposit, plus interest, *plus* the tenant's legal fees. In this case, Regent Realty Group neglected to pay a couple cents in interest and wound up paying thousands of dollars in penalties, attorney fees, and court costs.

The CRLTO is a typically poorly written ordinance, and ambiguity inevitably punishes the landlord. So here are our answers to a few of the more common questions:

- *When does annual interest begin to accrue?* The ordinance requires that interest be paid from the beginning date of the rental term through the end of each twelve-month rental period. There may be occasions, however, when a tenant writes a check for the security deposit and/or first month's rent before the rental term begins. Although the ordinance does not require any payment of interest for the period before the lease commences, landlords should consider paying interest from the date the funds are received.

- *What interest rate applies if the lease is signed in advance of the possession date?* The CRLTO also states that the applicable interest rate is the one most recently announced by the city comptroller before the rental agreement was made or renewed. So, if the lease is signed on December 20, but takes effect on February 1 (after the new rate was announced), which interest rate applies? The rate applicable to the former year or the latter? Landlords are probably on safe ground in assuming that a lease is "entered into" on the date it's signed, not the date that the term commences, but given the draconian penalties set forth in the ordinance, we suggest paying the tenant whichever rate of interest happens to be highest. The cost is likely only cents on the dollar, and the insurance is priceless.

- *How do I handle the payment of interest on a 13-month lease?* The CRLTO requires the landlord to make the interest payment (by cash or rent credit) *within thirty days following the end of each twelve-month rental period* (unless the lease terminates at the end of the twelfth month, in which event the landlord has 45 days to pay the interest). Thus, if the tenant signs a lease that extends longer than one year, the landlord must make the required interest payment before the initial term concludes. In the case of a 13-month lease, we recommend paying interest after the twelfth month, then again after the thirteenth or, if in the same calendar year, simply paying 13 months' interest after 12 months.

- *What happens if I make a simple mistake in the computation of interest?* In 2010, the City Council amended the CRLTO to ease the potentially harsh consequences visited upon landlords who pay interest to tenants in timely fashion, but miscalculate the amount of interest due. *Section 5-12-080(f)(2)*. In the past, even a minor miscalculation resulted in a violation of the ordinance and opened the landlord to the host of penalties and fees available to tenants. Under the new rule, if a tenant believes that the amount of interest paid was deficient, it must give written notice to the landlord. Within 14 days, the landlord must then either provide the correct amount of interest, plus an additional $50.00, or provide a written response explaining how the interest was computed. If the tenant disagrees with the landlord's computation, it may then file suit challenging the correctness of the written response. If successful, the tenant may then recover double the security deposit, plus interest, plus attorney fees and costs.

Timely Refund Deposits And Properly Document Repair Costs. The landlord is required to return the security deposit (or any balance remaining on the deposit), plus accrued interest, within 45 days after the tenant vacates the apartment (or within seven days after the tenant provides a notice of termination following a fire or other major casualty). The landlord may, however, make deductions from the security deposit as compensation for:

(1) unpaid rent which was not validly withheld by the tenant in accordance with federal, state, or local law, or
(2) the reasonable cost of repairing any damage caused by the tenant (or any person under the tenant's control), reasonable wear and tear excluded.

If the landlord makes deductions for repairs, it is required to deliver or mail to the tenant's last known address, *within 30 days*, an itemized statement of the damage allegedly caused by the tenant and the estimated or actual costs of the repairs. If the actual costs are provided, the landlord must enclose copies of paid receipts for the work. If estimated costs are provided, the landlord must furnish copies of paid receipts within 30 days after it provided the estimate (in other words, not more than 60 days after lease termination). If the repairs were performed by the landlord's own employees, then the landlord must provide a "certification" of the actual costs.

The rules regarding the delivery of an itemized statement of damage do not apply, under either the CRLTO or the Illinois Security Deposit Return Act, to the extent that some or all of a security deposit is withheld to compensate the landlord for losses other than property damage. *Turner v. 1212 S. Michigan Partnership*, 355 Ill. App. 3d 885 (1st Dist. 2005). In other words, if the landlord retains some or all of the security deposit because the tenant moved out early or otherwise failed to make payments of rent, then the tenant cannot claim a violation of the CRLTO on the basis of a failure to provide an itemized list of damages.

The landlord's obligation to timely refund the security deposit is tied to the date that the tenant "vacates" the apartment. But when does a tenant "vacate"? Believe it or not, trials can be held over this. In *Meyer v. Cohen*, 260 Ill. App. 3d 351(1st Dist. 1993), the tenant claimed that a letter her attorney sent to the landlord unequivocally established that she was terminating the tenancy as of March 31. On the other hand, the landlord claimed that she did not "vacate" the apartment until April 6, when she finally returned the keys. These six days made all the difference in the world because the landlord refunded the security deposit within 45 days of receiving the keys, but not within 45 days of the tenant's professed termination date.

Special Rules Governing Conveyances Of Apartment Buildings.

The CRLTO contains special provisions for situations where a landlord sells an apartment building to a new owner. *Section 5-12-080(e)*. In these instances, the successor landlord becomes liable for the security deposits and is required to notify the tenants, in writing and within 14 days of the transfer, that it is now holding the funds. In the notice, the successor landlord must also provide the tenants with his name, business address, and telephone number, as well as the telephone number of his managing agent, if any. By the same token, the selling landlord remains jointly and severally liable for the security deposit funds unless it notifies the tenants, in writing, within ten days, that their deposits were transferred, specifying the name, address, and telephone number of the successor landlord.

In a rare victory for landlords, the courts have held that the commingling prohibition in the CRLTO is not violated if the seller of an apartment building credits the amount of security deposit money held in its segregated account toward the purchase price at closing. *Starr v. Gay*, 354 Ill. App. 3d 610 (1st Dist. 2004). Unfortunately, neither the courts nor the CRLTO provide any guidance as to how much time the acquiring landlord has to re-segregate the security deposit funds before a "fresh" claim of commingling may be asserted. The ordinance allows a landlord to collect the first month's rent and security deposit in a single check, provided it transfers the security deposit to a separate account within five business days. Using this provision as guidance, an acquiring landlord would be well-advised to segregate security deposit funds in the same time period. As with other violations of the ordinance, liability for both commingling and non-compliance with the successorship rules is double the security deposit, plus interest and attorney fees.

Landlords Must Also Provide Summaries Of The CRLTO & The Security Deposit Interest Rates.

Since we're discussing the various ways that unwitting landlords leave themselves exposed under the CRLTO, it merits mention that the ordinance also requires landlords to provide tenants with a summary of the CRLTO and a summary of the "rights, obligations and remedies of landlords and tenants with respect to security deposits" (including the applicable interest rates for each of the prior two years), both upon initial lease signing and upon each and every lease renewal. *Section 5-12-170*. Copies of both the summary of the CRLTO and the security deposit disclosures are available on **domu**'s Free Forms page. (One of these summaries is also required to contain additional language regarding porch and deck safety.)

If the landlord fails to provide copies of these summaries upon lease signing and upon each and every lease renewal, the tenant may terminate the lease on thirty days' written notice. It may also recover $100 in a civil proceeding, along with (you guessed it!) attorney fees and costs.

Astute readers of the CRLTO may note that *Section 5-12-070* is actually somewhat ambiguous and merely states that "a copy of such summary" shall be attached to the rental agreement, without specifying whether that summary is the summary of the ordinance itself or the summary of the security deposit interest rates. For this reason, one landlord who failed to provide a copy of either of the two summaries at either of two successive lease renewals attempted to argue that this provision of the CRLTO was unconstitutionally vague. The circuit court disagreed, however, and held that both summaries must be provided, notwithstanding the ambiguity in the ordinance, thus paving the way for yet another expensive and punitive lawsuit against the landlord in a case where the tenant had suffered no apparent harm. *Darnell Beasley, etc. v. Michigan Beach*, L.P., et al., Circuit Court of Cook County, No. 08-CH 33566, August 10, 2009 (Hon. Kathleen M. Pantle).

Recently, landlords have been moving away from security deposits and taking non-refundable "move-in" fees. Even in these instances, where no security deposit was taken, crafty tenants' lawyers have been arguing that the landlord should still be held liable for failing to provide a copy of the security deposit interest summary. Why would a tenant need to know the security deposit interest rates if he tendered no security deposit? Go figure. But the ordinance states that the landlord "shall" attach the summary, and arguing logically in defense to a CRLTO claim is often a waste of precious breath. Landlords should probably provide copies of both summaries whether a security deposit is taken or not.

The Penalties Under The CRLTO Are "Singular."

In *Plambeck v. Greystone Management Co.*, 281 Ill. App. 3d 260 (1st Dist. 1996), the court held that the penalties under the CRLTO are "singular." In other words, tenants are limited to a single award of damages equaling double the security deposit, no matter how many violations of the ordinance that the landlord committed. In *Plambeck*, the landlord's failure to pay annual interest following two successive lease years, its failure to timely refund the security deposit, and its improper commingling of the security deposit entitled the tenant to only a single penalty, not to a series of penalties.

Other courts have reached the same conclusion. For example, in *Szpila v. Burke*, 279 Ill. App. 3d 964 (1st Dist. 1996), the landlord failed to pay annual security deposit interest four years in a row, so the tenant sued for damages equaling double his $975 security deposit for each of the four years that the landlord failed to pay. The court rejected the notion that double damages were available for each separate violation, reasoning that the tenant could not just sit on his hands year after year, secure in the knowledge that each failure to pay about $48.50 in accrued annual interest would later net him an additional $1,950 in damages. See also *Krawczyk v. Livaditis*, 366 Ill. App. 3d 375 (1st Dist. 2006) (reaffirming the holding of *Szpila*).

Under The CRLTO, The Penalty Is Double The Security Deposit, Not Double The Amount Wrongfully Withheld Or Commingled.

In the *Plambeck* case, the landlord deposited the tenant's initial $500 security deposit into a segregated escrow account, but then deposited two annual $25 increases of the security deposit into its own working capital account. In defense of the tenant's claim of commingling, the landlord argued that the damages should be limited to double the amount actually commingled (*i.e.*, $25 times two) rather than double the amount of the entire security deposit. The court disagreed, forcing the landlord to fork over $1,100 in statutory penalties for commingling $50 of security deposit funds.

The Statute Of Limitations On Most Violations Of The CRLTO Is Two Years.

Any landlord who is reading this guide and nervously fretting about its potential exposure under the CRLTO can take heart in at least one favorable development. In *Landis v. Marc Realty*, LLC, 235 Ill. 2d 1 (2009), the Illinois Supreme Court held that the statute of limitations on claims alleging a violation of the security deposit provisions of the CRLTO or a failure to attach the required summaries to a lease (or any renewal) is two years -- not five years, as the tenant community had previously contended. Once that two year period has elapsed, the tenant is barred from pursuing a claim under the ordinance.

The next question, of course, is *when* a cause of action accrues. If a tenant files suit for commingling of the security deposit or failure to attach a summary of the CRLTO, does the two years run from the inception of the lease, the date of the deposit into the commingled account, or the date the tenant first discovers facts indicating the existence of a potential claim? Alas, there appears to be no definitive answer to this question, although in *Namur v. The Habitat Co.*, 294 Ill. App. 3d 1007 (1st Dist. 1998), the court strongly insinuated that the time for filing suit runs from the date of the actual commingling, even if the tenant had no basis for knowing whether the security deposit was actually commingled at that time.

Not all violations of the CRLTO, however, are subject to a two-year statute of limitations. A tenant seeking damages in the form of a rent offset based on the diminished value of the premises or claiming retaliatory eviction enjoys the benefit of a five-year limitations period. *Sternic v. Hunter Properties*, Inc., 344 Ill. App. 3d 915 (1st Dist. 2003).

Settlement Tenders: A Mechanism For Defeating Class Actions.

Tenants' lawyers love to file class action lawsuits. It enables them to bring claims on behalf of all the residents in a particular building and gives them significantly more leverage over landlords. Typically, these lawyers will incorporate class claims into their lawsuits before they have any serious notion as to whether the other residents were treated in similar fashion. Theoretically, Illinois has rules that require lawyers to act in good-faith when making allegations in a court-filed pleading, but that doesn't count for a hill of beans in the real world, and certainly not in Cook County.

Landlords should be aware, therefore, that Illinois courts may strike class claims as moot if the landlord tenders a check for the full amount of the damages (including attorney fees) and the tenant does not exercise reasonable diligence in pursuing class certification. *Virginia A. Miller v. Ruby Darlene Ellis, et al.*, Circuit Court of Cook County, No. 08-L-353, June 24, 2009 (Hon. Kathleen M. Pantle). See also *Cohen v. Compact Power Systems, LLC*, 382 Ill. App. 3d 104 (1st Dist. 2008) ("The general rule has developed that if the defendant tenders the named plaintiff the relief requested before the class is certified, the underlying cause of action must be dismissed as moot, as there is no longer an actual controversy pending.").

The "Move-In" Fee: An Alternative To The Risks Created By The CRLTO.

Over the past several years, landlords have begun charging non-refundable "move-in" fees as a fail-safe device for avoiding liability under the CRLTO. Rather than taking a security deposit, the landlord collects a *non-refundable* "move-in" fee to cover, among other things, elevator and loading dock access or damage to the apartment. The landlord keeps the money and never has to endure the burdens associated with maintaining a segregated account, paying annual interest, or issuing timely refunds. Lawsuits brought under the corresponding provisions of the CRLTO are eliminated. Moreover, the absence of a security deposit does not relieve the tenant from liability, so the landlord maintains full legal recourse for damage caused to the unit or unpaid rent, and the tenant (who may need a reference for a future landlord) remains incented to keep the apartment free from harm.

Incidentally, we have heard from trusty inside sources that some tenants' lawyers have been attacking "move-in" fees as disguised security deposits. To help ensure that judges are not enticed into accepting any such theories, some landlords prefer to use the term "administrative fee" and to limit the amount requested to $300, regardless of the monthly rent.

Landlords Suing For Unpaid Rent, But Not Possession, May Be Able To Recover Attorney Fees.

The CRLTO prohibits any lease from containing a provision allowing a landlord to recover attorney fees in a lawsuit "arising out of the tenancy . . . except as provided for by court rules, statute or ordinance." *Section 5-12-140(f)*. One such ordinance, however, is the CRLTO itself, which provides that, except with

respect to evictions, the "prevailing plaintiff" in any lawsuit arising out of the rights created under the CRLTO "shall be entitled to all court costs and reasonable attorney's fees." *Section 5-12-180*. Accordingly, a landlord may be able to recover attorney's fees in an action brought to redress a right made available under the CRLTO, provided the action is not seeking possession of the premises.

The CRLTO provides that "[a] landlord may . . . maintain an action for rent and/or damages without terminating the rental agreement." Section 5-12-130(a). Because courts are typically hostile to claims for attorney fees, at least two landlords have already been denied recovery of such fees because they did not specifically mention the CRLTO when filing suit for unpaid rent and, instead, characterized their claims as common law breaches of the lease. In *VG Marina Management Corp. v. Wiener*, 378 Ill. App. 3d 887 (2nd Dist. 2008), the plaintiff landlord characterized its rent claim as an "action on the Lease for rent," and in *Willis v. NAICO Real Estate Property and Management Corp.*, 379 Ill. App. 3d 486 (1st Dist. 2008), the landlord did not "cite or rely on the RLTO" when pleading its case.

The day will come when a wise landlord, or a landlord with wise counsel, files suit to recover unpaid rent (but not possession) and expressly articulates *Section 5-12-030(a)* of the CRLTO as a separate basis for relief. The Illinois Appellate Court may then (unless the case settles beforehand) be forced to decide whether a landlord may, indeed, recover attorney fees in that context. Don't be surprised, however, if the court suddenly finds a new justification for ruling against the landlord. In this town, tenants are king.