

## WHERE'D MY MONEY GO?

By Judith Johannsen

When it comes to residential real estate transactions, landlords, tenants, buyers and sellers ooze questions, and while some pertain to the process, most are about money – their money – and just saying “money in, money out” doesn't really tell the whole story.

In a rental transaction, a landlord asks for a certain monthly rent and a security deposit. Some landlords understand the law when it comes to security deposits, but most seem to wing it.

The statutory definition of security deposit is “any advance rental payment other than an advance payment for the first month's rent and a deposit for a key or any special equipment”.

The statute then limits the amount of security deposit by the tenant's age. If a tenant is younger than sixty-two, the security deposit cannot exceed two months' rent, and if a tenant is sixty-two years of age or older, the maximum security deposit is one month's rent.

So, here's the math - the most a landlord can accept from a tenant under age sixty-two is an amount that equals three months' rent – the first month's rent and an amount equal to two months' rent as security deposit. The most a landlord can accept from a tenant sixty-two years of age or older is an amount equal to two month's rent – first month's rent and one month's rent as security deposit.

Furthermore, if a landlord receives more than one month's rent from a tenant sixty-two years of age or older as security deposit, the landlord, at the tenant's request, must refund the overage to the tenant.

There is no such thing as last month's rent or pet deposit, only first month's rent plus security deposit.

What should a landlord do with the security deposit? Spend it? No, a landlord is required to put the security deposit into an escrow account in a financial institution - **immediately**. This money is not a windfall for the landlord, it is part of a business transaction and is to be held in trust for the tenant and is the money from which a landlord can deduct payment for damages a tenant caused.

The security deposit is to be returned to the tenant within 30 days after the tenancy ends. The landlord also has to pay the tenant interest earned on the security deposit. If a landlord fails to return the security deposit plus interest (this year the interest is 1.5%), the landlord is liable for paying the tenant **double** the amount of the security deposit.

In a purchase and sale transaction, the money trail is a bit different. A buyer who makes a written offer to purchase typically includes a good faith deposit check with the offer. The offer and check are given to the seller's agent, who then presents the offer to the seller.

When a real estate broker accepts and holds any money in connection with a real estate transaction, like an earnest money deposit with an offer or a second deposit, the broker is required to deposit the money into an escrow account in a bank doing business in CT within three banking days of the date the agreement evidencing the transaction (for example, a purchase and sale contract) is signed by all the necessary parties.

If the purchase and sale transaction is successful, the escrowed money is released to the closing attorney and is included in the amount paid the seller. If, however, party A claims party B has defaulted, A typically demands the money in escrow be paid to him. If party B agrees, the money can be released to A; but, if B does not agree, the money remains in escrow until the parties can agree or there is an order of the court.

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