

Landlord & Tenant Law: Questions and Answers

If you have any general landlord-tenant questions that you would like answered in this column please feel free to submit them to me via email at tpettit@petriestocking.com. Please be aware however that due to limited space availability your questions should not be overly fact intensive; general questions are preferred and are more likely to be included in future editions of this newsletter.

Tristan R. Pettit

Attorney at Law

Petrie & Stocking S.C.

(414) 276-2850

Email: tpettit@petriestocking.com

Subject: Security Deposit Transmittal Letter / 21-Day Letter

Question: Dear Tristan:

I have a tenant whose lease has ended and she has recently moved out of one of my apartment units. Upon entering into the lease with me she had paid a security deposit equal to one month's rent. She failed to pay her last month's rent before moving out. Upon inspecting the unit after she left, I noticed that she didn't clean the oven or the refrigerator and there was a 1 foot by 1 foot hole in one of the walls. I have heard something about having to send a 21-Day letter to a past tenant when returning their security deposit to them after they have moved out. I am assuming that since this tenant's security deposit will not be being returned to her because it will be applied to the last month's rent which she owes me and the various cleaning charges and damages to the unit, that I no longer am required to send this letter. Am I correct?

Answer: No, unfortunately your assumption is incorrect. The requirement that you are referring to is contained in the Wisconsin Administrative Code, Chapter ATCP 134, entitled "Residential Rental Practices." The specific provision is entitled "Security Deposits" and is found in ATCP 134.06(2). That provision requires all residential landlords, within 21 days after a tenant surrenders the rental unit, to deliver or mail to the tenant their entire security deposit or if any amounts have been withheld from the security deposit, a letter (often referred to the security deposit transmittal letter or the 21-Day letter) itemizing the deductions from the security deposit. This letter still must be sent even if no portion of you ex-tenant's security deposit will be returned to her.

I would strongly recommend that when writing this letter you merely indicate the amount of her security deposit and that she failed to pay her last month's rent which was equal to the security deposit and therefore the entire amount of her security deposit will be applied to her last month's rent. Thus, no portion of her security deposit will be returned to her.

I would not recommend that you include the various cleaning charges and the damage to the wall in the 21-Day letter. ATCP 134 only requires that you itemize how the security deposit was applied and once that is done there is no need to continue to itemize additional charges. Cleaning charges and claims of damage to the unit are often contested by ex-tenants therefore I recommend that you merely itemize what I call the "slam dunk" items — things like past due rent. Your ex-tenant will be less apt to argue about her security deposit being applied to her last month's rent as she knows that she didn't pay it and that it was owed. By adding the additional cleaning fees and damages you are not only adding additional information which ATCP does not require you to include but you are increasing the chances that your ex-tenant will start a small claims lawsuit against you claiming that you improperly withheld portions of her security

deposit for the cleaning fees and alleged wall damage, in violation of ATCP 134.

While you may eventually defeat your ex-tenants claims of an improper deduction from her security deposit (assuming the fees and damage are beyond normal wear and tear) you will still end up having to waste your time and energy (and money if you hire an attorney) to defend against these claims. I suggest this safer and more conservative approach – to only list the "slam dunk" items in the 21-Day letter – as long as those deductions cover the entire amount of the security deposit. Then if you wish to pursue the ex-tenant for the cleaning fees and damages to the unit you start a small claims action against her for those amounts. By doing this, even if the court determines that the cleaning fees and damages were just normal wear and tear or if the court chooses to not believe the damages even occurred, you will not be opening yourself up to the penalties that a court may assess you for violating the ATCP provisions.

Under ATCP 134 and applicable Wisconsin Statutes, if a landlord improperly deducts items from a ex-tenant's security deposit and the tenant can prove that the amounts were indeed improper, then you the landlord will be required to pay in damages to the ex-tenant twice the amount of the improper deduction **PLUS** the costs of the tenant's actual and reasonable attorney's fees. Thus, if you make an improper deduction in violation of ATCP 134 you may end up having to pay the fees of the attorney that is suing you.

To add insult to injury, in the situation you described in your question, if you fail to send the 21-Day letter at all, even if the tenant is not entitled to any return of her security deposit, if that ex-tenant chooses to sue you for failure to comply with the requirements of ATCP 134.06(2) that tenant will be entitled to damages of twice the amount of her entire security deposit and her attorney's fees ----- which you, the landlord, would have to pay. **OUCH !!!**

As always, the above question and answer are general in nature and are not intended as specific legal advice, should you have questions regarding a specific legal matter you should contact an attorney.

DON'T MISS:

If you are unfamiliar with the provisions of ATCP 134, the "Residential Rental Practices" of the Wisconsin Administrative Code or if you merely want to brush up on the provisions to ensure that you are not violating them, be sure and attend the AASEW meeting in May, to be held on Monday, May 17, 2004 at 7 PM, as Attorney Tristan Pettit will be speaking on ATCP 134 and the "Residential Rental Practices" as well as answering any questions that you may have.