Is the security deposit timeline unrealistic?

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The black letter of the law gives a landlord 45 days from the date of the tenant’s move-out to file a suit for disputed damages or forfeit any right to it (with some exceptions). On the surface this may appear to be a fitting amount of time, but the reality of the matter is that the timeline is much shorter in practice. There are a number of interdependent obligations that must be satisfied within those 45 days. These deadlines do build on each other, and therefore, detract from the total 45 days allotted to file suit.

This issue can be remedied easily; however, there is a more serious flaw in the construction of the statutes which makes them unfair and impractical. Each deadline is accompanied by the irrebuttable presumption that if a party fails to comply, they are either according to the other parties’ claims or forfeiting their own. These laws are impractical because they are harsh, overly presumptuous, and, more importantly, moot. These statutes need to be revised to be more realistic.

The Timeline

Tenants have four days from their move-out to provide landlords with a forwarding address. Landlords have 30 days from the date of move-out to prepare and deliver an itemized list of damages to the tenant. Tenants will have seven days from the receipt of the itemized list of damages to dispute the damages. Finally, within 45 days of a tenant’s move-out and not thereafter, landlords may commence an action for “a money judgment for damages which he has sustained as a result of the termination of occupancy..." A more appropriately worded statute would read: “the parties might get legal representation and go to court; they might go to court on their own; or, they may attempt to negotiate a resolution independent from the court system. There are obvious risks associated with the latter two options, namely the risk that they will fail to file suit in a timely manner or will jeopardize their chances of recovering. Even with getting the aid of an attorney, such a short timeframe might make it difficult for an attorney to investigate the facts, prepare the appropriate court filings, file, and serve the opposing parties in a timely manner.

Fixing the Timeline

The simple solution to the timeline dilemma is to expand the timeframe. The parties should still be allowed the 41 days that would lapse in meeting the other deadlines at the furthest extremes. Each additional deadline should run from the completion of the previous task, not to exceed 45 days total. For example, if the forwarding address is not received until the fourth day, then the landlord has 30 days from the receipt of the forwarding address to prepare the itemized list of damages instead of 45 days from the date of move-out. Additionally, I am proposing that the legislature take on an additional 15 days for the sole purpose of negotiation and litigation preparation. This will bring the total amount of time to file suit to 60 days.

I make this proposal because I believe that more often than not, the dispute phase of the timeline will not conclude in one week; instead will last several weeks and will span several communications, as any negotiation might before litigation is pursued. Thus, the legislation in this area is completely disproportionate. It gives 30 days to prepare an itemized damages list and a mere 7 days to respond.

The Flawed Construction

The first change that should be made is removing the “after termination of occupancy” language from the relevant statutes and replacing it with “for the date of the [the prior obligation].”

For example, MCL 554.607 begins, “failure by the landlord to comply with the notice of damages requirement within the 30 days after the termination of occupancy...” A more appropriately worded statute would read:

failure by the landlord to comply with the notice of damages requirement within 30 days of receiving the tenant’s forwarding address...”

That change would restructure the statutes to reflect the fact that the obligations imposed therein are interrelated with the completion of other prior obligations.

While the timeline will be improved by the aforementioned changes, the more pivotal change I am recommending will remove the unfair presumptions from the statutes. If a tenant were to file for a larger claim, the language could be modified to remove the language that creates a presumption of acquiescence by failing to perform the obligations within such a short timeframe. The language I am referring to is as follows:

[1] . . . [f]ailure by the landlord to comply with the notice of damages requirement within the 30 days after the termination of occupancy, constitutes agreement by the landlord that no damages are due and he shall remit to the tenant immediately the full security deposit [emphasis added].

[2] . . . otherwise you will forfeit the amount claimed for damages... [MCL 554.607 (emphasis added)].

[3] Within 45 days after termination of the occupancy and not thereafter [MCL 554.613 (emphasis added)].

This language creates something of a dichotomy. The language of the statute suggests a party's right to receive the security deposit or claim for damages. The language further holds the court’s ruling treats section 13 as a statute of limitations which is unrelated to the security deposit. If the question were a statue of limitations on all damage claims arising from a landlord-tenant relationship, it would represent an unusually, and probably unreasonably, short period. Second, the language seemingly creates the additional time for the parties to negotiate and prepare for litigation. That same party can turn around and sue for damages equal or greater than the amount of the security deposit.

The language of the Security Deposit Act is worded, but not fatal. The Security Deposit Act creates a short and presumptive use of the statutes that seemingly deprives parties the opportunity to exercise their rights under the law on a technicality; however, the law actually has no lasting effect. This law can be revised to make it more effective and practical.

First, the 45-day timeline could be extended to 60 days. This will grant the parties the full 41 days already given within the 45 days in MCL 554.613, but will also add additional time for the parties to negotiate and prepare for litigation. Second, the language seemingly creates the unfair presumptions that all rights to damages will be waived, but this is not the case. As the occupation continues, the language that makes those lofty presumptions should be removed because of the confusion they create. The Act fails to specify that it only applies to security deposits and that the action for damages remains intact. Given that the action for damages remains intact, there is no point in having a statute that temporarily forecloses a remedy, but does not bar a subsequent action for damages. The timeline only pertains to claims against the security deposit, and does not bar a party from making a claim for thewhole of the damages, what is the point of the Security Deposit Act? The Court of Appeals in Oak Park, supra, further held that:

[the district court’s] interpretation of the statute subverts the very purpose of a statute of limitations, our primary consideration is to divine the Legislature’s intent. (Citation omitted.) The district court’s ruling treats section 13 as a statute of limitations which is unrelated to the security deposit. If the section in question were a statute of limitations on all damage claims arising from a landlord-tenant relationship, it would represent an unusually, and probably unreasonably, short period. If a tenant is deprived of receiving their security deposit, that same party can turn around and sue for damages equal or greater than the amount of the security deposit. The Security Deposit Act is moot. This only relates to claims against security deposit, but does not foreclose a party from initiating the same suit for damages at any time prior to the end of the statute of limitations period. Therefore, the aforementioned language of the statute is unnecessarily misleading. A party might fail to meet the requirements of the Security Deposit Act and have to return the security deposit. That same party can turn around and sue for damages equal or greater than the amount of the security deposit.

Conclusion

The Security Deposit Act is flawed, but not fatally. The Security Deposit Act creates a short and presumptive use of the statutes that seemingly deprives parties the opportunity to exercise their rights under the law on a technicality; however, the law actually has no lasting effect. This law can be revised to make it more effective and practical. Further, if a landlord and tenant cannot agree on a settlement, a tenant can sue for damages equal or greater than the amount of the security deposit.

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generations to come. Having an estate plan is important, but the addition of a succession plan tailored specifically toward the succession of your vacation home is crucial. If I have said enough to at least get you thinking and maybe contact an attorney, even if you have more questions than you know what to do with, I have done you a great service.

In my view, there is almost no smarter method of passing on a vacation home then by using some form of a business entity, such as an LLC. By doing so you are planning for the reality that your kids (and their kids, and their kids, etc.) will likely not agree on all of the decisions a vacation home owner must make.

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