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(Security Deposit Bond Blog Post**)**

DepositIQ, LLC
PO Box 22476
Denver, CO 80222
877-684-4039 Toll Free 877-306-8473 Fax

depositIQ

Enrollment and Bond Acknowledgement Form

Bond Number: 106534					
Apartment Community Name:	Washington Crossing			**ID:**	286
Street Address:	[redacted] 55987	**Building #:**	[redacted]	**Apartment #:**	[redacted]
State and Zip Code:	MN 55987				

#1: Resident	
First Name	**Last Name**
[redacted]	[redacted]
Date of Birth	**Social Security Number**
xx/xx/[redacted]	xxx-xx[redacted]

Security Bond Coverage Amount: $750.00 **Pet Bond Coverage Amount:** $0.00
Refundable Deposit Due To Community: $0.00 **Refundable Pet Deposit Due to Community:** $0.00
Non-refundable Purchase Price: $131.25

PLEASE READ THE FOLLOWING BEFORE SIGNING:

I intend to be legally bound, and I understand and voluntarily agree that:

I am enrolling on a bond that Bankers Insurance Company (Surety) issued for the benefit of the apartment community named above. The premium that I am paying for the Bond is not a security deposit, and I will not receive the premium back at the end of my lease. Moreover, this bond is not liability or other insurance, and thus does not relieve me of any responsibilities I have under the lease, including responsibility for physical damage to the property or for unpaid rent.

The bond is for the amount listed above in the box marked "Bond Coverage Amount." The bond provides coverage for damages that I may be responsible for under the lease and under law, including physical damage to the apartment (beyond normal wear and tear) or for any unpaid obligations under my lease agreement, such as unpaid rent or fees ("Covered Damages"), up to the Bond Coverage Amount. Therefore, if the apartment community makes a claim for Covered Damages, and provided the apartment community strictly complies with the lease terms and applicable law, Surety will be obligated to pay the claim for Covered Damages, including any collection expenses, court costs, and attorney fees, but not to exceed the Bond Coverage Amount. I will then be obligated to reimburse Surety the amount of the claim.

Nothing in this agreement limits the apartment community from first applying any money that I have on deposit with the apartment community to pay the claim. Moreover, if Surety pays a claim on my behalf, it will then seek to collect reimbursement from me. If this happens, subject to all applicable legal limitations, I authorize anyone to furnish Surety (or its employees or agents or assigns) any information that will assist Surety in collecting the money I owe. Moreover, the apartment community and the Surety are not affiliated in any manner, and the apartment community is not responsible for the actions that Surety takes during any collection efforts. I understand that if I fail to pay money that I owe to Surety as a result of my obligations under this bond: a) my credit rating may get worse; b) I might have trouble renting an apartment; and c) I might have trouble getting insurance coverage.

Any dispute or claim arising out of or relating to this agreement will be resolved by a single arbitrator in a binding arbitration proceeding administered by the American Arbitration Association or other appropriate entity that we mutually accept. Judgment on the arbitrator's award may be entered in any court with appropriate jurisdiction. In any arbitration or court proceeding, Surety, DepositIQ and I waive any claims for punitive damages, and Surety, DepositIQ and I waive any right to pursue claims on a class or representative basis – or to be included in any such class.

This is our entire agreement, and I am not relying on any oral promises or statements.

INITIAL THAT YOU HAVE BEEN SHOWN THE REVERSE SIDE OF THE AGREEMENT: [redacted]

RESCISSION RIGHTS: Within five (5) Calendar Days of signing this Bond Enrollment Form, I may rescind this bond enrollment for a full refund, PROVIDED I take certain action. I have been informed that a complete description of such actions (for example, the lease agree is lawfully terminated) is available at www.depositiq.com/rescission.html.

Signed by [redacted]
10/15/2018 11:52 AM MDT

Signature of #1: Resident

THIS IS PART OF THE AGREEMENT. PLEASE READ CAREFULLY

1. This constitutes our entire agreement, which supersedes all prior agreements and understandings pertaining thereto, and I am solely relying on what is written in this document, and not relying on any oral representations or promises.
2. The parties hereto shall have all remedies for breach of this Agreement available to them provided by law.
3. This agreement is not intended to be for the benefit of and shall not be enforceable by any person who or which is not a party hereto.
4. Neither Party may assign or delegate any of its rights or obligations under this agreement, although Surety may assign this agreement and any resulting judgment, for purposes of collection.
5. I understand that Surety and apartment community are independent and unaffiliated companies, and, that they are therefore not agents, joint venturers, partners, parents, or subsidiaries of one another. Therefore, I understand that the apartment community is not responsible for the conduct of the Surety, and the Surety is not responsible for the conduct of apartment community.
6. **I am enrolling in the bond program voluntarily, and not under the pressure, influence or recommendation of any person. I fully understand that I don't have to enroll in this program. But after considering the matter, I choose to enroll because I believe that it makes sense for me to do so.**
7. I have had sufficient opportunity and time to review this agreement.

THANK YOU, IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT THIS EXCITING PROGRAM, PLEASE VISIT OUR WEBSITE AT WWW.DEPOSITIQ.COM, OR CALL A CUSTOMER SERVICE REPRESENTATIVE AT (877-684-4039). WE WELCOME YOUR CALLS AND FEEDBACK.

Payment Received

Receipt # 87151

Bond # 106534

Amount: $131.25

Payment Type: eCheck

Status: Succeeded

Message: Payment is complete

106534

BOND ENROLLMENT & ACKNOWLEDGEMENT AGREEMENT

Bond Number: ABIC 1296-1303	Alliance Residential Company

COMMUNITY/LANDLORD INFORMATION

Name: Broadstone Passerelle	HTID: 2669354	ID: ARC15845
Address: 895 Broadstone Way		
City, State and Zip Code: Altamonte Springs, FL 32714		

RESIDENT INFORMATION

Move in Address:	890 Broadstone Way	Building #:		Apartment #:	303
City, State and Zip Code:	Altamonte Springs, FL 32714				

	First Name	Last Name	Social Security Number	Date of Birth	E-mail Address
1	Joseph	Forese	On File	7/14/1993	foresejoe@yahoo.com
2					
3					
4					

Effective Date (Move in Date): 7/13/2017 (MM/DD/YEAR)

BOND LIMIT AMOUNT:	$1,000.00
NON-REFUNDABLE PAYMENT:	$175.00
REFUNDABLE DEPOSIT DUE TO LANDLORD:	$0.00

IMPORTANT INFORMATION - READ BEFORE SIGNING

As described below, this is an agreement for the election to enroll in the SureDeposit bond program. By signing below, which I choose to do voluntarily, I intend to be legally bound, understand the terms and conditions, and agree to the following terms, conditions and obligations:

SureDeposit: SureDeposit is a voluntary surety bond program whereby I choose to make a one-time, nonrefundable payment in lieu of making a traditional security deposit in connection with the lease I entered into with the community's property manager or property owner (the "Landlord"). I freely elect to participate in the SureDeposit program and understand that the payment that I am making to participate in the program is NOT a security deposit, and that I will NOT receive a refund of the one-time payment at the end of my lease. I have not been required or compelled to enter into this agreement by any person or entity, and I understand that electing to participate in the SureDeposit program does not waive or release me from complying with the terms of my lease.

"SureDeposit" is the trade name of the surety bond program offered to residents of this community. **It is NOT insurance and does not protect me against any acts or risks typically covered by insurance**. American Bankers Insurance Company of Florida (an Assurant company) is the surety company (the "Surety") that has a bonding agreement with your Landlord.

Liability for Damages: The SureDeposit bond provides protection for any physical damage I may cause to the rental property (beyond normal wear and tear) and any of my financial obligations under the lease agreement that are not paid. I understand that if the Landlord makes a claim to the Surety after I move out or if the lease terminates because I caused property damage or I did not fulfill my financial lease obligations (such as not paying rent or not paying imposed fees), the Surety will pay the Landlord's claim, up to the specified Bond Limit Amount. If a claim is paid by the Surety to the Landlord, (a) I will be required to reimburse the Surety for the amount paid; and (b) If applicable, I must also reimburse the Landlord directly for any outstanding obligations in excess of the Bond Limit Amount.

Debt Owed to Surety: If Surety pays the Landlord any amount on my behalf and then seeks reimbursement from me: (a) I authorize the Landlord to furnish Surety any information that will assist Surety in collecting the money I owe to Surety, (b) I acknowledge that Surety, SureDeposit or a collection agency (as an assignee) may be identified as the creditor (at their discretion) for purposes of the collection and credit reporting process, and (c) I acknowledge that if I do not pay Surety (or the designated entity), the debt may be reported to the credit reporting bureaus which may have a negative impact on my credit profile. I also expressly permit the Landlord, Surety, or a collection agency to contact me by telephone (land line or mobile) or by electronic means (such as e-mail) to collect any amount that I owe.

Cancellation of SureDeposit Program Participation: I may cancel the election to participate in the SureDeposit program for a full refund within five (5) calendar days of the Effective Date upon submission of written notice to my Landlord, whereupon my payment will be refunded to me. IF I TAKE THIS ACTION, I UNDERSTAND I MUST PAY THE REQUIRED SECURITY DEPOSIT TO MY LANDLORD.

Arbitration: Any dispute or claim arising out of or relating to this agreement will be resolved by a single arbitrator in a binding arbitration proceeding administered by the American Arbitration Association or other appropriate entity that we mutually accept, except that the Surety or I may choose to pursue claims in small claims court if the claims relate solely to the collection of any debts I owe to the Surety. Judgment on the arbitrator's award may be entered in any court with appropriate jurisdiction. In any arbitration or court proceeding, Surety and I waive any claims for punitive damages, and I waive any right to pursue any claims, causes of action or any monetary, injunctive or prohibitory relief on any class or representative basis, and I agree and understand that I cannot and will not serve as a class representative at any such action or proceeding.

This is the entire agreement between Surety and I and I am not relying on any oral promises or statements.

Signed By: Joseph Forese

Wed Jul 12 06:39:21 AM CST 2017

Signature of Resident 1	Signature of Co-Signer/Guarantor	Signature of Resident 3	Signature of Co-Signer/Guarantor
Signature of Resident 2	Signature of Co-Signer/Guarantor	Signature of Resident 4	Signature of Co-Signer/Guarantor

FIDELITY
National Property & Casualty Insurance Company

SUREDEPOSIT ENROLLMENT & BOND ACKNOWLEDGEMENT

SURE DEPOSIT

Bond Number: FNPAC 100069	**Flaherty & Collins**

Knobs Pointe Apartments

ID: FC122F

Street Address: _____ **Building #**_____ **Apartment#**_____

New Albany, IN, 47150

Resident 1			**Resident 2 (For more than two, use a separate form)**		
First Name	MI	Last Name	First Name	MI	Last Name
Date of Birth	Social Security Number		Date of Birth	Social Security Number	
Effective Date (move in date)			Effective Date (move in date)		

Make Payments To: SureDeposit 293 Eisenhower Parkway Suite 320 Livingston, NJ 07039-1711

BOND COVERAGE AMOUNT	**NON-REFUNDABLE PREMIUM**

PLEASE READ THE FOLLOWING BEFORE SIGNING:

I intend to be legally bound, and I understand and agree that:

I am enrolling on a bond that Fidelity National Property & Casualty Company (Company) issued for the benefit of the apartment community named above. **The premium that I am paying for the enrollment is not a security deposit, and I will not receive the premium back at the end of my lease**.

The bond is for the amount listed above in the box marked "Bond Coverage Amount." The bond provides coverage for any physical damage to the apartment (beyond normal wear and tear) or any of my obligations under the lease agreement that are not paid such as past due rent, unpaid rent or fees. **If the apartment community makes a claim that I owe it money because I created damage or did not fulfill lease obligations such as paying rent or applicable fees, Company will be obligated to pay the claim including collection expenses, court costs, or attorney fees. I will then be obligated to reimburse Company.**

If the apartment community has any of my money on deposit at the end of my lease, it will apply this money first to pay the claim. If Company pays the apartment community on my behalf and then tries to collect reimbursement from me: a) I authorize anyone to furnish Company (or its employees or agents or assigns) any information that will assist Company in collecting the money I owe to Company; and b) the apartment community is not a party to, and is not responsible for, the actions that Company takes during any collection efforts. If I fail to pay money that I owe to Company as a result of my obligations under this bond: a) my credit rating may get worse, b) I might have trouble renting an apartment, and c) I might have trouble getting insurance coverage.

Any dispute or claim arising out of or relating to this agreement will be resolved by a single arbitrator in a binding arbitration proceeding administered by the American Arbitration Association or other appropriate entity that we mutually accept, except that Company or I may choose to pursue claims in court if the claims relate solely to the collection of any debts I owe to Company. Judgment on the arbitrator's award may be entered in any court with appropriate jurisdiction. In any arbitration or court proceeding, Company, SureDeposit and I waive any claims for punitive damages, and Company, SureDeposit and I waive any right to pursue claims on a class or representative basis.

This is our entire agreement, and I am not relying on any oral promises or statements.

Signature of Resident #1	Signature of Co-Signer or Guarantor	Signature of Witness
Signature of Resident #2	Signature of Co-Signer or Guarantor	Signature of Witness

APPENDIX 1

CONSUMER PROTECTION DIVISION OFFICE OF THE ATTORNEY GENERAL STATE OF MARYLAND	*	IN THE
	*	CONSUMER PROTECTION
Proponent,	*	DIVISION
v.	*	OFFICE OF THE
CONVERGE SERVICES GROUP, L.L.C. T/A SUREDEPOSIT, *et al.*	*	ATTORNEY GENERAL
	*	CPD Case No. 03-021
Respondents.	*	OAH No. OAG-CPD 02-03-45426

* * * * *

FINAL ORDER BY CONSENT ORDER

This Final Order by Consent ("Consent Order") is made and entered into by the Office of the Attorney General, Consumer Protection Division (the "Proponent") and Converge Services, Group, L.L.C., Daniel Rudd and Stuart Litwin (hereinafter referred to collectively as "Respondents"). The Proponent and Respondents agree as follows:

1. The Proponent is responsible for enforcement of Maryland consumer protection laws, including the Maryland Consumer Protection Act, Md. Code Ann., Com. Law §13-101 *et. seq.* (2000 Repl. Vol.)

2. Respondent, Converge Services Group, L.L.C. t/a SureDeposit is a New Jersey corporation that has conducted business in Maryland. Converge Services Group, L.L.C. t/a SureDeposit offered and sold surety bonds to Maryland consumers in connection with their applications to rent consumer realty.

3. Respondent, Stuart Litwin, is an owner and operator of Converge Services Group, L.L.C. Respondent Litwin is Converge Services Group, L.L.C.'s Chief Executive Officer.

4. Respondent, Daniel Rudd, is an owner and operator of Converge Services Group,

L.L.C. Respondent Rudd is Converge Services Group, L.L.C.'s Chief Financial Officer and Chief Operating Officer.

5. Respondents sold "SureDeposit Security Deposit Bonds" issued by Bankers Insurance Company or First Community Insurance Company (the "Surety") to tenants seeking to rent residential real estate in Maryland (the "SureDeposit Program").

6. The Proponent alleges that Respondents, through their SureDeposit Program, engaged in unfair and deceptive trade practices in violation of the Consumer Protection Act by failing to inform consumers of material facts, the omission of which deceived or tended to deceive consumers including, but not limited to, Respondents' failure to disclose to consumers:

(a) all material terms of the surety bonds consumers purchased;

(b) that, by purchasing SureDeposit Security Deposit Bonds, consumers remain liable for all damages paid by the Surety to landlords;

(c) that, by purchasing SureDeposit Security Deposit Bonds, consumers were foregoing the rights and protections they would ordinarily receive if they paid a cash security deposit, including their right to have the residential property inspected for damages in their presence at the inception and termination of their tenancy, prompt written notice of the damages claimed by the landlord and the actual costs incurred by the landlord, and the right to seek a penalty up to three times the amount of the security deposit, plus reasonable attorney's fees, if the landlord fails to comply with the Maryland Security Deposit Law, Md. Code Ann., Real Property § 8-213;

(d) that landlords who offered and sold SureDeposit Security Deposit Bonds were

paid a portion of consumers' premium payments;

(e) that landlords may make claims against SureDeposit Security Deposit Bonds for damages that exceed what landlords could deduct from a cash security deposit;

(f) that the Surety pays damages claims to landlords without requiring the landlords to honor consumers' rights afforded under the Maryland Real Property Article and without having to submit evidence to support their claims; and

(g) that Respondents do not provide consumers with notice of, and an opportunity to contest, damages claims made by landlords.

7. The Proponent alleges that Respondents engaged in unfair and deceptive trade practices in violation of the Consumer Protection Act by making misrepresentations that had the capacity, tendency or effect of deceiving or misleading consumers, including misrepresentations concerning the legality and nature of their SureDeposit Security Deposit Bond product and its benefit to consumers.

8. Respondents deny that they have violated the Consumer Protection Act, deny that they have committed any of the unfair and deceptive trade practices set forth above and contend that they have not committed any unfair or deceptive trade practices in connection with their offer and sale of surety bond products to Maryland consumers.

9. Proponent and Respondents intend that this Consent Order shall resolve the allegations set forth in the Proponent's Statement of Charges. This Consent Order shall not constitute an admission by either party. For purposes of resolving disputes concerning the above allegations in connection with the Respondents' SureDeposit Program, from the date of this Consent Order, Respondents agree as follows.

CEASE AND DESIST PROVISIONS

10. Respondents shall not offer and sell any surety bonds, insurance, or other products to Maryland consumers that are designed or promoted as replacements, alternatives or supplements for residential security deposits.

11. Respondents and the Surety shall cease accepting any money from Maryland consumers in connection with or arising out of the SureDeposit Program and shall cease from making any claims against Maryland consumers in connection with or arising out of the SureDeposit Program, including claims arising out of any payments made to landlords participating in the SureDeposit Program.

12. Respondents and the Surety shall cease reporting negative information to credit reporting bureaus in connection with any Maryland Consumer who purchased a SureDeposit Security Deposit Bond.

13. Respondents shall contact every credit reporting bureau to which Respondents and/or the Surety made a negative report concerning a Maryland consumer who purchased a SureDeposit Security Deposit Bond and inform the credit reporting bureau that the negative information that was reported is not currently accurate and should be removed.

RESTITUTION AND COSTS

14. On the date Respondents execute this Consent Order, Respondents shall provide the Proponent with a list of all Maryland consumers who purchased SureDeposit Security Deposit Bonds. For each such consumer, Respondents shall provide the following information:

(a) the consumer's name, last know address, and social security number;

(b) a statement whether the SureDeposit Security Deposit Bond purchased by each consumer has been terminated or remains in effect; and

(c) the amount of any payments made by any consumer to reimburse either Respondents or the Surety for any claim made against a SureDeposit Security Deposit Bond.

15. Respondents shall pay to the Office of the Attorney General a restitution amount equal to: (i) 40% of the premiums paid by Maryland consumers who purchased SureDeposit Security Deposit Bonds that are no longer in effect; plus (ii) the total of the premium amounts paid by each consumer who purchased a SureDeposit Security Deposit Bond that remains in effect, but whose landlord has not agreed to comply with the terms of paragraph 19 *infra*; plus (iii) Twelve Thousand Dollars ($12,000) (referred to collectively as the "Restitution Payment"). Respondents must pay the Division the Restitution Payment in accordance with paragraph 22.

16. If in the future the Division determines that more than the amount listed pursuant to paragraph 14(c) was paid by consumers to Respondents or the Surety in connection with the SureDeposit Program, Respondents shall pay the additional amounts above the amount listed pursuant to paragraph 14(c) to the Proponent, within ten (10) days being notified of such additional amount.

17. The Proponent shall use the Restitution Payment to pay restitution to consumers who purchased SureDeposit Security Deposit Bonds that are no longer in effect.

18. At the conclusion of any claims process conducted by the Proponent, any part of

the Restitution Payment that has not been distributed to consumers may, at the discretion of the Attorney General, be: (a) held in trust for consumers by the State; or (b) used in accordance with Maryland law, for consumer education or other consumer protection purposes, at the sole discretion of the Attorney General.

19. In addition to the Restitution Payment provided for under paragraph 15, within five (5) days of the date of the entry of this Consent Order, for each Maryland consumer who purchased a SureDeposit Security Deposit Bond that remains in effect, SureDeposit shall pay to the consumer's landlord the amount paid by the consumer in connection with the purchase of the SureDeposit Security Deposit Bond (the "Refunded Premium Amount"), provided that the landlord has agreed to: (i) retain the Refunded Premium Amount, on behalf of the consumer who paid the Refunded Premium Amount, as the consumer's security deposit subject to the requirements of §§ 8-203 and 8-203.1 of the Maryland Real Property Article and only make deductions from the security deposit in accordance with those provisions; (ii) not collect any amounts in addition to the Refunded Premium Amount as security deposits from Maryland consumers who purchased SureDeposit Security Deposit Bonds; and (iii) not sell any insurance, surety bond or other product to Maryland consumers as a replacement, alternative or supplement to a security deposit, to subject to paragraph 24. Where a Maryland consumer purchased a SureDeposit Security Deposit Bond that remains in effect, and the landlord received twenty-percent (20%) of the premium amount paid by the consumer after the consumer purchased the SureDeposit Security Deposit Bond, SureDeposit may pay eighty-percent (80%) of the Refunded Premium Amount to the consumer's landlord, as long as the landlord agrees to retain that amount, plus the twenty-percent (20%) it previously received on behalf of the consumer who

paid the Refunded Premium Amount, as the consumer's security deposit subject to the conditions set forth in this paragraph. Respondents shall provide the Proponent documentation of all payments made pursuant to this paragraph at the time the payment is made. Attached hereto as Exhibit 1* are written assurances that Respondents have received from landlords who participated in Respondents' SureDeposit Program that they will comply with the terms of this paragraph. Nothing set forth in this Consent Order shall prohibit Respondents from entering into an agreement with a landlord who participated in the SureDeposit Program to reimburse Respondents amounts that Respondents previously paid to the landlord, but which Respondents under this Consent Order are being required to return in connection with any existing SureDeposit Security Deposit Bond.

20. For a period of eighteen (18) months from the date of this Consent Order, upon request, Respondents shall provide the Proponent with access to Converge Services Group, L.L.C.'s financial records reflecting its sales of SureDeposit Security Deposit Bonds to Maryland consumers and the monies that were paid by Maryland consumers to reimburse the Respondents or Surety for any claim made against a SureDeposit Security Deposit Bond.

21. Respondents shall pay to the Office of the Attorney General Fifteen Thousand Dollars ($15,000) for costs the Proponent has incurred investigating this matter or that may be incurred by the Proponent in paying restitution to consumers. Respondents shall pay the costs under this paragraph in accordance with paragraph 22.

22. At the time Respondents execute this Consent Order, Respondents shall pay the Restitution Payment and costs required under this Consent Order to an escrow account managed by their attorneys, Schulman, Treem, Kaminkow, Gilden & Ravenell, P.A., Suite 1800, The World Trade Center, 401 East Pratt Street, Baltimore, MD 21202. Within five (5) days of the

*Letters on behalf of and dated as follows: Equity Management (3-17-05), Summit Management Company (3-16-05), Associated Estates Realty Corporation (3-10-05), Morgan Properties (3-10-05), A&G Management Co., Inc. (3-10-05), and Owings Park, LLC (3-18-05). William Leibow

APPENDIX 2

date of the entry of this Consent Order, Respondents shall require Schulman, Treem, Kaminkow, Gilden & Ravenell, P.A. to pay the Restitution Payment and costs required under this Consent Order to the Office of the Attorney General.

23. If any disputes arise concerning this Consent Order, the parties may petition the Chief of the Division to enter any supplemental orders needed to modify the Consent Order.

24. In the event of a change in circumstances, either party may petition the Chief of the Division to modify this Consent Order to both address the changed circumstances and fulfill the purposes of this Consent Order. In the event that a statute becomes law in Maryland that expressly permits the sale of a bond or insurance product in lieu of a security deposit, either party may petition the Chief of the Division to modify this Consent Order to permit the sale of the product authorized by the legislation and to impose additional cease and desist provisions and/or affirmative action as the Chief of the Division believes appropriate to prevent the unfair or deceptive trade practices that were alleged in the Amended Statement of Charges.

ENFORCEMENT

25. Respondents understand that this Consent Order is enforceable by the Consumer Protection Division pursuant to the Consumer Protection Act and that any violation of this Consent Order is a violation of the Consumer Protection Act.

26. Respondents agree that any future violations of this Consent Order, or the Consumer Protection Act, shall constitute a second violation of the Consumer Protection Act for purposes of §13-410 of the Act.

AGREED AS TO FORM AND SUBSTANCE

Consumer Protection Division
Office of the Attorney General of Maryland

Converge Services Group, L.L.C.

By:

William D. Gruhn
Assistant Attorney General

Philip D. Ziperman
Assistant Attorney General

March 22, 2005
Date

By:

Stuart Litwin, Individually and as
Chief Executive Officer

Daniel Rudd, Individually and as
Chief Operating Officer

March 10, 2005
Date

SO ORDERED:

William Leibovici, Chief
Consumer Protection Division

3-24-05
Date

Received 03/18/2005 09:55AM in 00:46 on line [4] for 3252 * Pg 1/2

March 17, 2005

SureDeposit
c/o Andrew M. Dansicker, Esquire
Schulman, Treem, Kaminkow, Gilden
& Ravenell, P.A.
Suite 1800, The World Trade Center
401 E. Pratt Street
Baltimore, Maryland 21202

Re: Consumer Protection Division Investigation of
SureDeposit Program

Dear SureDeposit:

Equity Management hereby represents and agrees, in cooperation with SureDeposit and the Consumer Protection Division of the State of Maryland, that it will not make available to residents in Maryland properties it manages any insurance, surety bond or other product as a replacement, alternative or supplement to a security deposit, subject to any modification of the Consent Order between SureDeposit and the Consumer Protection Division in *Consumer Protection Division v. Converge Services Group, L.L.C. t/a SureDeposit, et al.*, CPD Case No. 03-021/OAH No. OAG-CPD 02-03-45426.

Equity Management also agrees that for each Maryland consumer who purchased a SureDeposit surety bond that remains in effect and who lives at a property it still manages, Equity Management will apply the entire amount originally paid by the Maryland consumer for that surety bond as the consumer's security deposit, subject to the requirements of Sections 8-203 and 8-203.1 of the Real Property Article, and will only make deductions from that security deposit in accordance with these provisions.

Finally, Equity Management agrees that it will not require from the above-identified group of consumers any security deposit in addition to the amount originally paid by

STATE'S EXHIBIT 1

APPENDIX 2

Received 03/18/2005 09:55AM in 00:46 on line [4] for 3252 * Pg 2/2

these consumers for the SureDeposit surety bond, which amount is to be used as a security deposit under the present lease (see above).

Sincerely yours,

Equity Management

By: _____
Douglas Margerum
Equity Management, Inc.
13900 Laurel Lakes Ave.
Laurel, MD 20707

DRC/mmh

GOODWIN | PROCTER

Thomas M. Hefferon
202.346.4029
thefferon@
goodwinprocter.com

Goodwin Procter LLP
Counsellors at Law
901 New York Avenue, N.W.
Washington, D.C. 20001
T. 202.346.4000
F. 202.346.4444

March 16, 2005

VIA FACSIMILE

Mr. Dan Rudd
Sure Deposit
Converge Services Group LLC
293 Eisenhower Parkway, Suite 320
Livingston, NJ 07039

Re: Consumer Protection Division Investigation of SureDeposit and Landlords In Relation to Administration of and Participation in SureDeposit Program

Dear SureDeposit:

On behalf of Summit Management Company ("SMC"), we hereby state that SMC represents and agrees, in cooperation with SureDeposit and the Consumer Protection Division of the State of Maryland (the "CPD"), that it will not make available to its residents any insurance, surety bond or other product as a replacement, alternative or supplement to a security deposit to Maryland consumers, subject to any acceptable modification of the Consent Order between SureDeposit and the CPD in *Consumer Protection Division v. Converge Services Group, L.L.C t/a SureDeposit, et al.*, CPD Case No. 03-021/OAH No. OAG-CPD 02-03-45426.

SMC also agrees that for each Maryland consumer who purchased a SureDeposit surety bond that remains in effect, it will apply the entire amount originally paid by the Maryland consumer in connection with their purchase of a SureDeposit surety bond as the consumer's security deposit, subject to the requirements of Sections 8-203 and 8-203.1 of the Real Property Article, and it will only make deductions from that security deposit in accordance with these provisions.

Finally, SMC agrees that it will not require from these consumers any security deposit in addition to the amount originally paid by these consumers for the SureDeposit surety bond to be used as a security deposit under the present lease.

This agreement is not an admission of any fault or liability of SMC, which is expressly denied.

Very truly yours,

Thomas M. Hefferon

cc: Philip D. Ziperman, Esq.

March 10, 2005

VIA FAX TO 973/992-8770

martin a. fishman
VICE PRESIDENT
GENERAL COUNSEL
SECRETARY

Mr. Daniel Rudd
SureDeposit
Converge Services Group
293 Eisenhower Parkway
Livingston, NJ 07039

RE: Consumer Protection Division Office of the Attorney General State of Maryland, Proponent, v. Converge Services Group, LLC T/A SureDeposit, et al, Respondents, CPD Case No. 03-021/OAH No. OAG-CPD 02-03-45426

Dear Mr. Rudd:

We hereby represent and agree, in cooperation with SureDeposit and the Consumer Protection Division of the State of Maryland, that we will not make available to our residents any insurance, surety bond or other product as a replacement, alternative or supplement to a security deposit to Maryland consumers, subject to any modification of the Consent Order between SureDeposit and the Consumer Protection Division in Consumer Protection Division v. Converge Services Group, L.L.C. t/a SureDeposit, et al., CPD Case No. 03-021/OAH No. OAG-CPD 02-03-45426.

We also agree that for each Maryland consumer who purchased a SureDeposit surety bond that remains in effect, we will apply the entire amount originally paid by the Maryland consumer in connection with their purchase of a SureDeposit surety bond as the consumer's security deposit, subject to the requirements of Sections 8-203 and 8-203.1 of the Real Property Article, and we will only make deductions from that security deposit in accordance with these provisions.

Finally, we agree that we will not require from these consumers any security deposit in addition to the amount originally paid by these consumers for the SureDeposit surety bond to be used as a security deposit under the present lease.

Our agreement and cooperation, which is voluntary on our part, is solely for the purpose of facilitating the resolution of matters currently pending between SureDeposit and the Consumer Protection Division and avoiding further litigation. Our agreement is not to be construed as an admission that any actions taken by us with regard to any product or policy provided by SureDeposit was in violation of any law or obligation to any consumer and we specifically deny any wrongdoing including without limitation that any action taken by us was in violation of any law or obligation. Moreover, our agreements are limited and made solely with respect to the laws of the State of Maryland and only with respect to those properties operated by us in the State of Maryland and is not admissible in evidence in any action other than the captioned matter.

Sincerely,

Martin A. Fishman

MAF/skb

ASSOCIATED ESTATES REALTY CORPORATION
5025 swetland court
cleveland, ohio 44143
216.797.8780 fax: 216.797.8719
mfishman@aecrealty.com

associated estates communities

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APPENDIX 2

MORGAN
PROPERTIES

March 10, 2005

Morgan Properties
160 Clubhouse Road
King of Prussia, PA 19406

RE: The Marylander Apartments
Consumer Protection Division Investigation of SureDeposit and Landlords
In Relation to Administration of and Participation in SureDeposit Program

Dear SureDeposit:

We hereby represent and agree, in cooperation with SureDeposit and the consumer Protection Division of the State of Maryland, that we will not make available to our residents any insurance, surety bond or other product as a replacement, alternative or supplement to a security deposit to Maryland consumers, subject to any modification of the Consent Order between SureDeposit and the Consumer Protection Division in *Consumer Protection Division v. Converge Services Group, L.L.C. t/a SureDeposit, et al.*, CPD Case No. 03-021/OAH No. OAG-CPD 02-03-45426.

We also agree that for each Maryland consumer who purchased a SureDeposit surety bond that remains in effect, we will apply the entire amount originally paid by the Maryland consumer in connection with their purchase of a SureDeposit surety bond as the consumer's security deposit, subject to the requirements of Sections 8-203 and 8-203.1 of the Real Property Article, and we will only make deductions from that security deposit in accordance with these provisions.

Finally, we agree that we will not require from these consumers any security deposit in addition to the amount originally paid by these consumers for the SureDeposit surety bond to be used as a security deposit under the present lease.

Very truly yours,

Todd L. Richman
CFO

TLR/dml

APPENDIX 2

NED S. KODECK, CHARTERED
ATTORNEYS-AT-LAW

8 RESERVOIR CIRCLE, SUITE 203
BALTIMORE, MARYLAND 21208
(410) 486-4774
FAX 486-2335

NED S. KODECK
C. LYNNE SILVERMAN
ARI J. KODECK

March 10, 2005

BY FEDERAL EXPRESS

SureDeposit
293 Eisenhower Parkway, Suite 320
Livingston, New Jersey 07039

Landlord Name: A & G Management Co., Inc.

Landlord Address: C/O Ned S. Kodeck, Esquire
Ned S. Kodeck, Chartered
8 Reservoir Circle, Suite 203
Baltimore, Maryland 21208

Re: Consumer Protection Division Investigation of SureDeposit and Landlords in Relation to Administration of and Participation in SureDeposit Program

Dear SureDeposit:

We hereby represent and agree, in cooperation with SureDeposit and the Consumer Protection Division of the State of Maryland, that we will not make available to our residents any insurance, surety bond or other products as a replacement, alternative or supplement to a security deposit to Maryland consumers, subject to any modification of the Consent Order between SureDeposit and the Consumer Protection Division in *Consumer Protection Division v. Converge Services Group, L.L.C. t/a SureDeposit , et al.*, CPD Case No. 03-021/OAH No. OAG-CPD 02-0345426.

We also agree that for each Maryland consumer who purchased a SureDeposit surety bond that remains in effect, we will apply the entire amount originally paid by the Maryland consumer in connection with their purchase of a SureDeposit surety bond as the consumer's security deposit, subject to the requirements of Sections 8-203 and 8-203.1 of the Real Property Article, and we will only make deductions from that security deposit in accordance with these provisions.

Finally, we agree that we will not require from these consumers any security deposit in

addition to the amount originally paid by these consumers for the SureDeposit surety bond to be used as a security deposit under the present lease.

Very truly yours

NED S. KODECK, CHARTERED

Ned S. Kodeck
for Landlord: A & G Management Co., Inc.

NSK/as

031005

TELEPHONE:
(718) 937-2622

29-27 41st AVENUE
SUITE 606
LONG ISLAND CITY, NY 11101

March 18, 2005

SureDeposit
293 Eisenhower Parkway
Suite 320
Livingston, NJ 07039

Re: Consumer Protection Division Investigation of SureDeposit and Landlords In Relation to Administration of and Participation In SureDeposit Program

Dear SureDeposit:

We hereby represent and agree, in cooperation with SureDeposit and the Consumer Protection Division of the State of Maryland, that we will not make available to our residents any insurance, surety bond or other product as a replacement, alternative or supplement to a security deposit to Maryland consumers, subject to any modification of the Consent Order between SureDeposit and the Consumer Protection Division in *Consumer Protection Division v. Converge Services Group, L.L.C. t/a SureDeposit, et al.*, CPD Case No. 03-021/OAH No. OAG-CPD 02-03-45426.

We also agree that for each Maryland consumer who purchased a SureDepsit surety bond that remains in effect, we will apply the entire amount originally paid by the Maryland consumer in connection with their purchase of a SureDeposit surety bond as the consumer's security deposit, subject to the requirements of Sections 8-203 and 8-203.1 of the Real Property Article, and we will only make deductions from that security deposit in accordance with these provisions.

Finally, we agree that we will not require from these consumers any security deposit in addition to the amount originally paid by these consumers for the SureDeposit surety bond to be used as a security deposit under the present lease.

Very truly yours,

OWINGS PARK, LLC

LL:pdm

Lawrence Laikin
Managing Member

APPENDIX 2

For Immediate Release
March 25, 2005

Media Contact:
Kevin Enright 410-576-6357

ATTORNEY GENERAL SETTLES WITH COMPANY THAT SOLD SURETY BONDS TO RENTERS

UPDATE: *During the 2006 session, the General Assembly passed Ch. 502, Laws of Maryland 2006, which regulates the sale of surety bonds in lieu of a security deposit, including providing rights and remedies that are similar in many respects to those afforded under the Security Deposit Statute, § 8-203 of the Real Property Article. Converge Services, Inc. d/b/a SureDeposit is permitted to sell surety bonds in accordance with the statutory framework created by Ch. 502, Laws of Maryland 2006. To read the statute click on the following link:* http://mlis.state.md.us/2006rs/billfile/hb1620.htm

Attorney General J. Joseph Curran, Jr. announced today that his Consumer Protection Division has entered into a settlement with Converge Services Group, L.L.C. (doing business as "SureDeposit"), of 14 Main Street, Madison, N.J. and its owners, Stuart Litwin and Daniel Rudd. The settlement resolves allegations that the company engaged in unfair and deceptive trade practices in connection with their selling surety bonds to Maryland renters.

SureDeposit, through several landlords, sold surety bonds to Maryland tenants applying to rent apartments, at the cost of a $175 or higher nonrefundable premium. The surety bonds served the same purpose as a security deposit – to protect landlords against damages to the rental premises or damages due to breach of lease. At the conclusion of the tenancy, SureDeposit paid landlords for any damages the landlords claimed were caused by tenants (i.e., lost rent or damage to the property), and then sought to recover its payments from the tenants. The Division estimates that more than 1,050 Marylanders purchased SureDeposit surety bonds.

The Maryland Security Deposit Law permits landlords to collect security deposits from their tenants from which they may deduct amounts for lost rent, damage due to breach of lease and damages in excess of ordinary wear and tear. However, the amounts collected must be returned to tenants at the conclusion of their tenancies, less any deductions lawfully made for

damages. The Division alleged that SureDeposit violated the Consumer Protection Act because the premiums collected by SureDeposit for its surety bonds were nonrefundable and because the tenants who purchased the surety bonds were not advised of the rights and protections to which they would be entitled under the Security Deposit Law. The Division also alleged that SureDeposit did not adequately disclose to consumers who purchased its surety bonds that they would remain liable for damages to the rental premises, that SureDeposit would reimburse landlords for claims that could not be paid under the Security Deposit Law, and that SureDeposit did not notify the consumer of claims being made by the landlord. SureDeposit denies it violated the Consumer Protection Act.

Under the settlement agreement, SureDeposit promised to stop engaging in the practices that had been alleged. SureDeposit will pay restitution of all money it received from Maryland consumers. SureDeposit also agreed to pay the Division an additional $15,000 for its costs. The landlords through which SureDeposit offered its surety bond product products have agreed to hold the premiums being refunded to current tenants in accordance with the Security Deposit Law.

"When consumers rent apartments, they must be advised of all of their rights," said Curran. "Tenants should be able to enjoy all of the rights and protections provided under the Security Deposit Law."

#

COURT OF APPEALS
TENTH APPELLATE DISTRICT
FRANKLIN COUNTY, OHIO

08AP 719
Case No. 08-APE-819

KYLE KOPP, et al.,

Plaintiffs-Appellants

v.

ASSOCIATED ESTATES REALTY CORP.,

Defendant-Appellee

BRIEF FOR APPELLANTS

STEPHEN R. FELSON (0038432)
215 E. Ninth St., Suite 650
Cincinnati, Ohio 45202
(513) 721-4900
(513) 639-7011 (fax)
SteveF8953@aol.com

MICHAEL B. GANSON (0051944)
2306 Park Ave., Suite 101
Cincinnati, Ohio, 45206
(513) 721-2220
Fax: (513) 721-5109
E-mail: Gansonlawoffice@aol.com
Counsel for Plaintiffs-Appellants

RODGER ECKELBERRY
65 E. State St., Suite 2100
Columbus, OH 43215
(614) 462-5189
(614) 462-2616
reckelberty@bakerlaw.com
Counsel for Defendant-Appellee

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TABLE OF AUTHORITIES

Cases

Other Authorities

SOLE ASSIGNMENT OF ERROR

The trial court erred when it granted Defendant's motion for summary judgment and denied Plaintiffs' motion for summary judgment. (Decision of Aug. 18, 2008)

ISSUES PRESENTED FOR REVIEW

1. Whether a landlord's substitution of a non-refundable bond premium for a refundable cash security deposit, permitting a third party to pursue tenants for damages without itemizing them, violates R.C. 5321.16(B).

2. Whether a landlord may, consistent with the Landlord-Tenant Act, charge a "one-time, non-refundable fee . . . as a charge for preparing the Apartment prior to Tenant taking possession."

3. *Whether a landlord's nonrefundable pet fee is a liquidated damage provision prohibited by the Landlord-Tenant Act.*

STATEMENT OF THE CASE

On June 18, 2003, Kyle and Melanie Kopp filed this action on behalf of themselves and a class of similarly situated tenants. Defendant, Associated Estates Realty Corp. ("AERC"), owns and/or manages apartment buildings in the State of Ohio and leases units in those buildings to the public.

Following discovery, AERC filed a motion for summary judgment on February 9, 2004. The Kopps filed their summary judgment motion on June 4, 2004. By decision of August 18, 2008, the trial court granted AERC's motion and denied the Kopps' motion. On September 8, 2008, the trial court entered its final judgment based upon that decision. This timely appeal followed.

STATEMENT OF FACTS

As the trial court recognized, "the relevant facts of this case are very straightforward." (Decision at 3)[1] In December of 2000, the Kopps executed a lease with AERC for a unit in Arrowhead Station in Westerville, Ohio for a period of slightly more than one year. The monthly rent was $840, of which $40 was characterized as "pet rent."[2] The Kopps also paid AERC a $300 "pet fee" stated to be non-refundable.

AERC ordinarily required a refundable deposit of one month's rent as security for a tenant's performance under the lease. It also offered an alternative in the form of a program called "SureDeposit," marketed to AERC by Bankers Insurance Group ("BIC"). Under this scheme, as implemented by AERC on forms provided by BIC, the Kopps would pay $437.50 at move-in rather than one month's rent. They chose this alternative.

Paragraph 4 of the lease read as follows:

> SECURITY DEPOSIT. Tenant has deposited with the Landlord the sum of SureDeposit Dollars ($0.00) ("Security Deposit") for the purpose of insuring performance by Tenant of all obligations of Tenant as provided in this Lease. Landlord may use the Security Deposit to cure any Tenant default by reason of Tenant's noncompliance with the terms of this Lease. . . . Within thirty (30) days after the later of (i) the expiration or earlier termination of this Lease, or (ii) the date Tenant vacates the Apartment, Landlord will refund the Security Deposit less any deductions authorized above. . . . Landlord may commingle the Security Deposit with others funds of Landlord.

(AERC Mot. for Summary Judgment, Exh. A, p.1)

The Kopps also signed a document labeled "SureDeposit Bond Acknowledgement," which provided that the non-refundable purchase price of the SureDeposit bond was $437.50 and

[1] Most of the basic facts underlying the Kopps' legal positions are contained in the Affidavit of Michele Shaffer, attached to the AERC motion for summary judgment, filed February 9, 2004.

[2] While the lease states the rent at $845, it was apparently only $840. (Shaffer Affid., ¶ 6)

the bond coverage amount was $2,500. It also stated that the Kopps would owe BIC rather than AERC for any damages they caused above normal wear and tear. (Id., Exh. C)

AERC also provided the Kopps with an itemization of charges at move-in, known internally as "the money sheet." (Id. at 68, referring to Deposition Exh. 4) Opposite "Security Deposit" AERC listed the amount of $437.50, with "SureDeposit" entered to the side. AERC also listed a one-time "Pet Fee" of $300, footnoted as "non-refundable." Finally, the breakdown of the rent revealed that the "base rent" was $805 and the "pet rent" was $40. (AERC Memo., Exh. B)

Unknown to the Kopps, AERC's agreement with BIC entitled AERC to keep 20% of the SureDeposit premium. It paid this amount into its general funds. (Lustic Depo. at 12-13; Powers Depo. at 23)[3]

At the end of the lease AERC claimed that the Kopps' pets had caused damage to the carpet in the amount of $487.93. The Kopps paid this amount under protest. AERC kept the Kopps' $300 pet fee and its share of the SureDeposit Bond premium ($87.50) without crediting either of these amounts to the claimed pet damage.

THE DECISION BELOW

The trial court held that the SureDeposit premium was not a security deposit. Moreover, the Kopps "deposited no money with Defendant and paid the premium for the bond to SureDeposit who is neither affiliated with Defendant nor a party to this action. Therefore,

[3] AERC's memorandum in support of summary judgment, written before the depositions of its employees, insisted that 100% of the bond premium was paid to and "held by" a third party, namely BIC. (AERC Memo at 5, 6, 8, 10) Its employees have now testified otherwise, and the Kopps do not understand AERC to stand by its original position.

Defendant never held any of Plaintiffs' money or property as a deposit" and there could be no liability on this ground. (Decision, 8/18/08, at 8)

The trial court also held that the pet fee was "additional consideration for the contractual right to keep a pet." (Id. at 5) The court therefore rejected the Kopps' position that the fee was a security deposit. (Id. at 7)

As to the redecorating fee, the trial court held that "it is not a liquidated damages clause on the back-end of the lease" but rather "a payment to the landlord for preparing the apartment." (Id. at 10)

The court below therefore granted summary judgment to AERC and denied relief to the Kopps.

STANDARD OF REVIEW

"Appellate review of summary judgment motions is de novo." *Samaan v. Walker*, 2008 WL 4598295 (Ohio App. 10 Dist.), 2008-Ohio-5370, ¶ 7.

ARGUMENT

Each of the issues in this appeal is directly related to the security deposit section of the Ohio Landlord-Tenant Act. The relevant portion of that provision, R.C. 5321.16(B), reads as follows:

> **Security deposit procedures.**
>
> * * *
>
> (B) Upon termination of the rental agreement any property or money held by the landlord as a security deposit may be applied to the payment of past due rent and to the payment of the amount of damages that the landlord has suffered by reason of the tenant's noncompliance with section 5321.05 of the Revised Code or the rental agreement. *Any deduction from the security deposit shall be itemized and identified by the landlord in a written notice delivered to the tenant*

> together with the amount due, within thirty days after termination of the rental agreement and delivery of possession. . . .[4]

(Emphasis added.) As the Kopps will demonstrate below, AERC violated this provision in three separate ways.

A. THE SUREDEPOSIT SCHEME, A REPLACEMENT FOR AN ORDINARY, REFUNDABLE CASH SECURITY DEPOSIT, WAS AN ATTEMPT TO AVOID ITEMIZATION OF DAMAGES AND THEREFORE VIOLATED THE LANDLORD-TENANT ACT.

1. Substituting a Non-Refundable Bond Premium for a Refundable Cash Security Deposit, and Bringing in a Third-Party Bonding Company to Pursue Tenants for Damages in Disregard of the Itemization Provisions of the Landlord-Tenant Act, Violates that Act.

Both the lease and the testimony of AERC employees make it perfectly clear that the SureDeposit premium was a one-for-one substitute for a refundable cash security deposit. AERC's lease places it under Paragraph 4, "Security Deposits." On the so-called "money sheet," printed out by the landlord for the tenant at the time of move-in, AERC placed the premium in the category of "Security Deposit." AERC also supplied a document entitled "Security Deposit/Sure Deposit Guidelines Effective 11/30/00," referred to in the deposition of AERC property manager Schaffer (pp. 46 et seq.). This was the source for how large a SureDeposit Bond AERC would require in place of a refundable cash security deposit. The document makes it clear that AERC referred internally to the SureDeposit as a "security deposit." (Notice of Additional Authority, filed 5/19/04)

In addition to the documentary evidence, AERC employees, testifying in deposition, described the bond premium as an alternative to a refundable cash security deposit – the tenant was given the choice of one or the other. (Lustic Depo. at 8; Powers Depo. at 31) While the

[4] The Act goes on to award the tenant, for violation by the landlord, double damages and attorney fees. R.C. 5321.16(C)

premium was split (80% to BIC, 20% to AERC), the entire bond inured to the benefit of AERC, covering damages up to $2,500. (Lustic Depo. at 20-21) AERC's Director of Operational Accounting (Lustic) and its Vice-President (Powers) agreed that, in case of damage, BIC, the marketer of the SureDeposit plan, was contractually required to pay AERC for all damages up to the amount of the bond. BIC also had the sole right to pursue the former tenant in court to recover its loss. Where damages exceeded the bond amount, BIC would pursue the former tenant for that excess also, and these funds would belong to AERC. (Lustic Depo. at 43-44)

Despite these indisputable attributes of a security deposit, under the scheme in question neither AERC nor BIC is required to itemize damages.[5] All AERC has to do is inspect the premises, take photographs and forward the claim to SureDeposit. (Lustic Depo. at 15, 28-29; Powers Depo. at 18-20 and Exh. 7, pp. 1-2 ("Reporting of Claims")) Moreover, the plain language of the SureDeposit Bond Acknowledgement makes the tenant (by now a former tenant) liable to BIC regardless of any defenses he or she might have against AERC. (Lustic Depo., Exh. 5, p. 1) Thus, however this Court views the legal rights created by the bond premium, one thing is obvious – the practical effect of this scheme fulfills a landlord's fondest hope:

- Tenant damage is covered in an amount three times higher than the standard one-month-rent security deposit
- The landlord circumvents the statutory requirement to itemize damages before keeping a tenant's deposit
- The tenant's bond premium pays all collection costs

[5] The Ohio Supreme Court takes landlord itemization seriously. In *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 349, 513 N.E.2d 737, 742, it held that statutory liability for unauthorized deductions was *mandatory* "even if the landlord gave the tenant an itemized list of deductions from the deposit pursuant to R.C. 5321.16(B)." In other words, the itemization has to be correct, not just a list on a piece of paper. This is one of the cases that provides landlords with incentives to dispense with itemization altogether, as AERC did here.

- The landlord still gets to keep – without any obligation to provide a refund or a credit – 20% of the bond premium

The trial court held that the Kopps' $437.50 premium could not be a security deposit within the meaning of the Act because it was not paid to the landlord. This position favors form over substance. For example, AERC might have offered the Kopps, as an alternative to the $840 conventional security deposit, a $437.50 non-refundable "security fee." It could have used this amount, or at least 80% of it, to purchase insurance from SureDeposit in the amount of $2,500 against the Kopps defaulting. In this variation there would be no question but that the "security fee" designated as non-refundable was meant "to secure performance by the tenant under the rental agreement," R.C. 5321.01(E), and was therefore subject to the Act. The substance of this hypothetical transaction is the same as that of the SureDeposit scheme, which is simply a device to avoid the requirement of the Landlord-Tenant Act that the security deposit be refundable and that damages be itemized. Here this is accomplished by routing the payment to a third party which, in turn, insures the landlord against certain conduct by the tenant. The marketing component of the scheme is that the landlord – by means of the present benefit of a lower initial payment – entices the tenant into waiving his or her statutory right to the return of the deposit or itemization of damages if the landlord seeks to keep that deposit. This is done at a price no one would pay if the scheme were fully explained. And it is uncontested that SureDeposit did not explain these elements to the Kopps.

In sum, AERC has attempted to evade the plain statutory mandate to itemize damages. This Court should invalidate that attempt.

2. Even if this Court Holds that the $437.50 Bond Premium is not a Security Deposit Because the Kopps' Check Was Made Payable to BIC Rather Than AERC, the 20% Kickback Should Be Returned to the Kopps.

As argued above, since AERC sent a net of 80% of the SureDeposit Bond premium to BIC and received in return a bond worth $2,500 in damage coverage rather than the $840 in coverage it would have received from a refundable cash security deposit, the whole amount should be considered as a substitute for the security deposit. AERC does not dispute the advantages it obtained from this arrangement (see Lustic Depo. at 20-21) – there is no reason to disregard those advantages just because a third party provides them for a fee.

AERC argued below that its receipt of a portion of the premium does not make such portion an amount deposited by the Kopps with the landlord, since the entire payment first went to SureDeposit; since the rebate to AERC is characterized as representing administrative and accounting services; and since the rebate is paid to AERC corporate headquarters and commingled with other funds. Again, however, this is purely a matter of form. The underlying substance is that (1) AERC and SureDeposit split the Kopps' payment, and (2) the payment was made for the sole purpose of securing AERC against default by the Kopps. Even if the Court accepts AERC's argument that the form of the transaction governs, and that only funds which ended up in its hands can be considered a deposit, it should still order AERC to return that part of the bond premium it did receive.

3. The Provision of the Bond Which Makes the SureDeposit Premium Non-Refundable Cannot Be Enforced Because it is Unconscionable as a Matter of Law.

Section 5321.14 of the Landlord-Tenant Act provides:

5321.14 Unconscionable agreements

(A) If the court as a matter of law finds a rental agreement, or any clause thereof, to have been unconscionable at the time it was made, it may refuse to enforce the rental agreement or it may enforce the remainder of the rental agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.[6]

Provisions in leases that were not as one-sided as this one have been held unconscionable as a matter of law. E.g., *Berlinger v. Suburban Apartment Management, Inc.* (8th App. Dist. 1982), 7 Ohio App. 3d 122, 124-25, 454 N.E. 2d 1367 (provision for liquidated damages at double monthly rent held unconscionable); *Edwards v.C.N. Inv. Co.* (Ohio Mun. 1921), 27 Ohio Misc. 57, 272 N.E. 2d 652 (provision giving the landlord absolute control of tenant's property upon default held unconscionable); see also *Orlett v. Suburban Propane* (12th App. Dist. 1989), 540 Ohio App. 3d 127, 561 NE.2d 1066 (clause relieving supplier of negligence liability was unconscionable). A fortiori, the substitution of the SureDeposit for a refundable cash security deposit, even where the former was less than the latter, is unconscionable under the Act and the Court should invalidate it for that reason.

To start with, AERC was totally familiar with the SureDeposit scheme and the Kopps had no knowledge of it. (Lustic Depo. at 13-14; Kopp Affid., filed 6/21/04, ¶ 9) Using this advantage, AERC presented the scheme to the Kopps based on the fact that the initial payment was smaller than a conventional security deposit. (Lustic Depo. at 15-16; Powers Depo. at 15) In doing so AERC failed to disclose to the Kopps:

- that the SureDeposit was a device whereby AERC purported to avoid the Landlord-Tenant Act requirement that damages be itemized and amounts not so itemized be refunded;

[6] This provision is substantively identical to the corresponding UCC provision, found at R.C. 1302.15(A).

- that AERC was going to keep 20% of the SureDeposit premium irrespective of whether the Kopps owed anything at the termination of their lease;
- that AERC was going to use the Kopps' money to obtain insurance for AERC's benefit alone, insurance which covered three times the amount of coverage it would have been able to obtain in a conventional security deposit;
- that under the scheme the Kopps were effectively deprived of judicial review as to whether they actually owed AERC for any damages at the termination of their lease.

(Kopp Affid., ¶¶ 3-8)

Put in mathematical terms, if the Kopps had elected the conventional security deposit they would have deposited $840 up front and would have received it back at the end of the lease, either in the form of a refund or a credit against any liability they might have had to AERC for itemized damages. By virtue of paying $437.50 rather than $840, they had the use of the difference ($402.50) for a year. This is the sole benefit they received from the SureDeposit scheme, and it amounts to an annual interest rate of 108 per cent.[7] This rate greatly exceeds the legally permissible rate in Ohio. See R.C. 1321.571; *Retail Credit Corp. v. Shorterage*, 1996 WL 199831 (Ohio App. 8 Dist.) (holding 23.99 % interest rate not unconscionable):

> The General Assembly provided a bright line test for what was considered commercially reasonable when it permitted retail sellers and small loan licensees to contract for and receive finance charges or interest at any rate or rates agreed upon or consented to by the parties to the agreement, so long as the rate did not exceed an annual percentage rate of twenty-five per cent.

Id. at *1. Here the annual percentage rate is over four times the statutory maximum. It is per se

[7] This may be computed by dividing the $437.50 paid to SureDeposit, the equivalent of up-front interest, by the initial monetary benefit, the equivalent of a loan, of $402.50.

not commercially reasonable and therefore should be held unconscionable pursuant to R.C. 5321.14(A).[8]

It is undisputed that AERC, the corporate party which drafted and prepared all of the documents, did not explain the inherent unfairness of the scheme to the weaker party; the documents AERC provided to the Kopps did not do so either. This unfairness is what led the Attorney General of the State of Maryland, under that State's Consumer Protection Act, to prohibit SureDeposit from marketing the identical product in the State of Maryland and to force a consent order, paragraph 19 of which required SureDeposit to refund to each landlord, for the benefit of the tenant, "the amount paid by the consumer [tenant] in connection with the purchase of the SureDeposit Security Deposit Bond." SureDeposit was permitted to pay back only 80% of the premium in the following circumstance:

> Where a Maryland consumer purchased a SureDeposit Security Deposit Bond that remains in effect, and the landlord received twenty-percent (20%) of the premium amount paid by the consumer after the consumer purchased the SureDeposit Security Deposit Bond, SureDeposit may pay eighty-percent (80%) of the Refunded Premium Amount to the consumer's landlord, as long as the landlord agrees to retain that amount, plus the twenty-percent (20%) it previously received on behalf of the consumer who paid the Refunded Premium Amount, *as the consumer's security deposit* subject to the conditions set forth in this paragraph.

[8] Although AERC argued below that the program cannot be analyzed as a loan, SureDeposit itself markets its program to tenants on that basis. It offers to calculate the tenant's benefits from its program based on the tenant's cost of money over the term of the lease. Moreover, this calculation is based on the assumption that the bond is the same amount as the conventional security deposit. (See Lustic Depo., Exhibit 6) If that had been the situation here, the payment to SureDeposit would have been approximately $147 and the implicit interest rate approximately 21% (see note 6 above), which is within the allowable rate in Ohio.

(Notice of Additional Authority, filed 5/19/05 (emphasis added)); for press release see: http://www.oag.state.md.us/Press/2005/032505.htm (website last visited on Nov. 10, 2008)[9]

The Attorney General concluded his remarks as follows:

> When consumers rent apartments, they must be advised of all of their rights. . . . Tenants should be able to enjoy all of the rights and protections provided under the Security Deposit Law.

The release also notes that Maryland subsequently passed legislation regulating the use of the SureDeposit plan. The Ohio Legislature has enacted no such change in the law. This Court should follow the Maryland example and order all funds returned in the same manner.

4. The Lease Clearly Provides That The SureDeposit Premium Is A Refundable Deposit Governed By The Provisions Of The Landlord-Tenant Act.

Even if this Court believes that the lease in this case governs all and the SureDeposit arrangement is not unconscionable, the first sentence of Paragraph 4 of that lease (entitled "Security Deposit") states that the Kopps "deposited with the Landlord the sum of SureDeposit Dollars ($0.00) ('Security Deposit) *for the purpose of insuring performance by Tenant of all obligations of Tenant as provided in this Lease*." (Emphasis added.) Paragraph 4 goes on to provide that AERC can only retain the security deposit at the termination of the lease if it itemizes its claims against the Kopps – in that case the security deposit is to be a credit against any such claims.

This language clearly provides for the refundability of the SureDeposit, despite the ambiguity created by other documents. That ambiguity must be resolved against the party which drafted the form lease agreement – AERC. See *G.F. Business Equipment, Inc. v. Liston* (10th App. Dist. 1982), 7 Ohio App.3d 223, 224, 454 N.E.2d 1358.

[9] See also Lustic Depo., Exh. 8, the Statement of Charges against the Maryland marketer of this bond, filed 11/26/03.

No rational landlord will explain in a written document that it is offering a tenant the right to opt out of certain protective provisions of the Landlord-Tenant Act. In fact, the Act itself stipulates that "no provision of this chapter may be modified or waived by any oral or written agreement [with one exception not relevant here]." R.C. 5321.13(A). Thus, AERC's offer of the SureDeposit scheme is oblique – it appears to give tenants the right to pay less and does not explain the resulting loss of statutory rights. For this it is paid part of the premium; it receives more coverage than it would from a conventional security deposit; and it eliminates its statutory duty to itemize damages. This Court should, for the reasons set forth in this Section, invalidate the entire scheme.

B. AERC'S REDECORATING FEE IS INDISTINGUISHABLE IN SUBSTANCE FROM THE REDECORATING FEE INVALIDATED BY THIS COURT IN A PRIOR CASE. THE SAME HOLDING SHOULD OBTAIN HERE.

The lease required the Kopps to pay a "one-time, non-refundable fee of Seventy Five Dollars ($75.00) as a charge for preparing the Apartment prior to Tenant taking possession." (Lustic Depo., Exh. 2, p. 1) The "money sheet" renamed this payment a "Redecorating Fee." (Id., Exh. 4) Both AERC executives admitted that the company performed no services for it – it was just an "up-front fee." (Powers Depo. at 42-43; Lustic Depo. at 35)

There is no meaningful difference between this non-refundable fee and a security deposit subject to the Act. This Court invalidated a virtually identical preparation fee in *Riding Club Apartments v. Sargent* (10th App. Dist. 1981), 2 Ohio App.3d 146, 440 N.E.2d 1368 ("amount necessary or incident to prepare said premises and secure a new tenant"). There a lease provision permitting the landlord to deduct $150 from the tenant's security deposit "as an amount necessary or incident to prepare said premises and secure a new tenant." Id. This was determined by the Court to be "a liquidated damages clause . . . permitting the landlord to retain

a security deposit of $150. . . ." Id. The Court recognized that "a liquidated damages clause for retention of a security deposit is not a term that is barred" under R.C. 5321.13. Id. at 147. However, it went on to hold:

> A liquidated damages clause permitting the landlord to retain a security deposit *without itemization of actual damages* caused by reason of the tenant's noncompliance with R.C. 5321.05 or the rental agreement is inconsistent with R.C. 5321.16(B), *which requires itemization of damages after breach by the tenant of the rental agreement. Since the provision is inconsistent with R.C. 5321.16(B), it may not be included in a rental agreement and is not enforceable.*

Id. (emphasis added). Thus, the key to the *Riding Club Apartments* decision is not that the statute expressly prohibits liquidated damages clauses, but rather that, by its nature, *such a provision eliminates the need for the landlord to itemize damages*. It therefore violates the express language ("*shall* be itemized") of R.C. 5321.16(B) and is unenforceable. Accord, *Albreqt v. Chen* (6th App. Dist. 1983), 17 Ohio App.3d 79, 80, 477 N.E.2d 1150, 1153 ("A lease provision regarding carpet cleaning that is inconsistent with R.C. 5321.16(B) is unenforceable."); *Cook v. Heritage Glen Apts.*, 1996 WL 535238 (Ohio App. 12 Dist.) at *1 (citing *Riding Club Apartments* for the proposition that "liquidated damages provision in lease that permits a landlord to retain a security deposit without itemization of actual damages is inconsistent with R.C. 5321.16(B) and is unenforceable"); *Weingarden v. Eagle Ridge Condominiums* (Toledo Muni. Ct. 1995), 71 Ohio Misc.2d 7, 16, 653 N.E.2d 759, 764 (following *Albreqt* and holding that R.C. 5321.16(B) renders an automatic carpet cleaning cost provision in the lease unenforceable); *Nolan v. Sutton* (1st App. Dist. 1994), 97 Ohio App.3d 616, 619, 647 N.E.2d 218, 220 (landlord's withholding of forty dollars for "cleaning" violated section 5321); but cf. *Sokol v. Sine*, 1999 WL 959872 (Ohio App. 11 Dist.), at *2.

Below, AERC claimed that the redecorating fee here is different because it is charged at the beginning of the lease regardless of whether the tenant fully complied with all lease terms,

rather than actually being deducted from a security deposit. This ignores the fact that the redecorating fee in both cases is "automatic" and is kept by the landlord regardless of any other event which may occur during the tenancy, regardless of damage and without itemization.

AERC has failed to present any meaningful distinction between its redecorating or preparation fee and the fee invalidated in *Riding Club Apartments*. That case should control.

C. AERC'S NON-REFUNDABLE PET FEE IS A LIQUIDATED DAMAGE PROVISION PROHIBITED BY THE LANDLORD-TENANT ACT.

Whatever the pet fee is, it cannot be what the trial court said it was – "additional consideration for the contractual right to keep a pet." (Decision, 8/18/08, at 5) This is so because AERC had already charged the Kopps $40 per month for "pet rent," plainly relating to the right to keep a pet. (AERC Mot. for Summary Judgment, Shaffer Affid., Exh. B) Below is the Kopps' analysis of how the pet fee should be understood.

1. The Statute and its Relationship to the Pet Fee

A security deposit is defined in the Act as "any deposit of money or property to secure performance by the tenant under a rental agreement." R.C. 5321.01(E). In *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 513 N.E.2d 737, the Supreme Court interpreted the Landlord-Tenant Act strictly by holding statutory liability for unauthorized deductions *mandatory* "even if the landlord gave the tenant an itemized list of deductions from the deposit pursuant to R.C. 5321.16(B)." Id. at 349, 513 N.E. 2d at 742. Similarly, Ohio courts have refused to permit a landlord to withhold funds belonging to a tenant based upon a perfunctory compliance with the statutory itemization requirement. For example, in *Nolan v. Sutton* (1st App. Dist. 1994), 97 Ohio App.3d 616, 647 N.E.2d 218, the landlord withheld forty dollars for "cleaning." The Court held:

> A landlord should not be allowed to escape the intent underlying the R.C. 5321.16(C) penalties by making a list of deductions. A landlord will not be deterred from making unfounded deductions from a security deposit if the penalties provided by R.C. 5321.16(C) can be avoided by tendering a list of facially justifiable reasons for the deductions. . . . [T]he sufficiency of the itemization must be determined at the time it is sent to the tenant, not at the time it may later be clarified through discovery in a lawsuit.

Id. at 619, 647 N.E.2d at 220. It also held that the landlord's failure to demonstrate in the itemization whether the amount withheld was "due to ordinary wear and tear or something above that" was fatal to her position. Id.

Such decisions made it more difficult for landlords to obtain reimbursement for damage, including pet damage, by merely itemizing "pet damage to carpet." Instead they needed rather specialized testimony as to damages over and above ordinary wear and tear. This increased the incentive for landlords to do what AERC did in this case – liquidate future damages to a sum certain, label it a non-refundable fee, collect it in advance, and keep it regardless of actual damage. Here, for example, AERC succeeded in itemizing $487.93 for pet damage to its carpet (paid by the Kopps under protest) and *in addition* kept the Kopps $300 pet fee and 20 % of the SureDeposit Bond premium ($87.50), thus collecting a total of $875.43 for a little more than half that amount of pet damage. The Landlord-Tenant Act was enacted to prevent just this sort of shenanigans.

2. Ohio Authorities Unanimously Prohibit Non-Refundable Security Deposits, No Matter How Characterized.

AERC argued below that the Kopps' $300 payment could not be a security deposit because it is footnoted as non-refundable on the move-in sheet. This is a form-over-substance argument which entirely undercuts the remedial purpose of the Landlord-Tenant Act. As the following authorities demonstrate, Ohio courts have consistently equated this sort of non-refundable deposit with liquidated damages.

Again, the lead case in this District is *Riding Club Apartments*, supra, discussed in Part B above. Another case making it clear that non-refundable security deposits are prohibited by the Ohio Landlord-Tenant Law is *Albreqt v. Chen*, supra. In that case the parties had agreed as follows:

> Tenant assumes and agrees to pay a charge 60.00 Dollars ($60.00) for the cleaning of the carpeting in said apartment upon the vacation of said premises. . . . Tenant agrees that said $60.00 Dollar charge will be deducted from said security deposit over and above any other charges to be deducted from said deposit as herein provided.

17 Ohio App.3d at 80.

The court, following *Riding Club Apartments*, invalidated this deduction:

> In the absence of an affirmative showing, by way of itemization (see R.C. 5321.16(B)), that there was a specific need to clean the carpet, *appellant's unilateral deduction was improper. A lease provision regarding carpet cleaning that is inconsistent with R.C. 5321.16(B) is unenforceable.*

Id. (emphasis added); accord, *Cook, supra; Weingarden*, supra.

In sum, the pet fee portion of this case can be decided on the general principle that all landlord efforts to liquidate damages violate the Landlord-Tenant Act, specifically R.C. 5321.16(B); in every case the landlord keeps the tenant's money without itemization.

3. Pet Fee Cases

Three Ohio appellate courts have examined the legitimacy of non-refundable pet fees. In *Leszczynski v. Brewer*, 1991 WL 285435 (Ohio App. 2 Dist.) (copy attached hereto as Exh. B), the tenant had paid a $365 security deposit plus a "$100 pet fee." Id. at *3-*4. The landlord contested "the trial court awarding Plaintiff $100 as a 'pet fee' refund," since it was not denominated a security deposit. Id. at *3. The Second Appellate District affirmed the award, holding that "this pet fee was a form of security deposit because of potential pet damage to the

apartment." Id. In other words, in reality a pet fee is intended to cover pet damage just as a normal security deposit covers pet damage.

Thereafter, the First Appellate District, in *Pool v. Insignia Residential Group* (1st App. Dist. 1999), 136 Ohio App.3d 266, 736 N.E.2d 507, held that the contractual language ("nonrefundable pet fee to management in the amount of . . . 200/100 refundable") indicated an intent by the parties to create a security deposit, even though it was called a "fee" and was not set out in the security deposit paragraph of the lease.

The Ninth District disagreed in *Ritter v. Fairway Park Properties* (9th App. Dist. 2003), 154 Ohio App.3d 444, 797 N.E.2d 576. Its rationale was that "the plain language of the rental contract ['non-refundable'] indicates that the pet deposit was not to be applied to damages, and so it cannot be intended to secure performance to keep the apartment free from damage." Id. at 449.[10]

The problem with the analyses contained in *Pool* and *Ritter* is that they treat the issue as one of contract interpretation, when in fact the inquiry should begin with R.C. 5321.06 and .13. The former provision provides:

> A landlord and a tenant may include in a rental agreement any terms and conditions, including any term relating to rent, the duration of an agreement, and any other provisions governing the rights and obligations of the parties *that are not inconsistent with or prohibited by Chapter 5321. of the Revised Code* or any other rule of law. (Emphasis added.)

The latter provides that "No provision of this chapter may be modified or waived by any oral or written agreement . . . ." The above case law makes clear that every attempt by a landlord to evade its statutory duty to itemize damages contained in RC. 5321.16(B) violates these

[10] The Court was also persuaded by the fact that the Pet Addendum stated that "this fee shall not in any way be applied to damages at time of move-out."

provisions, whether the lease uses the term non-refundable, security deposit, pet fee, one-time payment, carpet fee, or "amount necessary or incident to prepare said premises and secure a new tenant" (as in *Riding Club Apartments*, supra).

More specifically to the instant case, merely calling a pet fee "non-refundable" and refusing to return it does not make it any less a security for pet damage. It "secure[s] performance by the tenant under a rental agreement," within the meaning of R.C. 5321.01(E), just as surely as if it were called a security deposit, since pets cause damage which is difficult to itemize and this fee helps pay the landlord for that damage. The theory propounded by AERC would permit a landlord to keep even the normal cash security deposit just by calling it "non-refundable" – in the view of AERC the deposit would suddenly cease to be a security deposit and therefore would not be covered by R.C. 5321.16(B). (AERC Memo. at 12) This is an absurd reading of the statute and disregards its plain purpose – to protect tenants from security deposit abuses.

4. <u>The Mere Fact That a Landlord Characterizes a Fee as "Non-Refundable" Does Not Take it Out of the Statutory Definition; the Act is Only Satisfied by Itemization of a Return of the Deposit</u>.

AERC made plain below its fervent belief that any up-front payment characterized in the documentation as "non-refundable" cannot as a matter of law constitute a security deposit, and therefore need never be returned pursuant to R.C. 5321.16(B), itemization or no itemization. The Kopps submit that this is another form-over-substance argument and that most appellate courts in Ohio, including the Tenth Appellate District, view non-refundable fees as liquidated damages and order them returned. The Kopps, on the other hand, acknowledge the ambiguity of R.C. 5321.01(F), since, no matter how much a fee or deposit looks like a security deposit, calling

it non-refundable at least permits the argument that it was never intended to "secure performance by the tenant."

The instant case squarely frames this issue, as it was framed in *Riding Club Apartments*, supra. The lease in that case contained an express agreement between landlord and tenant that $150 of the normal security deposit was non-refundable, yet this Court ordered it returned. The same result should follow here.

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment below and order summary judgment for the Kopps.

Respectfully submitted,

Stephen R. Felson (0038432)
215 E. Ninth St., Suite 650
Cincinnati, Ohio 45202
(513) 721-4900
(513) 639-7011 (fax)
SteveF8953@aol.com
Counsel for Plaintiffs-Appellants

Of counsel:

Leonard Egan
1030 15th Street, N.W., Suite 300
Washington, D.C. 20005

Michael B. Ganson
2306 Park Ave., Suite 101
Cincinnati, Ohio, 45206
(513) 721-2220
Fax: (513) 721-5109
E-mail: Gansonlawoffice@aol.com

CERTIFICATION

I hereby certify that a copy of the foregoing was served upon **Rodger Eckelberry**, 65 East State Street, Suite 2100, Columbus, OH 43215-4260, by and ordinary U.S. Mail this 10th day of November, 2008.

Stephen R. Felson

20642 - N45

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS

KYLE KOPP, et al.,	:	
	:	
Plaintiffs,	:	Case No. 03CVH-06-6736
	:	
v.	:	Judge Sheeran
	:	
ASSOCIATED ESTATES REALTY CORP.,	:	
	:	
Defendant.	:	

DECISION GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (FEBRUARY 9, 2004)

AND

DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT (FILED MAY 20, 2004)

Sheeran, J.

There are a number of motions pending before the Court. However, through various entries, the Court and parties have agreed it necessary to consider the parties' summary judgment motions first. Defendant filed its Motion for Summary Judgment on February 9, 2004. Plaintiffs' intended to file their Motion for Summary Judgment on May 20, 2004. However, though both Defendants' Memorandum Contra and Plaintiffs' Reply germane to this Motion were filed, Plaintiffs never filed their Motion for Summary Judgment in this, the refilled, case. Instead, they filed it on May 20, 2004 in the original case under Case No. 02CVH04-4628. The Motion basically incorporates arguments contained in Plaintiffs' Memorandum Contra Defendant's Motion for Summary Judgment and, considering that Defendant responded despite the error, no material effect

APPENDIX 4

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is evident. The Court has caused a copy of the Motion to be filed in this case so it is of record.

Ohio Civ. R. 56(C) provides:

> Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

In order to prevail upon a motion for summary judgment, the moving party must inform the court of the basis for the motion and identify those portions of the record which demonstrate the absence of a genuine issue of material fact. In ***Dresher v. Burt*** (1996), 75 Ohio St. 3d 280, the Ohio Supreme Court explained:

> the movant must be able to point to evidentiary materials of the type listed in Civ.R.56(C) that a court is to consider in rendering summary judgment . . . . These evidentiary materials must show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. . . . If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied.

Id. at 292, 293.

Although the court is obligated to view all evidentiary material in a light most favorable to the non-moving party, ***Temple v. Wean United, Inc.*** (1977), 50 Ohio St. 2d 317, when faced with a properly supported motion for summary judgment a non-moving party may not rely upon the mere allegations of its complaint, but must demonstrate a material issue of fact exists by directing the court's attention to evidentiary materials of the type listed in Civ.R. 56(C). ***Dresher*** at 292. ***See also, Wing v. Anchor Media, Ltd.*** (1991), 59 Ohio St. 3d 108, 111, following ***Celotex v. Catrett*** (1986), 477 U.S. 317; and ***Morris v. Ohio Cas. Ins. Co.*** (1988), 35 Ohio St. 3d 45. Viewing all facts in a light most

favorable to the non-moving party, the court must determine whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one sided that one party must prevail as a matter of law. ***Turner v. Turner*** (1993), 67 Ohio St. 3d 337, 340. A trial court must thoroughly examine all appropriate materials filed by the parties before ruling on a motion for summary judgment. ***Murphy v. Reynoldsburg*** (1992), 62 Ohio St.3d 356, 604 N.E.2d 138.

- **Facts**

The relevant facts of this case are very straightforward. Plaintiffs entered into a lease with Defendant. The lease, through an incorporated addendum called a "checklist," provided for a "Pet Fee" of $300.00 which Plaintiffs paid. The checklist contained a space for "Pet Deposit," with an amount listed of 0. The lease and addendum are otherwise silent as to the pet fee. The checklist also provided for a $75.00 "Redecorating Fee" which Plaintiffs paid. The checklist provided, in bold, that "All fees are Non-Refundable."

Finally, Defendant required a security deposit and, as Plaintiffs themselves put it, "offered an alternative to the conventional security deposit in the form of a program called 'SureDeposit,' marketed to [Defendant] by Bankers Insurance Group." In lieu of depositing one month's rent, $840.00, with Defendant, Plaintiffs elected this option and paid $437.50 to Bankers Insurance for a $2500 bond. The SureDeposit Acknowledgement form, attached to and incorporated in the lease, provides that the $437.50 is a non-refundable fee Plaintiffs signed the Acknowledgement which also provides, "I agree to purchase a security deposit bond from Bankers Insurance (BIC) through the apartment community named above... I further understand that the apartment

community named above is not a party to, nor responsible for, the collection activity or efforts (related to this bond)." Plaintiffs paid SureDeposit via a Money Order. Bankers Insurance issued the bond underwritten by Converge Services Group. None of these entities are affiliated with Defendant.

The lease, at paragraph 4 headed "**SECURITY DEPOSIT**," provided, "Tenant has deposited with Landlord the sum of ___Sure Deposit___Dollars ($0.00) for insuring performance by Tenant of all obligations of Tenant as provided in this Lease." Plaintiffs did not deposit any money with Defendant. However, Bankers Insurance paid Defendant a fee, a total of 20% of all bond premiums, paid together, for administering the program.

- ***Discussion***

Plaintiffs seek a return of all of the above, claiming the same to be deposits which must be returned under R.C. § 5321.16.[1] R.C. § 5312.16(B) provides:

> Upon termination of the rental agreement any property or money held by the landlord as a security deposit may be applied to the payment of past due rent and to the payment of the amount of damages that the landlord has suffered by reason of the tenant's noncompliance with section 5321.05 of the Revised Code or the rental agreement. Any deduction from the security deposit shall be itemized and identified by the landlord in a written notice delivered to the tenant together with the amount due, within *thirty days after termination of the rental agreement and delivery of* possession. The tenant shall provide the landlord in writing with a forwarding address or new address to which the written notice and amount due from the landlord may be sent. If the tenant fails to provide the landlord with the forwarding or new address as required, the tenant shall not be entitled to damages or attorneys fees under division (C) of this section.

[1] However, the Court would note that the redecorating fee is not mentioned in Plaintiffs' Complaint and is mentioned for the first time in their Motion for Summary Judgment.

Subsection (C) provides, "[i]f the landlord fails to comply with division (B) of this section, the tenant may recover the property and money due him, together with damages in an amount equal to the amount wrongfully withheld, and reasonable attorneys fees."

However, it is clear that the above provisions apply only to "property or money held by the landlord as a security deposit." Further, R.C. § 5321.01(E) provides, "'Security deposit' means any deposit of money or property to secure performance by the tenant under a rental agreement." The Court will initially address the pet fee.

The Court agrees with Defendant's position and finds that the fee is additional consideration for the contractual right to keep a pet. The lease itself differentiates between a pet deposit which Plaintiffs did not pay and a pet fee which they did. Further, the addendum indicates that it is a non-refundable fee and not, in any way, intended to cover damages caused by a pet. As such, it is undisputed that this fee was required to be and was paid at the lease's inception and was not a charge at the end of the lease for damages caused by a pet. Further, as Defendant points out, the lease does not set forth any obligations which Plaintiffs agreed to meet with regard to their pets. Correspondingly, the $300.00 fee did not secure Plaintiffs' performance under the agreement and, therefore, is not a security deposit under the statutory definition.

Case law supports the Court's conclusion. In ***Stauffer v. TGM Camelot, Inc.*** (July 17, 2006), 12th Dist. No. CA2005-12-508, 2006 Ohio 3623, the court considered the exact issue present here and the same arguments Plaintiffs assert. In upholding the trial court's grant of summary judgment to the landlord, the Court found "that appellants agreed to pay a one-time, nonrefundable $ 150 pet fee in exchange for the privilege of keeping a pet in their apartment." Like the lease in this case, the lease in ***Stauffer***

provided separately for a security deposit which the Court found significant to its determination. Ultimately, the Court found:

> We find no provision of law in Chapter 5321, or elsewhere, that prohibits, or is inconsistent with, a landlord and a tenant including a term in their lease agreement that requires the tenant to pay $ 150 as a one-time, nonrefundable fee in exchange for the right to keep a pet at the leased premises.

Likewise, in ***Ritter v. Fairway Park Properties, LLC*** (May 19, 2004), 9th Dist. No. C.A. No. 21509, the 9th District recognized, "Where a pet deposit is given to secure performance by the tenant under the lease, it may be considered a security deposit subject to the provisions of R.C. Chapter 5321 and applicable case law." However, the Court upheld the trial court's determination that the pet fee was not a deposit finding, "[t]he language of the addendum states that it is non-refundable and inapplicable to damages" and that, therefore, "it cannot be intended to secure performance to keep the apartment free from damage."

Further, while some cases have recognized otherwise, they do not change the Court's determination here.[2] In ***Pool v. Insignia Residential Group*** (1999), 136 Ohio App.3d 266, the 1st District held that, "where a pet deposit or pet fee is given to secure performance by the tenant under the lease, it may be considered a security deposit subject to the provisions of R.C. Chapter 5321 and applicable case law." The 1st District ultimately concluded that the pet fee the Plaintiff paid in ***Pool*** was a deposit because though, "the lease does not specifically state that the pet fee was paid to 'secure performance,' it is clear from the second sentence of the pet clause that the payment was intended to secure Pool's performance against damages caused by his pets." The

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[2] Plaintiff cites *Leszczynski v. Brewer* (Dec. 27, 1991), 2nd Dist.12523. However, this case does not cite the language of the lease at issue nor offer any reasoning and, therefore, is of little import.

paragraph to which the Court referred, after providing for the amount of the pet fee, stated at the second sentence, "Any damages incurred to the Premises above and beyond such amount shall be charged to Resident." Thus, it was clear that, though designated a fee, the amount paid was a deposit against pet damages and, therefore, secured the tenant's performance in that regard.

However, the addendum here indicates that the pet fee is non-refundable and the lease provides separately for a deposit to cover damages. There is absolutely no language in the lease indicating that the fee is intended to secure performance, i.e. to keep the leased premises free from pet damage or that it would be applied to damages caused by pets. In contrast, the lease provides as to the security deposit that it is "for the purpose of insuring performance by Tenant of all obligations as provided in this lease." The "all obligations" language clearly includes pet damage and secures Plaintiffs' future performance in this, and every other, regard. As stated in ***Ritter***, "[i]f a tenant pays for a contractual benefit, and not to secure the tenant's future performance, then that payment is not, by definition, a 'security deposit.'"

Given the above, the Court finds that the $300.00 pet fee is not a security deposit as defined by R.C. § 5321.01(E) and instead is a non-refundable fee for the privilege of keeping a pet. As such Defendant is entitled to summary judgment on Plaintiffs' claims as to the pet fee.

The Court now turns to the $437.50 paid to SureDeposit/Bankers Insurance. Initially, the Court would note that, though Plaintiffs assert that the provision which provides that the bond premium is non-refundable is unconscionable, there is absolutely

no evidence of misrepresentation or even that Plaintiffs' did not understand for what they were paying.

Again, a security deposit is defined as a "deposit of money" under R.C. § 5321.01(E). Here, the SureDeposit Bond acknowledgment, incorporated into the lease, provides that in exchange for a $2,500.00 bond, Plaintiffs would pay a "non-refundable purchase price" of $437.50. It specifically states that Plaintiffs agreed "TO PURCHASE A SECURITY DEPOSIT BOND FROM BANKERS INSURANCE." The lease itself indicates that Plaintiffs' elected the SureDeposit option and deposited $0.00. Plaintiffs paid SureDeposit directly with a money order and, therefore, deposited money with no one. Instead, as Defendant points out, Plaintiffs purchased a bond in lieu of making a deposit. There is nothing in the landlord-tenant act prohibiting such a practice.

Further, the $437.50 did not "secure performance" by Plaintiffs "under a rental agreement." Plaintiffs' could have paid $840.00 as a deposit to secure their performance. They did not and instead paid $437.50 to SureDeposit as a fee for a $2,500.00 bond which secured their performance. Given the above, the bond premium is not a deposit as defined by R.C. § 5321.01(E).

The Court also finds that the premium, even if considered a deposit, is not subject to R.C. 5321.16(B) which applies only to "any property or money held by the landlord as a security deposit." It is undisputed that Plaintiffs deposited no money with Defendant and paid the premium for the bond to SureDeposit who is neither affiliated with Defendant nor a party to this action. Therefore, Defendant never held any of Plaintiffs' money or property as a deposit.

The 20% paid to Defendant by SureDeposit does not change the Court's conclusion. It is undisputed that Defendant was paid a total of 20% of all bond premiums for administering/marketing the program. Defendant received this money through a separate transaction. Plaintiffs' paid a fee to SureDeposit for a bond. SureDeposit/Bankers Insurance paid a fee to landlords who marketed and/or administered the program. Again, Plaintiffs paid Defendant nothing in terms of a deposit regardless of the fee SureDeposit paid Defendant.

Finally, given that there is absolutely no evidence of an "absence of meaningful choice," Plaintiffs' arguments asserting that the bond provisions are unconscionable lack merit. ***See, Dorsey v. Contemporary Obstetrics*** (1996), 113 Ohio App.3d 75. The Court also finds that such an argument is more appropriately targeted at SureDeposit/Bankers Insurance and does not, under any circumstances, change the fact that the premium paid for the bond is not a deposit under R.C. § 5321.01(E) and is not subject to R.C. §5321.16.

Given the above, the Court finds that the $437.50 paid to SureDeposit is not a security deposit and is not subject to §5321.16. As such, Defendant is entitled to summary judgment on Plaintiffs' claims related to the SureDeposit premium.

Finally, the Court will address the $75.00 redecorating fee. The lease provides that this fee is for "preparing the Apartment prior to Tenant taking possession."[3] Therefore, it is not, as Plaintiffs suggest, like the clause invalidated in ***Riding Club Apartments v. Sargent*** (1981), 2 Ohio App.3d 146 which provided for an automatic fee and deduction from the tenant's security deposit, "to prepare said premises and secure a new tenant therefor." Here, the fee is paid up front by a tenant to prepare the apartment

[3] As it is specifically set forth in the parties' contract, Plaintiffs' reliance on testimony surrounding the fee is not relevant in the absence of some ambiguity. The Court would also note that it agrees with Defendant that Plaintiffs have misrepresented this testimony.

APPENDIX 4

for that tenant's occupying of it. It is not a liquidated damages clause on the back-end of the lease as in ***Riding Club***; it does not at all apply to any potential damage by Plaintiffs. It also is not a deposit as it does not secure a Plaintiffs' performance. It is a payment ot the landlord for preparing the apartment. Given all of the above, Defendant is entitled to summary judgment on this claim, to the extent it is even asserted in Plaintiffs' Complaint, as well.

The Court GRANTS Defendant's Motion for Summary Judgment and DENIES Plaintiffs' Motion for Summary Judgment. Given the Court's decision, all other pending motions are MOOT. Counsel for Defendant shall prepare and submit an appropriate judgment entry in accordance with Loc. R. 25.01. It is so ORDERED.

8/14/18

JUDGE PATRICK E. SHEERAN

Copies to:

Rodger Eckelberry, Esq.
Mark Johnson, Esq.
Baker and Hostetler
65 E. State St., Suite 2100
Columbus, OH 43215

Stephen Felson, Esq.
617 Vine St., Suite 1401
Cincinnati, OH 45202

Michael B. Ganson
2306 Park Ave., Suite 101
Cincinnati, OH 45206

20642 - N55

X

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS

KYLE KOPP, et al.,	:	
	:	
Plaintiffs,	:	Case No. 03CVH-06-6736
	:	
v.	:	Judge Sheeran
	:	
ASSOCIATED ESTATES REALTY CORP.,	:	TERMINATION NO. 18 BY PLL 9-5-08
	:	
Defendant.	:	

FINAL JUDGMENT ENTRY

Sheeran, J.

FINAL APPEALABLE ORDER

For the reasons set forth in the Court's August 18, 2008 Decision which granted Defendant's Motion for Summary Judgment and denied Plaintiffs' Motion for Summary Judgment, judgment is hereby granted to Defendant on all of Plaintiff's claims, costs to Plaintiffs.

It is so ORDERED.

9/3/08

JUDGE PATRICK E. SHEERAN

Copies to:

Rodger Eckelberry, Esq.
Mark Johnson, Esq.
Baker and Hostetler
65 E. State St., Suite 2100
Columbus, OH 43215

Stephen Felson, Esq.
617 Vine St., Suite 1401
Cincinnati, OH 45202

Michael B. Ganson
2306 Park Ave., Suite 101
Cincinnati, OH 45206

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APPENDIX 4

A-11

20642 - M83

IN THE TENTH DISTRICT COURT OF APPEALS
FRANKLIN COUNTY, OHIO

KYLE KOPP, *et al.*,

Appellants,

vs.

ASSOCIATED ESTATES REALTY CORP.,

Defendant.

CASE NO. 09AP-719 ~~08-APE-819~~

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BRIEF OF APPELLEE/DEFENDANT ASSOCIATED ESTATES REALTY CORP.

Rodger L. Eckelberry (0071207)
Mark A. Johnson (0030768)
Catherine E. Woltering (0084015)
BAKER & HOSTETLER LLP
65 East State Street, Suite 2100
Columbus, Ohio 43215-4260
614/228-1541
614/462-2616 fax

Counsel for Defendant/Appellee
Associated Estates Realty Corp.

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"The trial court erred when it granted Defendant's motion for summary judgment and denied Plaintiffs' motion for summary judgment. (Decision of Aug. 18, 2008)"

II. APPELLEE'S STATED ISSUES PRESENTED FOR REVIEW

1. Whether the purchase price of a performance bond, purchased by a tenant from a third-party to secure the tenants performance under a lease agreement, constitutes a "security deposit" within the meaning of R.C. 5321.16, when the purchase price is not paid to the landlord, the tenant deposits no money with the landlord, and the bond purchase agreement between the tenant and third-party expressly states that the purchase price is non-refundable.

2. Whether a consensual, non-refundable fee, which does not ~~which~~ secure any obligation of the tenant under the lease, paid at the inception of a lease as a charge for preparing the leased premises for occupancy, is an unenforceable liquidated damages provision when the fee is not intended to, and does not, cover any damages caused by the tenant to the leased premises.

3. Whether a consensual, non-refundable pet fee, paid by a tenant for the privilege of keeping pets in leased premises, is a liquidated damage provision prohibited by the Landlord-Tenant Act when the fee in no way secures any obligation of the tenant under the lease and is not intended to, and does not, cover any damages caused by the tenant or the tenant's pets.

III. STATEMENT OF THE CASE

This is a re-filed case. See Compl., p.1 The original action was filed on April 18, 2002. See *Kopp v. Assoc. Estates Realty Corp.*, Franklin Cty Court of Common Pleas Case No. 02CVH04-4268. Plaintiffs/Appellants dismissed that action on April 28, 2003. Appellants commenced the instant action on June 18, 2003. See Compl. Appellants moved for class certification on January 14, 2004. See 1/14/2004 Motion for Class Certification. After conducting discovery, Defendant/Appellee moved for summary judgment on all claims on February 9, 2004. See 2/9/2004 MSJ. On February 17, 2004, Appellee moved to stay class certification proceedings pending the trial court's ruling on Appellee's motion for summary judgment. See 2/17/2004 Motion to Stay. By agreed order entered March 23, 2004, Appellee's

response, if still necessary, to Appellants' motion for class certification was delayed until thirty days after the trial court's ruling on Appellee's motion for summary judgment. See 3/23/2004 Order. Appellants then moved for summary judgment in their favor on May 17, 2004. See 5/17/2004 MSJ.

The trial court issued a decision granting Appellee's motion for summary judgment, and denying Plaintiffs' motion for summary judgment, on August 18, 2008. See 8/18/08 Decision. In the same decision the court denied Plaintiffs' motion for class certification as moot. Id. The trial court entered a final judgment entry on September 3, 2008. Appellants' filed a timely notice of appeal in this Court on September 19, 2008. On September 16, 2008, Appellants requested a twenty-one day extension of time within which to file their appeal brief. This Court granted Appellants' motion on September 23, 2008. .

IV. STATEMENT OF FACTS

On December 15, 2000, Appellants Kyle and Melanie Kopp signed a residential lease agreement (the "Lease") with Defendant Associated Estates Realty Corp. ("AERC") for an apartment suite located at Arrowhead Station, an apartment community located in Westerville Ohio. See Lease Agreement ("Lease"), Kopp Dep. Ex. 2. AERC is a real estate investment trust headquartered in Richmond Heights, Ohio, which, through a subsidiary, owned the property leased by Appellants at Arrowhead Station. Appellants agreed to pay a monthly rent of $840 for a term beginning December 15, 2000 and ending December 31, 2001. Id.

A. Appellants Paid A Non-Refundable Pet Fee And A Non-Refundable Redecorating Fee.

Upon signing the Lease, Appellants paid several one-time nonrefundable fees, including a redecorating fee, an application fee, and a pet fee, which was a fee for the contractual right to keep a dog and a cat on the leased premises. Def. MSJ Ex.1 (Shaffer Aff'd) at ¶ 2. These fees

were described in an addendum to the Lease called a "Checklist", which was incorporated in and made a part of the Lease. See Kopp Dep. Ex. 4 (Checklist); Kopp Dep. Ex. 2 (Lease) at ¶ 30(L).

Although the Checklist also provides for the option of a pet deposit, Appellants were not requested to deposit money to secure their future performance under the Lease for damage caused by their pets. This space on the Checklist beside "pet deposit" was marked "-0-". Kopp Dep.. Ex. 4, (Checklist.) The pet fee was not intended, either implicitly or explicitly, to pay for damages caused by Appellants' pets or otherwise to secure Appellants' future performance of the Lease. Id.; Def. MSJ Ex.1 (Shaffer Aff'd). Neither the Checklist nor the Lease set forth any obligations or responsibilities that Appellants agreed to meet with respect to their pets. The Checklist states in bold lettering that "all fees are nonrefundable." Kopp Dep. Ex. 4 (Checklist)..

Appellants also paid, at the inception of the lease, a one-time, non-refundable redecorating fee. Kopp Dep. Ex. 4 (Checklist). This fee is charged to prepare the apartment prior to a tenant's occupancy. See Schaffer Dep. at 73.

B. Appellants Elected To Pay A Non-Refundable Premium To A Third Party For A Surety Bond Instead Of A Security Deposit.

Before signing the Lease, Appellants were given the option of purchasing a surety bond from a bonding company, in lieu of depositing a sum of money with AERC as a security deposit. The premium for the bond was $437.50. Kopp Dep. Ex. 3 (Bond). Appellants' other option was to pay AERC $840.00 to hold as a security deposit, nearly twice as much as the purchase price of the bond premium. Def. MSJ at Ex.1 (Shaffer Aff'd) at ¶¶ 5-6. Appellants chose to purchase a surety bond for a premium much lower than the cost of a refundable security deposit, but in making that choice, they agreed that the premium paid to the bonding company was non-refundable. Id. at ¶¶ 6-7.

Appellants signed a "SureDeposit Bond Acknowledgement" ("Acknowledgement") containing the terms of the contract between Appellants and Bankers Insurance Company ("Bankers Insurance"), which issued the bond. See Kopp Dep. Ex. 3 (Bond). The Acknowledgement provides in bold, capital letters that the payment for the bond is a "**NON-REFUNDABLE PURCHASE PRICE**" and also states, in part:

> I AGREE TO PURCHASE A SECURITY DEPOSIT BOND FROM BANKERS INSURANCE COMPANY (BIC) THROUGH THE APARTMENT COMMUNITY NAMED ABOVE. THIS BOND IS FOR THE MAXIMUM AMOUNT LISTED ABOVE AND PROVIDES COVERAGE FOR THE AMOUNT OF MONETARY DAMAGES INCLUDING PAST DUE RENT, FEES, AND ANY OTHER CHARGES OR DAMAGES TO APARTMENT BEYOND NORMAL WEAR AND TEAR. I FURTHER AGREE AND UNDERSTAND THAT A CASH SECURITY DEPOSIT (IF ANY) HELD IN ESCROW, UPON TERMINATION OR EXPIRATION OF MY LEASE WILL BE APPLIED TO THESE MONETARY DAMAGES. IN THE EVENT A CLAIM IS MADE ON MY ACCOUNT FOR DAMAGES, I UNDERSTAND THAT BIC IS OBLIGATED TO PAY ANY LOSS, DAMAGE, EXPENSES, COURT COSTS, AND ATTORNEY'S FEES BECAUSE OF MY ACTIONS. AS A RESULT I WILL BE OBLIGATED TO REIMBURSE BIC. * * *

Id. (Emphasis in original.) The Acknowledgement was also incorporated into and made a part of the Lease. Kopp Dep. Ex. 2 (Lease) at ¶ 30(L).

Appellants elected to purchase this bond by paying a premium through a money order *payable to the surety*, SureDeposit, for $437.50, the price of the bond. Kyle Kopp Dep. at 34-37: Kopp Dep. Ex. 3 (Bond) at 2. The SureDeposit Bond was issued by Bankers Insurance and underwritten by Converge Services Group (d/b/a SureDeposit), neither of which is owned by or affiliated in ownership in any way with AERC. Def. MSJ Ex. 2 (Lustic Aff'd) at ¶ 2.[1] Pursuant to the Acknowledgement, by choosing to purchase a bond, instead of depositing a much greater amount as a security deposit, Appellants agreed to perform as promised in the Lease without

[1] SureDeposit was the trade name of the bond program of which Bankers Insurance was the issuer. Def. MSJ Ex. 2 (Lustic Aff'd) at ¶ 2. For clarity, Bankers Insurance will be referred to herein as "SureDeposit."

depositing any money with AERC to secure that performance. Kopp Dep. Ex. 3. The money order collected for the SureDeposit Bond was forwarded directly to SureDeposit. Def. MSJ Ex.1 (Shaffer Aff'd) at ¶ 7.

All SureDeposit Bond premium payments by tenants were forwarded by AERC to SureDeposit. Shaffer Dep. at 83-84; Lustic Dep. at 12. In fact, the entire transaction was typically directly between tenants and SureDeposit.[2] Lustic Dep. at 12. As compensation for AERC's administrative and accounting services in processing SureDeposit bond purchases by tenants, SureDeposit paid AERC an administrative fee calculated as 20% of the total SureDeposit bond premiums processed by AERC monthly. Lustic Dep. at 12-13. That administrative fee was not deducted from any individual bond premium payment, but paid monthly to AERC *by SureDeposit* based on all premium payments for AERC properties nationwide. Id.

C. Appellants Failed To Pay All Sums Due Upon Early Termination Of Their Lease.

When Appellants executed their Lease, they also signed several addenda that were expressly incorporated into the Lease. One of the addendums, entitled "Addendum to Lease (Early Lease Termination Clause)," provides that Appellants could terminate their lease early, if they provided 60 days prior written notice and paid AERC an early termination fee of $700. Kopp Dep. Ex. 6 (Addendum). Appellants terminated their Lease two months early. Kopp Dep. Ex. 8 (Letter). While Appellants provided AERC with 60 days written notice that they *might* terminate the Lease early, Appellants never paid AERC the $700 early termination fee or the rent for the final two months of their lease. Kyle Kopp Dep. at 43-43.

[2] As an exception, and for the convenience for tenants, if a tenant wanted to provide a single check or money order for the full amount of any fees due AERC and the SureDeposit premium, AERC allowed some persons to do so and "then turned right back around and paid [the bond premium amount] to SureDeposit." Lustic Dep. at 12. Appellants, however, paid their entire premium directly to SureDeposit.

Another addenda to Appellants' Lease, entitled "Rent Credit Addendum," provided Appellants at the beginning of their lease term with a $479 credit towards their rent. See Kopp Dep. Ex. 5 (Rent Credit Addendum). This credit was a promotional offer. However, the Rent Credit Addendum expressly provides: "Tenant is credited with this amount **only** upon condition that Tenant maintains his/her residency in good standing throughout the full term of the Lease, ending on December 31, 2001." Id. at ¶ 2. (Emphasis added.) The addendum further provides that Appellants would be liable to AERC for the credit if they did not fulfill all obligations under the Lease. Appellants terminated their Lease early, on October 31, 2001. Kyle Kopp Dep. at 49-50; Kopp Dep. Ex. 9 (Move In/Out Checklist). However, despite not maintaining their residency throughout the full term of the Lease -- to December 31, 2001 -- Appellants did not return the $479 rent credit to AERC. Kyle Kopp Dep. at 43.

Less than 30 days after Appellants terminated their lease, AERC provided them with an itemization of damages to their apartment and of the charges for those damages. Kyle Kopp Dep. at 49-50, and Ex. 9. Appellants disputed some charges, such as a $487 charge for carpet replacement, while accepting others. Id. at 51-54; Kopp Dep. Exs. 10, 11. Ultimately, however, Appellants paid the charge for carpet replacement. Id. at 54.

V. LAW AND ARGUMENT

A. The SureDeposit Bond Premium Was Not A Security Deposit Under the Landlord-Tenant Act.

1. The bond premium was not a "security deposit" since it was not paid to or held by AERC.

A security deposit is defined in the Landlord-Tenant Act as follows: "'Security deposit'" means any deposit of money or property to secure performance by the tenant under a rental agreement." (Emphasis added.) R.C. 5321.01(E) "Deposit" is defined by Webster's as, *inter*

alia: "to place or entrust for safekeeping; to put (money) in a bank, as for safekeeping or to earn interest; to put down as a pledge or partial payment; something placed or entrusted for safekeeping;" Webster's New World College Dictionary (4th Ed. 2000) 388. At a minimum, the ordinary meaning of "deposit" in the statute contemplates money that is paid to and held by another. If money is not paid to or held by a party, it is not a "deposit" with that party within the meaning of section 5321.01(E).

The reference to "deposit" in R.C. 5321.01(E) is further explained in R.C. 5321.16(B), which states in part as follows: "Upon termination of the rental agreement any property or money held by the landlord as a security deposit may be applied to the payment of past due rent and to the payment of the amount of damages that the landlord has suffered . . . ." (Emphasis added). And, R.C. 5321.16(C) provides that a tenant may recover his security deposit from a landlord, plus "damages in an amount equal to the amount wrongfully withheld, ..." (Emphasis added.) Appellants' entire action is premised upon those words – an effort to recover a bond premium from AERC that they paid to a third party, alleging that the premium was a security deposit. But, the surety bond premium **was never paid to or held by AERC**.

Under Ohio's Landlord-Tenant Act, a "security deposit" must first be a sum of money deposited by a tenant **that is held by the landlord**. R.C. 5321.01(E) and 5321.16(B); see also *Vardeman v. Llewellyn* (1985), 17 Ohio St. 3d 24, 26; *Ritter v. Fairway Park Properties* (9th Dist.), 2003-Ohio-5048, 154 Ohio App. 3d 444, ¶ 15-16; *Pool v. Insignia Residential Group* (1st Dist. 1999), 136 Ohio App. 3d 266, 270. This common sense reading of the statute is borne out by other provisions. A landlord must pay interest on any "security deposit" in excess of $50 or one month's rent, whichever is greater. R.C. 5321.16(A). The obvious purpose is to prevent landlords from benefiting from interest earned while holding tenants' security deposits.

However, that statutory obligation makes no sense if the sum of money argued to be a security deposit is not paid to the landlord and is not in the possession of the landlord; if the landlord doesn't "hold" the money, the landlord doesn't earn interest on it.

Here, the landlord, AERC, **never held the premium paid by Appellants for the surety bond**. There is no dispute that Appellants paid the premium for the bond to SureDeposit; they did not deposit money with AERC or give the premium to AERC to "hold." See Kopp Dep. Ex. 3 (Bond) at 2, money order payable to SureDeposit. AERC cannot be liable for "withholding" this premium when it never held the premium to start with. Given that the definition of a security deposit requires the "deposit" of money or property that is "held by the landlord", the bond premium that Appellants paid to SureDeposit was not a security deposit and, as the trial court properly held, is not recoverable by Appellants. Def. MSJ Ex. 2 (Lustic Aff'd) at ¶ 2.

The Ohio Supreme Court has explained the legislative intent behind section 5321.16(B) and the purpose for restrictions on a security deposit in the Landlord-Tenant Act:

> One, to specifically permit the landlord, upon termination of the rental agreement, to deduct from the rental deposit any unpaid rents and actual damages to the premises occasioned by the tenant. Two, to require the prompt refunds of all or part of the security deposit or, in the alternative, to provide an explanation to the tenant why all or any part of the deposit was not returned to him. And three, to provide a penalty by way of damages and reasonable attorney fees against a noncomplying landlord for the wrongful withholding of any or all of the security deposit.

(Emphasis added.) *Vardeman*, 17 Ohio St.3d at 28. The Court's reasoning clearly contemplates a security deposit to be a sum of money that is held and controlled by the landlord. Any fee or payment not paid to or under the control of the landlord, like the premium for the surety bond purchased by Appellants, falls far outside what the Court and the statute define to be a security deposit. See, also, *Riding Club Apartments v. Sargent* (10th Dist. 1981), 2 Ohio App.3d 146, 147.

Appellants assert that AERC employees have testified that AERC was entitled "to keep 20% of the SureDeposit premium." App. Brief. at 3, n.3. This is completely false.[3] First, the contract between AERC and SureDeposit, the blanket bond through which AERC agreed to accept SureDeposit bonds purchased by tenants from SureDeposit, expressly states that AERC "agrees and acknowledges that the act of retaining Premiums from Residents under this bond or interference in any way with the Premium transaction between the Resident and the Surety may constitute an act of fraud or a violation of state insurance laws on the part of [AERC]." Lustic Dep. Ex. 7 at p.1 (Blanket Bond btwn AERC and BIC). By law, AERC could not keep part of any bond premiums. Moreover, Mr. Lustic, AERC's Director of Operational Accounting testified that all SureDeposit Bond premiums collected by AERC were forwarded to SureDeposit. Lustic Dep. at 12. Typically, the transactions were directly between the tenant and SureDeposit. Id. When a tenant preferred to write a single check or provide a single money order for both the SureDeposit Bond premium and AERC's charges, AERC allowed that but remitted the entire bond premium to SureDeposit. Consistent with that procedure, Appellants paid their entire premium directly to SureDeposit, by a money order payable to SureDeposit. See Kopp Dep. Ex. 3 (Bond) at 2. Contrary to Appellant's assertion, AERC did not retain any portion of bond premiums.

While SureDeposit reimburses AERC monthly for administrative and accounting services performed in connection with the SureDeposit Bond program at AERC's properties, calculated as 20% of the total premiums of bonds purchased by all AERC tenants nationwide, the

[3] Appellants make this assertion, in various forms, multiple times in their brief: ". . . the premium was split (80% to BIC, 20% to AERC. . . .", App. Brief at 6; "The landlord still gets to keep . . . 20% of the bond premium." ". . . AERC sent a net of 80% of the SureDeposit Bond premium. . . .", App. Brief at 8; ". . . AERC was going to keep 20% of the SureDeposit premium. . . ." App. Brief at 10; App. Brief at 7. These unsupported representations are contradicted by the unrebutted evidence; mere repetition of an incorrect assertion does not make it true.

undisputed evidence is that this payment compensates AERC for actual administrative costs incurred in administering the program. Lustic Dep. at 12-13. That payment is in the aggregate, based on bonds purchased by all tenants at all properties nationwide, and is not "deducted" from any individual premium payment. Further, the apartment complex does not receive any portion of this administrative fee, nor is it used to cover any damages caused by tenants. Shaffer Dep. at 86. Thus, this payment to AERC **by SureDeposit** (not tenants) cannot be a "security deposit" under the statute because it does not secure the performance of Appellants under their lease, nor was it a "deposit" by Appellants as contemplated by the Landlord-Tenant Act.

2. Appellants contractually agreed to purchase a non-refundable bond premium, rather than paying a security deposit in a greater amount.

Appellants agreed that the surety bond premium they paid to SureDeposit was nonrefundable, as it was a *purchase*, not a deposit. Appellants were given the choice of paying a security deposit to AERC of $840, or paying a premium to SureDeposit of $437.50 for a bond. They chose the latter, at a much lower out-of-pocket cost, but in exchange acknowledged that the purchase price of that bond was not be refundable. Kopp Dep. Ex. C. The option was clearly explained to Appellants. Def. MSJ Ex.1 (Shaffer Aff'd) at ¶¶ 4-5.

Appellants chose to purchase a bond from SureDeposit *in lieu of a security deposit*. In fact, the bond acknowledgement form itself differentiates between a bond and a security deposit, providing that "a cash security deposit (if any) held in escrow, upon termination or expiration of my lease will be applied to [any] damages. . . ." Kopp Dep. Ex. 3 (Bond). Thus, any security deposit, had Appellant paid one, which they did not, would have been called upon to cover damages before a claim could be made against the bond. While Appellants were not required to

post a security deposit in addition to the SureDeposit bond, the distinction between the two is clear from the bond itself.[4]

The Landlord-Tenant Act neither requires nor prohibits a security deposit. Similarly, the Act does not prohibit a landlord from offering a tenant the *choice* of purchasing a bond from a surety, in lieu of depositing cash with a landlord as security for the tenant's performance of his or her obligations under the lease. The premium for that bond is no different than other fees that are not security deposits under Ohio law. See, e.g., *Sokol v. Sine* (11th Dist.), 1999 Ohio App. LEXIS 4660, at *4 ("Ohio law does not prohibit a landlord from collecting a non-refundable maintenance fee if his tenant agrees to pay it."). Here, the surety bond premium is even further removed from the definition of a security deposit than the maintenance fee in *Sokol*, as *the bond premium was never paid to or held by AERC.*

B. Accepting A Bond From Appellants, Purchased From A Third Party, In Lieu Of A Security Deposit, Does Not Violate The Landlord-Tenant Act.

1. Appellants were provided an itemization of damages in less than 30 days.

Argument and hyperbole are no substitute for evidence and law. Lacking the latter, Appellants rely exclusively on the former and, entirely from whole-cloth, assert that acceptance of a bond in lieu of a security deposit was "an attempt to avoid itemization of damages and therefore violated the Landlord-Tenant Act." App. Brief at 5. They cite to no evidence to support this baseless accusation, and the evidence of record is to the contrary.

[4] Appellants contend that the SureDeposit bond premium is refundable under the terms of the lease because the "security deposit" section of the lease lists "SureDeposit Dollars ($0.00)." App. Brief at 12. Of course, there is no way to "refund" "$0.00." Moreover, as Appellants are aware, the reference to "SureDeposit" in the security deposit section of the lease was merely to indicate that no security deposit had been paid but, rather, Appellants had purchased a bond instead. As Ms. Shaffer testified, "something" was always required in that space on the lease. Shaffer Dep. at 20.

The fact that SureDeposit did not require, under its contract with AERC, an itemization of damages to be provided to Appellants is irrelevant. Even though they did not pay a security deposit, Appellants *did* receive a timely itemization of damages and they had an opportunity to dispute the claimed damages. Kyle Kopp Dep. at 49-54. Appellants' attempt to portray acceptance of a bond in lieu of a security deposit, at the *tenant's* option, as a means to avoid itemizing damages, is thwarted by the indisputable fact that Appellants actually received an itemization of damages to their apartment less than 30 days after they terminated their lease.[5] Kyle Kopp Dep. at 49-50; Kopp Dep. Ex. 9 (Move In/Out Checklist). Appellants disputed some charges, such as a $487 charge for carpet replacement, while accepting others. Kyle Kopp Dep. at 51-54. Ultimately, Appellants paid for the damages and no claim was made against their bond. Id. at 54. Appellants' unsupported protestations of some "scheme" to avoid itemizing damages is a red-herring based on conjecture, not evidence.

2. Appellants' purchase of the SureDeposit bond did not waive their defenses to any damages claim asserted by AERC.

Appellants incorrectly assert that "the plain language of the SureDeposit Bond Acknowledgement makes the tenant . . . liable to [SureDeposit] regardless of any defenses he or she might have against AERC." App. Brief at 6. That is not true. It is black letter law that the "obligations and defenses of the principal and surety on a payment bond should be co-extensive and concurrent." *Thomas Steel, Inc. v. Bennett, Inc.* (8th Dist. 1998), 127 Ohio App.3d 96, 107. As this Court has noted: "Because the surety's obligation is derived from that of the principal, the liability of the surety is ordinarily measured by the liability of the principal. As a general

[5] An itemization of damages is required only when money is withheld from a security deposit. R.C. 5321.16(B). Because a bond purchased from a third party is not a security deposit given to a landlord, the requirement of an itemization of damages is not triggered. Nonetheless, Appellants *were* provided an itemization of damages. Appellants' assertion that AERC "dispense[d] with itemization altogether," (App. Brief at 6, n.5), is contradicted by the record.

rule, a surety on a payment bond is not liable unless the principal is . . . ." *State of Ohio v. Federal Ins. Co.*, 2005-Ohio-6807, at ¶ 9.

If Appellants, or any tenant who purchased a SureDeposit Bond, disputed any damages claim asserted by AERC, such tenant need only put SureDeposit on notice of the tenant's defenses to preserve those defenses. "When a consensual surety pays the principal's obligation, it is entitled to reimbursement *subject* only to the principal's defenses on the obligation known to the surety when it paid the creditor." (Emphasis added.) *U.S. v. Griffen*, 707 F.2d 1477, 1481 (D.C. 1981); RESTATEMENT OF THE LAW OF SECURITY, Chap. 4, § 108(5) (principal has no obligation to reimburse surety who fails to assert a defense of the principal known to the surety). "[I]f a surety pays a claim when its principal is not liable, the surety is treated as a volunteer and cannot recover the payment from its principal." *R.J. "Bob" Jones Excavating Contractor, Inc. v. Firemen's Ins. Co. of Newark*, 920 S.W.2d 483, 487 (Ark. 1996). See *also National Union Fire Ins. Co. of Pittsburgh, PA. v. Alexander*, 728 F.Supp. 192, 198 (S.D.N.Y. 1989) ("A conditional surety who pays a creditor knowing than an investor has a defense to payment is not entitled to reimbursement."); RESTATEMENT OF THE LAW OF SECURITY, Chap. 4, § 108(5).

In addition to advising SureDeposit of any defenses, Appellants, or any purchaser of a SureDeposit bond, could also preserve any defenses to a damage claim asserted by AERC by bringing a declaratory judgment action to resolve the disputed damages claim. Appellants asserted defenses to AERC's damage claim in disputing the charges with the property manager. See Kopp Dep. Exs. 10 (Letter from AERC) and 11 (Letter to D. Wilson). Rather than paying the charges under protest, they could have filed suit against AERC, or they could have filed suit to recover the disputed charges after they paid them. In fact, although they chose not to do so, Appellants could have asserted a claim in this action for recovery of the damage payment they

made "under protest." Appellants' contention that merely purchasing a SureDeposit Bond waived defenses to a damage claim is contrary to the facts and law.

3. The SureDeposit bond premium is not unconscionable.

Appellants next complain that the SureDeposit bond they purchased cost $437.50, but that they could have posted a cash security deposit of $840. App. Brief at 10. Because it is a bond, the rates charged *by SureDeposit* were filed with and approved by the Ohio Department of Insurance. Def. Reply in Sup. of MSJ at Exhibit 7, certified copy of Dept. of Insurance approval of SureDeposit rates, effective 9/1/00; R.C. 3937.03(A). Appellants have no private cause of action against AERC based upon the rates charged for bonds by a third party. If Appellants believe the premium charged for the bond purchased by them was too high, their exclusive remedy is an administrative appeal of those rates before the Ohio Department of Insurance, not this action. R.C. 3937.04. Appellants were given a choice of whether to pay a cash security deposit or to purchase a bond. Def. Reply in Sup. of MSJ Ex. 1 (Shaffer Aff'd) at ¶ 5. That they now regret that choice does not convert the bond premium, not paid to or held by AERC, into a refundable security deposit, nor is it actionable.[6]

Appellants further argue that the SureDeposit bond should be held as unconscionable under the Act and not enforced. This unconscionability "claim" was never raised prior to Appellants' opposition to AERC's motion for summary judgment; the complaint does not allege any affirmative relief based on a finding of unconscionability, let alone allege that any part of the lease is unconscionable. Moreover, Appellants do not identify any provision *of the lease*

[6] Appellants also complain that they could have paid a cash security deposit of $840, but the bond coverage provided was $2,500. It must be remembered that **Appellants** were given the *option*, and they *chose* to purchase the SureDeposit bond rather than post the $840 cash security deposit. Moreover, the *amount* of the bond coverage is irrelevant to whether the SureDeposit bond purchase price is a security deposit, which it is not. Whether the SureDeposit bond purchase price was $1 or $1 million, it was *not* deposited with AERC. Therefore, it was *not* a security deposit under R.C. 5321.01(E).

Appellants contend is unconscionable, and exactly what provision they seek to prevent being enforced. Unconscionability is a defense, yet AERC obtained summary judgment on the claims of Appellants. Exactly how a *defense* of unconscionability fits into Appellants' claim that the SureDeposit bond premium is a security deposit is unexplained. Moreover, the SureDeposit bond contract is between Appellants and SureDeposit, which is not even a party to this action.

Regardless of what provision Appellants may think is unconscionable, they offer *no* evidence that any provision of the Lease or the bond acknowledgment with SureDeposit is, in fact, unconscionable. The doctrine of unconscionability, highly fact dependent on individual circumstances, doctrine consists of two prongs:

(1) substantive unconscionability - unfair and unreasonable contract terms; and
(2) procedural unconscionability - individualized circumstances surrounding each of the parties to a contract such that no voluntary meeting of the minds was possible.

Dorsey v. Contemporary Obstetrics (1996), 113 Ohio App.3d 75, 80. Unconscionability is the "'absence of meaningful choice on the part of one of the parties to a contract, combined with contract terms that are unreasonably favorable to the other party.'" Id., *quoting Collins v. Click Camera & Video, Inc.* (1993), 86 Ohio App.3d 826, 834.

Here, Ms. Shaffer's affidavit is unrefuted that Appellants were given the option of paying either a cash security deposit or purchasing a SureDeposit bond. Def. Reply in Sup. of MSJ Ex. 1 (Shaffer Aff'd) at ¶ 5. The affidavit of Kyle Kopp, submitted by Appellants, does not refute that Appellants were offered these options, yet chose to purchase a bond. The record also reflects that Appellants signed the SureDeposit bond acknowledgment, which clearly discloses that the bond premium was not a security deposit and was not refundable. Kopp Dep. Ex. 3 (Bond). "Nothing in the record reveals that [one party] was forced to enter into the agreement

with [another party]." *Bank One, NA v. Borovitz* (9th Dist.), 2002-Ohio-5544,-at ¶ 20 (no procedural unconscionability). Nor, in this case, is there any "evidence to suggest that [Appellants] [were] incapable of negotiating terms other than those that appear in the . . . agreement." *Dorsey*, 113 Ohio App.3d at 81.

Instead, Appellants rely upon the self-serving affidavit of Mr. Kopp, which sets forth conclusory, inaccurate, and irrelevant assertions of what he allegedly "was not told",[7] as a purported basis for the Court to find some provision unconscionable. The affidavit of Mr. Kopp of what oral disclosures were made to him does not come close to establishing that he was "forced" into purchasing a bond from SureDeposit, or that he lacked a meaningful choice between purchasing a bond, paying a cash security deposit, or simply not renting an apartment from AERC. Without evidence of an "absence of meaningful choice", whatever Appellants' "claim" of unconscionability may be, it must fail. *See Bank One* at ¶ 20; *Dorsey*, 113 Ohio App.3d at 81; Accord *Blon v. Bank One, Akron, N.A.* (1988), 35 Ohio St.3d. 98, 101-02 (no duty to disclose information in arm's length business transaction).

Finally, in an absurd analogy, Appellants argue that the SureDeposit bond Acknowledgment is unconscionable (again, ignoring the fact that the SureDeposit Bond Acknowledgement is not a provision of the Lease) because Ohio law limits interest rates on loans or credit extended to no more than 25%. App. Brief at 10-11. The SureDeposit bond

[7] Mr. Kopp's affidavit did not set forth facts. Instead, it set forth argument and legal conclusions of Appellants' counsel. In his deposition, Mr. Kopp contradicted the factual predicates to the arguments asserted in his affidavit. He testified that he did not know whether the SureDeposit Bond violated the Landlord-Tenant Act; that he also received a benefit from purchasing the SureDeposit Bond, and that he doesn't know whether he gave up the right to challenge AERC's damage claim by purchasing the SureDeposit Bond – all contrary to the argument set forth in his affidavit. Mr. Kopps assertion that he was not told that AERC would "keep" 20% of the bond premium, in addition to being inaccurate, is irrelevant. AERC was under no obligation to inform the Kopps that SureDeposit paid AERC a fee for administering the SureDeposit program. See *Blon v. Bank One, Akron, N.A.* (1988), 35 Ohio St.3d. 98, 101-102 ("Ordinarily in business transactions where parties deal at arms length, . . . neither party has a duty to disclose material information to the other.").

premium was the *purchase price of a bond*, not a loan. Def. Rep. in Sup. of MSJ Ex. 7 (Dept. of Insurance Approval of Bond Form and Rates). There is simply no "interest rate" at issue because there was nothing "loaned" to Appellants, and in any event the rates for the bond are regulated by the Department of Insurance. See Kyle Kopp Dep. at 93-94 (testifying that he purchased the bond and neither loaned nor borrowed any money as part of the transaction). Furthermore, Appellants paid the premium to SureDeposit, not AERC, so any claim challenging the premium rate is against SureDeposit, not AERC. Thus, the trial court correctly held that Appellants' unconscionability argument lacks merit.

4. The purported settlement between the Maryland Attorney General and SureDeposit is irrelevant, unauthenticated, and inadmissible hearsay.

Appellants attempt, as they did below, to rely upon a purported settlement agreement between the Maryland Attorney General and SureDeposit (and not AERC) in support of their claims. That purported settlement is irrelevant, unauthenticated, and inadmissible hearsay. The document submitted by Appellants was not authenticated and, as it is not under seal, is not self-authenticating.[8] See Evid. R. 901. Thus, it is inadmissible and not properly considered on summary judgment. *Frederick v. Grandview Memorial Park, Inc.* (11th Dist.), 1998 Ohio App. LEXIS 2894, at *13-14 (unauthenticated documents inadmissible and not properly considered on summary judgment).

More importantly, the proffered opinion of the Attorney General of the State of Maryland regarding Maryland law is irrelevant. In the present case Appellants contend that the SureDeposit bond premiums they paid were, in fact, "deposits" within the meaning of Ohio's Landlord-Tenant Act. As Appellants' document reveals on its face, no such assertion was made

[8] Ohio Civ. R. 56((E) requires "[s]worn or certified copies of all papers. . . ." *If* the opinion of the Maryland Attorney General was relevant, which it is not, the Court could properly consider the proffered document only if it was properly authenticated and certified as required by Rule 56.

by the Maryland Attorney General. Rather, the issue was whether the respondents (of which AERC was *not* one) had failed to disclose certain information to Maryland consumers in violation of Maryland's *Consumer Protection Act*. Indeed, that Maryland subsequently passed legislation addressing security deposit bonds, as Appellants state, indicates that such a bond was not, and is not now, considered a security deposit within the meaning of Maryland's landlord-tenant laws. See Md. Real Property Code Ann. § 8-203. By statute, Maryland expressly authorizes landlords to accept bonds in lieu of, or in addition to, a security deposit. Id. In this respect, the Court "should follow the Maryland example. . . ." App. Brief at 12.

C. **The Pet Fee Is Not A Security Deposit Under The Landlord-Tenant Act.**

Again, a security deposit is defined in the Landlord-Tenant Act as "any deposit of money or property *to secure performance by the tenant under a rental agreement*." (Emphasis added.) R.C. 5321.01(E). But the pet fee paid by Appellants did not secure any performance of Appellants, and was not intended to be applied, and, in fact, *was not applied*, to damages caused by Appellants' pets. The lease documents, as well as the affidavit of AERC's assistant property manager, are clear and unrefuted that the pet fee was paid for the contractual right to keep pets in the apartment, *not* to secure Appellants' performance of the Lease. As Mr. Kopp testified, AERC was under no obligation to allow Appellants to keep pets in the apartment. Rather, they agreed to pay a higher rent and to pay a $300, nonrefundable fee for the right to keep a pet. Kyle Kopp Dep. at 61, 63. Appellants would not have moved in to the apartment if they could not have kept pets, but they wanted to live in AERC's apartment because of the price to size ratio. Id. at 25. Rather than securing any performance by Appellants under the Lease, the pet fee merely allowed them to lease an apartment of the size and at a price they desired *and* to keep pets in that apartment.

Whether a payment to a landlord is intended to secure performance of a lease, or is a nonrefundable fee in exchange for a contract right, is dependent on the intent of the parties as reflected in the lease documents. *Ritter*, 2003-Ohio-5048 at ¶ 14. "Ohio law does not prohibit a landlord from collecting a non-refundable . . . fee if his tenant agrees to pay it." *Sokol v. Sine* (11th Dist.), 1999 Ohio App. LEXIS 4660, *4 (Ex. 3). The Lease documents signed by Appellants are clear that the pet fee was not paid to secure their performance of the Lease, but was "nonrefundable." Kopp Dep. Ex. 4 (Checklist). Appellants do not point to **any** language in the Lease documents to the contrary; indeed, their only evidence submitted, the affidavit of Kyle Kopp, does not even mention pet fees.

Appellants cite several cases for the proposition that a liquidated damages clause in a lease, which provides for an automatic deduction from a security deposit, is unenforceable. See App. Brief at 16-17. Those cases are wholly irrelevant, though, because the pet fee paid by Appellants is *not* a liquidated damages clause, nor was the pet fee "deducted" from any security deposit.[9] In each case cited by Appellants, a portion of the tenants' *security deposit* was withheld to cover damage without a showing that such damage was in excess of normal wear and tear or necessary. See *Riding Club Apartments v. Sargent* (10th Dist. 1981), 2 Ohio App.3d 146 (landlord retained $150 from the tenant's *security deposit* to prepare the premises and secure a new tenant, without an itemization of the damages to which the withheld portion of the *security deposit* was applied); *Albreqt v. Chen* (6th Dist. 1983); 17 Ohio App.3d 79 (automatic deduction

[9] Appellants seek reversal of summary judgment through broad-based assertions of the policymaking intentions of various courts. They argue that decisions of Ohio courts "made it more difficult for landlords to obtain reimbursement for damage, including pet damage. . . ," and that that such decisions "increased the incentive for landlords to . . . liquidate future damages to a sum certain, label it a non-refundable fee, collect it in advance, and keep it regardless of actual damage." App. Brief at 15-16. Of course, Appellants do not cite to any evidence in support of this contention. Conclusory allegations and invented facts were insufficient to preclude summary judgment below, and are insufficient to reverse that judgment here.

of $60 from the *security deposit* for carpet cleaning invalid absent a showing that there was a specific need to clean the carpet).

The pet fee paid by Appellants is dramatically different from the automatic deduction from security deposits invalidated by *Riding Club* and its progeny, because: (i) Appellants paid the pet fee at the beginning of the Lease; (ii) the pet fee was not deducted from any security deposit at the end of the Lease; and (iii) Appellants did not even pay a security deposit from which any liquidated sum could be deducted in the first place. This fee was not intended to, and was not used, to cover damages caused by Appellants' pets. See AERC ledger statement of damages caused by Appellants, Shaffer Dep. Ex. 9 at p. 2 . The pet fee was clearly designated as a non-refundable fee in exchange for the contractual right to keep pets on the leased premises. Shaffer Dep. Ex. 4. Appellants caused $487.93 in damage to the carpet of their apartment, but the pet fee paid by Appellants was **not** applied to this damage. Shaffer Dep. Ex. 9, p. 2. Rather, Appellants paid for this damage by check. Id. at p. 8. This is because the pet fee was not a security deposit, and was entirely unrelated to any damage that could be caused by Appellants or their pets. Appellants remained responsible for any damage, and paid for such damage by check because the pet fee was never intended to cover such damage.

As Ms. Shaffer, the assistant property manager at the apartment complex where Appellants rented from AERC, testified:

> The pet fee is not assessed as a deposit, and is not intended to secure a tenant's performance. It is a contractual fee assessed for the privilege of owning a pet while leasing property at Arrowhead Station.

Def. MSJ Ex.1 (Shaffer Aff'd) at ¶ 2. The Checklist, incorporated as part of Appellants' lease, plainly states that the pet fee was nonrefundable. Kopp Dep. Ex. 4 (Checklist). That the pet fee was not a deposit if further evidenced by the Checklist, which separately lists "pet fee," "security

deposit," and "pet deposit." Id. The Checklist reflects Appellants paid a $300 pet fee, but paid "O" for any security or pet deposit.

Additionally, Appellants' reliance upon the cases they cite is woefully misplaced, and their analysis and misapplication of those cases again proceeds from the unsupported *assumption* that the pet fee is a security deposit. Appellants begin by mischaracterizing the holding in *Leszczynski v. Brewer* (10th Dist. 1991), No. 12523, 1991 WL 285435, stating: "In other words, in reality a pet fee is intended to cover pet damage just as a normal security deposit covers pet damage." App. Brief at 18. A review of *Leszczynski* beyond the headnotes reveals the fallacy of Appellants' argument.

The *Leszczynski* appellate court did *not* hold that all pet fees are a form of security deposit, only that the trial court had found that the pet fee under the evidence in that case was assessed to apply against damages. *Leszczynski*, at *4. While the judgment of the trial court was affirmed, Appellants ignore the reasoning. The court of appeals expressly noted: "This $100 'pet fee' was an issue for judicial determination. The trial court determined this pet fee was a form of security deposit because of potential pet damage to the apartment. Such a conclusion cannot be said to be incorrect *when the entire record is reviewed and considered.*" (Emphasis added.) Id. Whatever may have been contained in the "entire record" is not known, so, as noted by the court below, *Leszczynski* provides no guidance here. Here, though, there is no evidence that the pet fee was intended to cover damages, actual or potential. The *undisputed* evidence in this case is that the pet fee was simply a contractual fee charged Appellants for the privilege of keeping pets in the apartment they rented from AERC. Def. MSJ Ex.1 (Shaffer Aff'd).; Kopp Dep. Ex. 4 (Checklist).

Pool v. Insignia Residential Group (1st Dist. 1999), 136 Ohio App.3d 266 is similarly unavailing here. Significantly, Appellants fail to mention that the *Pool* court held that the $30 per month "pet fee" was "intended as an additional rent, which cannot, *as a matter of law*, properly be considered a security deposit." (Emphasis added.) Id. at 270. Moreover, while the *Pool* court held the non-refundable pet fee in that case to be subject to R.C. section 5321, Appellants pay no attention to the reason the court so held.

The lease provision at issue in *Pool* stated:

> If resident owns a pet which will be kept on the Premises, Resident shall [pay] a [ ] refundable pet deposit [ ] non-refundable pet fee to Management in the amount of . . . 200/100 refundable . . . . Any *damages* incurred to the Premises *above and beyond such amount* shall be charged to Resident.

(Emphasis added.) *Pool* 136 Ohio App.3d at 268. Thus, even the non-refundable portion of the pet fee in *Pool* was intended to secure the tenants' performance by covering damages caused by the tenants' pets. For this reason, the *Pool* court held: "[W]here a pet deposit or pet fee is given *to secure performance by the tenant under the lease*, it may be considered a security deposit subject to the provisions of R.C. Chapter 5321. . . ." Id. at 271 (emphasis added). However, there is nothing in the record here which indicates or even implies that the pet fee paid by Appellants was given "to secure performance by [Appellants] under the lease. . . ." Id. Appellants rely solely on the bare assertion that because pets cause damage, the pet fee must have been paid to compensate for damage (App. Brief at 10); yet they point to no evidence, in the

lease documents or elsewhere, that the pet fee they paid to AERC was intended for anything other than the right to keep pets in the apartment.[10]

In urging the Court to ignore *Ritter*, 2003-Ohio-5048, at ¶ 19, Appellants attempt to distinguish the indistinguishable. *Ritter* held that "the plain language of the rental contract indicate[d] that the pet deposit was not to be applied to damages, and so it cannot be intended to secure performance to keep the apartment free from damage." Appellants argue that the intent of the parties as reflected in the lease is irrelevant to whether the pet fee was intended to be a security deposit. However, "Ohio courts recognize the inherent contractual nature of lease agreements and apply traditional contract principles when interpreting their provisions." *Pool*, 136 Ohio App.3d at 269 (citations omitted); see also *Ritter* at ¶¶ 13-14.

Appellants also misleadingly state: "Three Ohio appellate have examined the legitimacy of non-refundable pet fees." App. Brief at 17. Appellants then discuss *Leszczynski*, *Pool*, and *Ritter*, but fail to inform the Court that the Twelfth District also addressed non-refundable pet fees in *Staufer v. TGM Camelot, Inc.*, 2006-Ohio-3623. There, as here, the plaintiff argued that, even though the pet fee was denominated "nonrefundable" in the parties' agreement, such a fee is prohibited by the Landlord-Tenant act because "the fee was intended as security to cover damage [the plaintiffs'] pet might cause to the apartment." Id. at ¶ 11. Rejecting this argument, the court held:

> We find no provision of law in Chapter 5321, or elsewhere, that prohibits, or is inconsistent with, a landlord and tenant including a term in their lease agreement that requires the tenant to pay $150 as a one-time, non-refundable fee in exchange for the right to keep a pet at the leased premises.

[10] Appellants boldly assert, without evidentiary support, that a pet fee "secures performance by the tenant under the rental agreement, within the meaning of R.C. § 5321.01(E), just as surely as if it were called a security deposit, since pets cause damage which is difficult to itemize and this fee helps pay the landlord for that damage." App. Brief at 10. To the contrary, AERC had no difficulty itemizing, and charging, Appellants for the damage caused by Appellants' pets. See Shaffer Dep., Ex. 9, p. 2. Further, there is not one scintilla of evidence that the pet fee "helps pay the landlord for that damage." App. Brief at 10.

Id. at ¶ 27. Appellants' failure to apprise the Court of this decision, after implying that *only* three Ohio appellate courts have addressed nonrefundable pet fees, is surprising. Not only was the *Staufer* decision raised below through a notice of supplemental authority, but the *Stauffer* plaintiffs were represented by lead counsel for Appellants here.

In addition to these cases, this Court has previously examined the issue of nonrefundable pet fees. In *Zeallear v. F & W Properties* (10th Dist.) App. No. 99AP-1215, 2000 Ohio App. LEXIS 3321 (July 25, 2000), the plaintiff had paid a $100 "pet deposit" that the defendant landlord had not returned. Id. at *3-4. On summary judgment, the trial court held that the landlord's retention of the pet deposit violated R.C. 5321.16(B) and awarded double damages and attorney's fees. This Court reversed on that issue because the landlord had submitted an affidavit below that "averred that the pet deposit was non-refundable, and essentially represented a forfeiture fee to be paid by [the plaintiff] based upon his intention to keep a dog on the premises." *Zeallear*, 2000 Ohio App. LEXIS at *11-12. Contrasting this evidence with the lease annotations reflecting "1. Dog w/$ 100 dep." and mention of a $100 pet deposit "per addendum," this Court held there remained a material issue of fact as to whether the pet deposit was refundable and, accordingly, reversed summary judgment in favor of the plaintiff on this point. Id. at 12. If, as Appellants suggest, all non-refundable fees are, in reality, security deposits that must be returned, then this Court would have simply affirmed the trial court's decision in *Zeallear*.

Traditional contract principles apply when a court interprets lease agreement provisions. *Pool*, 136 Ohio App. 3d at 270. If a contract is clear and unambiguous, its interpretation is a question of law. *Red Head Brass, Inc. v. Buckeye Union Ins. Co.* (10th Dist. 1999), 135 Ohio

App.3d 616, 627. A lease agreement for real property is subject to the same guiding principles as in contract actions:

> In interpreting rental agreements, as with other written contracts, we look to the terms of the lease to determine the intention of the parties. The intent of the parties to a lease is presumed to reside in the language they chose to employ in the agreement.

Ritter, 154 Ohio App. 3d at 449 (citations omitted).

Here, the intent of Appellants and AERC is clear in the language of the Checklist, incorporated into and part of the Lease they signed. Kopp Dep. Ex. 9 (Move In/Out Checklist); Kopp Dep. Ex. 2 (Lease). Appellants paid a nonrefundable pet fee to AERC for the right to keep two pets on the leased premises. As in *Ritter*, there is nothing in Appellants' Lease that even suggests that damages will be applied against their pet fee, or even that the pet fee was an "advance" payment for damages that Appellants argue (without evidence) are always caused by pets. Under the plain language of the Lease, this payment did **not** secure Appellants' performance obligations to AERC, and therefore is not a security deposit under the Landlord-Tenant Act.

D. <u>The Redecorating Fee Was Also Not A Security Deposit</u>.

Below, Appellants moved for summary judgment on a claim never asserted – claiming that a "redecorating/preparation fee" paid at lease inception was also a security deposit. Appellants' motion for summary judgment was the first pleading that even mentioned this fee. Moreover, Appellants offered absolutely <u>no</u> evidence in support of any claim that they are entitled to a return of this fee, and point to none on appeal. To the contrary, the unrefuted deposition testimony of Michelle Shaffer established that the redecorating fee was not a deposit for damages:

Q. Okay. Can you tell me the next line – what the next line means, redecorating fee, what's it for?
A. More or less it is a redecorating or processing fee or prep fee. It is to preparate [sic] – to prepare the apartment.

Shaffer Depo. at 73. Therefore, the undisputed and only evidence is that the redecorating fee is paid at the beginning of the lease term to prepare the apartment for occupancy, **not** to secure the performance of Appellants' lease obligations.

Appellants incorrectly state that "[b]oth AERC executives admitted that the company performed no services for it – it was just an 'upfront fee.'" App. Brief at 13. When Appellants made this identical representation below (see Pls. MSJ at 2), the trial court expressly noted that "Plaintiffs have misrepresented this testimony." 8/18/08 Decision Granting Def. MSJ and Denying Pls. MSJ at 9, n.3. As the trial court agreed, AERC's executives made no such admission.

First, Mr. Lustic did *not* admit that AERC performed no services for the redecorating fee. In fact, Mr. Lustic stated he did not know what the fee was:

Q. Do you know what the redecorating fee is? That would be the next line.
A. I've heard of it, **I don't know what it is.**
Q. Do you remember what somebody said about it?
A. I don't recall.
Q. Do you know of any redecorating which is done for that $75?
A. No. **I mean I don't. I'm not aware.**

(Emphasis added.) Lustic Dep. at p. 35, L. 15 – 22. Far from "admitting" that AERC performed no services for the fee, Mr. Lustic's testimony actually reflects that he did not know anything about it. Appellants' characterization of Mr. Powers' testimony is similarly incorrect. With respect to the "preparation fee," Mr. Powers testified:

Q. Do you know anything about the preparation fees at AERC properties; do you have any knowledge of what this is about?
A. It's just a fee.
Q. Is this the same as a decorating fee?
A. **No.**

Q. We will see that term later, we will see that term in one of the documents later, but this is not a decorating fee?
A. **I think** it's just a preparation fee, it's just an up-front fee.
Q. Do you know the purpose of it? I mean, I understand it goes into the bank account of AERC but besides that?
A. The market allows us to charge this fee.
Q. To your knowledge does this preparation fee have any connection with actual work done by AERC personnel?
A. **Not to *my knowledge*.**

(Emphasis added.) Powers Dep. at p. 34, L. 14 – p. 35, L. 6. Stating that he has no "knowledge" of any work done in connection with the fee is far from "admit[ing] that the company performed no services for it." App. Brief at 13. Moreover, although Appellants use the terms "redecorating fee" and "preparation fee" interchangeably, Mr. Powers testified that they are not the same fee. See Powers Dep. at p. 34, L. 14 – 19. Later, Appellants' counsel asked Mr. Powers about a "redecorating fee." See Powers Dep. at 42. Mr. Powers testified:

Q. Now, do you know what that redecorating fee refers to, what it is?
A. I don't know specifically. It's a fee. It's just a nonrefundable fee.

Id. at p. 42, L. 13 – 16.[11]

Contractual fees are not contrary to the letter or the spirit of the Act, and have been upheld in Ohio and in other states. See, e.g., *Ritter, supra*; *Holmes v. Canlen Management Corp.* (Tex. App. 1976), 542 S.W.2d 199, 202 (affirming dismissal of claim seeking $40, non-refundable painting and cleaning fee paid at lease inception because non-refundable fee not within the

[11] Additionally, the witnesses were produced under Civ. R. 30(B)(5) to testify regarding the following topics identified by Appellants, none of which addressed the redecorating fee:

1. The administration of the Sure Deposit [sic] program referred to in Article 4 of the lease between Defendant and Appellants.
2. Any agreement that exists or has existed between Defendant and Sure Deposit [sic].
3. The rights and obligations of Sure Deposit [sic] and Defendant with respect to Plaintiffs' lease, including events which took place after the termination of the lease.
4. The administration of Defendant's pet deposit program.

Def. Memo Contra Pls. 2nd Motion to Compel at Ex. A. Thus, these witnesses were not speaking on behalf of AERC with respect to the preparation/redecorating fee, which was not referenced in the Complaint and not identified as a topic for which a corporate representative was requested to testify.

definition of "security deposit" in comparable Texas landlord-tenant act); *Stutelberg*, supra.[12] Because Appellants offered no evidence that the redecorating fee was, in fact, a security deposit, their motion for summary judgment was properly denied.

E. This Court May Properly Affirm The Decision Below Even If It Were To Hold That The SureDeposit Bond Premium, Nonrefundable Pet Fee, And Nonrefundable Redecorating Fee Were Security Deposits.

Even if the Court were to hold that the SureDeposit Bond premium, the redecorating/preparation fee, and the pet fee paid by Appellants were, in fact, security deposits within the meaning of Ohio's Landlord-Tenant Act, the Court may still affirm the judgment below on other grounds. See *Interim HealthCare of Columbus, Inc. v. State of Ohio Dept. of Admin. Services* (10th Dist), 2008-Ohio-2286, at ¶ 11 (a "judgment must be affirmed if it is legally correct for a different reason."); *Arth Brass and Aluminum Castings, Inc. v. Ryan*, 2008-Ohio-1109, at ¶ 14 (holding same); *Joyce v. General Motors Corp.* (1990), 49 Ohio St.3d 93, 96 ("We have consistently held that a reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as the basis thereof.").

Assuming, arguendo, that the SureDeposit premium of $437.50, the non-refundable pet fee of $300, and the "redecorating/preparation fee" of $75 were "security deposits," which they were not, AERC was still entitled to summary judgment because such amounts could not have been "wrongfully withheld." Revised Code section 5321.16(C) provides: "If the landlord fails to comply with division (B) of this section [requiring an itemization of any deduction from a tenant's security deposit and a return to the tenant of any remaining balance], the tenant may recover the property and money due him, together with damages in an amount equal to the amount ***wrongfully withheld***,

[12] Appellants' reliance upon *Riding Club Apartments v. Sargent* (10th Dist. 1981), 2 Ohio App.3d 146, is misplaced. There, this Court held a liquidated damages clause allowing the landlord to retain part of a tenant's *security deposit* is unenforceable. Here, the redecorating fee is charged to prepare the apartment for the tenants occupancy. It cannot be said to secure the tenants performance because the fee is for services that occur *prior* to the tenant moving in, and the fee is not applied to *any* damage or default caused by the tenant.

and reasonable attorneys fees." (Emphasis added.) AERC was properly granted summary judgment because no amounts were "wrongfully withheld."

The total amount claimed by Appellants to have been "wrongfully withheld" is $812.50. Pls. MSJ at 2 (SureDeposit Bond premium of $437.50, pet fee of $300, and redecorating/preparation fee of $75). However, it is undisputed that Appellants received a $479 rent credit as an incentive to lease their apartment, and that Appellants agreed to return that credit if they did not fulfill the lease through December 31, 2001. See Kopp Dep. Ex. 5 (Rent Credit Addendum). It is also undisputed that Appellants terminated their lease two months early, did not return the rent credit they received, and did not pay the $700 early termination fee provided for in the lease. Kopp Dep. Ex. 6 (Addendum); Kyle Kopp Dep. at 44. Therefore, the amount to which AERC is entitled ($1,179) exceeds the total of the $837.50 claimed by Appellants, and no amount could have been "wrongfully" withheld even if SureDeposit Bond premium, pet fee, and redecorating fee could properly be characterized as a "security deposit."

Below, Appellants argued that AERC could not recoup the monies owed it because these sums were not itemized in the statement given to Appellants at the end of their lease. However, this argument has already been considered, and soundly rejected, by the Ohio Supreme Court. In *Vardeman v. Llewellyn* (1985), 17 Ohio St.3d 24, the tenants rented, on a month-to-month basis, an apartment from the landlord, and posted a $325 security deposit. Id. at 24. The tenants subsequently vacated the apartment, but without giving proper notice of their intent to terminate the lease. Id. The tenants demanded the return of their security deposit but the landlord refused, contending he expended sums for refurbishment of the premises. Id. The landlord did not provide the tenants with an itemization of deductions from their deposit for rent due or damages. Id.

The tenants sued to recover their security deposit. The trial court concluded the deductions for refurbishment were reasonable, and that the tenants were liable for an additional month's rent because they had not given proper notice of their intent to vacate. Id. The tenants appealed, contending, inter alia, that "on the thirty-first day following termination of the rental agreement and delivery of possession, the landlord, if he has not delivered the notice containing an itemization of any deductions from the security deposit, is automatically liable to the tenant for an amount equal to twice the security deposit plus reasonable attorney fees." Id. at 27. In rejecting this argument, the Ohio Supreme Court stated:

> Had the General Assembly desired to penalize a landlord for failure to itemize the deductions by automatically rendering him liable for the full amount of the security deposit plus damages in a like amount and attorney fees, it could have readily utilized language to do so. However, the General Assembly chose not to impose such a penalty, but instead specified the damages the tenant is entitled to recover in terms of 'property and money due * * * [the tenant'] and 'damages in an amount equal to the amount wrongfully withheld and reasonable attorneys fees.

Id. at 28. Thus, the court held, a landlord is liable only for amounts "wrongfully withheld," even if amounts withheld were not provided on an itemized list. Id. at 28-29. See, also, *Stalhood v. Reasonover* (6th Dist. 2003), 2003-Ohio-5674, at ¶ 5 (holding that where rent arrearage exceeded the amount of the security deposit the landlord had not "wrongfully withheld" any amount of the deposit); *Blanchard Investment Co., Inc. v Ianaggi* (Apr. 2, 1985), 10th Dist. App. No. 84AP-792, 1985 Ohio App. LEXIS 6280, at * 2-3 (landlord entitled to apply amount of lease inducement paid to tenants who terminated lease, as well as rent for portion of lease before premises were re-let, against amount of tenants security deposit, which was less than amounts landlord entitled to, and, thus, the landlord was not liable to tenants for failure to return deposit).

The same result is required here. Even though the rent credit and early termination fee were not listed on the itemized statement given to Appellants, AERC would still be allowed to apply the

fees and SureDeposit bond premium (which was not paid to AERC) to the amounts owed by Appellants to AERC. "The Landlord-Tenant Act must be interpreted in such a manner that fair and equitable treatment will be afforded to both landlords and tenants." *Vardeman v. Llewellyn* (1985), 17 Ohio St.3d 24, 28. It is undisputed that Appellants received a $479 rent credit as an incentive to lease their apartment, and that Appellants agreed to return that credit if they did not fulfill the lease term through December 31, 2001. It is also undisputed that Appellants terminated their Lease two months early, did not return the rent credit they received, and did not pay the $700 early termination fee provided for in the Lease. Therefore, the amount to which AERC is entitled ($1,179) exceeds the total claimed by Appellants of $837.50, and no amount could have been "wrongfully" withheld by AERC. It would not be "fair and equitable" to permit Appellants to receive the monies they claim while denying AERC the right to recoup monies Appellants contractually agreed to pay.

VI. CONCLUSION

The judgment of the Franklin County Court of Common Pleas was entirely correct. Appellants want this Court to hold that nonrefundable fees, clearly designated as such and voluntarily paid, and that do not secure any performance obligation of a tenant are "security deposits" within the meaning of the Landlord-Tenant Act merely because Appellants say they are. The facts of record and Ohio law demonstrate otherwise, and the judgment below should be affirmed in all respects.

Respectfully submitted,

Rodger L. Eckelberry (0071207)
Mark A. Johnson (0030768)
Catherine E. Woltering (0084015)
BAKER & HOSTETLER LLP
65 East State Street, Suite 2100
Columbus, Ohio 43215-4260
614/228-1541
614/462-2616 fax

Attorneys for Defendant/Appellee
Associated Estates Realty Corp.

CERTIFICATE OF SERVICE

The undersigned, hereby certifies that a copy of the foregoing was served this 4th day of December, 2008, by first class U.S. mail, upon the following:

Stephen R. Felson, Esq.
215 E. Ninth St., Suite 650
Cincinnati, Ohio 45202

Leonard Egan, Esq.
1030 15th Street, NW, Suite 300
Washington, D.C. 20005

Michael B. Ganson, Esq.
2306 Park Ave., Suite 101
Cincinnati, Ohio 45206

One of the attorneys for Defendant

20642 - M69

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COURT OF APPEALS
TENTH APPELLATE DISTRICT
FRANKLIN COUNTY, OHIO

09AP 719
Case No. ~~08-APE-819~~

(Regular Calendar)

KYLE KOPP, et al.,

Plaintiffs-Appellants

v.

ASSOCIATED ESTATES REALTY CORP.,

Defendant-Appellee

REPLY BRIEF FOR APPELLANTS

STEPHEN R. FELSON (0038432)
215 E. Ninth St., Suite 650
Cincinnati, Ohio 45202
(513) 721-4900
(513) 639-7011 (fax)
SteveF8953@aol.com

MICHAEL B. GANSON (0051944)
2306 Park Ave., Suite 101
Cincinnati, Ohio, 45206
(513) 721-2220
Fax: (513) 721-5109
E-mail: Gansonlawoffice@aol.com
Counsel for Plaintiffs-Appellants

RODGER ECKELBERRY
65 E. State St., Suite 2100
Columbus, OH 43215
(614) 462-5189
(614) 462-2616
reckelberty@bakerlaw.com
Counsel for Defendant-Appellee

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INTRODUCTION

In their Main Brief the Kopps made the following arguments:

- AERC's SureDeposit alternative simply replaced an ordinary cash security deposit in an attempt to avoid itemization of damages; it therefore violated Ohio's Landlord-Tenant Act.

- AERC's redecorating fee, related to damages but not refundable, also violated that Act.

- AERC's nonrefundable pet fee was a liquidated damage provision prohibited by the Landlord-Tenant Act.

AERC has responded as follows:

A. The SureDeposit bond premium was not a security deposit since it was not paid to or held by AERC. (AERC Brief at 6-10)

B. Having contractually agreed to the SureDeposit alternative, the Kopps may not now claim that the SureDeposit bond premium was a security deposit. (*Id.* at 10-11)

C. The SureDeposit premium did not violate the Landlord-Tenant Act since AERC provided "an itemization of damages in less than thirty days." (Id. at 11-12)

D. There can be no violation based upon a waiver of defenses since the Kopps did not waive any defense to AERC's damage claim. (Id. at 12-14)

E. The bond premium was not unconscionable and therefore does not violate R.C. 5321.14. (Id. at 14-17)

F. The fact that the Maryland Attorney General has invalidated the same SureDeposit bond premium has no bearing upon the instant case. (Id. at 17-18)

G. The pet fee is not a security deposit and therefore does not violate the Landlord-Tenant Act. (Id. at 18-25)

H. The redecorating fee was not a security deposit and therefore did not violate the Landlord-Tenant Act. (Id. at 25-28)

I. Even if the Kopps are correct in their security deposit argument, AERC did not wrongfully withhold any funds. (Id. at 28-31)

The Kopps will respond to these arguments in the order presented.

ARGUMENT

A. THE MERE CHANGE IN THE FORM OF THE SECURITY ARRANGEMENTS TO A SCHEME WHERE THE DEPOSIT WAS NON-REFUNDABLE AND PAID TO A THIRD PARTY DID NOT RELIEVE AERC FROM ITS OBLIGATION TO ITEMIZE DAMAGES.

The State of Ohio allows a landlord to require a tenant to deposit money in order to secure a tenant's performance. In return it requires the landlord to itemize all deductions but also permits the tenant to challenge the deduction in court and receive double damages and attorney fees if successful. R.C. 5321.16. This requirement recognizes the superior position that a landlord, normally a business, has over the tenant, normally an individual, in circumstances where the landlord holds the funds.

AERC contends that this statutory requirement is narrow in scope and limited to circumstances where the landlord actually holds the money as a deposit. It claims that, by offering the tenant the option of purchasing a bond in favor of the landlord, it can alter the statutorily-imposed requirements enacted for the benefit of the tenant. By introducing a third-party surety to charge a non-refundable premium, it claims to have eliminated the tenant's protections under the Act because the premium, being non-refundable, is not a deposit and is paid to the third party.

The focus of the Landlord-Tenant Act, however, is on protecting tenants in circumstances where they are confronted with the claims of a more powerful adversary. The Act's fundamental purpose is to level the playing field a little so the tenant has a better chance of challenging the landlord's damage claims. The SureDeposit scheme is at war with this purpose. It removes the tenant entirely from the process and leaves everything to the surety and the landlord. Thus AERC's argument may be characterized as follows: the statute may be avoided by a change in structure whereby the technical distinctions between "deposit" and

"non-refundable premium," as well as the person to whom the money is paid, prevails over the statute's requirements and purpose.[1]

The Kopps argue in the alternative that, even if the portion of the premium retained by SureDeposit is not covered by the statute because paid to a third party, the 20 per cent of it that was automatically refunded to AERC constituted a security deposit and therefore was entitled to the statutory protection. AERC counters that the 20 per cent is only for general "administrative costs" expended on a nationwide basis. (AERC Brief at 9-10) However, the record does not support this position.

AERC first cites pages 12-13 of the deposition of Jeffrey Lustic, where he merely states, "We receive an administrative fee [of 20 per cent] for handling the transaction on behalf of SureDeposit." He says nothing about "actual administrative costs incurred in administering the program" which the AERC Brief claims as a fact.

AERC's citation from the deposition of Michele Shaffer does not support its position either. She is silent about what an apartment complex receives – all she says is that she did not "recall getting any commission on . . . the bond premium . . . ."

AERC did not put in any evidence of administrative costs below, and even had it done so it is not apparent how it would relate a flat 20 per cent commission on all premiums to "actual administrative costs." Since the rebate was 20 per cent across the board, the portion of it attributable to the Kopps' premium had to be 20 per cent also.

Furthermore, the defendant in this case is AERC, not "the apartment complex." AERC concedes it receives 20 per cent of the premium. Thus, even if the Court rejects the

[1] This argument might have some validity if the SureDeposit scheme had retained the fundamental protections of the statute. But it does not – it eliminates the right to an itemization and to challenge the validity of the charges and cannot stand. The substance of the statute must supersede the form of the transaction.

argument that the Act applies to the entire SureDeposit scheme, it should still hold the Act applicable to the portion of the premium AERC actually received.

B. THE KOPPS DID NOT AGREE THAT THEIR PAYMENT WAS NON-REFUNDABLE.

AERC next contends that the Kopps cannot obtain any refund whatsoever because they contractually agreed that the SureDeposit premium was non-refundable. (AERC Brief at 10-11) This is merely a restatement of AERC's position that the premium should not be interpreted as a refundable deposit, to which the Kopps responded in Part I(A) above. Moreover, to the extent AERC's argument has any validity, the contract, as interpreted by AERC, is unconscionable and not enforceable, as demonstrated in Part E below.

C. AERC'S LIST OF DAMAGES DID NOT COMPLY WITH THE LANDLORD-TENANT ACT.

AERC urges the Court to find that the "Move-In/Move-Out Checklist" (Kopp Depo., Exh. 9) constitutes an itemization of damages that complies with the Landlord-Tenant Act. (AERC Brief at 12) The delivery of this written notice required by the Act, however, gives the tenant the right to challenge the deductions in the notice and to recover in a lawsuit "the property and money due him, together with damages in an amount equal to the amount wrongfully withheld, and reasonable attorneys fees." R.C. 5321.16(C). Since AERC's position is that the Kopps have no right to recover, it cannot claim that the checklist satisfies the Act's requirements.

More fundamentally, there is simply no right in the SureDeposit scheme equivalent to the protections of the Landlord-Tenant Act. As set forth in more detail in the Kopps' Main Brief, tenants are liable to the AERC marketer (BIC) regardless of any defenses they might have against AERC, such as wrongful damage itemization. AERC officers unequivocally testified to this fact at deposition. (Kopp Main Brief at 6) AERC does not analyze the testimony of its officers, nor does it mention the text of the SureDeposit Bond acknowledgement. No further discussion is necessary regarding its position – that it has

complied with the Landlord-Tenant Act by providing a list of damages. By the terms of the product itself, the Kopps become liable to BIC regardless of itemization.

D. AERC'S CLAIM THAT TENANTS CAN ONLY PROTECT THEMSELVES BY FILING DECLARATORY JUDGMENT ACTIONS IS STILL ANOTHER REASON WHY IT HAS VIOLATED THE LANDLORD-TENANT ACT.

As noted in Part C above, the Landlord-Tenant Act provides that if a landlord's damage itemization is incorrect and as a result a landlord wrongly withholds security deposit funds, a tenant is entitled to double recovery and attorneys fees. Since AERC's SureDeposit scheme does not require any itemization or permit any such recovery, the Kopps have argued that it violates the Act. AERC counters with the following two suggestions to tenants faced with a wrongful itemization of damages:

- Hire a lawyer who will figure out that "when a consensual surety pays the principal's obligation, it is entitled to reimbursement subject only to the principal's defenses on the obligation known to the surety when it paid the creditor." (AERC Brief at 13; citations omitted) This would apparently stop BIC from paying AERC, assuming that the notice came in time. If BIC paid AERC before receiving notice, there would presumably be litigation as to what the tenant's rights were, as well as a determination of the rights between BIC, the surety, and AERC, the creditor. Obviously, the tenant would have to fund this litigation and would not be entitled either to double damages or attorney fees even if he or she prevailed.

- As an alternative (or possibly an additional) remedy, bring "a declaratory judgment action to resolve the disputed damages claim." (Id. at 13) The tenant would be forced to fund this litigation also, without the hope of double damages or attorney fees.

AERC's position has converted the simple remedy of the Landlord-Tenant Act, designed to cover security deposits in the amount of one month's rent and landlords' wrongful refusal to return them, into a complicated piece of three-party litigation with recovery limited to a few hundred dollars. As a practical matter the SureDeposit scheme strips the tenant of the protections of the Act..

E. AN ARRANGEMENT WHICH REQUIRES A TENANT TO BRING A DECLARATORY JUDGMENT ACTION IN ORDER TO OBTAIN A RETURN OF HIS OR HER SECURITY DEPOSIT, THEREBY ELIMINATING THE TENANT'S RIGHTS UNDER THE LANDLORD-TENANT ACT, IS UNCONSCIONABLE AS A MATTER OF LAW.

On pages 9-10 of their Main Brief the Kopps set forth four significant misrepresentations – by failure to disclose – that AERC committed when it sold the SureDeposit bond scheme to the Kopps instead of a normal refundable security deposit. Based upon these misrepresentations, the Kopps argued that this scheme was unconscionable in violation of R.C. 5321.14 of the Act. That provision gives a court wide latitude to protect consumer-tenants from "the application of any unconscionable clause to avoid any unconscionable result," including finding an entire rental agreement unconscionable.

AERC does not attempt to defend its representations. Instead it attempts to avoid application of the doctrine of unsconscibility by claiming that (1) the Kopps' only remedy is "an administrative appeal . . . before the Ohio Department of Insurance" (AERC Brief at 14); (2) the bond was not part of the lease (id. at 14-15); (3) it gave the Kopps' a choice and they simply made the wrong one (id. at 15-16). None of these arguments can justify AERC's conduct.

First, the Kopps are not contesting the bond premium rates; rather they are arguing that the premium should be treated as a refundable security deposit. Second, paragraph 30(I.) of the lease states that "SureDeposit" is "part of this Lease and incorporated in this Lease by reference." The Court should reject AERC's attempt on appeal to exclude it from the lease for purposes of avoiding R.C. 5321.14.

Finally, while the Kopps chose the SureDeposit alternative, they did so based upon misrepresentations, failures to disclose, and unconscionable practices on the part of AERC. In enacting R.C. 5321.14(A) the Ohio Legislature specifically rejected the *caveat emptor* theory of residential leasing. The Court should reject this attempt to evade liability also.

AERC itself makes the unconscionability of the AERC scheme clear when it urges the Court to require tenants to bring declaratory judgment actions in order to obtain the return of wrongfully held security deposits. (AERC Brief at 13) If ever there was landlord conduct calling for the use of R.C. 5321.14, AERC's SureDeposit scheme is one of them.

F. THE MARYLAND ATTORNEY GENERAL'S SETTLEMENT AGREEMENT, AS WELL AS THE SUBSEQUENT MARYLAND STATUTE, SUPPORT THE KOPPS' POSITION.

AERC now contends for the first time that the Maryland settlement agreement with SureDeposit cannot be considered. (AERC Brief at 17-18) First, it states that the settlement is inadmissible hearsay. However, Evidence Rule 803(8) eliminates this argument.

AERC next contends that Maryland's prohibition of the SureDeposit plan is irrelevant to the instant case. (Id.) This position is belied by the testimony of its officer, Jeffrey Lustic, who stated that AERC's use of the SureDeposit bond had "declined because we're basically taking a wait and see to find out what is going to come out of Maryland." AERC can hardly claim lack of relevance when its own officer stated that AERC was waiting for the Maryland result.

As to the merits of the Maryland proceedings, AERC concludes that the fact that Maryland subsequently enacted a statute authorizing bonds in lieu of security deposits supports its contention that a bond is not a security deposit. Unlike the SureDeposit scheme, however, the Maryland statute permitting bonds in lieu of security deposits explicitly requires the landlord to provide "a written list of damages to be claimed and a statement of the costs actually incurred by the landlord." Md. Real Property Code § 8-203(i)(7). Moreover, the tenant has the right to dispute the surety's claim and "damages may only be awarded to the surety to the extent that the tenant would have been liable to the landlord . . . ." § 8-203(i)(10). The tenant also has the right to contest the claimed damages and to judicial review. § 8-203(i)(9) and (10). The landlord cannot retain, either directly or indirectly, any

part of the premium. § 8-203(i)(6)(iii). And the landlord must inform the tenant that the bond is not insurance for the tenant's benefit. § 8-203(i)(4)(ii). Thus, the final resolution of the Maryland Attorney General's suit against SureDeposit in no way validated the SureDeposit scheme – rather it forced SureDeposit to provide an alternative to the normal security deposit that is fair and provides adequate notice to tenants, just what the Kopps are seeking here.

G. NOTHING IN AERC'S ARGUMENT UNDERCUTS THE PLAIN FACT THAT ITS MONTHLY PET RENT IS THE CHARGE FOR KEEPING A PET WHILE ITS NON-REFUNDABLE PET FEE IS A LIQUIDATED DAMAGE PROVISION.

In their Main Brief the Kopps argued that the Ohio pet fee cases, both those favoring their position and those rejecting their position, are problematic because "they treat the issue as one of contract interpretation, when in fact the inquiry should begin with R.C. 5321.06 and .13." (Kopp Main Brief at 18) The Kopps then urged this Court to observe the realities of the current situation with its two kinds of pet charges and compare it with the clear intention of the Landlord-Tenant Act. On this basis the Court should accept the Kopps' position that the fee must be refunded; no further discussion is necessary concerning the nuances of Ohio case law.

Zeallear v. F&W Properties, 2000 WL 1015345 (Ohio App. 10 Dist.), does not support AERC's position, as it believes. (AERC Brief at 24) There was no indication in that case whether the lease provided for monthly "pet rent" as it does here. While this Court appeared inclined to look to the parties' intentions as to refundability, it did not discuss the liquidated damages issues raised here.

H. SINCE AERC PERFORMED NO SERVICES IN RETURN FOR THE DECORATING FEE, AERC MUST RETURN IT.

AERC's attempts to distinguish *Riding Club Apartments v. Sargent* (10th Dist. 1981), 2 Ohio App.3d 146, 440 N.E.2d 1368, in a brief footnote. (AERC Brief at 28) That case nevertheless controls here. In charging a redecorating fee without redecorating, AERC did

exactly what the *Riding Club* landlord did – created a liquidated damages clause prohibited by the Landlord-Tenant Act.

AERC's attempt to undercut the testimony of its own witnesses also fails. (AERC Brief at 26-27) None of its witnesses knew anything about any redecorating which was done in return for the fee. All any of them could think of was "it's just an up-front fee." (Powers Depo. at 34) If AERC is now attempting to tell this Court that it actually performed redecorating services for this fee it should be able to point to at least some record evidence of such performance. It has not.

I. AERC'S SETOFF ARGUMENT MUST FAIL, SINCE THE CAUSES OF ACTION IT ASSERTS ARE BARRED AS A MATTER OF LAW.

The Kopps signed a lease for an approximate one-year term which was to end on December 31, 2001. In addition to the lease and some other documents, they signed the two addendums upon which AERC based its counterclaim below, and upon which it now bases its claim that the Kopps owe it more than it owes the Kopps. (See Exhs. A and B to AERC's Mot. to Amend Answer)[2]

The Kopps gave AERC notice of their intention to vacate the premises at the end of October. (Exh. B to Kopps' Response to AERC's Mot. to Amend) After the Kopps vacated the apartment on October 31, 2001, AERC sent Mr. Kopp a statement of the amount it claimed the Kopps owed at the time of move-out. This statement included a "release fee" of $100 and a "carpet replacement" charge of $487.93. (Exh. C to AERC Mot. to Amend) It did not include the amounts AERC later sought to collect by counterclaim.

Mr. Kopp challenged the release fee and the carpet replacement fee. (Exh. D to Kopps' Response) AERC responded that the release fee was provided for in the lease and

[2] The trial court granted the AERC motion on May 27, 2004. It denied all pending motions as moot in its decision of August 18, 2008 (p. 10), so presumably it never decided whether the Kopps owed AERC anything.

defended the carpet replacement fee. (Exh. E to Kopps' Response) Mr. Kopp then acknowledged that he and his wife owed the release fee but continued to contest the carpet replacement fee. (Exh. F to Kopps' Response) The Kopps then paid the total amount claimed by AERC. (Exh. G to Kopps' Response) AERC accepted this payment.

Never at any time during this process did AERC claim the right to a refund of all or any portion of the $479 credit provided in the Rent Credit Addendum or of the $700 referred to in the Addendum to Lease [Early Termination Clause]. This may be because the Kopps maintained their residency in good standing during the entire term of their occupancy. (See ¶ 2, Exh. A to AERC's Mot. to Amend) They did not violate a single term of the lease, a prerequisite to AERC's recovery of the credit. (Id., ¶ 3) In fact, the Kopps exercised their right to shorten the lease in accordance with its provisions.

The $700 Early Termination Fee purported to liquidate any damages sustained by AERC as a result of early termination. It did not cover the cost of reletting the apartment, which was instead covered by the release fee which the Kopps paid. Here, of course, the termination occurred just two months prior to the end of the lease. Under Ohio law AERC had a duty to mitigate any damages it sustained as a result of early termination. *Dennis v. Morgan* (2000), Ohio St.3d 417, 419, 732 N.E.2d 391, 2000-Ohio-211. The fact that AERC put the apartment on the market two months earlier than originally contemplated may have caused it no damage at all. It certainly asserted none, whether $700 or some other number, in its final statement to the Kopps as to what they owed.

In any event, in the context of negotiation by both sides, where both sides made contentions and where the Kopps actually paid, and AERC accepted, the full amount of AERC's demand, the doctrine of "payment in full" acts as an affirmative defense to any further claim as a matter of law. *Weber v. Billman* (1956), 165 Ohio St. 431, 439, 135 N.E.2d 866; *In re Buckingham's Estate* (2nd App. Dist. 1967), 9 Ohio App.2d 305, 309, 224 N.E.2d

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383. Thus, since AERC has no further claim on the Kopps for any amount, its setoff argument has no force.

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment below and order summary judgment for the Kopps.

Respectfully submitted,

Stephen R. Felson (0038432)
215 E. Ninth St., Suite 650
Cincinnati, Ohio 45202
(513) 721-4900
(513) 639-7011 (fax)
SteveF8953@aol.com
Counsel for Plaintiffs-Appellants

Of counsel:

Leonard Egan
1030 15th Street, N.W., Suite 300
Washington, D.C. 20005

Michael B. Ganson
2306 Park Ave., Suite 101
Cincinnati, Ohio, 45206
(513) 721-2220
Fax: (513) 721-5109
E-mail: Gansonlawoffice@aol.com

CERTIFICATION

I hereby certify that a copy of the foregoing was served upon **Rodger Eckelberry**, 65 East State Street, Suite 2100, Columbus, OH 43215-4260, by and ordinary U.S. Mail this 16th day of December, 2008.

Stephen R. Felson

MINNESOTA. LAWS, STATUTES, ETC.

MINNESOTA STATUTES

1971

Printed by the Revisor of Statutes. Embraces laws of a general and permanent nature in force at the close of the 1971 sessions of the Legislature.

COMPILED, EDITED, AND PUBLISHED BY
the office of Revisor of Statutes

OFFICIAL PUBLICATION
OF THE
STATE OF MINNESOTA

APPENDIX 7

license, except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the lessee or licensee or a person under his direction or control.

(c) To maintain the premises in compliance with the applicable health and safety laws of the state and of the local units of government where the premises are located during the term of the lease or license, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the lessee or licensee or a person under his direction or control.

The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section.

Subd. 2. The lessor or licensor may agree with the lessee or licensee that the lessee or licensee is to perform specified repairs or maintenance, but only if the agreement is supported by adequate consideration and set forth in a conspicuous writing. No such agreement, however, may waive the provisions of subdivision 1 or relieve the lessor or licensor of the duty to maintain common areas of the premises.

Subd. 3. This section shall be liberally construed, and the opportunity to inspect the premises before concluding a lease or license shall not defeat the covenants established herein.

Subd. 4. The covenants contained herein shall be in addition to any covenants or conditions imposed by law or ordinance or by the terms of the lease or license.

Subd. 5. Nothing contained herein shall be construed to alter the liability of the lessor or licensor of residential premises for injury to third parties.

Subd. 6. The provisions of this section apply only to leases or licenses of residential premises concluded or renewed on or after June 15, 1971. For the purposes of this section estates at will shall be deemed to be renewed at the commencement of each rental period.

[*1971 c 219 s 1*]

504.19 REFUND OF SECURITY DEPOSIT; DAMAGES; ATTORNEY'S FEES. Subdivision 1. Any person, partnership, firm, association or corporation which requires a damage deposit, or any other type of security deposit, in connection with the renting of real property for residential purposes, shall refund said deposit or furnish to the renter vacating such property a written statement showing the reason for the withholding of the deposit, or any portion thereof, within 31 days after the renter vacates the property.

Subd. 2. Any person entitled to a refund of the deposit, or any portion thereof, who is not furnished a written statement as required herein and who is required to start legal proceedings for the recovery thereof, shall be entitled on a verdict to the total amount of the deposit, or portion thereof which is withheld, plus reasonable attorney's fees.

[*1971 c 784 s 1, 2*]

CHAPTER 560—S.F.No.943

An act relating to education; interest on installment purchase of buses; amending Minnesota Statutes 1971, Section 123.39, Subdivision 3.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1971, Section 123.39, Subdivision 3, is amended to read:

Subd. 3. **SCHOOL DISTRICTS; PURCHASE OF BUSES; INSTALLMENT PLAN; INTEREST.** The board may purchase buses on the installment plan, the installments to be all paid within a period of not to exceed three years from the date of purchase and the deferred payments to bear a rate of interest of not to exceed ~~four~~ six percent per annum.

Approved May 23, 1973.

CHAPTER 561—S.F.No.965

[Coded in Part]

An act relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1971, Chapter 504, is amended by adding a section to read:

[504.20] LANDLORD AND TENANT; INTEREST ON SECURITY DEPOSITS; WITHHOLDING SECURITY DEPOSITS; DAMAGES. Subdivision 1. Any deposit of money, the function of which is to secure the performance of a residential rental agreement or any part of such an agreement, other than a deposit which is exclusively an advance payment of rent, shall be governed by the provisions of this section.

Subd. 2. Any such deposit of money shall not be considered received in a fiduciary capacity within the meaning of Minnesota Statutes, Section 87.17, Subdivision 7, but shall be held by the

landlord for the tenant who is party to such agreement and shall bear simple interest at the rate of five percent per annum noncompounded, computed from the first day of the next month following the full payment of such deposit to the last day of the month of termination of the tenancy. Any interest amount less than $1 shall be excluded from the provisions of this act.

Subd. 3. Every landlord shall, within two weeks after termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return such deposit to the tenant, with interest thereon as above provided, or furnish to the tenant a written statement showing the specific reason for the withholding of the deposit or any portion thereof. The landlord may withhold from such deposit only such amounts as are reasonably necessary:

(a) To remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement; or

(b) To restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

In any action concerning such deposit, the burden of proving, by a fair preponderance of the evidence, the reason for withholding all or any portion of such deposit shall be on the landlord.

Subd. 4. Any landlord who fails to provide a written statement within two weeks of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, shall forfeit all rights to withhold any portion of such deposit.

Subd. 5. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent shall, within a reasonable time, do one of the following acts, either of which shall relieve him of further liability with respect to such deposit:

(a) Transfer such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the landlord's successor in interest and thereafter notify the tenant of such transfer and of the transferee's name and address; or

(b) Return such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the tenant.

Subd. 6. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord's successor in interest shall have all of the rights and obligations of the landlord with respect to such

deposit, except, that if tenant does not object to the stated amount within 20 days after written notice to tenant of the amount of deposit being transferred or assumed, the obligation of the landlord's successor to return such deposit shall be limited to the amount contained in such notice. Such notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service.

Subd. 7. The bad faith retention by a landlord of such deposit, or any portion thereof, in violation of this section shall subject the landlord to punitive damages not to exceed $200 in addition to any actual damages. Failure by the landlord to provide the written statement required by subdivision 3 and to return such deposit within two weeks after the commencement of any action for the recovery of such deposit shall be presumed to be a bad faith retention by the landlord of such deposit.

Subd. 8. Any attempted waiver of this section by a landlord and tenant, by contract or otherwise, shall be void and unenforceable.

Subd. 9. The provisions of this section shall apply only to tenancies commencing or renewed on or after July 1, 1973. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period.

Sec. 2. **REPEALER.** Minnesota Statutes 1971, Section 504.19, is repealed.

Approved May 23, 1973.

CHAPTER 562—S.F.No.1004

[Coded]

An act relating to crimes and criminals; prohibiting experimentation and research on a living human conceptus or the sale of such living human conceptus; providing penalties.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **[145.421] PUBLIC HEALTH; HUMAN CONCEPTUS; EXPERIMENTATION, RESEARCH OR SALE, DEFINITIONS.** Subdivision 1. **TERMS.** As used in sections 1 and 2, the terms defined in this section shall have the meanings given them.

APPENDIX 7

TIME LINE

1973 HOUSE

DATE	ACTION
1/8/73 page1	H.F. 48 (failed): 1st Read - Sent to Committee on Commerce and [Sieben, M; Stanton; Moe; Faricy; Ullard] Econ. Development
1/22/73 page3	H.F. 209 (failed): [Ojala, LaVoy; Fugina; Cummiskey; Johnson, D.] (Commerce and Econ. Developmt)
2/22/73 page12	H.F. 734 (failed) [Sieben, M; Moe; Dietrich; Nelson; Faricy] [Commerce and Econ Development]
3/8/73 page17	H.F. 1034 (Companion Bill) Introduced [Berg, Beglin, Ferdeser, Savelkoul, Stanton] (Commerce and Econ. Development)
4/18/73	Commerce + Economic Development Report From Commitee on 1034: Adams, J. Recommends Amendments / They are made * Second Reading 1034 *
4/19/73	Reports from Clerk
5/1/73	HOUSE GETS SENATE 965
5/1/73	Berg Notes Bills (965/1034) are similar and refers to Chief Clerk
5/2/73	Commitee gets 965
5/4/73	Identical except S.F. had high read waiver OK Berg moves 965 replace 1034
/73	Berg moves to strike out all the stuff that made 965 differed. Passes
/73	Approved / FILED

SENATE

1973

1/8/73 S.F. 36 [failed] Commitee on Judiciary (A)
[Perpich, A.J.; Spear; Gearty]

2/22/73 S.F. 749 (failed) Commitee on Judiciary (A)
[Humphrey, Chenoweth; Schaaf]

3/5/73 Into S.F. 965 (R)
[Tennessen, O'Neill; and Perpich, G] Commitee on Judiciary

4/23/73 Daves from Judiciary recommends Amendments
* Second Reading

4/30/73 Bill voted on and passed

5/16/73 Reciept of returned bill w/ amendments
Then passed

Sieben, M.; Stanton; Moe; Faricy; and Ulland introduced:

H. F. No. 48, A bill for an act relating to landlords and tenants; damage deposits; interest; amending Minnesota Statutes 1971, Section 504.19, by adding a subdivision.

The bill was read for the first time and referred to the Committee on Commerce and Economic Development.

Vento; Carlson, L.; St. Onge; Dieterich; and Patton introduced:

H. F. No. 49, A bill for an act relating to elections; providing for election of members of the legislature by party designation; amending Minnesota Statutes 1971, Sections 202.03, Subdivision 1; 203.29, Subdivision 2; 203.35, Subdivisions 7 and 9; and 206.07, Subdivision 1.

The bill was read for the first time and referred to the Committee on General Legislation and Veterans Affairs.

Jopp, by request, introduced:

H. F. No. 50, A bill for an act relating to the claim of Mr. and Mrs. Alvin Schmidt; arising from the death of Eunice Schmidt while a patient at a state institution; appropriating money for the payment thereof.

The bill was read for the first time and referred to the Committee on Appropriations.

Savelkoul, Wolcott, Becklin, Spanish, and Johnson, C., introduced:

H. F. No. 51, A bill for an act relating to highway traffic regulations; requiring drivers or operators of motor vehicles to have the same under control at all times; providing a penalty.

The bill was read for the first time and referred to the Committee on Transportation.

Savelkoul, McArthur, Wohlwend, Laidig, and Johnson, C., introduced:

H. F. No. 52, A bill for an act relating to taxation; exemptions from the general sales tax; amending Minnesota Statutes 1971, Section 297A.25, Subdivision 1.

The bill was read for the first time and referred to the Committee on Taxes.

Stangeland, Larson, Skaar, Kelly, and Eken introduced:

H. F. No. 53, A bill for an act relating to municipalities; building officials instructional courses; appropriating money.

The bill was read for the first time and referred to the Com-

Bennett; Carlson, B.; Ferderer; Kelly; and Pavlak, R. L., introduced:

H. F. No. 54, A bill for an act relating to drivers' licenses; prescribing fees; amending Minnesota Statutes 1971, Section 171.06, Subdivision 2.

The bill was read for the first time and referred to the Committee on Transportation.

Ulland introduced:

H. F. No. 55, A bill for an act relating to the claim of Clarence H. Murschel; arising from negligence of department of highways; appropriating money for the payment thereof.

The bill was read for the first time and referred to the Committee on Appropriations.

Stangeland, Graba, Eken, Skaar, and Larson introduced:

H. F. No. 56, A bill for an act relating to the building code standards committee; membership thereon; amending Minnesota Statutes 1971, Section 16.853, Subdivision 2.

The bill was read for the first time and referred to the Committee on Governmental Operations.

Johnson, D.; Samuelson; Prahl; Ojala; and Fugina introduced:

H. F. No. 57, A bill for an act relating to game and fish; senior citizens' fishing licenses; amending Minnesota Statutes 1971, Section 98.47, by adding a subdivision.

The bill was read for the first time and referred to the Committee on Environmental Preservation and Natural Resources.

Johnson, J.; Lindstrom, E.; Belisle; Laidig; and Clifford introduced:

H. F. No. 58, A bill for an act relating to the legislature; prescribing the number of members thereof and describing the geographic boundaries represented by each member; amending Minnesota Statutes 1971, Sections 2.021; 2.031; and Chapter 2, by adding sections; repealing Minnesota Statutes 1971, Sections 2.041 to 2.712.

The bill was read for the first time and referred to the Committee on General Legislation and Veterans Affairs.

Wolcott; Enebo; Adams, J.; Sarna; and Bennett introduced:

H. F. No. 59, A bill for an act relating to corporations; regulation of employee retirement benefits.

The bill was read for the first time and referred to the Com-

APPENDIX

* Failed Similar HF

1/8/73 House

{Sieben, M; [illegible]}

A bill for an act

relating to landlords and tenants; damage deposits; interest; amending Minnesota Statutes 1971, Section 504.19, by adding a subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1971, Section 504.19, is amended by adding a subdivision to read:

Subd. 3. Damage or security deposits shall be interest bearing in favor of the renter of the residential real property. In accordance with this section, the renter shall receive interest upon his deposit at the same time and under the same terms as he receives his deposit. The amount of interest payable upon such deposit shall be determined pursuant to rules and regulations promulgated by the director of consumer services.

sota Statutes 1971, Sections 363.03, Subdivisions 1 and 5; 363.11; and 363.12, Subdivisions 1 and 2.

Which was read the first time and referred to the Committee on Judiciary.

Messrs. North, Conzemius and Lewis introduced—

S. F. No. 34: A bill for an act relating to funeral directing; requiring an itemized statement of funeral costs; amending Minnesota Statutes 1971, Chapter 149, by adding a section.

Which was read the first time and referred to the Committee on Transportation and General Legislation.

Messrs. North, Dunn and Moe introduced—

S. F. No. 35: A bill for an act relating to trade regulation; requiring a fee for beverage containers; providing penalties.

Which was read the first time and referred to the Committee on Labor and Commerce.

Mr. Hansen, Baldy, questioned the reference thereon, and under Rule 35, the bill was referred to the Committee on Rules and Administration.

Messrs. Perpich, A. J.; Spear and Gearty introduced—

S. F. No. 36: A bill for an act relating to landlord and tenant; refund of security deposit upon termination of tenancy; amending Minnesota Statutes 1971, Section 504.19.

Which was read the first time and referred to the Committee on Judiciary.

Similar * S.F. Failed

Mr. Borden introduced—

S. F. No. 37: A bill for an act relating to the claim of Elton A. Leaf; arising from an injury suffered while in state employment; appropriating money for the payment thereof.

Which was read the first time and referred to the Committee on Finance.

Messrs. Olhoft; Olson, A. G. and Berg introduced—

S. F. No. 38: A resolution demanding the Farmers Home Administration aids be released to Minnesota farmers injured by the 1972 floods.

Which was read the first time and referred to the Committee on Natural Resources and Agriculture.

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Messrs. Spear, Coleman and Perpich, A. J. introduced—

S. F. No. 39: A resolution memorializing the President and Congress to halt federal appropriations to continue the war in Southeast Asia.

Which was read the first time and referred to the Committee on Transportation and General Legislation.

Mr. Doty introduced—

S. F. No. 40: A bill for an act relating to the claim of Clarence H. Murschel; arising from negligence of department of highways; appropriating money for the payment thereof.

Which was read the first time and referred to the Committee on Finance.

MOTIONS AND RESOLUTIONS

Mr. Chmielewski moved that S. F. No. 26 be withdrawn from the Committee on Transportation and General Legislation. Which motion prevailed.

Mr. Chmielewski moved that S. F. No. 26 be re-referred to the Committee on Governmental Operations. Which motion prevailed.

INTRODUCTION OF BILLS—CONTINUED

Messrs. Wegener, Berg and Moe introduced—

S. F. No. 41: A bill for an act defining legal capacity for the purpose of meeting eligibility requirements of certain federal programs.

Which was read the first time and referred to the Committee on Judiciary.

MOTIONS AND RESOLUTIONS—CONTINUED

Mr. Coleman moved that the Senate do now adjourn until 12:00 o'clock noon, Thursday, January 11, 1973. Which motion prevailed.

Patrick E. Flahaven, Secretary of the Senate.

Eken	Johnson, C.	McCarron	Pavlak, R. L.	Skaar
Enebo	Johnson, D.	McCauley	Pehler	Smith
Erdahl	Johnson, J.	McEachern	Peterson	Spanish
Erickson	Johnson, R.	McFarlin	Pieper	Stangeland
Faricy	Jopp	McMillan	Pleasant	Stanton
Ferderer	Jude	Menke	Prahl	Swanson
Fjoslien	Kahn	Miller, D.	Quirin	Tomlinson
Flakne	Kelly	Miller, M.	Resner	Ulland
Forsythe	Kempe	Moe	Rice	Vanasek
Fudro	Knickerbocker	Mueller	Ryan	Vento
Fugina	Kvam	Munger	St. Onge	Voss
Graba	Laidig	Myrah	Salchert	Weaver
Graw	Larson	Nelson	Samuelson	Wenzel
Growe	LaVoy	Newcome	Sarna	Wigley
Hagedorn	Lemke	Niehaus	Savelkoul	Wohlwend
Hanson	Lindstrom, E.	Norton	Schreiber	Wolcott
Haugerud	Lindstrom, J.	Ohnstad	Schulz	Mr. Speaker
Heinitz	Lombardi	Ojala	Searle	
Hook	Long	Parish	Sherwood	
Jacobs	Mann	Patton	Sieben, H.	
Jaros	McArthur	Pavlak, R.	Sieben, M.	

The bill was passed and its title agreed to.

INTRODUCTION OF BILLS, Continued

Savelkoul introduced:

H. F. No. 202, A bill for an act relating to the claim of Henry Knutson; arising from negligence by the highway department; appropriating money for the payment thereof.

The bill was read for the first time and referred to the Committee on Appropriations.

Savelkoul introduced:

H. F. No. 203, A bill for an act relating to the claim of James Nothwehr; arising from negligence of the highway department; appropriating money for the payment thereof.

The bill was read for the first time and referred to the Committee on Appropriations.

Ferderer introduced:

H. F. No. 204, A bill for an act relating to the claim of Cecelia A. Swanson and Victor Swanson; arising from negligence of University of Minnesota, Arboretum, Carver county; appropriating money for the payment thereof.

The bill was read for the first time and referred to the Committee on Appropriations.

Faricy; Sabo; Anderson, I.; Dirlam; and Pavlak, R., introduced:

H. F. No. 205, A bill for an act relating to the supreme court; appropriating money for its facilities.

The bill was read for the first time and referred to the Com-

APPENDIX 7

Andersen, R., introduced:

H. F. No. 206, A bill for an act relating to the claim of village of St. Anthony arising from negligence of highway department; appropriating money for the payment thereof.

The bill was read for the first time and referred to the Committee on Appropriations.

Vento, Boland, Moe, Sherwood, and Bell introduced:

H. F. No. 207, A bill for an act relating to advertising by electric and natural gas public utilities.

The bill was read for the first time and referred to the Committee on Commerce and Economic Development.

Ojala; Ulland; Fugina; Johnson, D.; and Berglin introduced:

H. F. No. 208, A bill for an act relating to commerce; prohibiting the advertisement that a product is manufactured by Indians unless such product is in fact so manufactured; providing a penalty.

The bill was read for the first time and referred to the Committee on Commerce and Economic Development.

Ojala, LaVoy, Fugina, Cummiskey, and Johnson, D., introduced:

H. F. No. 209, A bill for an act relating to landlord and tenant; refund of security deposit upon termination of tenancy; amending Minnesota Statutes 1971, Section 504.19.

The bill was read for the first time and referred to the Committee on Commerce and Economic Development.

St. Onge, Fugina, Wenzel, Quirin, and Kelly introduced:

H. F. No. 210, A bill for an act relating to education; regulating the tenure of teachers and granting seniority rights; amending Minnesota Statutes 1971, Section 125.12, Subdivision 6.

The bill was read for the first time and referred to the Committee on Education.

Prahl, Munger, Sherwood, Fugina, and Johnson, D., introduced:

H. F. No. 211, A bill for an act relating to game and fish; disposal of ice cores or blocks by ice fishermen; providing a penalty.

The bill was read for the first time and referred to the Com-

S. F. No. 36

1/8/73

HF 209

A bill for an act

relating to landlord and tenant; refund of security deposit upon termination of tenancy; amending Minnesota Statutes 1971, Section 504.19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1971, Section 504.19, is amended to read:

504.19 [REFUND OF SECURITY DEPOSIT; DAMAGES; ATTORNEY'S FEES.] Subdivision 1. Any person, partnership, firm, association or corporation which requires a damage deposit, or any other type of security deposit, in connection with the renting of real property for residential purposes, shall refund said deposit together with interest thereon at the rate of six percent per annum from the date of deposit, or furnish to the renter vacating such property a written statement showing the reason for the withholding of the deposit, or any portion thereof, within 31 days after the renter vacates the property.

Subd. 2. Any person entitled to a refund of the deposit, or any portion thereof, who is not furnished a written statement as required herein and who is required to start legal proceedings for the recovery thereof, shall be entitled on a verdict to the total amount of the deposit, or portion thereof which is withheld, plus reasonable attorney's fees. In addition, if the court finds that the landlord's action in withholding or refusing to make a refund of a deposit or portion thereof was malicious or done in bad faith, the court may award punitive damages in an amount not to exceed three times the amount wrongfully

APPENDIX 7

withheld.

Subd. 3. In any action pursuant to subdivision 2, there shall exist a rebuttable presumption that the withholding or refusal to make a refund of a deposit or a portion thereof was wrongful, and the burden of proving the reasonableness of such withholding or refusal shall rest upon the landlord.

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H. F. No. 209

1/22/73

11
SF 36

A bill for an act

relating to landlord and tenant; refund of security deposit upon termination of tenancy; amending Minnesota Statutes 1971, Section 504.19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1971, Section 504.19, is amended to read:

504.19 [REFUND OF SECURITY DEPOSIT; DAMAGES; ATTORNEY'S FEES.] Subdivision 1. Any person, partnership, firm, association or corporation which requires a damage deposit, or any other type of security deposit, in connection with the renting of real property for residential purposes, shall refund said deposit together with interest thereon at the rate of six percent per annum from the date of deposit, or furnish to the renter vacating such property a written statement showing the reason for the withholding of the deposit, or any portion thereof, within 31 days after the renter vacates the property.

Subd. 2. Any person entitled to a refund of the deposit, or any portion thereof, who is not furnished a written statement as required herein and who is required to start legal proceedings for the recovery thereof, shall be entitled on a verdict to the total amount of the deposit, or portion thereof which is withheld, plus reasonable attorney's fees. In addition, if the court finds that the landlord's action in withholding or refusing to make a refund of a deposit or portion thereof was malicious or done in bad faith, the court may award punitive damages in an amount not to exceed three times the amount wrongfully

withheld.

Subd. 3. In any action pursuant to subdivision 2, there shall exist a rebuttable presumption that the withholding or refusal to make a refund of a deposit or a portion thereof was wrongful, and the burden of proving the reasonableness of such withholding or refusal shall rest upon the landlord.

Cummiskey, Wigley, and Johnson, C., introduced:

H. F. No. 729, A bill for an act authorizing the city of Mankato to establish and maintain a downtown mall.

The bill was read for the first time and referred to the Committee on City Government.

Sieben, H., introduced:

H. F. No. 730, A bill for an act authorizing the sale of certain land to the city of Hastings in which the state of Minnesota owns the reversionary interest; providing for appraisals and payment.

The bill was read for the first time and referred to the Committee on City Government.

Carlson, A.; Kahn; Flakne; Casserly; and Salchert introduced:

H. F. No. 731, A bill for an act relating to appointments by the mayor of the city of Minneapolis.

The bill was read for the first time and referred to the Committee on City Government.

Fudro; Sarna; Adams, J.; Jacobs; and Stanton introduced:

H. F. No. 732, A bill for an act relating to trade regulations; providing for the posting of octane ratings on gasoline pumps; amending Minnesota Statutes 1971, Section 325.77, Subdivisions 1 and 2, and by adding a subdivision.

The bill was read for the first time and referred to the Committee on Commerce and Economic Development.

Dieterich; Resner; Miller, M.; Tomlinson; and Sarna introduced:

H. F. No. 733, A bill for an act relating to commerce; providing remedies for unlawful practices in business, commerce or trade; amending Minnesota Statutes 1971, Section 325.907, Subdivision 3; and by adding subdivisions.

The bill was read for the first time and referred to the Committee on Commerce and Economic Development.

APPENDIX 7

Sieben, M.; Moe; Dieterich; Nelson; and Faricy introduced:

H. F. No. 734, A bill for an act relating to landlord and tenant; refund of damage deposits upon termination of occupancy; amending Minnesota Statutes 1971, Section 504.19.

(*) Failed similar HF

The bill was read for the first time and referred to the Com-

Brinkman; Mueller; Adams, J.; Casserly; and Pavlak, R. L., introduced:

H. F. No. 735, A bill for an act relating to commerce; administration of the unfair cigarette sales act; providing penalties; amending Minnesota Statutes 1971, Sections 325.66, Subdivision 4; 325.67; 325.74, Subdivision 1; and 325.75, Subdivisions 1, 2, and 3.

The bill was read for the first time and referred to the Committee on Commerce and Economic Development.

Adams, J.; Ryan; and Spanish introduced:

H. F. No. 736, A bill for an act relating to public safety; fire extinguishers; regulating the sale and use thereof; amending Minnesota Statutes 1971, Section 299F.36, Subdivision 2.

The bill was read for the first time and referred to the Committee on Commerce and Economic Development.

Stanton; Johnson, D.; Adams, J.; McCauley; and Jaros introduced:

H. F. No. 737, A bill for an act relating to food; providing for the regulation and control of its manufacture, distribution and sale; prescribing penalties; amending Minnesota Statutes 1971, Chapter 31, by adding sections; Sections 31.01, Subdivisions 2, 3, and 4, and by adding subdivisions; 31.02; 31.04; 31.05; 31.14; and 32.021, Subdivision 2; and repealing Minnesota Statutes 1971, Sections 31.01, Subdivisions 5 and 19; 31.10; 31.11; and 31.12.

The bill was read for the first time and referred to the Committee on Commerce and Economic Development.

Connors, Biersdorf, McCarron, Bennett, and Anderson, G., introduced:

H. F. No. 738, A bill for an act relating to crimes and criminals; gun regulations; prohibiting exconvicts, aliens and narcotic drug addicts from owning or possessing any concealable firearm; providing a penalty.

The bill was read for the first time and referred to the Committee on Crime Prevention and Corrections.

McEachern, Jude, Weaver, and Ohnstad introduced:

H. F. No. 739, A bill for an act authorizing Independent School District No. 728, Elk River, to issue bonds in excess of the limitation prescribed by Minnesota Statutes, Section 475.53.

The bill was read for the first time and referred to the Com-

requiring unit pricing; providing for injunctions and cease and desist agreements; providing a penalty.

Which was read the first time and referred to the Committee on Labor and Commerce.

Mr. Ueland introduced—

S. F. No. 745: A bill for an act authorizing the city of Mankato to establish and maintain a downtown mall.

Which was read the first time and referred to the Committee on Local Government.

Messrs. Tennessen, Bang and Davies introduced—

S. F. No. 746: A bill for an act relating to securities; repealing Minnesota Statutes 1971, Chapter 80.

Which was read the first time and referred to the Committee on Labor and Commerce.

Messrs. Humphrey, Tennessen and Doty introduced—

S. F. No. 747: A bill for an act relating to consumer protection; establishing a Minnesota department of consumer affairs; appropriating money thereto; providing powers and duties for the new department; transferring the functions, pending business, records, unexpended funds and personnel of the consumer services section of the department of commerce to the new department; amending Minnesota Statutes 1971, Section 325.907, Subdivision 1.

Which was read the first time and referred to the Committee on Governmental Operations.

Mr. Laufenburger introduced—

S. F. No. 748: A bill for an act authorizing the city of Winona to reduce speed limits on certain portions of highways located within the city during school hours.

Which was read the first time and referred to the Committee on Transportation and General Legislation.

Messrs. Humphrey, Chenoweth and Schaaf introduced—

S. F. No. 749: A bill for an act relating to landlord and tenant; refund of damage deposits upon termination of occupancy; amending Minnesota Statutes 1971, Section 504.19.

Which was read the first time and referred to the Committee on Judiciary.

APPENDIX 1

Similar SF Failed

Messrs. Conzemius and Olson, A. G. introduced—

S. F. No. 750: A bill for an act relating to taxation; limiting the deductions attributable to farming allowed against Minnesota gross income; amending Minnesota Statutes 1971, Sections 290.09, Subdivision 1; and 290.972, by adding a subdivision.

Which was read the first time and referred to the Committee on Taxes and Tax Laws.

Mr. Conzemius introduced—

S. F. No. 751: A resolution memorializing Congress to further restrict deductions for "tax loss farming."

Which was read the first time and referred to the Committee on Taxes and Tax Laws.

Messrs. Conzemius and Bernhagen introduced—

S. F. No. 752: A bill for an act relating to taxation; qualification of homesteads under the agricultural property tax law; amending Minnesota Statutes 1971, Section 273.111, Subdivision 3.

Which was read the first time and referred to the Committee on Taxes and Tax Laws.

Messrs. Olson, A. G.; Lord and Olson, H. D. introduced—

S. F. No. 753: A bill for an act relating to agricultural lands; regulating the ownership of such lands by certain corporations; providing penalties; repealing Minnesota Statutes 1971, Sections 500.22, Subdivisions 3, 4 and 5; and 500.23.

Which was read the first time and referred to the Committee on Natural Resources and Agriculture.

Messrs. Humphrey, Chenoweth and Schaaf introduced—

S. F. No. 754: A bill for an act relating to landlords and tenants; restriction on automatic renewals of leases; amending Minnesota Statutes 1971, Chapter 504, by adding a section.

Which was read the first time and referred to the Committee on Judiciary.

Messrs. Conzemius, Larson and Chmielewski introduced—

S. F. No. 755: A bill for an act relating to agriculture; contents of agricultural corporation reports; amending Minnesota Statutes 1971, Section 500.23, Subdivision 2.

Which was read the first time and referred to the Committee on Natural Resources and Agriculture.

2/22/73

S. F. No. 749

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HF 734

A bill for an act

relating to landlord and tenant; refund of damage deposits upon termination of occupancy; amending Minnesota Statutes 1971, Section 504.19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1971, Section 504.19, is amended to read:

504.19 [REFUND OF SECURITY DEPOSIT; ACTIONS TO RECOVER.] Subdivision 1. Any person, partnership, firm, association or corporation which requires a damage deposit, or any other type of security deposit, in connection with the renting of real property for residential purposes, shall refund said deposit together with interest earned thereon at the rate of five percent per annum, or furnish to the renter vacating such property a written statement showing the reason for the withholding of the deposit, or any portion thereof, within ~~31~~ 15 days after the renter vacates the property. Valid reasons for withholding all or a portion of any security deposit shall be limited to the following:

(a) Damage to the premises or personal property therein caused by the renter, ordinary wear and tear excepted;

(b) Default in the payment of rent;

Subd. 2. The renter's claim to any moneys paid under this section shall be prior to the claim of any other creditor, including a trustee in bankruptcy, of the person, partnership, firm, association or corporation holding the deposit.

Subd. ~~2~~ 3. Any person entitled to a refund of the deposit, or any portion thereof, who is not furnished a

APPENDIX 7

written statement as required herein or who is furnished a false or inadequate statement, and who is required to start legal proceedings for the recovery thereof, shall be entitled on a ~~verdict~~ judgment to the total amount of the deposit, or portion thereof which is withheld, ~~plus~~ and, subject to the provisions of subdivision 4, interest as provided in subdivision 1, together with costs and disbursements, including reasonable attorney's fees, provided that the court in its discretion may award punitive damages in an amount not to exceed $200, in addition to the actual damages sustained.

Subd. 4. The provisions of this section requiring payment of interest shall not apply to deposits held for 120 days or less.

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2/22/73

H. F. No. 734

[Sabo, M; Dietrich, Moe, Tomczyk, Nelson] 11

SF 749

A bill for an act

relating to landlord and tenant; refund of damage deposits upon termination of occupancy; amending Minnesota Statutes 1971, Section 504.19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1971, Section 504.19, is amended to read:

504.19 [REFUND OF SECURITY DEPOSIT; ACTIONS TO RECOVER.] Subdivision 1. Any person, partnership, firm, association or corporation which requires a damage deposit, or any other type of security deposit, in connection with the renting of real property for residential purposes, shall refund said deposit together with interest earned thereon at the rate of five percent per annum, or furnish to the renter vacating such property a written statement showing the reason for the withholding of the deposit, or any portion thereof, within ~~21~~ 15 days after the renter vacates the property. Valid reasons for withholding all or a portion of any security deposit shall be limited to the following:

(a) Damage to the premises or personal property therein caused by the renter, ordinary wear and tear excepted;

(b) Default in the payment of rent;

Subd. 2. The renter's claim to any moneys paid under this section shall be prior to the claim of any other creditor, including a trustee in bankruptcy, of the person, partnership, firm, association or corporation holding the deposit.

Subd. ~~2~~ 3. Any person entitled to a refund of the deposit, or any portion thereof, who is not furnished a

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APPENDIX 7

written statement as required herein or who is furnished a false or inadequate statement, and who is required to start legal proceedings for the recovery thereof, shall be entitled on a ~~verdict~~ judgment to the total amount of the deposit, or portion thereof which is withheld, ~~plus~~ and, subject to the provisions of subdivision 4, interest as provided in subdivision 1, together with costs and disbursements, including reasonable attorney's fees, provided that the court in its discretion may award punitive damages in an amount not to exceed $200, in addition to the actual damages sustained.

Subd. 4. The provisions of this section requiring payment of interest shall not apply to deposits held for 120 days or less.

APPENDIX 7

Mr. Fitzsimons introduced—

S. F. No. 957: A bill for an act relating to the city of Thief River Falls; payment of firemen's service pensions.

Which was read the first time and referred to the Committee on Governmental Operations.

Messrs. McCutcheon and Schaaf introduced—

S. F. No. 958: A bill for an act relating to intoxicating liquor and non-intoxicating malt liquor; days and hours of sale; amending Minnesota Statutes 1971, Sections 340.034, Subdivision 1; and 340.14, Subdivision 1.

Which was read the first time and referred to the Committee on Labor and Commerce.

Messrs. Keefe, S.; Arnold and Hansen, Baldy introduced—

S. F. No. 959: A bill for an act relating to elections; removing limitations on the transportation of voters to the polls, repealing Minnesota Statutes 1971, Section 211.14, Subdivision 4.

Which was read the first time and referred to the Committee on Transportation and General Legislation.

Mr. Fitzsimons introduced—

S. F. No. 960: A bill for an act relating to the city of Thief River Falls; payment of firemen's service pensions.

Which was read the first time and referred to the Committee on Governmental Operations.

Messrs. Tennessen, O'Neill and Perpich, G. introduced—

S. F. No. 961: A bill for an act relating to real estate; forcible entry and unlawful detainer; landlord and tenant; creating remedies for tenants of substandard housing; amending Minnesota Statutes 1971, Sections 566.01; 566.02; 566.05; 566.06; 566.09; 566.15; 566.16; and Chapter 566, by adding sections.

Which was read the first time and referred to the Committee on Judiciary.

Messrs. Willet, Larson and Chmielewski introduced—

S. F. No. 962: A bill for an act relating to taxation; real estate taxes upon state owned residential property.

Which was read the first time and referred to the Committee on Taxes and Tax Laws.

Messrs. Schaaf, O'Neill and Spear introduced—

S. F. No. 963: A bill for an act relating to education; courses

and training in human relations; providing reimbursement for such courses and training; amending Minnesota Statutes 1971, Section 126.022, by adding subdivisions.

Which was read the first time and referred to the Committee on Education.

Messrs. Keefe, S.; Doty and Bang introduced—

S. F. No. 964: A bill for an act relating to insurance; nonresident insurance agents; requiring a license to do business; amending Minnesota Statutes 1971, Section 60A.17, Subdivision 3.

Which was read the first time and referred to the Committee on Labor and Commerce.

Messrs. Tennessen, O'Neill and Perpich, G. introduced—

S. F. No. 965: A bill for an act relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

Which was read the first time and referred to the Committee on Judiciary.

Messrs. Willet, Bernhagen and Hughes introduced—

S. F. No. 966: A bill for an act relating to natural resources; establishing the volunteers in parks program and specifying the powers and duties of the commissioner of natural resources in relation thereto; appropriating money; amending Minnesota Statutes 1971, Chapter 85, by adding a section; and Section 176.011, Subdivision 9.

Which was read the first time and referred to the Committee on Natural Resources and Agriculture.

Messrs. Hansen, Baldy; Patton and Perpich, A. J. introduced—

S. F. No. 967: A bill for an act relating to taxation; reducing the tax on oleomargarine; amending Minnesota Statutes 1971, Section 30.10, Subdivision 1.

Which was read the first time and referred to the Committee on Taxes and Tax Laws.

Messrs. Hughes, Pillsbury and Schaaf introduced—

S. F. No. 968: A bill for an act relating to crimes and criminals; providing penalties for the receipt, purchase or concealment of stolen goods; amending Minnesota Statutes 1971, Section 609.53.

Which was read the first time and referred to the Committee on Judiciary.

Berglin, Bell, Pehler, Growe, and Johnson, R., introduced:

H. F. No. 1032, A bill for an act relating to education; authorizing payment of certain surplus school funds in county treasuries to certain school districts; amending Minnesota Statutes 1971, Chapter 124, by adding a section.

The bill was read for the first time and referred to the Committee on Education.

Johnson, D.; and Anderson, G., introduced:

H. F. No. 1033, A bill for an act relating to the claim of Robert F. Engel and Mary Lou Engel Lillehaug; arising from overpayment of tax to the state of Minnesota; appropriating money for the payment thereof.

The bill was read for the first time and referred to the Committee on Appropriations.

Companion Bill

Berg, Berglin, Ferderer, Savelkoul, and Stanton introduced:

H. F. No. 1034, A bill for an act relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

The bill was read for the first time and referred to the Committee on Commerce and Economic Development.

Carlson, B.; Samuelson; Skaar; Carlson, D.; and Jaros introduced:

H. F. No. 1035, A bill for an act relating to natural resources; indemnifying landowners who permit public use of private land for recreational purposes against loss; regulating recreational trails and landowner's liability; amending Minnesota Statutes 1971, Sections 85.015, Subdivision 1; 85.015, by adding a subdivision; and 87.023; repealing Minnesota Statutes 1971, Sections 84.029, Subdivision 2; and 85.015, Subdivision 9.

The bill was read for the first time and referred to the Committee on Environmental Preservation and Natural Resources.

Norton, Moe, Faricy, and Swanson introduced:

H. F. No. 1036, A bill for an act relating to historic sites; regulating the boundaries of the old Fort Snelling historic district and designating the historic hill district; amending Minnesota Statutes 1971, Section 138.73, Subdivision 13; and Section 138.73, by adding a subdivision.

The bill was read for the first time and referred to the Com-

APPENDIX 7

Schulz, Prahl, Lemke, Kahn, and Lindstrom, J., introduced:

H. F. No. 1037, A resolution memorializing Congress and the President to restore federal assistance for sewage disposal projects.

The bill was read for the first time and referred to the Committee on Environmental Preservation and Natural Resources.

Biersdorf and Miller, D., introduced:

H. F. No. 1038, A bill for an act relating to state parks; authorizing additional lands to be included within the boundaries of Rice Lake state park.

The bill was read for the first time and referred to the Committee on Environmental Preservation and Natural Resources.

Jaros, Stanton, Growe, McEachern, and Ojala introduced:

H. F. No. 1039, A bill for an act relating to state parks and recreation areas; requiring free admission and reduced user fees for senior citizens; amending Minnesota Statutes 1971, Section 85.05.

The bill was read for the first time and referred to the Committee on Environmental Preservation and Natural Resources.

Culhane, Niehaus, Schulz, Faricy, and Haugerud introduced:

H. F. No. 1040, A resolution memorializing the President to release funds appropriated for sewage treatment facilities, and Congress to prevent further impoundments of similar funds.

The bill was read for the first time and referred to the Committee on Environmental Preservation and Natural Resources.

Casserly; Carlson, L.; Cleary; Sherwood; and Sieben, H., introduced:

H. F. No. 1041, A bill for an act relating to the organization and administration of state government; providing changes in the distribution of receipts credited to the state forest suspense account; amending Minnesota Statutes 1971, Section 16.20, Subdivision 5.

The bill was read for the first time and referred to the Committee on Environmental Preservation and Natural Resources.

Johnson, C; Eckstein; Dirlam; Wigley; and Menke introduced:

H. F. No. 1042, A bill for an act relating to waters; southern Minnesota river basin commission; appropriating money; amending Laws 1971, Chapter 705, Section 3, Subdivision 1; and Section 5; repealing Laws 1971, Chapter 705, Section 11.

The bill was read for the first time and referred to the Com-

Introduced 3/5/73 [Tennessen, O'Neill, and Popovich G.]

1973

ORIGINAL SF 965

A bill for an act

relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1971, Chapter 504, is amended by adding a section to read:

[504.20] [INTEREST ON SECURITY DEPOSITS; WITHHOLDING SECURITY DEPOSITS; DAMAGES.] Subdivision 1. Any deposit of money, the function of which is to secure the performance of a residential rental agreement or any part of such an agreement, other than a deposit which is exclusively an advance payment of rent, shall be governed by the provisions of this section.

Subd. 2. Any such deposit of money shall be held by the landlord for the tenant who is part to such agreement and shall bear simple interest at the rate of five percent per annum noncompounded, computed from the first day of the next month following the full payment of such deposit to the last day of the month of termination of the tenancy. Any interest amount less than $1 shall be excluded from the provisions of this act.

Subd. 3. Every landlord shall, within two weeks of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return such deposit to the tenant, with interest thereon as above provided, or furnish to the tenant a written statement showing the specific reason for the withholding of the

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deposit or any portion thereof. The landlord may withhold from such deposit only such amounts as are reasonably necessary:

(a) To remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement; or

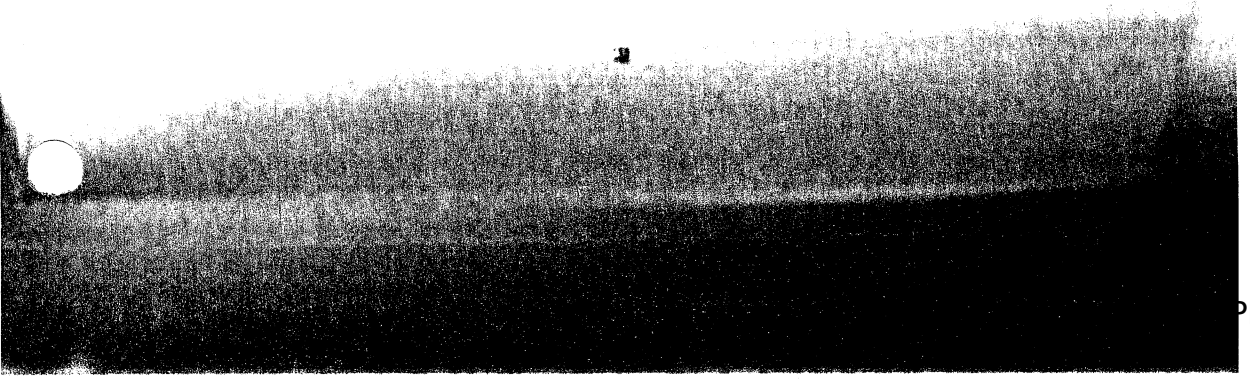
(b) To restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

In any action concerning such deposit, the burden of proving, by a fair preponderance of the evidence, the reason for withholding all or any portion of such deposit shall be on the landlord.

Subd. 4. Any landlord who fails to provide a written statement within two weeks of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, shall forfeit all rights to withhold any portion of such deposit.

Subd. 5. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent shall, within a reasonable time, do one of the following acts, either of which shall relieve him of further liability with respect to such deposit:

(a) Transfer such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the landlord's successor in interest and thereafter notify the tenant of



such transfer and of the transferee's name and address; or

(b) Return such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the tenant.

Subd. 6. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord's successor in interest shall have all of the rights and obligations of the landlord with respect to such deposit, except, that if tenant does not object within 20 days after written notice to tenant of the amount of deposit being transferred or assumed, the obligation of the landlord's successor to return such deposit shall be limited to the amount contained in such notice. Such notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service.

Subd. 7. The bad faith retention by a landlord of such deposit, or any portion thereof, in violation of this section shall subject the landlord to punitive damages not to exceed $200 in addition to any actual damages. Failure by the landlord to provide the written statement required by subdivision 3 and to return such deposit within two weeks after the commencement of any action for the recovery of such deposit shall be ~~conclusively~~ presumed to be a bad faith retention by the landlord of such deposit.

Subd. 8. Any attempted waiver of this section by a landlord and tenant, by contract or otherwise, shall be void and unenforceable in any tenancy in which the monthly rent

shall be $300 or less. In any tenancy in which the monthly rent shall exceed $300, this section may be waived by the landlord and tenant in writing.

Subd. 9. The provisions of this section shall apply only to tenancies commencing or renewed on or after July 1, 1973. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period.

Sec. 2. [REPEALER.] Minnesota Statutes 1971, Section 504.19, is repealed.

3/8/1973

Original 1034 is exactly the same as original SF 1027

A bill for an act

relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1971, Chapter 504, is amended by adding a section to read:

[504.20] [INTEREST ON SECURITY DEPOSITS; WITHHOLDING SECURITY DEPOSITS; DAMAGES.] Subdivision 1. Any deposit of money, the function of which is to secure the performance of a residential rental agreement or any part of such an agreement, other than a deposit which is exclusively an advance payment of rent, shall be governed by the provisions of this section.

Subd. 2. Any such deposit of money shall be held by the landlord for the tenant who is part to such agreement and shall bear simple interest at the rate of five percent per annum noncompounded, computed from the first day of the next month following the full payment of such deposit to the last day of the month of termination of the tenancy. Any interest amount less than $1 shall be excluded from the provisions of this act.

Subd. 3. Every landlord shall, within two weeks of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return such deposit to the tenant, with interest thereon as above provided, or furnish to the tenant a written statement showing the specific reason for the withholding of the

deposit or any portion thereof. The landlord may withhold from such deposit only such amounts as are reasonably necessary:

(a) To remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement; or

(b) To restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

In any action concerning such deposit, the burden of proving, by a fair preponderance of the evidence, the reason for withholding all or any portion of such deposit shall be on the landlord.

Subd. 4. Any landlord who fails to provide a written statement within two weeks of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, shall forfeit all rights to withhold any portion of such deposit.

Subd. 5. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent shall, within a reasonable time, do one of the following acts, either of which shall relieve him of further liability with respect to such deposit:

(a) Transfer such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the landlord's successor in interest and thereafter notify the tenant of

such transfer and of the transferee's name and address; or

(b) Return such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the tenant.

Subd. 6. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord's successor in interest shall have all of the rights and obligations of the landlord with respect to such deposit, except, that if tenant does not object within 20 days after written notice to tenant of the amount of deposit being transferred or assumed, the obligation of the landlord's successor to return such deposit shall be limited to the amount contained in such notice. Such notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service.

Subd. 7. The bad faith retention by a landlord of such deposit, or any portion thereof, in violation of this section shall subject the landlord to punitive damages not to exceed $200 in addition to any actual damages. Failure by the landlord to provide the written statement required by subdivision 3 and to return such deposit within two weeks after the commencement of any action for the recovery of such deposit shall be conclusively presumed to be a bad faith retention by the landlord of such deposit.

Subd. 8. Any attempted waiver of this section by a landlord and tenant, by contract or otherwise, shall be void and unenforceable in any tenancy in which the monthly rent

shall be $300 or less. In any tenancy in which the monthly rent shall exceed $300, this section may be waived by the landlord and tenant in writing.

Subd. 9. The provisions of this section shall apply only to tenancies commencing or renewed on or after July 1, 1973. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period.

Sec. 2. [REPEALER.] Minnesota Statutes 1971, Section 504.19, is repealed.

HF. 1034

STATE OF MINNESOTA
HOUSE OF REPRESENTATIVES

COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE
SUBCOMMITTEE ON LANDLORDS-TENANTS BILLS

The meeting was called to order on Tuesday, March 27th, 1973, at 2:10 P. M., in Room 123 by the chairman, Rep. Thomas Resner.

The clerk called the roll and the following members were present:

Resner, Chairman
Pieper
Spanish
Tomlinson
Wohlwend

The chairman announced that we would first consider H. F. No. 586, chief author, Rep. Casserly:

A bill for an act relating to landlords and tenants; restriction on automatic renewals of leases; amending Minnesota Statutes 1971, Chapter 504, by adding a section.

Rep. Casserly spoke on his bill and answered questions.

Rep. Casserly introduced Mr. Frank Hill, 169 North McKnight Road, St. Paul, Minnesota, who spoke as a tenant in favor of the bill.

Rep. Spanish moved that H. F. No. 586 be recommended to pass.

Discussion followed.

Rep. Casserly introduced an amendment as follows:

Page 1, line 11, of the typewritten bill, after the word "property" and before the word "no", delete the comma and insert "used for residential property,"

Rep. Spanish moved that the amendment be adopted. Voice vote was taken and the MOTION CARRIED.

Rep. Spanish then moved that H. F. No. 586 as amended be recommended to pass out of the subcommittee. Voice vote was taken and the MOTION CARRIED.

Rep. M. Sieben, chief author of H. F. No. 48 and H. F. No. 754 ← SHOULD THIS READ 734? spoke on his bills and stated he could support H. F. No. 1034.

Rep. Tom Berg spoke on his bill H. F. No. 1034:

A bill for an act relating to real estate; landlord and tenant; deposit of money, amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

Rep. Berg introduced Mr. Bob Herr, Head of the Consumer Division Attorney General's Office, who supported H. F. No. 1034.

The chairman called on Rep. Ojala, chief author of H. F. 209 *

APPENDIX 7

who spoke on his bill. Rep. Ojala stated that he would support H. F. No. 1034, Rep. Berg's bill.

Rep. Berg, chief author of H. F. No. 1034 introduced amendments to the typewritten bill as follows:

Page 1, line 18, delete the word "part" and insert the word "party"

Page 1, line 25 - Subd. 3. strike the word "of" and insert the word "after"

Page 3, line 10, after the word "object" and before the word "within" insert the words "to the stated amount"

Page 3, line 24, strike the word "conclusively"

Rep. Tomlinson moved the adoption of the amendments. Voice vote was taken and the MOTION CARRIED.

Rep. Berg introduced the following speakers, who spoke in favor of the bill:

1. Mr. Ned Carter, Minnesota Housing Institute.

2. Mr. Paul Marina - Hennepin County Legal Assistance

3. Mr. Clayton G. Ryan, Board Member of the Minnesota Apartment Association.

4. Mr. Roger Hanke, Minnesota Tenants Union.

5. Mrs. Sue Taylor, League of Women Voters.

6. Ms. Penny Cairns, representing Community Line Telephone Information and Referral Service.

Mr. John Koolstra, President, Property Owners Association, Inc. questioned the chairman about the next meeting.

The chairman informed him the next meeting would be on Tuesday, April 3, 1973, at 2:00 P. M. in Room 123 and that the opponents to the bills would be heard.

The chairman declared the meeting adjourned at 3:05 P. M.

Thomas R Resner
Thomas Resner, Chairman

Patricia Ask
Patricia Ask, Clerk

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STATE OF MINNESOTA
HOUSE OF REPRESENTATIVES

COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE
SUBCOMMITTEE ON LANDLORDS-TENANTS BILLS

The meeting was called to order on on Tuesday, April 3, 1973, at 2:10 P. M., in Room 123 by the chairman, Rep. Thomas Resner.

The clerk called the roll and the following members were present:

Resner, Chairman
Pieper
Spanish
Tomlinson
Wohlwend

Rep. Tomlinson moved that the minutes be accepted as prepared by the clerk and approved by the chairman. Voice vote was taken and the MOTION CARRIED.

The chairman announced that we would consider H. F. No. 1034, chief author, Rep. Berg, as follows:

A bill for an act relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19

The chairman announced that we would hear the opponents first and called on:

1. Mr. John Koolstra, President, Minn. Property Owners, Inc.

2. Mr. James Klinkner, representing Property Owners Association.

The chairman called on Rep. Stanton, a co-author of H. F. No. 1034, who introduced Mr. Paul Marina - Hennepin County Legal Assistance, who answered questions.

The chairman then introduced two more opponents to the bill:

3. Mr. Charles Laurents, a St. Paul landlord.

4. Mr. Alex Godroski, a Minneapolis property owner.

A discussion followed and questions were asked of Mr. Charles Laurents.

The chairman then introduced Rep. Berg, chief author of the bill who spoke on H. F. No. 1034 and proposed the following amendment:

Page 1, line 17, after the word "money" and before the word "shall" insert:

"shall not be considered received in a fiduciary capacity within the meaning of Minnesota Statutes, Section 82.17, Subdivision 7, but"

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COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE
Subcommittee on Landlord-Tenant Bills
April 3, 1973

Rep. Wohlwend moved the adoption of the amendment.

Discussion followed. A voice vote was taken and the MOTION CARRIED.

Rep. Tomlinson moved that H. F. No. 1034 as amended be recommended to pass and spoke in favor of the bill.

Rep. Berg answered questions by members of the committee.

The chairman called for a voice vote on Rep. Tomlinson's motion to recommend that H. F. No. 1034 be recommended to pass as amended. Voice vote was taken and the MOTION CARRIED.

The chairman declared the meeting adjourned at 2:55 P. M.

Thomas W Resner
Thomas Resner, Chairman

Patricia Ask
Patricia Ask, Clerk

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HF 1034

STATE OF MINNESOTA
HOUSE OF REPRESENTATIVES

COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE
MINUTES OF FIFTEENTH MEETING

The FIFTEENTH meeting of the House Commerce and Economic Development Committee was called to order by the Chairman, James L. Adams, at 7:35 P. M., on Monday, April 16, 1973, in Room 107.

The roll was called by the clerk and the following members were present:

Adams, James	- Chairman	McArthur
Connors	Vice Chairman	McCauley
		Miller, M.
Anderson, G.		Pavlak, R. L.
Cleary		Pieper
Fjoslien		Resner
Fudro		Ryan
Heinitz		Stanton
Jaros		Tomlinson
Johnson, D.		Wigley
Kvam		Wohlwend
LaVoy		

Rep. M. Sieben and Rep. Spanish were excused. Rep. Jopp was absent.

Rep. McCauley moved that the minutes as prepared by the clerk and approved by the chairman be accepted. MOTION CARRIED by voice vote.

The chairman introduced Rep. Brinkman, chief author of H. F. No. 735 as follows:

> A bill for an act relating to commerce; administration of the unfair cigarette sales act; providing penalties; amending Minnesota Statutes 1971, Sections 325.66; Subdivision 4, 325.67; 325.74; Subdivision 1; and 325.75, Subidivisions 1, 2, and 3.

Rep. Brinkman introduced Mr. Samuel W. Hardy, Minnesota Commerce Department who handles unfair cigarette sales and who suggested an amendment as follows: Page 2, line 12, strike "or criminal".

Rep. LaVoy moved the adoption of the amendment. Voice vote was taken and the MOTION CARRIED.

There was a short discussion and Rep. Tomlinson questioned if there was any opposition to the bill. There being none, Rep. Tomlinson moved that H. F. No. 735 as amended be recommended to pass and to be place on the Consent Calendar. Voice vote was taken and the MOTION CARRIED.

The chairman then introduced Rep. Resner, Chairman of the Subcommittee on Landlord-Tenant Bills.

Rep. Resner reported that H. F. No. 1034 was a conglomerate bill of those in Subcommittee and moved that H. F. No. 1034 be taken out of subcommittee:

> A bill for an act relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

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Rep. Berg, chief author of H. F. No. 1034 spoke on the bill and reported the amendments adopted in subcommittee as follows:

> Page 1, line 17, after the word "money" and before the word "shall" insert: "shall not be considered received in a fiduciary capacity within the meaning of Minnesota Statutes, Section 82.17, Subdivision 7, but"

Rep. Resner moved the adoption of the amendment. Voice vote was taken and the MOTION CARRIED.

> Page 1, line 18, delete the word "part" and insert the word "party"

Rep. R. L. Pavlak moved the amendment. Voice vote was taken and the MOTION CARRIED.

> Page 1, line 25, delete the word "of" and insert the word "after"

Rep. Cleary moved the adoption of this amendment. Voice vote was taken and the MOTION CARRIED.

The chairman then introduced Mr. John Koolstra, representing Property Owners, Inc. who spoke in opposition to the bill and suggested an amendment changing the interest rate on Page 1, line 19 from "five" to "four" per cent.

Rep. R. L. Pavlak moved the amendment and called for a roll call vote. A discussion followed and Rep. G. Anderson called for the question. Vote was as follows:

Connors	nay	McCauley	aye
Anderson, G.	nay	Miller, M.	nay
Cleary	nay	Pavlak, R.L	aye
Fudro	nay	Pieper	aye
Jaros	nay	Resner	nay
Johnson, D.	nay	Ryan	nay
Kvam	aye	Stanton	nay
LaVoy	nay	Tomlinson	nay
McArthur	nay	Wigley	aye
		Wohlwend	pass

There being 13 nays and 5 ayes and 1 pass, the MOTION FAILED.

The chairman called on the following persons who spoke in opposition to H. F. 1034:

1. Mr Joseph Mertesdorf, Property Owners Association
2. Mr. Alex Kidrowski, Property Owners Association
3. Mr. James Klinkner, Property Owners Association
4. Mr. Dwight Hokansen, Property Owners Association

Discussion followed and Rep. G. Anderson called for the question.

Rep. Pieper offered an amendment to H. F. 1034 as follows:

> Subd. 8, Page 3, line 28, insert a period after the word "tenancy" and strike the rest of line 28. Page 4, strike all of lines 1, 2, and 3.

Rep. Pieper asked for a roll call vote which was as follows:

APPENDIX 7

Connors	aye	McCauley	aye
Anderson, G.	aye	Miller, M.	aye
Cleary	aye	Pavlak, R. L.	aye
Fudro	aye	Pieper	aye
Jaros	pass	Resner	aye
Johnson, D.	aye	Ryan	aye
Kvam	aye	Stanton	aye
LaVoy	aye	Tomlinson	aye
McArthur	aye	Wohlwend	aye

There being 17 ayes and 1 pass, the MOTION CARRIED.

Rep. R. L. Pavlak moved the amendment to strike the word "conclusively" on page 3, line 24. Voice vote was taken and MOTION CARRIED.

Rep. Resner moved that H. F. No. 1034 as amended be recommended to pass. Voice vote was taken and MOTION CARRIED.

The chairman then introduced Rep. Resner, chief author of H. F. No. 1191 as follows:

> A bill for an act relating to employment agencies; the licensing and regulation thereof; prescribing penalties; amending Minnesota Statutes 1971, Sections 184.21; Subdivision 2, and by adding subdivisions 184.22; 184.26, Subdivision 1; 184.29; 184.30, Subdivison 1; 184.32; 184.33; 184.35; 184.37; 184;38, Subdivisions 1, 2, 3, and 13; and 184.41; repealing Minnesota Statutes 1971, Sections 184.31 and 184.39.

Rep. Resner moved to amend the bill on Page 6, lines 20 and 23, delete the word "five" and insert the word "three". Voice vote was taken and the MOTION CARRIED.

Rep. Resner introduced Commissioner E. I. "Bud" Malone, Department of Labor and Industry who spoke in favor of the bill.

Rep. Heinitz moved that H. F. 1191 be recommended to pass

Rep. Resner stated for the record that Mr. John L. Olson, Chairman of the Employment Agency Advisory Board and other board members were present that would like to endorse the bill but due to limited time, he would not call on them.

Question was called for, voice vote was taken and MOTION CARRIED.

The chairman then introduced Rep. McCarron, chief author of H. F. No. 662:

> A bill for an act relating to food; providing for the regulation and licensing of food handlers; amending Minnesota Statutes 1971, Sections 28A.05; 28A.15, Subdivisions 6, 7, and 8; 28A.16; 32.59; and 34.05; repealing Minnesota Statutes 1971, Section 31.495, Subdivision 3.

APPENDIX 7

Mr. Adams, J., from the

Committee on Commerce and Economic Development to which

was referred:

H F. No. 1034, A bill for an act relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

Reported the same back with the following amendments:

Page 1, line 17, after the word "money" and before the word "shall" insert: "shall not be considered received in a fiduciary capacity within the meaning of Minnesota Statutes, Section 82.17, Subdivision 7, but"

Page 1, line 18, delete the word "part" and insert the word "party"

Page 1, line 25, strike the word "of" and insert the word "after"

Page 3, line 10, after the word "object" and before the word "within" insert the words "to the stated amount"

Page 3, line 24, strike the word "conclusively"

Page 3, line 28, insert a period after the word "tenancy" and strike the rest of line 28.

Page 4, strike all of lines 1, 2, and 3.

[X] With the recommendation that when so amended the bill do pass.

[ ] With the recommendation that when so amended the bill do pass and be placed on the Consent Calendar.

[ ] With the recommendation that when so amended the bill do pass and be re-referred to the Committee on

[ ] And without further recommendation.

This Committee action taken April 16, 19 73

, Chairman

James L. Adams

Form 107 2

APPENDIX 7

HF 1034
HOUSE FILES

Mr. Adams, J., from the

Committee on Commerce and Economic Development to which

was referred:

H F. No. 1034, A bill for an act relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

Reported the same back with the following amendments:

Page 1, line 17, after the word "money" and before the word "shall" insert: "shall not be considered received in a fiduciary capacity within the meaning of Minnesota Statutes, Section 82.17, Subdivision 7, but"

Page 1, line 18, delete the word "part" and insert the word "party"

Page 1, line 25, strike the word "of" and insert the word "after"

Page 3, line 10, after the word "object" and before the word "within" insert the words "to the stated amount"

Page 3, line 24, strike the word "conclusively"

Page 3, line 28, insert a period after the word "tenancy" and strike the rest of line 28.

Page 4, strike all of lines 1, 2, and 3.

ADOPTED BY THE HOUSE
STATE OF MINNESOTA
APR 18 1973
Edward A. Burdick
Chief Clerk,
HOUSE OF REPRESENTATIVES

[X] With the recommendation that when so amended the bill do pass.

[ ] With the recommendation that when so amended the bill do pass and be placed on the Consent Calendar.

[ ] With the recommendation that when so amended the bill do pass and be re-referred to the Committee on

[ ] And without further recommendation.

This Committee action taken April 16, 19 73

James L. Adams, Chairman
James L. Adams

Form 107

APPENDIX 7

rted the same back with the recommendation that the bill

report was adopted.

Norton from the Committee on Appropriations to which ferred:

No. 545, A bill for an act relating to the Willmar state college; appropriating money to the city of Willmar for curred on behalf of the college.

rted the same back with the recommendation that the bill

report was adopted.

Norton from the Committee on Appropriations to which ferred:

No. 1327, A bill for an act relating to the state college authorizing the board to apply and receive federal funds planning and construction of an emergency driving and h facility and for the construction and operation of the appropriating money for the operation and maintenance

rted the same back with the recommendation that the pass and be placed on the Consent Calendar.

report was adopted.

Norton from the Committee on Appropriations to which erred:

No. 1601, A bill for an act relating to the operation of overnment for the fiscal year ending June 30, 1973; ap- ting money therefor.

rted the same back with the following amendments:

2, after line 4, add the following:

l. 11. To the senate:

Salaries, supplies and expenses	100,000.00

l. 12. To West Publishing Company:

Printing of Minnesota Liability Study Commission report	1,385.03

l. 13. To department of public safety:

(a) Salaries	17,500.00
(b) Supplies and expenses	13,500.00
(c) Sheriffs teletype operations	107,500.00"

APPENDIX 7

Renumber remaining subdivisions.

With the recommendation that when so amended the bill do pass.

The report was adopted.

Mr. Adams, J., from the Committee on Commerce and Economic Development to which was referred:

Company Bill

H. F. No. 1034, A bill for an act relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

Reported the same back with the following amendments:

Page 1, line 17, after the word "*money*" and before the word "*shall*" insert: "*shall not be considered received in a fiduciary capacity within the meaning of Minnesota Statutes, Section 82.17, Subdivision 7, but*".

Page 1, line 18, delete the word "*part*" and insert the word "*party*".

Page 1, line 25, strike the word "*of*" and insert the word "*after*".

Page 3, line 10, after the word "*object*" and before the word "*within*" insert the words "*to the stated amount*".

Page 3, line 24, strike the word "*conclusively*".

Page 3, line 28, insert a period after the word "*tenancy*" and strike the rest of line 28.

Page 4, strike all of lines 1, 2, and 3.

With the recommendation that when so amended the bill do pass.

The report was adopted.

Mr. Johnson, C., from the Committee on Education to which was referred:

H. F. No. 1490, A bill for an act relating to education; community school program; continuing and increasing certain reimbursements to participating school districts; appropriating money therefor; amending Minnesota Statutes 1971, Section 121.89.

Reported the same back with the following amendment:

Page 2, line 11, delete "*1971*".

With the recommendation that when so amended the bill do pass and be re-referred to the Committee on Appropriations.

The report was adopted.

Mr. Enebo from the Committee on Labor-Management Relations to which was referred:

H. F. No. 982, A bill for an act relating to employment; prohibiting lie detector tests of employees or prospective employees; providing a penalty.

Reported the same back with the following amendments:

Page 1, line 9, strike the word "request" and insert in lieu thereof "solicit".

Page 1, line 9, strike the word "or" after the word "polygraph", insert a comma; insert a comma after the word "detector", and add the words "or psychological stress evaluator".

With the recommendation that when so amended the bill do pass.

The report was adopted.

Mr. Enebo from the Committee on Labor-Management Relations to which was referred:

H. F. No. 1638, A bill for an act relating to labor relations; charitable hospitals; amending Minnesota Statutes 1971, Section 179.35, Subdivision 2.

Reported the same back with the recommendation that the bill do pass and be placed on the Consent Calendar.

The report was adopted.

Mr. Pavlak, R., from the Committee on Taxes to which was referred:

H. F. No. 768, A bill for an act abolishing the iron ore tax commission; repealing Minnesota Statutes 1971, Section 3.923.

Reported the same back with the recommendation that the bill do pass and be re-referred to the Committee on Rules and Legislative Administration.

The report was adopted.

APPENDIX X

SECOND READING OF HOUSE BILLS

Second Reading Companion

H. F. Nos. 485, 545, 1327, 1601, 1034, 1001, 1202, 1495, 601, 1308, 1309, 1386, 1617, 604, 892, 1789, 1897, 543, 1413, 1415, 1058, 1518, 1591, 713, 982, and 1638 were read for the second time.

SECOND READING OF SENATE BILLS

INTRODUCTION OF BILLS

Lemke, Biersdorf, St. Onge, Mann, and Wigley introduced:

H. F. No. 2139, A bill for an act relating to commercial fertilizers and soil conditioners; imposing penalties; amending Minnesota Statutes 1971, Section 17.718, Subdivision 1.

The bill was read for the first time and referred to the Committee on Agriculture.

Lemke, Biersdorf, St. Onge, Mann, and Wigley introduced:

H. F. No. 2140, A bill for an act relating to agriculture; commercial feed inspection fees; amending Minnesota Statutes 1971, Section 25.39, Subdivision 2.

The bill was read for the first time and referred to the Committee on Agriculture.

Jacobs, Weaver, Voss, Hanson, and Faricy introduced:

H. F. No. 2141, A bill for an act relating to drivers training schools; providing state aid to certain drivers training schools; appropriating money; amending Minnesota Statutes 1971, Sections 171.38; 171.39; 171.40; 171.41; and Chapter 171, by adding a section.

The bill was read for the first time and referred to the Committee on Education.

Miller, D.; Kelly; Heinitz; DeGroat; and Johnson, D., introduced:

H. F. No. 2142, A bill for an act relating to the administration of state government; authorizing certain agencies to make direct purchases under certain conditions; amending Minnesota Statutes 1971, Section 16.06, by adding a subdivision.

The bill was read for the first time and referred to the Committee on Education.

Sherwood; Savelkoul; Ulland; Lindstrom, J.; and Boland introduced:

H. F. No. 2143, A bill for an act relating to game and fish; prohibiting use of lead shot in taking waterfowl; amending Minnesota Statutes 1971, Section 100.29, by adding a subdivision.

The bill was read for the first time and referred to the Committee on Environmental Preservation and Natural Resources.

APPENDIX 7

1034
Companion

STATE OF MINNESOTA

SIXTY-EIGHTH SESSION – 1973

FORTY-FIRST DAY

SAINT PAUL, MINNESOTA, THURSDAY, APRIL 19, 1973

The House convened at 2:00 p.m. and was called to order by the Speaker.

Prayer was offered by the Chaplain.

The roll was called, and the following members were present:

Adams, J.	DeGroat	Johnson, D.	Miller, M.	Samuelson
Adams, S.	Dieterich	Johnson, J.	Moe	Sarna
Andersen, R.	Dirlam	Johnson, R.	Mueller	Savelkoul
Anderson, D.	Eckstein	Jopp	Munger	Schreiber
Anderson, G.	Eken	Jude	Myrah	Schulz
Anderson, I.	Enebo	Kahn	Nelson	Searle
Becklin	Erdahl	Kelly	Newcome	Sherwood
Belisle	Erickson	Kempe	Niehaus	Sieben, H.
Bell	Esau	Klaus	Norton	Sieben, M.
Bennett	Faricy	Knickerbocker	Ohnstad	Skaar
Berg	Fjoslien	Kvam	Ojala	Smith
Berglin	Flakne	Laidig	Parish	Spanish
Biersdorf	Forsythe	Larson	Patton	Stangeland
Boland	Fudro	LaVoy	Pavlak, R.	Stanton
Braun	Fugina	Lemke	Pavlak, R. L.	Swanson
Brinkman	Graba	Lindstrom, E.	Pehler	Tomlinson
Carlson, A.	Graw	Lindstrom, J.	Peterson	Ulland
Carlson, B.	Growe	Lombardi	Pieper	Vanasek
Carlson, D.	Hagedorn	Long	Pleasant	Vento
Carlson, L.	Hanson	Mann	Prahl	Voss
Casserly	Haugerud	McArthur	Quirin	Weaver
Clifford	Heinitz	McCarron	Resner	Wenzel
Connors	Hook	McCauley	Rice	Wigley
Culhane	Jacobs	McEachern	Ryan	Wohlwend
Cummiskey	Jaros	McFarlin	St. Onge	Wolcott
Dahl	Johnson, C.	Menke	Salchert	Mr. Speaker

A quorum was present.

Cleary; Ferderer; Miller, D.; and McMillan were excused.

The Chief Clerk proceeded to read the Journal of the preceding day, when on the motion of Mr. Enebo, the further reading was dispensed with and the Journal was approved as corrected.

REPORTS OF CHIEF CLERK

Pursuant to Rules of the House, printed copies of H. F. Nos. 485, 545, 1058, 1308, 1309, 1327, 1638, 543, 601, 713, 604, 884,

H. F. No. 10 21

With Amendments

A bill for an act

relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1971, Chapter 504, is amended by adding a section to read:

[504.20] [INTEREST ON SECURITY DEPOSITS; WITHHOLDING SECURITY DEPOSITS; DAMAGES.] Subdivision 1. Any deposit of money, the function of which is to secure the performance of a residential rental agreement or any part of such an agreement, other than a deposit which is exclusively an advance payment of rent, shall be governed by the provisions of this section.

Subd. 2. Any such deposit of money shall not be considered received in a fiduciary capacity within the meaning of Minnesota Statutes, Section 82.17, Subdivision 7, but shall be held by the landlord for the tenant who is party to such agreement and shall bear simple interest at the rate of five percent per annum noncompounded, computed from the first day of the next month following the full payment of such deposit to the last day of the month of termination of the tenancy. Any interest amount less than $1 shall be excluded from the provisions of this act.

Subd. 3. Every landlord shall, within two weeks after termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return such deposit to the tenant, with interest thereon as above

provided, or furnish to the tenant a written statement showing the specific reason for the withholding of the deposit or any portion thereof. The landlord may withhold from such deposit only such amounts as are reasonably necessary:

(a) To remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement; or

(b) To restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

In any action concerning such deposit, the burden of proving, by a fair preponderance of the evidence, the reason for withholding all or any portion of such deposit shall be on the landlord.

Subd. 4. Any landlord who fails to provide a written statement within two weeks of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, shall forfeit all rights to withhold any portion of such deposit.

Subd. 5. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent shall, within a reasonable time, do one of the following acts, either of which shall relieve him of further liability with respect to such deposit:

(a) Transfer such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest

thereon as provided in subdivision 2, to the landlord's successor in interest and thereafter notify the tenant of such transfer and of the transferee's name and address; or

(b) Return such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the tenant.

Subd. 6. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord's successor in interest shall have all of the rights and obligations of the landlord with respect to such deposit, except, that if tenant does not object to the stated amount within 20 days after written notice to tenant of the amount of deposit being transferred or assumed, the obligation of the landlord's successor to return such deposit shall be limited to the amount contained in such notice. Such notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service.

Subd. 7. The bad faith retention by a landlord of such deposit, or any portion thereof, in violation of this section shall subject the landlord to punitive damages not to exceed $200 in addition to any actual damages. Failure by the landlord to provide the written statement required by subdivision 3 and to return such deposit within two weeks after the commencement of any action for the recovery of such deposit shall be presumed to be a bad faith retention by the landlord of such deposit.

Subd. 8. Any attempted waiver of this section by a

landlord and tenant, by contract or otherwise, shall be void and unenforceable in any tenancy.

Subd. 9. The provisions of this section shall apply only to tenancies commencing or renewed on or after July 1, 1973. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period.

Sec. 2. [REPEALER.] Minnesota Statutes 1971, Section 504.19, is repealed.

1973 S.F. 765

JUDICIARY COMMITTEE MEETING
Tuesday, April 17, 1973
2:00 P.M., Room 118, State Capitol

Members present:

Davies	Doty	Keefe, J.	Novak	Pillsbury	Thorup
Anderson	Humphrey	Knutson	O'Neill	Schaaf	
Blatz	Jensen	McCutcheon	Perpich,G.	Tennessen	

The committee considered:

✓ S.F. 754, Landlord-tenant bill.(Humphrey, Chenoweth,Schaaf) Senator Humphrey explained the bill and asked for adoption of the amendment as recommended by the subcommittee. MOTION CARRIED (copy attached) Senator Humphrey moved that S.F. 754 be recommended to pass as amended. MOTION CARRIED

✓ S.F. 965, Landlord-tenant bill. (Tennessen,O'Neill,Perpich,G.) Senator Tennessen explained the bill and asked for adoption of the author's amendment as recommended by the subcommittee. MOTION CARRIED (copy attached) Senator Tennessen moved that S.F. 965 be recommended to pass as amended. MOTION CARRIED

made 965 read like 1034?

✓ S.F. 961, Landlord-tenant bill. (Tennessen,O'Neill,Perpich,G.) Senator Tennessen explained the intent of the bill and asked for adoption of the amendment to S.F. 961 as recommended by the subcommittee. MOTION CARRIED (copy attached) Senator Knutson moved to amend S.F. 961. MOTION FAILED. Senator Pillsbury moved to amend S.F. 961. MOTION CARRIED (copy attached) Senator Tennessen moved that S.F. 961 be recommended to pass as amended. MOTION CARRIED Charles Boyum, Income Property Owners Association, spoke opposing the bill. Clayton Rein, Minnesota Apartment Association and Paul Marion, Minnesota Tenant's Union, spoke for the bill.

✓ S.F. 1776, Repealing sumptuary sex laws.(Tennessen, Coleman, Krieger) Senator Tennessen explained the intent of the bill and moved that the amendment to the bill be adopted. MOTION CARRIED (copy attached) Senator Novak moved to amend S.F. 1776. MOTION CARRIED (copy attached) Senator O'Neill moved to amend S.F. 1776 and asked for a roll call for each. MOTION FAILED. Senator McCutcheon moved to amend S.F. 1776. MOTION FAILED Senator Tennessen moved that S.F. 1776 be recommended to pass as amended. MOTION CARRIED

✓ S.F. 1713, Structure and Form Amendment.(Davies, McCutcheon,Doty) was not heard.

✓ S.F. 775, Uniform misdemeanor penalties.(Nelson, Davies, McCutcheon)was not heard.

Adjournment at 4:00 P.M.

Jack Davies
Jack Davies, Chairman

Mary Mogush
Committee Secretary

Mr. Tennessen moves to amend S.F. 965, the typewritten bill, as follows:

Page 1, line 17, after "money" insert "shall not be considered received in a fiduciary capacity within the meaning of Minnesota Statutes, Section 87.17, Subdivision 7, but"

Page 1, line 18, strike "part" and insert in lieu thereof "party"

Page 1, line 25, strike "of" and insert in lieu thereof "after"

Page 3, line 10, after "object" insert "to the stated amount"

Page 3, line 24, strike "conclusively"

SAME AS 4/3/73 LC-7 SUBCOM.

SAME AS 1034 Edits 3/27/73

SAME AS 1034 cd/AS 3/27/73

SAME

SAME

APPENDIX 7

Mr. Hansen, Baldy from the Committee on Labor and Commerce, to which was referred

S. F. No. 328: A bill for an act relating to motor fuel; requiring display of octane rating; amending Minnesota Statutes 1971, Section 325.77, Subdivisions 1, 3, and 4, and by adding a subdivision.

Reports the same back with the recommendation that the bill be amended as follows:

Page 1, line 19, after "*the*" insert "*minimum*"

Page 1, line 27, after "*the*" insert "*minimum*"

Page 2, line 1, after "*the*" insert "*minimum*"

Page 2, line 7, after "*the*" insert "*minimum*"

Page 2, line 15, after "*the*" insert "*minimum*"

Page 2, line 17, after "*the*" insert "*minimum*"

Page 2, line 21, after "*the*" insert "*minimum*"

Page 3, after line 12, add:

"Sec. 5. *This act shall take effect January 1, 1974.*"

And when so amended the bill do pass. Amendments adopted. Report adopted.

Mr. Davies from the Committee on Judiciary, to which was referred

S. F. No. 754: A bill for an act relating to landlords and tenants; restriction on automatic renewals of leases; amending Minnesota Statutes 1971; Chapter 504, by adding a section.

Reports the same back with the recommendation that the bill be amended as follows:

Page 1, line 11 after the word "*property*" and before the "," insert "*used for residential purposes*"

And when so amended the bill do pass. Amendments adopted. Report adopted.

Mr. Davies from the Committee on Judiciary, to which was referred

S. F. No. 961: A bill for an act relating to real estate; forcible entry and unlawful detainer; landlord and tenant; creating remedies for tenants of substandard housing; amending Minnesota Statutes 1971, Sections 566.01; 566.02; 566.05; 566.06; 566.09; 566.15; 566.16; and Chapter 566, by adding sections.

Reports the same back with the recommendation that the bill be amended as follows:

Page 7, line 8, strike the word "*this*" and insert in lieu thereof "*sections 8 to 23*"

APPENDIX 7

Page 7, line 9, strike the word "*act*"

Page 8, line 10, strike "*council or other*"

Page 8, line 10, strike the word "*for*" and insert in lieu thereof "*of*"

Page 11, line 25, after "*malicious*," insert "*negligent*"

Page 12, line 28, strike "*(1)*" and insert in lieu thereof "*(c)*"

Page 13, line 2, strike "*(2)*" and insert in lieu thereof "*(1)*"

Page 13, line 3, strike "*(i)*" and insert in lieu thereof "*(a)*"

Page 13, line 5, strike "*(ii)*" and insert in lieu thereof "*(b)*"

Page 13, line 9, strike "*(3)*" and insert in lieu thereof "*(2)*"

Page 13, line 16, strike "*(c)*" and insert in lieu thereof "*(d)*"

Page 13, line 23, strike "*(d)*" and insert in lieu thereof "*(e)*"

Page 15, line 5, after the word "*building*" strike the word "*or*" and insert in lieu thereof ", *the inspector*,"

And when so amended the bill do pass. Amendments adopted. Report adopted.

Mr. Davies from the Committee on Judiciary, to which was referred

S. F. No. 965: A bill for an act relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

Reports the same back with the recommendation that the bill be amended as follows:

Page 1, line 17, after "*money*" insert "*shall not be considered received in a fiduciary capacity within the meaning of Minnesota Statutes, Section 87.17, Subdivision 7, but*"

Page 1, line 18, strike "*part*" and insert in lieu thereof "*party*"

Page 1, line 25, strike "*of*" and insert in lieu thereof "*after*"

Page 3, line 10, after "*object*" insert "*to the stated amount*"

Page 3, line 24, strike "*conclusively*"

And when so amended the bill do pass. Amendments adopted. Report adopted.

Mr. Conzemius from the Committee on Health, Welfare and Corrections, to which was referred

S. F. No. 1893: A bill for an act relating to public welfare; authorizing the commissioner of public welfare, and certain counties and municipalities to make grants for child care service and for certain programs for child care.

Page 80, line 24, reinstate the stricken "guilty of a misdemeanor"

Page 80, line 24, before the restored "misdemeanor" insert "*petty*"

Page 80, line 24, strike "punished by a"

Page 80, line 25, strike all language

Page 80, line 27, delete "*$50*"

Page 81, line 8, after "guilty of a" insert "*petty*"

Page 82, line 8, reinstate the stricken "guilty of a misdemeanor"

Page 82, line 8, before the restored "misdemeanor" insert "*petty*"

Page 82, line 8, strike "punished"

Page 82, line 9, before the period, strike "by a fine of ~~not less than $10 nor~~ more than ~~$25~~ *$50*"

Page 82, line 16, after the period, strike "The" and insert in lieu thereof "*Any*"

Page 82, line 17, strike "such"

Page 82, line 21, after "guilty of a" insert "*petty*"

Page 82, line 24, delete "*Section*" and insert in lieu thereof "*Sections 35.405;*"

Page 82, line 25, delete ", *is*" and insert in lieu thereof "*; and 340.83 are*"

Renumber the sections in sequence.

Further, amend the title in line 10, after "31.403;" by deleting "31.405;" in line 14 after "Subdivision 2;" by inserting "65B.13;" in line 15 by deleting "72A.14;" in line 17 after "Subdivision 3;" by inserting "88.14, Subdivision 2;" Lines 39 and 40, delete "340.83, Subdivision 1;" in line 47 by deleting "Section" and inserting in lieu thereof "Sections 31.405;" and in line 48, after "Subdivision 2" by inserting "; and 340.83"

And when so amended the bill do pass. Amendments adopted. Report adopted.

Mr. Hughes from the Committee on Education, to which was referred

H. F. No. 368: A bill for an act relating to the state college board; authorizing the establishment of educational television and telecommunication projects at the state college at Bemidji.

Reports the same back with the recommendation that the bill do pass. Report adopted.

APPENDIX 7

Mr. Coleman from the Committee on Rules and Administration, to which were referred H. F. Nos. 443, 588, 793, 1036, 1203, 1376, 1556, 1712, 1715, 624, 735, 1172, 1486 and 1536 for comparison

to companion Senate Files, reports the following House Files were found to have no companion Senate Files on Senate Calendars and are recommended to be re-referred to their respective Committees as follows:

H. F. Nos. 1712 and 1715 to the Committee on Education.

H. F. Nos. 443 and 793 to the Committee on Finance.

H. F. No. 1036 to the Committee on Governmental Operations.

H. F. Nos. 1486 and 1536 to the Committee on Health, Welfare and Corrections.

H. F. No. 624 to the Committee on Judiciary.

H. F. Nos. 588 and 735 to the Committee on Labor and Commerce.

H. F. No. 1556 to the Committee on Metropolitan and Urban Affairs.

H. F. Nos. 1203 and 1376 to the Committee on Natural Resources and Agriculture.

H. F. No. 1172 to the Committee on Transportation and General Legislation.

Pursuant to Rule 49, this report was prepared and submitted by the Secretary of the Senate on behalf of the Committee on Rules and Administration. Report adopted.

SECOND READING OF SENATE BILLS

S. F. Nos. 1067, 1349, 1950, 1881, 1741, 261, 1925, 523, 1465, 328, 754, 961, 965, 1724, 1592, 1872, 1232, 1776, 1522, 1247 and 775 were read ~~the~~ second time.

SECOND READING OF HOUSE BILLS

H. F. Nos. 1624 and 368 were read the second time.

MOTIONS AND RESOLUTIONS

Mr. Anderson moved that H. F. No. 942, No. 28 on the Calendar be stricken and placed at the top of General Orders. Which motion prevailed.

Mr. Willet moved that S. F. No. 1992 be withdrawn from the Committee on Local Government and re-referred to the Committee on Finance. Which motion prevailed.

Mr. Gearty moved that the report from the Committee on Governmental Operations reported April 18, 1973, pertaining to appointments be taken from the table. Which motion prevailed.

Mr. Gearty moved that the foregoing report be now adopted. Which motion prevailed.

Ogdahl	O'Neill	Schaaf	Stassen	Wegener
Olhoft	Perpich, A. J.	Schrom	Stokowski	Willet
Olson, A. G.	Perpich, G.	Sillers	Tennessen	
Olson, H. D.	Pillsbury	Solon	Thorup	
Olson, J. L.	Purfeerst	Spear	Ueland	

The Sergeant-at-Arms was instructed to bring in the absent members.

The question being taken on the passage of the bill,

Mr. Conzemius moved that those not voting be excused from voting. Which motion prevailed.

And the roll being called, there were yeas 46 and nays 17, as follows:

Those who voted in the affirmative were:

Anderson	Doty	Kowalczyk	Olhoft	Stassen
Arnold	Dunn	Larson	Olson, A. G.	Stokowski
Bang	Fitzsimons	Laufenburger	Olson, H. D.	Tennessen
Berg	Gearty	Lewis	Perpich, A. J.	Thorup
Borden	Hansen, Baldy	Lord	Perpich, G.	Wegener
Chenoweth	Hughes	Milton	Purfeerst	Willet
Chmielewski	Humphrey	Moe	Schaaf	
Coleman	Keefe, S.	Nelson	Schrom	
Conzemius	Kirchner	North	Solon	
Davies	Knutson	Ogdahl	Spear	

Those who voted in the negative were:

Ashbach	Frederick	Josefson	Novak	Pillsbury
Bernhagen	Hansen, Mel	Krieger	Olson, J. L.	Sillers
Blatz	Hanson, R.	McCutcheon	O'Neill	Ueland
Brown	Jensen			

So the bill passed and its title was agreed to.

SPECIAL ORDER

S. F. No. 328: A bill for an act relating to motor fuel; requiring display of octane rating; amending Minnesota Statutes 1971, Section 325.77, Subdivisions 1, 3, and 4, and by adding a subdivision.

Mr. North moved to amend S. F. No. 328, as follows:

Page 3, line 14, strike "*D439-70*" and insert "*D439-71*"

Which motion prevailed. So the amendment was adopted.

S. F. No. 328 was read the third time, as amended, and placed on its final passage.

The question being taken on the passage of the bill, as amended,

And the roll being called, there were yeas 42 and nays 15, as follows:

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Those who voted in the affirmative were:

Anderson	Doty	Kirchner	Novak	Spear
Arnold	Dunn	Kowalczyk	Olhoft	Stokowski
Bang	Fitzsimons	Lewis	Olson, A. G.	Tennessen
Borden	Gearty	Lord	O'Neill	Thorup
Brown	Hansen, Baldy	McCutcheon	Perpich, A. J.	Wegener
Chenoweth	Hansen, Mel	Milton	Perpich, G.	Willet
Chmielewski	Hughes	Moe	Schaaf	
Coleman	Humphrey	Nelson	Schrom	
Davies	Keefe, S.	North	Solon	

Those who voted in the negative were:

Berg	Frederick	Knutson	Olson, H. D.	Purfeerst
Bernhagen	Hanson, R.	Krieger	Olson, J. L.	Sillers
Blatz	Josefson	Larson	Pillsbury	Ueland

So the bill, as amended, passed and its title was agreed to.

SPECIAL ORDER

S. F. No. 965: A bill for an act relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

Was read the third time and placed on its final passage.

The question being taken on the passage of the bill,

And the roll being called, there were yeas 57 and nays 2, as follows:

Those who voted in the affirmative were:

Anderson	Doty	Kirchner	Ogdahl	Solon
Arnold	Dunn	Knutson	Olhoft	Spear
Ashbach	Fitzsimons	Kowalczyk	Olson, A. G.	Stassen
Bang	Gearty	Larson	Olson, H. D.	Stokowski
Bernhagen	Hansen, Baldy	Lewis	Olson, J. L.	Tennessen
Blatz	Hansen, Mel	Lord	O'Neill	Thorup
Borden	Hanson, R.	McCutcheon	Perpich, A. J.	Ueland
Brown	Hughes	Milton	Perpich, G.	Wegener
Chenoweth	Humphrey	Moe	Pillsbury	Willet
Chmielewski	Jensen	Nelson	Schaaf	
Coleman	Josefson	North	Schrom	
Davies	Keefe, S.	Novak	Sillers	

Messrs. Berg and Purfeerst voted in the negative.

So the bill passed and its title was agreed to.

SPECIAL ORDER

S. F. No. 1872: A bill for an act relating to courts, procedure and penalties in petty misdemeanor and traffic violation cases; amending Minnesota Statutes 1971, Sections 169.121, Subdivision 1; 169.89, Subdivision 1; 171.01, Subdivision 13; 171.16, Subdivisions 1 and 3; 484.63; 488.20; and 488A.18, Subdivision 12.

Mr. Olson, A. G. moved to amend S. F. No. 1872 as follows:

S. F. Nos. 771, 1025, 1454, 1693, 1835, 2011, and 2012.

PATRICK E. FLAHAVEN, Secretary of the Senate

Mr. Speaker:

I hereby announce the passage by the Senate of the following Senate File, herewith transmitted:

S. F. No. 452.

PATRICK E. FLAHAVEN, Secretary of the Senate

Mr. Speaker:

I hereby announce the passage by the Senate of the following Senate Files, herewith transmitted:

S. F. Nos. 261, 384, 1295, 1575, 1602, 1622, 1741, 1809, 1950, and 2015.

PATRICK E. FLAHAVEN, Secretary of the Senate

Mr. Speaker:

I hereby announce the passage by the Senate of the following Senate Files, herewith transmitted:

S. F. Nos. 1441, 1526, 1592, 1724, 1731, 1925, and 1940.

PATRICK E. FLAHAVEN, Secretary of the Senate

Mr. Speaker:

I hereby announce the passage by the Senate of the following Senate Files, herewith transmitted:

S. F. Nos. 523 and 965.

PATRICK E. FLAHAVEN, Secretary of the Senate

Mr. Speaker:

I hereby announce the passage by the Senate of the following Senate Files, herewith transmitted:

S. F. Nos. 60, 393, 1361, 1584, and 1667.

PATRICK E. FLAHAVEN, Secretary of the Senate

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FIRST READING OF SENATE BILLS

S. F. No. 162, A bill for an act relating to private detectives and protective agents; providing regulations therefor; prescribing penalties; appropriating money; amending Minnesota Statutes 1971, Sections 326.331; 326.332, Subdivision 1; 326.333; 326.339; and Chapter 326, by adding sections; repealing Minnesota Statutes 1971, Section 326.335.

The bill was read for the first time and referred to the Committee on Commerce and Economic Development.

S. F. No. 1881, A bill for an act relating to the city of Hutchinson; authorizing the city to acquire and develop an off-street parking area to serve the central business district, and to issue bonds therefor.

The bill was read for the first time.

Kvam moved that S. F. No. 1881 and H. F. No. 1872, now on the Consent Calendar, be referred to the Chief Clerk for comparison. The motion prevailed.

S. F. No. 1955, A bill for an act directing conveyance of certain property by the state to the village of Crosby, Crow Wing county.

The bill was read for the first time.

Smith moved that S. F. No. 1955 and H. F. No. 1909, now on the Consent Calendar, be referred to the Chief Clerk for comparison. The motion prevailed.

S. F. No. 56, A bill for an act relating to welfare; establishing and empowering a Gillette hospital authority for the purpose of operating a children's hospital in conjunction with Ramsey county hospital; appropriating funds; amending Minnesota Statutes 1971, Sections 246.01; 256.01, Subdivision 2; repealing Minnesota Statutes 1971, Section 246.02, Subdivision 3; and Chapter 250.

The bill was read for the first time and referred to the Committee on Appropriations.

S. F. No. 1061, A bill for an act relating to natural resources; indemnifying landowners who permit public use of private land for recreational purposes against loss; regulating recreational trails and landowner's liability; amending Minnesota Statutes 1971, Sections 85.015, Subdivision 1; 85.015, by adding a subdivision; and 87.023; repealing Minnesota Statutes 1971, Sections 84.029, Subdivision 2; and 85.015, Subdivision 9.

The bill was read for the first time and referred to the Committee on Environmental Preservation and Natural Resources.

S. F. No. 1296, A bill for an act relating to taxes on and measured by net income; exempting public pensions, benefits and allowances from gross income; amending Minnesota Statutes

S. F. No. 1724, A bill for an act relating to election matters; authorizing political party organization in legislative districts; amending Minnesota Statutes 1971, Sections 202.21; 202.22, Subdivisions 2 and 3; 202.25; and 202.26, Subdivision 4.

The bill was read for the first time and referred to the Committee on General Legislation and Veterans Affairs.

S. F. No. 1731, A bill for an act relating to courts; establishing salary for court reporters in fourth judicial district; amending Laws 1969, Chapter 568, Section 1, Subdivision 1, as amended.

The bill was read for the first time and referred to the Committee on Judiciary.

S. F. No. 1925, A bill for an act relating to Pipestone county; fees of registered abstractors who are county employees; repealing Laws 1971, Chapter 439.

The bill was read for the first time.

Long moved that S. F. No. 1925 and H. F. No. 1918, now on the Consent Calendar, be referred to the Chief Clerk for comparison. The motion prevailed.

S. F. No. 1940, A bill for an act relating to Independent School District No. 709, St. Louis county; providing that such school district shall be subject to the same net debt limitations and have the same power to authorize obligations as are provided for other school districts in the state under certain provisions of law.

The bill was read for the first time and referred to the Committee on Education.

S. F. No. 523, A bill for an act relating to hearing aids; permitting sales only upon the recommendation of persons licensed to practice medicine; providing a penalty.

The bill was read for the first time.

Sieben, M., moved that S. F. No. 523 and H. F. No. 279, now on General Orders, be referred to the Chief Clerk for comparison. The motion prevailed.

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S. F. No. 965, A bill for an act relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

The bill was read for the first time.

Berg moved that S. F. No. 965 and H. F. No. 1034, now on General Orders, be referred to the Chief Clerk for comparison. The motion prevailed.

S. F. No. 60, A bill for an act relating to motor vehicles; regulating the type and use of tires on vehicles using the highways; providing for a study of the effect of the use of wire embedded tires on highways; empowering the commissioner of highways to authorize the use of such tires under certain conditions; amending Minnesota Statutes 1971, Section 169.72, Subdivision 1, and by adding a subdivision; repealing Minnesota Statutes 1971, Section 169.72, Subdivision 2.

The bill was read for the first time.

Eken moved that S. F. No. 60 and H. F. No. 85, now on General Orders, be referred to the Chief Clerk for comparison. The motion prevailed.

S. F. No. 393, A bill for an act relating to public health; hospitals and related institutions; authorizing the state board of health to issue correction orders under certain circumstances to hospitals and related institutions and providing assessments for failure to comply with such correction orders; amending Minnesota Statutes 1971, Section 144.54.

The bill was read for the first time and referred to the Committee on Health and Welfare.

S. F. No. 1361, A bill for an act relating to Hennepin county; removing $10,000 limitation on revolving fund; amending Laws 1951, Chapter 556, Section 4.

The bill was read for the first time.

Hook moved that S. F. No. 1361 and H. F. No. 1342, now on the Consent Calendar, be referred to the Chief Clerk for comparison. The motion prevailed.

S. F. No. 1667, A bill for an an act relating to trade regulations; recorded material; unauthorized reproductions; providing a penalty.

The bill was read for the first time and referred to the Committee on Commerce and Economic Development.

S. F. No. 1584, A bill for an act relating to boilers; regulating the standards of inspection; amending Minnesota Statutes 1971, Section 183.465.

The bill was read for the first time.

SUSPENSION OF RULES

Pursuant to Article IV, Section 20, of the Constitution of the state of Minnesota, Niehaus moved that the rule therein be suspended and an urgency be declared so that S. F. No. 1584 be

1677, 2227, 2228, 2235, 2236, 279, 680, 932, 1104, 1290, 1732, 1764, 1854, 1895, 2034, 2145, 2225, 2294, 1550, 1306, 85, 286, 523, 805, 1120, 1339, 2189, 469, and 786 and S. F. Nos. 523, 965, 261, 384, 1295, 1575, 1602, 1622, 1741, 1809, 1950, and 2015 have been placed in the members' files.

S. F. No. 1182 and H. F. No. 1071, which had been referred to the Chief Clerk for comparison, were examined and found to be identical, except that H. F. No. 1071, after the enacting clause, reads as follows:

"Section 1. [HOUSTON COUNTY; LICENSING BUREAU.] Subdivision 1. The county board of Houston county may establish a Houston county licensing bureau, to be located at the Houston county seat and such other locations as the county board may designate. Pursuant to and as permitted by the laws of this state, the license bureau may be responsible for and shall administer the issuance of game and fish licenses, snowmobile licenses, boat licenses, drivers' licenses, automobile, trailer, and mobile home licenses, and all other state licenses.

Subd. 2. The county board may appoint a county license agent to be responsible for administering the county license bureau. The county board may also appoint such subagents and other employees as it deems necessary.

Sec. 2. [LOCAL APPROVAL.] This act shall become effective upon its approval by the board of county commissioners of Houston county and upon compliance with Minnesota Statutes, Section 645.021.";

whereas, S. F. No. 1182, after the enacting clause, reads:

"Section 1. [LICENSE BUREAU AUTHORIZED.] For the purpose of promoting efficiency in county government and to afford better service to the general public any county in the state is authorized to establish a county license bureau. The license bureau may be located in the county seat or at such other location or locations as the county board may designate.

Sec 2. [STATE LICENSES MAY BE ISSUED.] Notwithstanding any other law or regulation designating or authorizing a specific county official to issue any license or permit or to process or assist in preparing an application for any license or permit issued by the state, the county license bureau is authorized to issue, process or assist in preparing an application for any license or permit issued by the state or a state official including but not limited to game and fish, trapping, wild rice harvest, motor vehicle, mobile home, trailer, snowmobile, water craft or drivers license or as many of the licenses as is designated by the county board but this authority shall not include the issuance of marriage licenses. The county board may delegate the responsibility for the issuance of any county license or permit to the county licensing bureau.

Sec. 3. [IMPLEMENTATION, NOTICE.] Subdivision 1.

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of county commissioners shall pass a resolution declaring its intent to proceed under the provisions of these sections and to establish a county license bureau. The resolution establishing a county license bureau shall take effect at such date as the county board shall designate but not less than 30 days after the date of the adoption of the resolution.

Subd. 2. No resolution establishing a county license bureau shall be valid unless a notice of intention to adopt a resolution to establish a county licensing bureau has been mailed by the clerk of the county board to each state department having the responsibility for the issuance of a state license not less than 20 days prior to the date of the meeting at which the adoption of a resolution establishing a license bureau is to be considered. A similar notice shall be delivered by the clerk of the county board to the deputy registrar of motor vehicles for the county and to each county officer having the authority to issue, process or assist in the preparation of an application for the issuance of any license not less than ten days prior to the date of the meeting at which the establishment of a license bureau is to be considered.

Sec. 4. [DIRECTOR OF BUREAU.] Subdivision 1. The county board shall appoint a director of the county license bureau upon the terms and conditions it deems advisable and may appoint any county officer or employee as the director. The county board shall set the compensation of the director and may provide for the expenses of the office including the premium of any bond required to be furnished by the director. The director shall exercise all powers granted to and perform all duties imposed on the county officer who previously had the authority to issue or process the application for any license referred to in section 1 of this act. Notwithstanding the provisions of Minnesota Statutes, Section 168.33, Subdivision 2, the director may be appointed the deputy registrar of motor vehicles in the county and if appointed a deputy registrar he shall have the same authority as a county auditor to appoint one or more deputy registrars as provided in Minnesota Statutes, Section 168.33, Subdivision 2.

Subd. 2. The director shall be responsible for all funds in his custody as the director of the license bureau and shall deposit the funds in the county treasury, a state depository or forward the funds to the appropriate state official at the times and in the manner provided by law or regulation or as designated by the county board not inconsistent with applicable statutes and regulations. The director of the license bureau or an employee in the bureau shall not be permitted to retain any portion of the fee charged by law or any surcharge upon the license or application, his sole compensation shall be the salary provided by the county board.

Sec. 5. [BOND REQUIRED.] Before entering upon the discharge of his duties, the director and each employee having the charge of handling any money, license, license plate or applica-

"Subd. 3. If the council approves the preliminary plan it may adopt, record and publish the ordinance. After the effective date of the ordinance, the council shall have jurisdiction to acquire, regulate, maintain and improve the area or areas designated as the off-street parking system, and to levy assessments, and to recall and pay in full from the proceeds of any bond sale made pursuant to this act, all outstanding revenue bonds previously issued for off-street parking on taxable properties within the central business district, whether abutting on the parking system or not, in accordance with law. In levying such assessments the city council shall determine and consider the proportionate benefits of the parking system to the various properties within the central business district.".

SUSPENSION OF RULES

Kvam moved that the rules be so far suspended that S. F. No. 1881 be substituted for H. F. No. 1872 and that the House File be indefinitely postponed. The motion prevailed.

S. F. No. 1791 and H. F. No. 1290, which had been referred to the Chief Clerk for comparison, were examined and found to be identical.

Casserly moved that S. F. No. 1791 be substituted for H. F. No. 1290 and that the House File be indefinitely postponed. The motion prevailed.

S. F. No. 1167 and H. F. No. 1677, which had been referred to the Chief Clerk for comparison, were examined and found to be identical.

Wenzel moved that S. F. No. 1167 be substituted for H. F. No. 1677 and that the House File be indefinitely postponed. The motion prevailed.

S. F. No. 1441 and H. F. No. 1430, which had been referred to the Chief Clerk for comparison, were examined and found to be identical, except that H. F. No. 1430, page 1, lines 9 and 10, read: "law to the contrary, the town of Woodside, Polk county, is a municipality within the meaning of Minnesota Statutes,"; whereas, S. F. No. 1441, page 1, lines 9 through 11, read in part: "law to the contrary, the town of Woodside, Polk county, shall have the power of a municipality within the meaning of Minnesota Statutes,".

SUSPENSION OF RULES

Eken moved that the rules be so far suspended that S. F. No. 1441 be substituted for H. F. No. 1430 and that the House File be indefinitely postponed. The motion prevailed.

S. F. No. 965 and H. F. No. 1034, which had been referred to the Chief Clerk for comparison, were examined and found to be identical, except that S. F. No. 965, page 4, lines 2 through 5, read in part: "*in which the monthly rent shall be $300 or less. In any tenancy in which the monthly rent shall exceed $300, this section may be waived by the landlord and tenant in writing.*"; whereas, H. F. No. 1034 does not contain this language.

SUSPENSION OF RULES

Berg moved that the rules to so far suspended that S. F. No. 965 be substituted for H. F. No. 1034 and that the House File be indefinitely postponed. The motion prevailed.

S. F. No. 1374 and H. F. No. 1518, which had been referred to the Chief Clerk for comparison, were examined and found to be identical.

Knickerbocker moved that S. F. No. 1374 be substituted for H. F. No. 1518 and that the House File be indefinitely postponed. The motion prevailed.

S. F. No. 17 and H. F. No. 768, which had been referred to the Chief Clerk for comparison, were examined and found to be identical, except that S. F. No. 17, page 1, lines 9 and 10, contain the language:

"Sec. 2. This act is effective the day following its final enactment.";

whereas, H. F. No. 768, does not contain this language.

SUSPENSION OF RULES

Ojala moved that the rules be so far suspended that S. F. No. 17 be substituted for H. F. No. 768 and that the House File be indefinitely postponed. The motion prevailed.

S. F. No. 746 and H. F. No. 950, which had been referred to the Chief Clerk for comparison, were examined and found to be identical, except that H. F. No. 950, page 9, line 23, reads: "(2) has violated or failed to comply with any provision"; whereas, S. F. No. 746, page 9, line 23, reads: "(2) has wilfully violated or failed to comply with any".

H. F. No. 950, page 24, lines 24 through 26 read:

"(1) effecting transactions in a security exempted by clauses (a), (b), (c), (d), (e), (g), (h) or (j) of section 15, subdivision 1;";

whereas, S. F. No. 746, page 24, lines 25 through 27, read:

"(1) effecting transactions in a security exempted by clauses (a), (b), (c), (g) or (h) of section 15, subdivision 1;".

H. F. No. 950, page 35, lines 13 through 15, read: "than those designated in clause (g) during any period of 12 consecutive months, whether or not the offeror or any of the purchasers is then present in this state, if (1) the issuer"; whereas, S. F. No. 746, page 35, lines 14 and 15 read: "than those designated in

Mann	Munger	Pehler	Samuelson	Tomlinson
McArthur	Myrah	Peterson	Sarna	Ulland
McCarron	Nelson	Pieper	Savelkoul	Vanasek
McCauley	Newcome	Pleasant	Schreiber	Vento
McEachern	Niehaus	Prahl	Schulz	Voss
McFarlin	Ohnstad	Quirin	Sherwood	Wenzel
McMillan	Ojala	Resner	Sieben, H.	Wigley
Menke	Parish	Rice	Sieben, M.	Wohlwend
Miller, D.	Patton	Ryan	Skaar	Wolcott
Miller, M.	Pavlak, R.	St. Onge	Smith	Mr. Speaker
Moe	Pavlak, R. L.	Salchert	Stanton	

The bill was passed and its title agreed to.

S. F. No. 1872, A bill for an act relating to counties; removing numerous limitations on tax levies; amending Minnesota Statutes 1971, Sections 12.26, Subdivisions 2 and 4; 18.022, Subdivision 2; 38.27, Subdivision 1; 38.36; 40.07, Subdivision 15; 121.712, Subdivision 2; 134.12, Subdivision 3; 145.51, Subdivisions 1 and 2; 163.05, Subdivision 1; 163.06, Subdivision 1; 193.145, Subdivision 2; 245.62; 245.65, Subdivision 1; 252.22; 252.24, Subdivision 4; 275.09, Subdivision 2; 282.38, Subdivision 2; 373.25, Subdivision 1; 373.27, Subdivisions 1 and 2; 375.33, Subdivisions 1 and 2; 376.19; 376.20; 376.28; 381.12, Subdivision 2; 398.33, Subdivisions 1 and 6; 399.07, Subdivision 2; 400.11; 471.16, Subdivision 2; 471.63, Subdivision 2; and Laws 1951, Chapter 289, Section 3; repealing Minnesota Statutes 1971, Sections 38.27, Subdivision 2; 163.05, Subdivisions 2, 3, 4 and 5; 400.12, and Laws 1969, Chapter 905, Section 2.

The bill was read for the third time and placed upon its final passage.

The question being taken on the passage of the bill and the roll being called, there were yeas 86, and nays 38, as follows:

Those who voted in the affirmative were:

Adams, J.	Cummiskey	Kahn	Munger	Sherwood
Andersen, R.	Dahl	Kelly	Nelson	Sieben, H.
Anderson, G.	DeGroat	Laidig	Norton	Sieben, M.
Anderson, I.	Dieterich	Larson	Ojala	Smith
Becklin	Enebo	LaVoy	Parish	Stanton
Bennett	Faricy	Lemke	Patton	Swanson
Berg	Fudro	Lindstrom, J.	Pavlak, R.	Tomlinson
Berglin	Fugina	Lombardi	Pehler	Vanasek
Biersdorf	Graba	Mann	Peterson	Vento
Boland	Growe	McArthur	Prahl	Voss
Braun	Hanson	McCarron	Quirin	Wenzel
Brinkman	Haugerud	McEachern	Resner	Wigley
Carlson, B.	Jacobs	McFarlin	Rice	Wohlwend
Carlson, D.	Jaros	McMillan	Ryan	Mr. Speaker
Carlson, L.	Johnson, C.	Menke	Salchert	
Casserly	Johnson, D.	Miller, D.	Samuelson	
Clifford	Jopp	Miller, M.	Sarna	
Connors	Jude	Moe	Schreiber	

Those who voted in the negative were:

Adams, S.	Cleary	Erickson	Forsythe	Hook
Anderson, D.	Culhane	Esau	Graw	Johnson, J.
Belisle	Dirlam	Ferderer	Hagedorn	Johnson, R.
Carlson, A.	Erdahl	Fjoslien	Heinitz	Klaus

Knickerbocker	Myrah	Pavlak, R. L.	Savelkoul	Ulland
Lindstrom, E.	Newcome	Pieper	Schulz	Wolcott
Long	Niehaus	Pleasant	Searle	
McCauley	Ohnstad	St. Onge	Skaar	

The bill was passed and its title agreed to.

ANNOUNCEMENTS BY THE SPEAKER

The Speaker announced the appointment of the following members of the House to the Conference Committee on H. F. No. 633:

Niehaus, Peterson, and Schulz.

The Speaker announced the appointment of the following members of the House to the Conference Committee on H. F. No. 491:

Anderson, I.; Enebo; and McFarlin.

The Speaker announced the appointment of the following members of the House to the Conference Committee on H. F. No. 9:

Faricy, Ferderer, and LaVoy.

UNANIMOUS CONSENT

Dirlam requested unanimous consent to offer a motion. The request was granted.

Dirlam moved that S. F. No. 1797 be recalled from the Committee on Metropolitan and Urban Affairs and be re-referred to the Committee on Rules and Legislative Administration. The motion prevailed.

Anderson, I., moved that the House recess until 2:30 p.m. The motion prevailed.

RECESS

RECONVENED

The House reconvened and was called to order by the Speaker.

Bell was excused until 7:30 p.m.

REPORT FROM THE COMMITTEE ON RULES AND LEGISLATIVE ADMINISTRATION

Pursuant to Rule 14, Mr. Anderson, I., for the Committee on Rules and Legislative Administration, designated the following bills as a Special Order for today, Tuesday, May 15, 1973, to be acted upon immediately following those Special Orders which were designated for Monday, May 14, 1973, and which were continued to Tuesday, May 15, 1973:

S. F. Nos. 405, 965, 1028, 1726, 2275, 2016, 678, and 1436.

Mr. Speaker:

I hereby announce the passage by the Senate of the following House File, herewith returned, as amended by the Senate, in which amendment the concurrence of the House is respectfully requested:

H. F. No. 2238, A bill for an act relating to Dakota county; soil and water conservation; expenditures from general revenue fund.

PATRICK E. FLAHAVEN, Secretary of the Senate

CONCURRENCE AND REPASSAGE

Sieben, H., moved that the House concur in the Senate amendments to H. F. No. 2238 and that the bill be repassed as amended by the Senate. The motion prevailed.

H. F. No. 2238, A bill for an act relating to metropolitan counties; soil and water conservation; expenditures from general revenue fund.

The bill was read for the third time, as amended by the Senate, and placed upon its repassage.

The question being taken on the repassage of the bill and the roll being called, there were yeas 130, and nays 0, as follows:

Those who voted in the affirmative were:

Adams, J.	Dahl	Jaros	Menke	St. Onge
Adams, S.	DeGroat	Johnson, C.	Miller, D.	Salchert
Andersen, R.	Dieterich	Johnson, D.	Miller, M.	Samuelson
Anderson, D.	Dirlam	Johnson, J.	Moe	Sarna
Anderson, G.	Eckstein	Johnson, R.	Mueller	Savelkoul
Anderson, I.	Eken	Jopp	Munger	Schreiber
Becklin	Enebo	Jude	Myrah	Searle
Belisle	Erdahl	Kahn	Nelson	Sherwood
Bell	Erickson	Kelly	Newcome	Sieben, H.
Bennett	Esau	Kempe	Niehaus	Sieben, M.
Berg	Faricy	Klaus	Norton	Skaar
Berglin	Ferderer	Knickerbocker	Ohnstad	Smith
Biersdorf	Fjoslien	Laidig	Ojala	Spanish
Boland	Flakne	Larson	Parish	Stangeland
Braun	Forsythe	LaVoy	Patton	Stanton
Brinkman	Fudro	Lemke	Pavlak, R.	Swanson
Carlson, A.	Fugina	Lindstrom, E.	Pavlak, R. L.	Tomlinson
Carlson, B.	Graba	Lindstrom, J.	Pehler	Ulland
Carlson, D.	Graw	Lombardi	Peterson	Vanasek
Carlson, L.	Growe	Long	Pieper	Vento
Casserly	Hagedorn	Mann	Pleasant	Voss
Cleary	Hanson	McArthur	Prahl	Wenzel
Clifford	Haugerud	McCarron	Quirin	Wigley
Connors	Heinitz	McCauley	Resner	Wohlwend
Culhane	Hook	McEachern	Rice	Wolcott
Cummiskey	Jacobs	McFarlin	Ryan	Mr. Speaker

The bill was repassed, as amended by the Senate, and its title agreed to.

Mr. Speaker:

I hereby announce the passage by the Senate of the following House File, herewith returned, as amended by the Senate, in which amendment the concurrence of the House is respectfully requested:

H. F. No. 1659, A bill for an act prescribing policies and procedures for the selection, designation, planning, and regulation of areas of critical concern.

PATRICK E. FLAHAVEN, Secretary of the Senate

Vento moved that the House refuse to concur in the Senate amendments to H. F. No. 1659, that the Speaker appoint a Conference Committee of 3 members of the House, and that the House requests that a like committee be appointed by the Senate to confer on the disagreeing votes of the two Houses. The motion prevailed.

Mr. Speaker:

I hereby announce the passage by the Senate of the following Senate File, herewith transmitted:

S. F. No. 2272.

PATRICK E. FLAHAVEN, Secretary of the Senate

FIRST READING OF SENATE BILLS

S. F. No. 2272, A bill for an act authorizing the county of Anoka to establish subordinate service districts in order to provide and finance governmental services.

The bill was read for the first time and referred to the Committee on Rules and Legislative Administration.

SPECIAL ORDERS

S. F. No. 965 was reported to the House.

Berg moved to amend S. F. No. 965, the printed bill, as follows:

Page 4, line 2, delete "*in any tenancy in which the monthly rent*".

Page 4, delete lines 3 and 4.

Page 4, line 5, delete "*landlord and tenant in writing*".

The motion prevailed and the amendment was adopted.

S. F. No. 965, A bill for an act relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

The bill was read for the third time, as amended, and placed upon its final passage.

The question being taken on the passage of the bill and the roll being called, there were yeas 97, and nays 22, as follows:

Those who voted in the affirmative were:

Adams, J.	Clifford	Heinitz	Moe	Savelkoul
Andersen, R.	Connors	Hook	Munger	Schreiber
Anderson, G.	Cummiskey	Jacobs	Myrah	Sherwood
Anderson, I.	Dahl	Jaros	Nelson	Sieben, H.
Becklin	DeGroat	Johnson, D.	Newcome	Sieben, M.
Belisle	Dieterich	Jude	Norton	Smith
Bell	Dirlam	Kahn	Ohnstad	Spanish
Bennett	Eken	Kelly	Ojala	Stanton
Berg	Enebo	Knickerbocker	Parish	Tomlinson
Berglin	Faricy	Laidig	Pehler	Ulland
Biersdorf	Ferderer	LaVoy	Peterson	Vanasek
Boland	Flakne	Lindstrom, E.	Pleasant	Vento
Braun	Forsythe	Lindstrom, J.	Prahl	Voss
Brinkman	Fudro	Lombardi	Quirin	Wenzel
Carlson, A.	Fugina	Mann	Resner	Wohlwend
Carlson, B.	Graba	McArthur	Rice	Wolcott
Carlson, D.	Graw	McCarron	Ryan	Mr. Speaker
Carlson, L.	Growe	McFarlin	Salchert	
Casserly	Hanson	Menke	Samuelson	
Cleary	Haugerud	Miller, D.	Sarna	

Those who voted in the negative were:

Anderson, D.	Fjoslien	Long	Patton	Stangeland
Eckstein	Hagedorn	McCauley	Pieper	Wigley
Erdahl	Jopp	Miller, M.	St. Onge	
Erickson	Klaus	Mueller	Searle	
Esau	Larson	Niehaus	Skaar	

The bill was passed, as amended, and its title agreed to.

S. F. No. 1726 was reported to the House.

There being no objection, S. F. No. 1726 was continued on Special Orders for tomorrow.

S. F. No. 2275, A bill for an act relating to employees of the fire department of the city of Fridley; transferring full time firemen to the public employees retirement association; providing benefits to members of the firemen's relief association; amending Laws 1969, Chapter 594, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11; and repealing Laws 1969, Chapter 594, Section 12, Subdivision 3.

The bill was read for the third time and placed upon its final passage.

The question being taken on the passage of the bill and the roll being called, there were yeas 107, and nays 8, as follows:

Those who voted in the affirmative were:

Adams, S.	Anderson, I.	Berg	Braun	Carlson, D.
Andersen, R.	Becklin	Berglin	Brinkman	Carlson, L.
Anderson, D.	Belisle	Biersdorf	Carlson, A.	Casserly
Anderson, G.	Bennett	Boland	Carlson, B.	Cleary

Clifford	Hagedorn	Lindstrom, E.	Parish	Sieben, M.
Connors	Hanson	Lindstrom, J.	Patton	Skaar
Cummiskey	Heinitz	Lombardi	Pavlak, R.	Spanish
Dahl	Hook	Long	Pehler	Stanton
DeGroat	Jacobs	McArthur	Peterson	Swanson
Dieterich	Johnson, C.	McCarron	Pieper	Tomlinson
Eken	Johnson, D.	McFarlin	Prahl	Ulland
Enebo	Johnson, J.	Menke	Quirin	Vanasek
Erdahl	Johnson, R.	Miller, D.	Resner	Vento
Erickson	Jude	Miller, M.	Rice	Voss
Faricy	Kahn	Moe	St. Onge	Wenzel
Ferderer	Kelly	Mueller	Salchert	Wigley
Fjoslien	Kempe	Munger	Samuelson	Wohlwend
Flakne	Klaus	Myrah	Savelkoul	Wolcott
Fugina	Knickerbocker	Nelson	Schreiber	Mr. Speaker
Graba	Laidig	Newcome	Searle	
Graw	Larson	Ohnstad	Sherwood	
Growe	Lemke	Ojala	Sieben, H.	

Those who voted in the negative were:

Adams, J.	Jaros	LaVoy	Pavlak, R. L.	Sarna
Haugerud	Jopp	Niehaus		

The bill was passed and its title agreed to.

S. F. No. 2016, A bill for an act relating to regional development commissions; authorizing the issuance of certificates of indebtedness; clarifying sales tax exemptions; amending Minnesota Statutes 1971, Sections 462.39, Subdivision 1; and 462.396, Subdivision 1; and Chapter 462, by adding a section.

The bill was read for the third time and placed upon its final passage.

The question being taken on the passage of the bill and the roll being called, there were yeas 105, and nays 20, as follows:

Those who voted in the affirmative were:

Adams, J.	Cummiskey	Johnson, R.	Miller, M.	Salchert
Anderson, G.	Dahl	Jopp	Moe	Samuelson
Anderson, I.	Dieterich	Jude	Munger	Sarna
Belisle	Enebo	Kahn	Myrah	Searle
Bell	Erickson	Kelly	Nelson	Sherwood
Bennett	Esau	Kempe	Newcome	Sieben, H.
Berg	Faricy	Klaus	Norton	Sieben, M.
Berglin	Ferderer	Knickerbocker	Ojala	Smith
Biersdorf	Flakne	Laidig	Parish	Spanish
Boland	Fudro	LaVoy	Patton	Stangeland
Braun	Fugina	Lemke	Pavlak, R.	Swanson
Brinkman	Graba	Lindstrom, E.	Pavlak, R. L.	Tomlinson
Carlson, A.	Growe	Lindstrom, J.	Pehler	Ulland
Carlson, B.	Hagedorn	Lombardi	Peterson	Vanasek
Carlson, D.	Hanson	Mann	Pieper	Vento
Carlson, L.	Haugerud	McArthur	Prahl	Voss
Casserly	Heinitz	McCarron	Quirin	Wenzel
Cleary	Jacobs	McCauley	Resner	Wigley
Clifford	Jaros	McFarlin	Rice	Wohlwend
Connors	Johnson, C.	Menke	Ryan	Wolcott
Culhane	Johnson, D.	Miller, D.	St. Onge	Mr. Speaker

The question being taken on the repassage of the bill, as amended,

And the roll being called, there were yeas 54 and nays 0, as follows:

Those who voted in the affirmative were:

Anderson	Fitzsimons	Keefe, S.	Moe	Schaaf
Arnold	Frederick	Kirchner	North	Schrom
Ashbach	Gearty	Kleinbaum	Novak	Sillers
Bernhagen	Hansen, Baldy	Knutson	Olhoft	Solon
Blatz	Hansen, Mel	Kowalczyk	Olson, A. G.	Spear
Brown	Hanson, R.	Larson	Olson, J. L.	Tennessen
Chenoweth	Hughes	Laufenburger	O'Neill	Thorup
Coleman	Humphrey	Lewis	Perpich, A. J.	Ueland
Conzemius	Jensen	Lord	Perpich, G.	Wegener
Davies	Josefson	McCutcheon	Pillsbury	Willet
Dunn	Keefe, J.	Milton	Purfeerst	

So the bill, as amended, was repassed and its title was agreed to.

MESSAGES FROM THE HOUSE—CONTINUED

Mr. President:

I have the honor to announce the passage by the House of the following Senate File, AS AMENDED by the House, in which amendments the concurrence of the Senate is respectfully requested:

S. F. No. 2275: A bill for an act relating to employees of the fire department of the city of Fridley; transferring full time firemen to the public employees retirement association; providing benefits to members of the firemen's relief association; amending Laws 1969, Chapter 594, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11; and repealing Laws 1969, Chapter 594, Section 12, Subdivision 3.

Senate File No. 2275 is herewith returned to the Senate.

Edward A. Burdick, Chief Clerk, House of Representatives.

Returned May 15, 1973

CONCURRENCE AND REPASSAGE

Mr. Schaaf moved that the Senate do now concur in the amendments by the House to S. F. No. 2275 and that the bill be placed on its repassage as amended. Which motion prevailed.

S. F. No. 2275 was read the third time, as amended by the House, and placed on its repassage.

The question being taken on the repassage of the bill, as amended,

And the roll being called, there were yeas 49 and nays 0, as follows:

APPENDIX 7

Those who voted in the affirmative were:

Arnold	Fitzsimons	Keefe, S.	Milton	Schaaf
Ashbach	Gearty	Kirchner	Novak	Schrom
Bernhagen	Hansen, Baldy	Kleinbaum	Olhoft	Sillers
Blatz	Hansen, Mel	Knutson	Olson, A. G.	Solon
Brown	Hanson, R.	Kowalczyk	Olson, J. L.	Spear
Chenoweth	Hughes	Larson	O'Neill	Tennessen
Coleman	Humphrey	Laufenburger	Perpich, A. J.	Ueland
Conzemius	Jensen	Lewis	Perpich, G.	Wegener
Davies	Josefson	Lord	Pillsbury	Willet
Dunn	Keefe, J.	McCutcheon	Purfeerst	

So the bill, as amended, was repassed and its title was agreed to.

MESSAGES FROM THE HOUSE—CONTINUED

Mr. President:

I have the honor to announce the passage by the House of the following Senate File, AS AMENDED by the House, in which amendments the concurrence of the Senate is respectfully requested:

S. F. No. 965: A bill for an act relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

Senate File No. 965 is herewith returned to the Senate.

Edward A. Burdick, Chief Clerk, House of Representatives.

Returned May 15, 1973

CONCURRENCE AND REPASSAGE

Mr. Tennessen moved that the Senate do now concur in the amendments by the House to S. F. No. 965 and that the bill be placed on its repassage as amended. Which motion prevailed.

S. F. No. 965 was read the third time, as amended by the House, and placed on its repassage.

The question being taken on the repassage of the bill, as amended,

And the roll being called, there were yeas 54 and nays 0, as follows:

Those who voted in the affirmative were:

Anderson	Fitzsimons	Kirchner	North	Schrom
Arnold	Frederick	Kleinbaum	Novak	Sillers
Ashbach	Gearty	Knutson	Olhoft	Solon
Bernhagen	Hansen, Baldy	Kowalczyk	Olson, A. G.	Spear
Blatz	Hansen, Mel	Larson	Olson, J. L.	Stassen
Brown	Hanson, R.	Laufenburger	O'Neill	Tennessen
Chenoweth	Hughes	Lewis	Perpich, A. J.	Thorup
Chmielewski	Humphrey	Lord	Perpich, G.	Ueland
Coleman	Jensen	McCutcheon	Pillsbury	Wegener
Davies	Josefson	Milton	Purfeerst	Willet
Dunn	Keefe, S.	Moe	Schaaf	

So the bill, as amended, was repassed and its title was agreed to.

craft on certain reaches of the St. Croix river; providing penalties; amending Minnesota Statutes 1971, Chapter 85, by adding a section.

S. F. No. 926, An act establishing the Minnesota environmental education council; and describing the powers and duties thereof.

S. F. No. 938, An act relating to zoning; providing notice and procedures for amending ordinances in cities of the first class; amending Minnesota Statutes 1971, Section 462.357, Subdivisions 3 and 5.

S. F. No. 943, An act relating to education; interest on installment purchase of buses; amending Minnesota Statutes 1971, Section 123.39, Subdivision 3.

S. F. No. 965, An act relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

S. F. No. 1004, An act relating to crimes and criminals; prohibiting experimentation and research on a living human conceptus or the sale of such living human conceptus; providing penalties.

S. F. No. 1028, An act relating to employees of the fire department of the city of Cloquet; transferring the active employees to the public employees police and fire fund and establishing trust for retired employees.

S. F. No. 1059, An act relating to county attorneys; creating a county attorneys council and the office of executive director; prescribing powers and duties; and appropriating money; amending Minnesota Statutes 1971, Section 15A.083, Subdivision 3.

S. F. No. 1125, An act relating to peace officer training courses; eligibility; amending Minnesota Statutes 1971, Section 626.851.

S. F. No. 1164, An act relating to intoxicating liquor; county licenses in unorganized or unincorporated areas of certain counties.

S. F. No. 1252, An act relating to state parks; establishing the St. Croix Wild River state park in Chisago county; appropriating money; amending Minnesota Statutes 1971, Sections 85.012, Subdivision 1; and 85.012, by adding a subdivision.

S. F. No. 1283, An act relating to cable communications; providing penalties; appropriating money; amending Minnesota Statutes 1971, Sections 161.45, Subdivision 1; and 222.37, Subdivision 1.

S. F. No. 1374, An act relating to elections; nomination, affidavits and election of county court judges; amending Minnesota Statutes 1971, Sections 202.03, Subdivision 1; 202.04, Subdivisions 1 and 3; 203.41; 487.03, Subdivision 2; and repealing Minnesota Statutes 1971, Section 487.03, Subdivision 3.

S. F. No. 1404, An act relating to veterans; the enforcement of veterans' preference rights by the commissioner of veterans affairs; authorizing the attorney general to represent veterans in certain cases; appropriating money; amending Minnesota Statutes 1971, Chapter 197, by adding a section.

S. F. No. 1436, An act relating to elections; providing for the payment of the expenses of special county elections; amending Minnesota Statutes 1971, Section 203.43.

S. F. No. 1455, An act relating to health; regulating alcohol and other drug abuse; establishing a state authority providing for treatment of persons dependent on alcohol or other drugs; amending Minnesota Statutes 1971, Sections 245.694, Subdivision 1; 197.603; 197.64, Subdivision 3; 198.01; 253A.03; 253A.04, Subdivisions 2 and 3; 253A.07, Subdivision 2; repealing Minnesota Statutes 1971, Sections 126.04; 144.81; 144.82; 144.831; 144.832; 144.833; 144.834; 145.696; 145.697; 145.699; 245.692; 245.693; 245.694; and 245.695.

S. F. No. 1505, An act relating to pollution; livestock, poultry and other animal lots; permitting counties to exercise certain permit processing powers; amending Minnesota Statutes 1971, Section 116.07, by adding a subdivision.

S. F. No. 1526, An act relating to welfare; assistance, claim against a blind person's estate; releasing claims of the state; repealing Minnesota Statutes 1971, Section 256.65.

S. F. No. 1582, An act relating to agriculture, beef industry promotion board; appropriating money.

S. F. No. 1592, An act relating to elections; defining "county auditor" for the purpose of the election laws; amending Minnesota Statutes 1971, Section 200.02, by adding a subdivision.

S. F. No. 1602, An act relating to compensation insurance; providing for a change in administration from the department of commerce to the commissioner of insurance; amending Minnesota Statutes 1971, Section 79.01, Subdivision 5.

S. F. No. 1653, An act relating to education; the establishment of a pilot educational service area in southwest and west central Minnesota to provide educational services and programs on a regional basis; appropriating money therefor.

S. F. No. 1667, An act relating to trade regulations; recorded material; unauthorized reproductions; providing a penalty.

S. F. No. 1699, An act relating to education; veteran farmer cooperative training program; appropriating money.

S. F. No. 1797, An act relating to Ramsey county; establishing a commission for the study of local government; prescribing duties and obligations; providing for report by the commission to the legislature; appropriating money.

S. F. No. 1847, An act changing the name of the department of taxation to the department of revenue; amending Minnesota Statutes 1971, Section 270.02.

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S.F. No.	H.F. No.	Session Laws Chapter No.	Date Approved 1973	Date Filed 1973
690		555	May 23	May 23
721		556	May 23	May 23
765		557	May 23	May 23
926		558	May 23	May 23
938		559	May 23	May 23
943		560	May 23	May 23
965		561	May 23	May 23
1004		562	May 23	May 23

Sincerely,

ARLEN ERDAHL
Secretary of State

STATE OF MINNESOTA
OFFICE OF THE SECRETARY OF STATE
ST. PAUL 55155

The Honorable Martin O. Sabo
Speaker of the House of Representatives

The Honorable Alec G. Olson
President of the Senate

Sirs:

I have the honor to inform you that the following enrolled Acts of the 1973 Session of the State Legislature have been received from the Office of the Governor and are deposited in the Office of the Secretary of State for preservation pursuant to the State Constitution, Article IV, Section 11:

S.F. No.	H.F. No.	Session Laws Chapter No.	Date Approved 1973	Date Filed 1973
1028		563	May 23	May 23
1059		564	May 23	May 23
1125		565	May 23	May 23
1164		566	May 23	May 23
1252		567	May 23	May 23
1283		568	May 23	May 23
1374		569	May 23	May 23
1404		570	May 23	May 23
1436		571	May 23	May 23

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S.F. No.	H.F. No.	Session Laws Chapter No.	Date Approved 1973	Date Filed 1973
1455		572	May 23	May 23
1505		573	May 23	May 23
1526		574	May 23	May 23
1582		575	May 23	May 23
1592		576	May 23	May 23
1602		577	May 23	May 23
1653		578	May 23	May 23
1667		579	May 23	May 23
1699		580	May 23	May 23
1797		581	May 23	May 23
1847		582	May 23	May 23
1872		583	May 23	May 23
1893		584	May 23	May 23
1895		585	May 23	May 23

Sincerely,

ARLEN ERDAHL
Secretary of State

STATE OF MINNESOTA
OFFICE OF THE SECRETARY OF STATE
ST. PAUL 55155

The Honorable Martin O. Sabo
Speaker of the House of Representatives

The Honorable Alec G. Olson
President of the Senate

Sirs:

I have the honor to inform you that the following enrolled Acts of the 1973 Session of the State Legislature have been received from the Office of the Governor and are deposited in the Office of the Secretary of State for preservation pursuant to the State Constitution, Article IV, Section 11:

S.F. No.	H.F. No.	Session Laws Chapter No.	Date Approved 1973	Date Filed 1973
1948		586	May 23	May 23
1949		587	May 23	May 23
1950		588	May 23	May 23

Savelkoul's files for 73 ACHIEVEMENTS OF "MAJOR LEGISLATION"

RENTERS

Access to Multiple Unit Dwellings (H.F. 307, Chapter 93)

- - It is unlawful for any person to directly or indirectly deny access to multiple unit dwellings to any candidate who has filed for office and seeks admittance for campaign purposes.

- - Applies to apartment houses, dormatories, nursing homes, mobile home parks, any areas in which two or more single family dwellings are located on private roadways or any other multiple unit facility used as a residence.

- - Candidates may not use this law to enter particular apartments, rooms, etc. within a multiple dwelling and must show proper identification.

- - With regard to nursing homes, a candidate may be denied entrance where valid health reasons exist.

- - Candidates can obtain injunctive relief to enter multiple unit dwellings.

Automatic Lease Renewals (H. F. 586, Chapter 603)

- - No lease is automatically renewed, even though there is an automatic renewal clause in the lease, unless the landlord calls the clause to the tenant's attention in writing within 15 days prior to the time the tenant is required to furnish notice of his intention to quit, but not more than 30 days prior thereto.

Building Repairs (H. F. 1059, Chapter 611)

- - Tenant may demand inspection by local authorities.

- - Inspector to inform owner of any violations and to set reasonable time limit on correcting such violation.

- - Allows tenants to have special proceeding regarding violations.

APPENDIX 7

RENTERS (con't.)

- - Court may order corrective action by the owner; order tenants to remedy violation and deduct cost from rent; appoint an administrator to hold rents in escrow and remedy violations.

- - Provisions of this act cannot be waived by a tenant.

Renters' Credit (H. F. 2121, Chapter 650)

- - Increased rent credit from 7.5 percent to 10 percent of rents paid in taxable year.

- - Maximum credit raised from $90 to $120.

- - To qualify, a renter must live in the unit for any six month period during the year rather than the last six months (as the old law provided).

Security Deposits (S. F. 965, Chapter 561)

- - Requires landlords to pay five percent per annum simple interest on security deposits.

- - Landlords have two weeks to return deposit (with interest to tenant, or give tenant a written statement showing reason for withholding deposit (old law was 31 days).

- - Burden of proof on landlord.

- - Landlord forfeits all right to deposit if he fails to respond within two weeks of the termination of the tenancy.

- - Bad faith retention of deposit in violation of law shall subject landlord to punitive damages not to exceed $200 in addition actual damages.

- - Landlords and tenants cannot waive this act.

Introduced 3/5/73 [Tennessen, O'Neill, and Popovich G.]

1973

ORIGINAL SF 965

A bill for an act

relating to real estate; landlord and tenant; deposit of money; amending Minnesota Statutes 1971, Chapter 504, by adding a section; and repealing Minnesota Statutes 1971, Section 504.19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1971, Chapter 504, is amended by adding a section to read:

[504.20] [INTEREST ON SECURITY DEPOSITS; WITHHOLDING SECURITY DEPOSITS; DAMAGES.] Subdivision 1. Any deposit of money, the function of which is to secure the performance of a residential rental agreement or any part of such an agreement, other than a deposit which is exclusively an advance payment of rent, shall be governed by the provisions of this section.

Subd. 2. Any such deposit of money shall be held by the landlord for the tenant who is part to such agreement and shall bear simple interest at the rate of five percent per annum noncompounded, computed from the first day of the next month following the full payment of such deposit to the last day of the month of termination of the tenancy. Any interest amount less than $1 shall be excluded from the provisions of this act.

Subd. 3. Every landlord shall, within two weeks of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return such deposit to the tenant, with interest thereon as above provided, or furnish to the tenant a written statement showing the specific reason for the withholding of the

APPENDIX 7

deposit or any portion thereof. The landlord may withhold from such deposit only such amounts as are reasonably necessary:

(a) To remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement; or

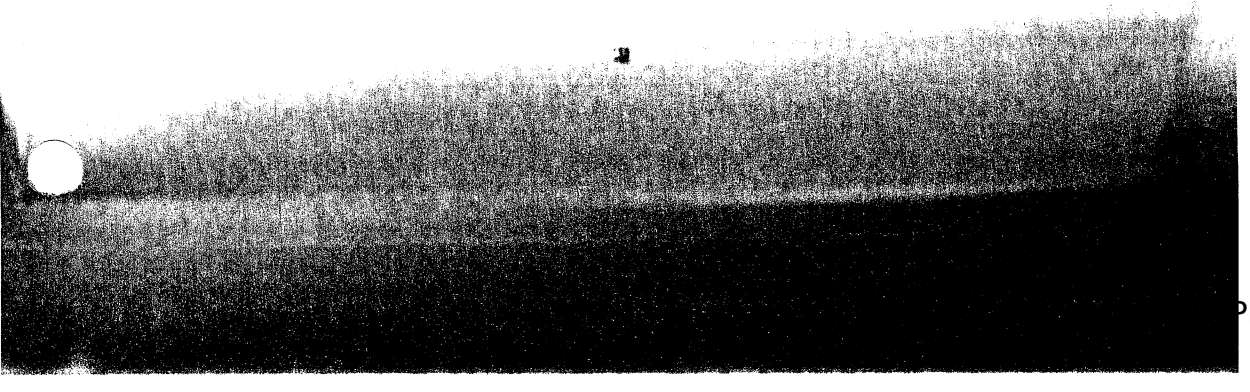
(b) To restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

In any action concerning such deposit, the burden of proving, by a fair preponderance of the evidence, the reason for withholding all or any portion of such deposit shall be on the landlord.

Subd. 4. Any landlord who fails to provide a written statement within two weeks of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, shall forfeit all rights to withhold any portion of such deposit.

Subd. 5. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent shall, within a reasonable time, do one of the following acts, either of which shall relieve him of further liability with respect to such deposit:

(a) Transfer such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the landlord's successor in interest and thereafter notify the tenant of



such transfer and of the transferee's name and address; or

(b) Return such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the tenant.

Subd. 6. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord's successor in interest shall have all of the rights and obligations of the landlord with respect to such deposit, except, that if tenant does not object within 20 days after written notice to tenant of the amount of deposit being transferred or assumed, the obligation of the landlord's successor to return such deposit shall be limited to the amount contained in such notice. Such notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service.

Subd. 7. The bad faith retention by a landlord of such deposit, or any portion thereof, in violation of this section shall subject the landlord to punitive damages not to exceed $200 in addition to any actual damages. Failure by the landlord to provide the written statement required by subdivision 3 and to return such deposit within two weeks after the commencement of any action for the recovery of such deposit shall be ~~conclusively~~ presumed to be a bad faith retention by the landlord of such deposit.

Subd. 8. Any attempted waiver of this section by a landlord and tenant, by contract or otherwise, shall be void and unenforceable in any tenancy in which the monthly rent

shall be $300 or less. In any tenancy in which the monthly rent shall exceed $300, this section may be waived by the landlord and tenant in writing.

Subd. 9. The provisions of this section shall apply only to tenancies commencing or renewed on or after July 1, 1973. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period.

Sec. 2. [REPEALER.] Minnesota Statutes 1971, Section 504.19, is repealed.

license, except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the lessee or licensee or a person under his direction or control.

(c) To maintain the premises in compliance with the applicable health and safety laws of the state and of the local units of government where the premises are located during the term of the lease or license, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the lessee or licensee or a person under his direction or control.

The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section.

Subd. 2. The lessor or licensor may agree with the lessee or licensee that the lessee or licensee is to perform specified repairs or maintenance, but only if the agreement is supported by adequate consideration and set forth in a conspicuous writing. No such agreement, however, may waive the provisions of subdivision 1 or relieve the lessor or licensor of the duty to maintain common areas of the premises.

Subd. 3. This section shall be liberally construed, and the opportunity to inspect the premises before concluding a lease or license shall not defeat the covenants established herein.

Subd. 4. The covenants contained herein shall be in addition to any covenants or conditions imposed by law or ordinance or by the terms of the lease or license.

Subd. 5. Nothing contained herein shall be construed to alter the liability of the lessor or licensor of residential premises for injury to third parties.

Subd. 6. The provisions of this section apply only to leases or licenses of residential premises concluded or renewed on or after June 15, 1971. For the purposes of this section estates at will shall be deemed to be renewed at the commencement of each rental period.

[*1971 c 219 s 1*]

504.19 REFUND OF SECURITY DEPOSIT; DAMAGES; ATTORNEY'S FEES. Subdivision 1. Any person, partnership, firm, association or corporation which requires a damage deposit, or any other type of security deposit, in connection with the renting of real property for residential purposes, shall refund said deposit or furnish to the renter vacating such property a written statement showing the reason for the withholding of the deposit, or any portion thereof, within 31 days after the renter vacates the property.

Subd. 2. Any person entitled to a refund of the deposit, or any portion thereof, who is not furnished a written statement as required herein and who is required to start legal proceedings for the recovery thereof, shall be entitled on a verdict to the total amount of the deposit, or portion thereof which is withheld, plus reasonable attorney's fees.

[*1971 c 784 s 1, 2*]

question are being held in violation of this section, it shall enter an order so declaring. The attorney general shall file for record any such order with the register of deeds or the registrar of titles of each county in which any portion of said lands are located. Thereafter, the corporation owning such land shall have a period of five years from the date of such order to divest itself of such lands. The aforementioned five year limitation period shall be deemed a covenant running with the title to the land against any corporate grantee or assignee or the successor of such corporation. Any lands not so divested within the time prescribed shall be sold at public sale in the manner prescribed by law for the foreclosure of a mortgage by action.

[*1973 c 427 s 1*]

CHAPTER 501. USES AND TRUSTS

501.461 Trusts not affected

Notwithstanding any other provisions of law to the contrary, the provisions of any trust created prior to June 1, 1973 relating to one's "minority" or "majority" or other relating terms shall be governed by the definitions of such terms existing at the time of the creation of such trust.

[*1973 c 725 s 88*]

CHAPTER 504. LANDLORDS AND TENANTS

504.19 [Repealed, 1973 c 561 s 2]

504.20 Interest on security deposits; withholding security deposits; damages

Subdivision 1. Any deposit of money, the function of which is to secure the performance of a residential rental agreement or any part of such an agreement, other than a deposit which is exclusively an advance payment of rent, shall be governed by the provisions of this section.

Subd. 2. Any such deposit of money shall not be considered received in a fiduciary capacity within the meaning of section 87.17, subdivision 7, but shall be held by the landlord for the tenant who is party to such agreement and shall bear simple interest at the rate of five percent per annum noncompounded, computed from the first day of the next month following the full payment of such deposit to the last day of the month of termination of the tenancy. Any interest amount less than $1 shall be excluded from the provisions of this section.

Subd. 3. Every landlord shall, within two weeks after termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return such deposit to the tenant, with interest thereon as above provided, or furnish to the tenant a written statement showing the specific reason for the withholding of the deposit or any portion thereof. The landlord may withhold from such deposit only such amounts as are reasonably necessary:

(a) To remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement; or

(b) To restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

In any action concerning such deposit, the burden of proving, by a fair preponderance of the evidence, the reason for withholding all or any portion of such deposit shall be on the landlord.

Subd. 4. Any landlord who fails to provide a written statement within two weeks of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, shall forfeit all rights to withhold any portion of such deposit.

Subd. 5. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent shall, within a reasonable time, do one of the following acts, either of which shall relieve him of further liability with respect to such deposit:

(a) Transfer such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the landlord's successor in interest and thereafter notify the tenant of such transfer and of the transferee's name and address; or

(b) Return such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the tenant.

Subd. 6. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord's successor in interest shall have all of the rights and obligations of the landlord with respect to such deposit, except, that if tenant does not object to the stated amount within 20 days after written notice to tenant of the amount of deposit being transferred or assumed, the obligation of the landlord's successor to return such deposit shall be limited to the amount contained in such notice. Such notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service.

Subd. 7. The bad faith retention by a landlord of such deposit, or any portion thereof, in violation of this section shall subject the landlord to punitive damages not to exceed $200 in addition to any actual damages. Failure by the landlord to provide the written statement required by subdivision 3 and to return such deposit within two weeks after the commencement of any action for the recovery of such deposit shall be presumed to be a bad faith retention by the landlord of such deposit.

Subd. 8. Any attempted waiver of this section by a landlord and tenant, by contract or otherwise, shall be void and unenforceable.

Subd. 9. The provisions of this section shall apply only to tenancies commencing or renewed on or after July 1, 1973. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period.

[*1973 c 561 s 1*]

504.21 Restriction on automatic renewals of leases

Notwithstanding the provisions of any lease of real property used for residential purposes, no person shall have the right to enforce any automatic renewal clause of a lease which states, in effect, that the term thereof shall be deemed renewed for a specified additional period of time unless the lessee or tenant gives notice to the lessor of his intention to quit the premises at the expiration of the term due to expire, unless the lessor or his agent, within 15 days prior to the time that the lessee or tenant is required to furnish notice of his intention to quit, but not more than 30 days prior thereto, shall give to the tenant written notice, served personally or by registered or certified mail, directing the lessee's or tenant's attention to the automatic renewal provision of the lease.

[*1973 c 603 s 1*]

MAR 12 1973

Minneapolis Urban Coalition Action Council
100 No 7th St • Produce Bank Bldg.
Minneapolis, Minnesota 55403
Telephone (612) 333-1445

TO: The Honorable Thomas K. Berg, The Honorable Russell Stanton, The Honorable Robert Tennessen, The Honorable Joe O'Neill, The Honorable George Perpich

FROM: Franklin J. Knoll

DATE: March 9, 1973

RE: REMEDIES BILL AND SECURITY DEPOSIT BILL
(Remedies Bill:Senate File #961-House File #1059)
(Security Deposit Bill: Senate File #965-House File #1034)

Enclosed for your convenience are summaries of the bills relating to tenants' rights which you have agreed to author. Hopefully they will be of assistance to you in understanding the provisions of the bills, as well as in explaining their provisions to others. As indicated, the summaries have been prepared for the Minneapolis Urban Coalition by Professor Robert A. Stein of the University of Minnesota Law School.

FJK:eee
Enclosures
cc: William E. Mullin
Professor Robert A. Stein
Neill Carter

APPENDIX 8

EXPLANATION OF

BILL AMENDING MINN. STAT. § 504.19 (S.F. #965)

By Professor Robert A. Stein
University of Minnesota Law School

A Bill for an Act Relating to Deposit of Money to Secure Performance of Residential Rental Agreement

This bill would repeal the damage deposit statute passed during the 1971 session of the Legislature and replace it with a statute that more clearly defines the rights and obligations of landlords and tenants with regard to security deposits. Specifically, the bill contains the following provisions:

1) Security deposits will bear simple interest at the rate of 5% per year non-compounded.

2) The time within which a landlord must return a security deposit or furnish reasons for withholding it is reduced to two weeks after termination of the tenancy.

3) Authorized reasons for withholding all or a portion of the security deposit are limited to: a) tenant defaults in the payment of rent or other funds due to the landlord; or b) restoration of the premises, ordinary wear and tear excepted.

4) A landlord who fails to furnish written reasons for withholding a security deposit as required forfeits his right to withhold the deposit.

5) A landlord's bad faith retention of a security deposit in violation of the proposed statute subjects him to punitive damages up to $200., plus any actual damages.

6) Detailed provisions are included governing the rights and liabilities of the parties when the landlord transfers his interest in the premises to a successor landlord.

7) The provisions of the proposed statute may not be waived by the landlord and tenant, except in tenancies when the monthly rent exceeds $300.

EXPLANATION OF

BILL AMENDING MINN. STAT. CHAPTER 566 (S.F. #961)

By Professor Robert A. Stein
University of Minnesota Law School

A Bill for an Act Relating to Landlord and Tenant; Elimination of Criminal Penalties for Unlawful Detainer; Creation of Remedies for Tenants of Substandard Housing

This bill contains two major parts.

The first part -- the first seven sections of the bill -- contain several amendments to the present Chapter 566 of the Minnesota Statutes -- the unlawful detainer proceeding chapter. The purpose of these amendments is to eliminate the criminal penalties for unlawful detainer, which are in fact seldom, if ever, imposed. Coincident with the elimination of the criminal penalties, the amendment also provides that an unlawful detainer action Complaint may be served by any person as in any civil proceeding -- and not just by the Sheriff as presently required. Such an amendment will eliminate the delay difficulties currently encountered when the Sheriff is unable to locate the defendant. Therefore, the amendments provide benefit for both landlord and tenants.

The Second part-Sections 8 through 23 of the bill-would create new statutory provisions which are substantially the same as the bill designated as S.F. 579 - H.F. 1163 in the 1971 legislative session.

That 1971 bill was passed by the Senate and was reported favorably out of the House Judiciary Committee, but never was voted on by the House. It provides that any tenant or governmental authority charged with enforcement of health or housing codes may commence a proceeding in the district court to remedy a health or housing code violation which "materially endangers the health or safety of the tenants of the building involved." The bill is designed to provide a fast legal remedy to tenants in cases where extremely dangerous code violations exist on the premises. The tenant is first required to utilize the inspection and enforcement procedures provided by applicable local housing and health codes. In the event that the local officials can not correct the dangerous condition, this proceeding may be commenced. Procedures for filing the Complaint and Answer are specified, including a provision detailing the defenses available to a landlord. A hearing within 5 to 10 days of filing the Complaint is provided. When the tenant p

proves his case, the Court is empowered to grant the following remedies:

1) Order the landlord to correct the violations; or

2) Direct the tenant to correct the violations and deduct the cost from the rent; or

3) Order the rents of the entire building paid into Court and appoint an administrator to use these funds to repair the violations and operate and maintain the building; or

4) Order rent abatement; or

5) Grant any other appropriate relief in the discretion of the Court.

The remainder of these sections of the bill contains provisions regarding the appointment, powers and duties of an administrator. Waiver of the Act by a tenant is prohibited.

MINNESOTA ASSOCIATION OF REALTORS

6101 WAYZATA BOULEVARD • MINNEAPOLIS, MINN. 55416 • PHONE: 612-544-8714

File

Re: S.F. 965 & H.F. 1034-Tenant-Landlord-Security Deposit Bills, and

S.F. 759 & H.F. 600-Real Estate License Law Bills

There appears to be a direct conflict between these bills in that:

The Tenant-Landlord-Security Deposit Bills require that 5% per annum be paid on Damage Deposits, whereas

The Real Estate License Law requires that Damage Deposits be placed in a Non-interest bearing Trust Account.

It is suggested that this conflict be eliminated by including the following amendment in S.F. 965 and H.F. 1034:

The provisions of this section requiring payment of interest shall not apply to deposits required by law to be placed in a non-interest bearing trust account.

copy 2

Tentative Draft
prepared as
a research project
of the
American Bar Foundation,

Julian H. Levi
Philip Hablutzel
Louis Rosenberg
James White

Model Residential Landlord-Tenant Code

APPENDIX 9

Part One

Title, Purposes, and Application

Section 1-101 Short Title
This Act shall be known and may be cited as the Residential Landlord-Tenant Code.

Section 1-102 Legislative Findings
The legislature hereby finds that a significant proportion of the rental housing in this State is substandard in structure, equipment, sanitation, and maintenance; that the condition of this housing has had and will continue to have, unless corrected, a deleterious effect on the residents of this housing; that poorly maintained and overcrowded housing contributes to the development and spread of disease, crime, infant mortality, juvenile delinquency, broken homes, and other physical, social, and psychological problems, and constitutes a menace to the health, safety, morals, and welfare of the residents of this State; that these conditions have necessitated excessive and disproportionate expenditures of public funds for crime prevention and punishment, for public health and safety, and for other public services and facilities, and have impaired the efficient and economic provision of government services by municipalities and the State. The legislature further finds that these conditions result in part from the often unequal bargaining power of landlords and tenants as well as from an ill-suited common law of landlord and tenant in which leases are interpreted as grants of the right of possession rather than mutual and dependent covenants; that this common law, which evolved in an agricultural setting, is inappropriate when applied to modern residential property; that in order to facilitate fair and equitable arrangements, to foster the development of housing which will meet the minimum standards of the present day, and to promote the health, safety, morals, and welfare of the people, it is necessary and appropriate that the

State specify certain minimum rights and remedies, obligations and prohibitions, for landlords and tenants of certain kinds of residential property.

Partial Bibliography

President's Advisory Commission on Government Housing Policies & Programs, Recommendations 151–54 (1953).
Rosow, *The Social Effects of the Physical Environment,* 27 J. AMERICAN INSTITUTE OF PLANNERS 127 (1961).
SCHORR, SLUMS AND SOCIAL INSECURITY 7–33 (1963).
Wilner & Walkley, *Effects of Housing on Health and Performance,* in Duhl, ed., THE URBAN CONDITION 215 (1963).

Section 1-103 Purposes and Policies

This Act shall be liberally construed and applied to promote its underlying purposes and policies.

The underlying purposes and policies of this Act are:

(1) to simplify and clarify the law governing the rental of dwelling units;

(2) to encourage landlords and tenants to maintain and improve the quality of housing in this State; and

(3) to revise and modernize the law of landlord and tenant to serve more realistically the needs of an urban society.

Section 1-104 Applicability of Act

This Act shall regulate and determine all legal rights, remedies, and obligations of the parties and beneficiaries of any rental agreement of a dwelling unit within this State, wherever executed. Any agreement, whether written or oral, shall be unenforceable insofar as the agreement or any provision thereof conflicts with any provision of this Act and is not expressly authorized herein. Such unenforceability shall not affect other provisions of the agreement which can be given effect without such void provision.

Cross-References:

Other agreements governed, see Sec. 1-401.
Scope of Article II, see Sec. 2-101.
"Dwelling unit," see Sec. 1-202.
"Rental agreement," see Sec. 1-207.
Permissible agreements generally, see Sec. 2-203(3).
Permissible agreements with regard to single-family residence, see Sec. 2-203(2).
Permissible agreements by "occasional" landlord, see Sec. 2-203(4).

Rent provision, see Sec. 2-301.
Tenant's obligation to use and occupy, agreement, see Sec. 2-307.
Period of rental agreement, see Sec. 2-309.
Landlord's rule-making power, see Secs. 2-311, 2-312.
Permissible prohibition of assignment and limitation of sublease, see Sec. 2-403.
Security deposit authorized, see Sec. 2-401.

COMMENT

(1) This section substantially changes existing law of conflicts of law. Generally, leases are governed by the law of the place of execution rather than by the location of the property (thus incorporating the contract rather than the conveyance rule). The policy of this section is that any person who engages in the rental of residential property in this State is engaging in a business subject to regulation by this State. In actual practice, the effect will be insignificant since few residential leases are executed (signed by the tenant) out of the situs state.

(2) Courts are directed by this section to fit any residential rental arrangement, no matter how bizarre, into the categories set forth in this Act, except as otherwise exempted (as in section 2-101).

(3) This is also the general non-waivability section of this statute. Except as herein allowed, no variation from the duties and remedies contained in the Code is permitted.

Section 1-105 Severability

If any provision or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

COMMENT

This is the model severability section recommended by the National Conference of Commissioners on Uniform State Laws for inclusion in all acts of extensive scope. It is section 1-108 of the Uniform Commercial Code.

Section 1-106 Jurisdiction

Any person, whether or not a citizen or resident of this State, who owns, holds an ownership or beneficial interest in, uses, manages, or possesses real estate situated in this State, submits himself or his personal representative to

Part Two

Definitions

Section 1-201 Person

Person includes an individual, corporation, government, or governmental agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

Section 1-202 Dwelling Unit

A dwelling unit is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, to the exclusion of all others.

Section 1-203 Premises

Premises means a dwelling unit, appurtenances thereto, grounds and facilities held out for the use of tenants generally and any other area or facility whose use is promised to the tenant.

Definitional Cross-Reference:
"Dwelling unit," see Sec. 1-202.

Section 1-204 Roomer; Boarder

A roomer or boarder is a tenant occupying a dwelling unit

(1) which lacks at least one major bathroom or kitchen facility, such as a toilet, refrigerator, or stove,

(2) in a building

(a) where one or more such major facilities are supplied to be used in

common by the occupants of the roomer or boarder's dwelling unit and one or more other dwelling units; and

(b) in which the landlord resides.

Definitional Cross-References:
"Tenant," see Sec. 1-210.
"Dwelling unit," see Sec. 1-202.
"Landlord," see Sec. 1-209.

Section 1-205 Single Family Residence

A single family residence is a structure maintained and used as a single dwelling unit.

Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

Definitional Cross-Reference:
"Dwelling unit," see Sec. 1-202.

Section 1-206 Apartment Building

An apartment building is any structure containing one or more dwelling units except:

(1) a single-family residence (section 1-205).

(2) a structure in which all tenants are roomers or boarders (section 1-204).

Section 1-207 Rental Agreement

Rental agreement means and includes all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

Section 1-208 Owner

An owner means one or more persons, jointly or severally, in whom is vested:

(1) all or any part of the legal title to property; or

(2) (a) part or all of the beneficial ownership; and

(b) a right to present use and enjoyment of the property.

Section 1-209 Landlord

(1) Landlord means the owner, lessor, or sub-lessor of the dwelling unit or the property of which it is a part and in addition means any person authorized to exercise any aspect of the management of the premises, including any person who, directly or indirectly, receives rents or any part thereof, other than as a bona fide purchaser, and who has no obligation to deliver the whole of such receipts to another person.

(2) Wherever landlord is used in this Code to signify the person to whom the tenant has a duty (including a condition to the exercise of a privilege), this duty may, at the tenant's election, be discharged in regard to:

(a) any person held out by any landlord as the appropriate party to accept performance, whether a landlord or not; or

(b) any person with whom the tenant normally deals as a landlord; or

(c) any person to whom the person specified in (1) or (2) is directly or ultimately responsible.

(3) Wherever landlord is used in this Code to signify the person who is under a duty, whether to a tenant or to property, all persons specified in (1) shall be responsible for its performance and liable for its non-performance. Nothing in this subsection should be taken to forbid the allocation by agreement among multiple landlords of such duties, although no such agreement shall be effective as against a tenant or other party with rights against the landlord under this Code.

Section 1-210 Tenant

A tenant is any person who occupies a dwelling unit for living or dwelling purposes with the landlord's consent.

Part Three

Statute of Frauds

Section 1-301 Effect of Unsigned Rental Agreement

(1) If the landlord does not sign a written rental agreement which has been signed and tendered to him by the tenant, acceptance of rent without reservation by the landlord shall give to the rental agreement the same effect as if it had been signed by the landlord.

(2) If the tenant does not sign a written rental agreement which has been signed and tendered to him by the landlord, acceptance of possession and payment of rent without reservation shall give to the rental agreement the same effect as if it had been signed by the tenant.

(3) Where the rental agreement which is given effect by the operation of this section provides by its terms for a term longer than one year, it shall operate to create only a one-year term.

COMMENT

This statute provides that where there is a written document signed by one party but not by the other, the non-signing party's partial performance—as by accepting rent, or by the acceptance of the premises and the payment of rent—will give to the contract the effect of having been signed. In the case of a written agreement for a term greater than one year, a one-year lease will be created.

COMMENTARY

Originally, oral contracts were not enforceable at law, but the development of assumpsit brought enforcement thereof and also extensive fraud and oppression, leading to the enactment of the Statute of Frauds (29 Car. II, c. 3 (1677)). The Statute of Frauds provided that any lease for a term of more than three years but not in writing would achieve only a tenancy at will. American statutes retain this rule, or have changed it to one year, or make no length distinction at all. The operation of these statutes, and the court-made rules that accompany them, varies greatly from state to state.

Part Four

Other Limitations on Landlords and Tenants

Section 2-401 Security Deposit

(1) Any advance or deposit of money, regardless of its denomination, whose primary function is to secure the performance of a rental agreement or any part thereof, shall be governed by this section. This money shall be held and administered for the benefit of the tenant. The tenant's claim to such money shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy, even if such security funds are commingled.

(2) The landlord may only claim such funds as are reasonably necessary to remedy tenant defaults covered by any of the following provisions: Secs. 2-301, 2-304(1) or 2-308. Remaining funds shall be returned to the tenant no later than two weeks after the time at which the rental agreement would have terminated, had all parties performed perfectly, except if, at the end of this period, the landlord is in the process of remedying tenant's defaults under Sec. 2-304(1), the landlord may retain the security deposit until he has been able to ascertain the cost of the remedy.

(3) Upon cessation of his interest in the dwelling unit, whether by sale, assignment, death, appointment of a receiver, or otherwise, the person in possession of the security deposit (landlord, his agent, or executor) shall within a reasonable time:

(a) transfer the funds, or any remainder after lawful deductions under subsection (2), to the landlord's successor in interest and notify the tenant by registered or certified mail of such transfer and of the transferee's name and address; or

(b) return the funds, or any remainder after lawful deductions under subsection (2), to the tenant.

In either case, the landlord shall be relieved of further liability.

(4) Upon receipt of transferred funds under subsection (3)(a), the transferee, in relation to such funds, shall be deemed to have all of the rights and obligations of a landlord holding the funds as a security deposit.

(5) The wilful retention of a security deposit in violation of this section by a landlord whose interest has expired or terminated shall be a misdemeanor.

Cross-References:
Rent generally, see Sec. 2-301.
Advance payments of rent, see Sec. 2-301(2).
Landlord remedy for tenant waste or failure to maintain, see Sec. 2-304(1).
Landlord remedies for tenant absence, misuse, or abandonment, see Sec. 2-308.
Penalty for landlord misdemeanor, see Sec. 3-501.
Tenant to receive half of misdemeanor penalty, see Sec. 3-502.

COMMENT

The first sentence of subsection (1) defines "security deposit" in terms of its intended security function. This deposit is to have a quasi-trust status; it cannot be reached by the landlord's creditors, but it can be commingled.

Subsection (2) limits the use to which the landlord can devote the deposit to curing defaults under stipulated sections. "Remedy" forbids any withdrawal from the security deposit except when the landlord has first (as in the case of waste) or thereby (as in the case of rent) makes himself whole. The subsection was not intended, however, to bar parties from agreeing to a narrower range of coverage than that permitted by the stipulated sections.

Subsection (4) makes a successor liable to the tenant only for the former's wrongdoings and not for the sins of his predecessor. Hence, if the original landlord absconds with the security deposit or depletes it wrongfully, the tenant only has an action against the original landlord.

COMMENTARY

Against the advice of a number of commentators, the draftsmen did not require the landlord to pay interest on security deposits. The major reason for rejecting this suggestion was that such a requirement would in most situations entail more work and expense for the landlord than the interest would cover. Moreover, it was felt that those tenants able to make a security deposit, which warranted the payment of interest by the landlord, did not need the assistance of this Code in bargaining for such a provision.

The draftsmen were split on whether the tenant or the successor-landlord should bear the losses of the original landlord's misappropriations. On behalf of the tenant it was contended that:

1. The successor is in a better position than the tenant to know that the predecessor's interest has lapsed and hence has better notice of the original landlord's absconding.

2. As a class, successors can better bear the loss than tenants.

On behalf of the successor-landlord it was argued that:

1. The tenant has better notice of the landlord's possible absconding, since unlike the successor, he has certain knowledge of the existence of a security deposit.

2. Putting the burden on successors would inhibit the transferability of real property.

Subsection (4) resolves the above controversy in the successor-landlord's favor, thus aligning the Code fairly closely with existing law. The tenant is, however, given some extra protection by subsection (5).

Section 2-402 Effect of Termination by Either Party

Except as otherwise provided in this Code, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease and determine, and the parties shall thereupon discharge any remaining obligations as soon as practicable.

Cross-References:

Tenant's liability for rent generally, see Sec. 2-301.

Apportionability of rent, see Sec. 2-301(3).

Tenant's rights to terminate, see Secs. 2-304, 2-305, 2-207, 2-208, 2-403, 2-405(3).

Security deposit generally, see Sec. 2-401.

Section 2-403 Sublease and Assignments

(1) Unless otherwise agreed in writing, the tenant may sublet his premises or assign the rental agreement to another without the landlord's consent.

(2) A written rental agreement may restrict the tenant's right to assign the rental agreement in any manner. The tenant's right to sublease the premises may be conditioned on obtaining the landlord's consent, which shall be withheld upon reasonable grounds as specified in subsection (5); no further restriction on sublease shall be effective.

(3) When the rental agreement requires the landlord's consent to sublease, the tenant may secure one or more persons who are willing to sublet the premises. Each such prospective subtenant shall make a formal, written, signed offer to the landlord, containing all of the following, except as the landlord may waive one or more items:

(a) the prospective subtenant's full name and age.

(b) the prospective subtenant's marital status.

(c) the prospective subtenant's occupation, place of employment, and name and address of employer.

(d) the names and ages and relationships to the prospective subtenant of all persons who would normally reside in the premises.

(e) two credit references, or responsible persons who will confirm the financial responsibility of the prospective subtenant.

(f) the names and addresses of all landlords of the prospective subtenant from whom he has leased or rented during the prior three years, [or, if more than three, any three of them].

(4) Within [10] days, not including legal holidays, after such a written offer has been delivered or mailed [by certified mail] to the landlord, the landlord may reject the prospective subtenant by delivering or mailing [by certified mail] to the tenant a written reply signed by the landlord which shall contain one or more specific grounds for the rejection.

If the landlord fails to reply within the [10] days, or if his written reply fails to give reasonable grounds for rejecting the prospective subtenant, the tenant may, at his option, terminate the rental agreement by giving written notice to the landlord within [90] days following the lapse of the [10] day reply period or the receipt of the rejection reply which fails to state any reasonable ground for rejection.

[Thirty] days after such notice is delivered or mailed [by registered mail] to the landlord, the rental agreement shall terminate. The tenant shall be subject to no damages, penalty, or forfeiture of any part or all of his security deposit or any other payment for such termination.

(5) Reasonable grounds for rejecting a proposed subtenant include any facts which reasonably indicate that the proposed tenancy would be less favorable to the landlord than the existing tenancy, including, but not limited to:

(a) Insufficient credit standing or financial responsibility.

(b) Number of persons in the proposed household.

(c) Number of persons under 18 in the proposed household.

(d) Unwillingness of the prospective tenant to assume the same terms as are included in the existing rental agreement.

(e) Proposed maintenance of pets.

(f) Proposed commercial activity.

(g) Written information signed by a previous landlord, which shall accompany the rejection, setting forth abuses of other premises occupied by the prospective subtenant.

No consideration of race, creed, sex, religion, political opinion or affiliation, or national origin may be relied on by the landlord as reasonable grounds for rejection.

(6) In any proceeding in which the reasonableness of the landlord's rejection shall be in issue, the burden of showing reasonableness shall be on the landlord.

Cross-References:

Effect of termination, see Sec. 2-402.