

ILLINOIS LANDLORD-TENANT LAW

I. Leases

A. General

Except in the case of mobile homes (see below), leases may be oral or written. Written leases are typically form leases presented to the tenant by the lessor (“landlord”). There are special provisions relating to mobile homes, discussed later

B. Duration

Where no lease term is specified in an oral or written lease, courts imply renewable lease terms for the periods for which rental payments are paid. Thus, a month to month tenancy is implied where rent is paid every month, and a week to week tenancy where rent is paid every week. *Seidelman v Kouvavus*, 57 Ill.App.3d 350, 373 N.E.2d 53 (2nd Dist. 1978); *Dobsons, Inc. v Oak Park Nat'l Bank*, 86 Ill.App.3d 200, 407 N.E.2d 993 (1st Dist 1980).

Many form leases provide for renewal of the tenancy on a periodic basis (e.g. month to month) after the expiration of the first lease term.

C. Construction of Leases

A lease is a contract and contract rules of contract construction apply. *Midland Management Co. v. Helgason* 158 Ill.2d 97, 630 N.E.2d 836 (1994). For example, ambiguities are construed against the drafter. *Rose v. Chicago Housing Authority*, 203 Ill.App.3d 208, 560 N.E.2d 1131 (1st Dist. 1990), *American Apartment Management Co. v. Phillips*, 274 Ill.App.3d 556, 653 N.E. 2d 834 (1st Dist. 1995).

D. Warranty of Habitability

A warranty of habitability is implied in every residential lease. *Jack Spring v. Little*, 50 Ill.2d 351, 280 N.E.2d 208 (1972) (warranty exists and is fulfilled by substantial compliance with Chicago building code); *Glaoe v. Trinkle*, 107 Ill.2d 1, 479 N.E.2d 915 (1985) (implied regardless of whether there is local building code; “the defect must be of such a substantial nature as to render the premises unsafe or unsanitary, and thus unfit for occupancy”). Tenants may enforce this warranty in affirmative individual or class action lawsuits, or in defense to eviction actions based on their non-payment of rent.

E. Disclosures

The Chicago RLTO requires disclosure of code violations and prospective termination of utility service when a lease is entered into or renewed:

§ 5-12-100 Notice of conditions affecting habitability.

Before a tenant initially enters into or renews a rental agreement for a dwelling unit, the landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing:

(a) Any code violations which have been cited by the city of Chicago during the previous 12 months for the dwelling unit and common areas and provide notice of the pendency of any code enforcement litigation or compliance board proceeding pursuant to Section 13-8-070 of the municipal code affecting the dwelling unit or common area. The notice shall provide the case number of the litigation and/or the identification number of the compliance board proceeding and a listing of any code violations cited.

(b) Any notice of intent by the city of Chicago or any utility provider to terminate water, gas, electrical or other utility service to the dwelling unit or common areas. The disclosure shall state the type of service to be terminated, the intended date of termination; and whether the termination will affect the dwelling unit, the common areas or both. A landlord shall be under a continuing obligation to provide disclosure of the information described in this subsection (b) throughout a tenancy. If a landlord violates this section, the tenant or prospective tenant shall be entitled to remedies described in Section 5-12-090.

Also, under RLTO §5-12-170 a summary of the ordinance must be attached to the rental agreement.

F. Covenant of Quiet Enjoyment

The covenant of quiet enjoyment is implied in every lease. This means that the landlord may not interfere with the tenant's quiet enjoyment, for example, by entering the premises without the tenant's permission or as provided in the parties' lease, or by demanding that the tenant leave, or by harassing the tenant. *Chapman v. Brokaw*, 225 Ill. App. 3d 662, 588 N.E.2d 462 (3rd Dist. 1992).

G. Illegal lease terms

Certain lease terms are unenforceable. Examples of potentially illegal terms are:

1. A term allowing eviction without taking the tenant to court. RLTO §5-12-140(b); *Brooks v La Salle Nat'l Bank*, 11 Ill. App. 3d 791, 298 N.E.2d 262 (1st Dist. 1973).
2. A term requiring the tenant to pay the landlord's attorney's fees even if the tenant wins. RLTO §5-12-140(f).
3. A term waiving service of legal notices or summons. RLTO §5-12-140(d).
4. Unreasonably large late fees or other penalties. *Builder's Concrete Co. v. Fred Faubel & Sons*, 58 Ill. App.3d 100, 373 N.E.2d 863 (3rd Dist. 1978). For example, in *Sun Ridge Investors, Ltd. v. Parker*, 1998 OK 22, 956 P.2d 876, 877 (Okla. 1998), the Court held that a \$ 5 per diem late charge in a residential lease agreement constituted an unenforceable penalty where the landlord was unable to tie the charge to its extra costs of collecting late rent. The party claiming that the charge is unenforceable has the burden of proof. *Pav-Saver Corp. v. Vasso Corp.*, 143 Ill. App. 3d 1013; 493 N.E.2d 423 (3rd Dist. 1986). The RLTO limits late charges to \$10.00 per month for the first \$500.00 in monthly rent plus five percent per month for any amount in excess of \$500.00 in monthly rent. RLTO §5-12-140 (h)-(i).

II. Security Deposits

A. General

“A security deposit has been defined as money a tenant deposits with a landlord as security for the tenant's full and faithful performance of the lease terms.” *Starr v. Gay*, 354 Ill.App.3d 610, 822 N.E.2d 89 (1st Dist. 2004).

B. Use and return of security deposits

1. Illinois law

The Security Deposit Return Act, 765 ILCS 710/0.01 et seq., provides that if residential real property contains five or more units, a landlord who has received a security deposit from a tenant must provide the tenant with a written statement of any damage to the property before deducting repair costs from the security deposit. The landlord may not withhold any part of the deposit as compensation for property damage unless the landlord has, within 30 days of the date the tenant vacates, sent the tenant a written itemized statement of the damages allegedly caused by the tenant to the

premises and the actual or estimated cost of repair of the damages, with any paid receipts, or copies, attached. The landlord may include a reasonable cost for his own labor, if completing the repairs himself. If only an estimate is given, the landlord must give the tenant paid receipts showing the actual cost within 30 days from the date of the itemized statement. If the landlord does not furnish the tenant with the statement and receipts, the landlord must, within 45 days, return the security deposit to the tenant.

The text of the statute is as follows:

765 ILCS 710/1. [Return of security deposit]

Sec. 1. A lessor of residential real property, containing 5 or more units, who has received a security deposit from a lessee to secure the payment of rent or to compensate for damage to the leased property may not withhold any part of that deposit as compensation for property damage unless he has, within 30 days of the date that the lessee vacated the premises, furnished to the lessee, delivered in person or by mail directed to his last known address, an itemized statement of the damage allegedly caused to the premises and the estimated or actual cost for repairing or replacing each item on that statement, attaching the paid receipts, or copies thereof, for the repair or replacement. If the lessor utilizes his or her own labor to repair any damage caused by the lessee, the lessor may include the reasonable cost of his or her labor to repair such damage. If estimated cost is given, the lessor shall furnish the lessee with paid receipts, or copies thereof, within 30 days from the date the statement showing estimated cost was furnished to the lessee, as required by this Section. If no such statement and receipts, or copies thereof, are furnished to the lessee as required by this Section, the lessor shall return the security deposit in full within 45 days of the date that the lessee vacated the premises.

Upon a finding by a circuit court that a lessor has refused to supply the itemized statement required by this Section, or has supplied such statement in bad faith, and has failed or refused to return the amount of the security deposit due within the time limits provided, the lessor shall be liable for an amount equal to twice the amount of the security deposit due, together with court costs and reasonable attorney's fees.

The Security Deposit Return Act does not require a landlord to send any statement to the tenant if the landlord withheld the security deposit because of unpaid rent and not because of property damage.

2. Chicago Residential Landlord and Tenant Ordinance (“RLTO”), Municipal Code of Chicago, §5-12-080. This ordinance was passed under Chicago’s home rule power, and takes precedence over inconsistent provisions of state law.

The RLTO applies to dwelling units in Chicago, except an owner-occupied apartment building containing six apartments or less. Townhomes are not considered a single building even if the landlord lives in an adjacent unit. *Allen v. Lin*, 356 Ill.App.3d 405, 826 N.E.2d 1064 (1st Dist. 2005).

The RLTO requires that a landlord must return a security deposit within 45 days after the date the tenant vacates the dwelling unit. However, the landlord may deduct from the security deposit (1) any unpaid rent which has not been validly withheld or deducted pursuant to state or federal law or local ordinance, and (2) a reasonable amount necessary to repair any damage caused to the premises by the tenant or any person under the tenant's control. The landlord may not deduct for damage based only on reasonable wear and tear.

In the case of damage, the landlord must deliver or mail to the last known address of the tenant within 30 days an itemized statement of damages and the estimated or actual cost for repairing or replacing each item. The landlord must attach copies of paid receipts for the repair or replacement to the statement. If an estimated cost is given, the landlord must furnish the tenant with copies of paid receipts within 30 days from the date the damage statement was furnished to the tenant.

If the landlord or landlord's agent fails to comply, the tenant is entitled to damages of twice the security deposit plus court costs and reasonable attorney's fees.

Unlike the state statutes, wilfulness is not required. *Lawrence v. Regent Realty Group, Inc.*, 197 Ill.2d 1, 754 N.E.2d 334 (2001).

The text of §5-12-080 is as follows:

**TITLE 5. HOUSING AND ECONOMIC DEVELOPMENT
CHAPTER 5-12. RESIDENTIAL LANDLORDS AND TENANTS**

Chicago Municipal Code § 5-12-080

§ 5-12-080 Security deposits.

(a) A landlord shall hold all security deposits received by him in a federally insured interest-bearing account in a bank, savings and loan association or other financial institution located in the state of Illinois. A security deposit and interest due thereon shall continue to be the property of the tenant making such deposit, shall not be commingled with the assets of the landlord, and shall not be subject to the claims of any creditor of the landlord or of the landlord's successors in interest, including a foreclosing mortgagee or trustee in bankruptcy.

(b) Any landlord or landlord's agent who receives a security deposit from a tenant or prospective tenant shall give said tenant or prospective tenant at the time of receiving such security deposit a receipt indicating the amount of such security deposit, the name of the person receiving it and, in the case of the agent, the name of the landlord for whom such security deposit is received, the date on which it is received, and a description of the dwelling unit. The receipt shall be signed by the person receiving the security deposit. Failure to comply with this subsection shall entitle the tenant to immediate return of security deposit.

(c) A landlord who holds a security deposit or prepaid rent pursuant to this section shall pay interest to the tenant accruing from the beginning date of the rental term specified in the rental agreement at the rate determined in accordance with Section 5-12-081. The landlord shall, within 30 days after the end of each 12-month rental period, pay to the tenant any interest, by cash or credit to be applied to the rent due.

(d) The landlord shall, within 45 days after the date that the tenant vacates the dwelling unit or within seven days after the date that the tenant provides notice of termination of the rental agreement pursuant to Section 5-12-110(g), return to the tenant the security deposit or any balance thereof and the required interest thereon; provided, however, that the landlord may deduct from such security deposit or interest due thereon for the following:

(1) Any unpaid rent which has not been validly withheld or deducted pursuant to state or federal law or local ordinance; and

(2) A reasonable amount necessary to repair any damage caused to the premises by the tenant or any person under the tenant's control or on the premises with the tenant's consent, reasonable wear and tear excluded. In case of such damage, the landlord shall deliver or mail to the last known address of the tenant within 30 days an itemized statement of the damages allegedly caused to the premises and the estimated or actual cost for repairing or replacing each item on that statement, attaching copies of the paid receipts for the repair or replacement. If estimated cost is given, the landlord shall furnish the tenant with copies of paid receipts or a certification of actual costs of repairs of damage if the work was performed by the landlord's employees within 30 days from the date the statement showing estimated cost was furnished to the tenant.

(e) In the event of a sale, lease, transfer or other direct or indirect disposition of residential real property, other than to the holder of a lien interest in such property, by a landlord who has received a security deposit or prepaid rent from a tenant, the successor landlord of such property shall be liable to that tenant for any security deposit, including statutory interest, or prepaid rent which the tenant has paid to the transferor.

The successor landlord shall, within ten days from the date of such transfer, notify the tenant who made such security deposit by delivering or mailing to the tenant's last known address that such security deposit was transferred to the successor landlord and that the successor landlord is holding said security deposit. Such notice shall also contain the successor landlord's name, business address, and business telephone number of the successor landlord's agent, if any. The notice shall be in writing.

The transferor shall remain jointly and severally liable with the successor landlord to the tenant for such security deposit or prepaid rent, unless and until such transferor transfers said security deposit or prepaid rent to the successor landlord and provides notice, in writing, to the tenant of such transfer of said security deposit or prepaid rent, specifying the name, business address and business telephone number of the successor landlord or his agent within 10 days of said transfer.

(f) If the landlord or landlord's agent fails to comply with any provision of Section 5-12-080(a)--(e), the tenant shall be awarded damages in an amount equal to two times the security deposit plus interest at a rate determined in accordance with Section 5-12-081. This subsection does not preclude the tenant from recovering other damages to which he may be entitled under this

chapter.

There are thus five violations of 5-12-080 for which statutory damages may be awarded:

- a. Failure to put and keep security deposits in a separate bank account from rent payments (5-12-080(a)).
 - b. Failure to issue a receipt for the security deposit which contains the amount of the deposit, the person receiving it, the date, a description of the dwelling unit, and a signature (5-12-080(b))
 - c. Failure to pay or credit interest on the security deposit within 30 days after the end of each 12 month period (5-12-080(c))
 - d. Failure to account for and return the security deposit, with paid receipts for all deductions. Notice of deductions must be given within 30 days after moveout. The security deposit must be returned within 45 days after moveout. Deductions may not include ordinary wear and tear, including ordinary painting.
 - e. Failure to provide written notice upon sale of the property and transfer of the security deposit. Both the new and old landlords must provide written notice within 10 days after sale containing the new landlord's business address and telephone number and an acknowledgment by the new landlord that it is holding the security deposit.
3. Other cities, including Evanston, Mt. Prospect, DeKalb and Urbana, have their own ordinances.

C. Security Deposit Interest

1. Illinois law

The Security Deposit Interest Act, 765 ILCS 715/1 et seq., applies to buildings or complexes with 25 or more residential units. The landlord must have held the security deposit for more than six months.

The landlord must pay interest on security deposits computed from the date of the lessee's deposit with the landlord. Interest must be paid at a rate equal to the minimum passbook savings account interest rate paid by the

largest Illinois commercial bank as of December 31 of the year prior to the beginning of the lease.

Landlord must make the interest payment by cash or by credit against rent due within 30 days of the end of each 12 month rental period, unless the tenant is in default under the lease.

A landlord who willfully fails or refuses to pay the interest due is liable for damages equal to the entire security deposit, together with court costs and reasonable attorney's fees.

The text of the statute is as follows:

765 ILCS 715/1. [Computation of interest]

Sec. 1. A lessor of residential real property, containing 25 or more units in either a single building or a complex of buildings located on contiguous parcels of real property, who receives a security deposit from a lessee to secure the payment of rent or compensation for damage to property shall pay interest to the lessee computed from the date of the deposit at a rate equal to the interest paid by the largest commercial bank, as measured by total assets, having its main banking premises in this State on minimum deposit passbook savings accounts as of December 31 of the calendar year immediately preceding the inception of the rental agreement on any deposit held by the lessor for more than 6 months.

765 ILCS 715/2. [Time of payment]

Sec. 2. The lessor shall, within 30 days after the end of each 12 month rental period, pay to the lessee any interest, by cash or credit to be applied to rent due, except when the lessee is in default under the terms of the lease. A lessor who willfully fails or refuses to pay the interest required by this Act shall, upon a finding by a circuit court that he has willfully failed or refused to pay, be liable for an amount equal to the amount of the security deposit, together with court costs and reasonable attorneys fees.

2. Chicago RLTO, §5-12-080

For tenancies governed by the Chicago ordinance, all landlords who hold a security deposit for more than six months must pay interest on the deposit.

The rate is determined by the city comptroller based on a formula contained in §5-12-081 of the ordinance. The interest rate is published in January of each year. The published rate applies to rental agreements that are entered into that calendar year. The landlord must pay interest within 30 days after the end of each 12 month rental period to the tenant by cash or credit to be applied to the rent due. In addition, the landlord must pay interest on the deposit within 45 days after the tenant moves out of the dwelling unit.

The RLTO also requires a landlord to hold all security deposits in a federally insured interest-bearing account in a bank, savings and loan association, or other financial institution located in Illinois. The landlord may not commingle a security deposit with the landlord's assets. Mortgage loan documents may not pledge the security deposit as security for the landlord's debt. The security deposit continues to be the property of the tenant.

If the landlord or agent fails to comply with the interest requirements under the RLTO, the tenant is entitled to damages of two times the security deposit plus court costs and reasonable attorney's fees.

The text of §5-12-080 is set forth above.

D. Waiver

Rights under these statutes are not subject to waiver. *Wang v. Williams*, 343 Ill.App.3d 495, 797 N.E.2d 179 (5th Dist. 2003).

E. Payment of interest or return of security after the date required without payment of statutory damages does not moot a case. *Dickson v. West Koke Mill Village Partnership*, 329 Ill.App.3d 341, 769 N.E.2d 971 (4th Dist. 2002).

III. Limitations issues

A. Courts have applied both the two-year limitations for statutory penalties and the general five year limitations provision to various types of cases seeking statutory damages under the Illinois statutes and RLTO. *Sternic v. Hunter Props., Inc.*, 344 Ill. App. 3d 915; 801 N.E.2d 974 (1st Dist. 2003); *Namur v. Habitat Co.*, 294 Ill.App.3d 1007, 691 N.E.2d 782 (1st Dist. 1998). Generally, if there is actual loss to the tenant, the longer statute should apply.

IV. Damages

A. Whether multiple damages can be awarded for multiple violations

Krawczyk v. Livaditis, 366 Ill.App.3d 375, 851 N.E.2d 862 (1st Dist. 2006). Under RLTO, can recover separate damages for 5-12-080(f) and 5-12-100 but not for multiple violations of 5-12-080.

Szpila v Burke, 279 Ill.App.3d 964, 665 N.E.2d 357 (1st Dist. 1996). Under RLTO, cannot recover multiple damages for three violations of 5-12-080 and one violation of 5-12-170.

B. Who is liable

In *Kutcher v. Barry Realty*, 362 Ill.App.3d 756, 841 N.E.2d 73 (1st Dist. 2005), the court held that under the Security Deposit Interest Act, a management company that signs a lease on behalf of an undisclosed owner is liable. Under *Hayward v. Tinervin*, 123 Ill.App.3d 302, 462 N.E.2d 896 (1984), an agent that holds itself out as the lessor is liable under Security Deposit Return Act.

RLTO §5-12-030 includes within the term “landlord” the owner, agent, lessor or sublessor, or the successor in interest of any of them, of a dwelling unit or the building of which it is part”, and then imposes liability on the “landlord.”

V. Repair and deduct rights

A. Illinois law

The Illinois Residential Tenants’ Right to Repair Act, 765 ILCS 742/1 et seq., provides that when a landlord has promised in the lease to make needed repairs and does not after a tenant has given the landlord notice of conditions and a reasonable amount of time to make repairs, the tenant has three options:

1. Abandon the premises if, due to the landlord’s failure to make repairs, the premises become untenable;
2. Remain in possession and sue the landlord for costs of repairs; or
3. Make repairs and deduct the costs of the repairs from the rent due.
4. These rights exist only under certain circumstances.

- a. The repairs must be required by the lease, or by state or local law.
 - b. The tenant cannot deduct the cost of repair if the tenant or family members or guests caused the damages by a deliberate or negligent act or by a failure to act in some way.
 - c. The statute does not apply to a mobile home park, public housing, condominium or cooperative housing, or if the landlord lives on the property and the building has six units or less.
 - d. The tenant cannot make the repairs, but must use a tradesman or supplier who is not related to the tenant, who holds a valid license or certificate as required by State or local law, and who is properly insured to cover bodily harm and property damage.
5. The amount that can be deducted is limited to the reasonable price that is usually charged for such repairs. Also:
- a. If the rent is \$1000 or more, the tenant can take up to \$500 for a repair.
 - b. If the rent is \$999 or less, the tenant cannot take more than 50% for a repair.
6. The tenant is required to take certain steps before deducting the repair cost. Those steps are:
- a. Notify the landlord in writing before hiring a tradesman. Notice must be given by registered or certified mail to the landlord's address shown on the lease, or the most recent address available for the landlord.
 - b. Wait 14 days to allow the landlord to make the repair, except in the case of an emergency. Emergencies are conditions that will cause irreparable harm to the apartment if not immediately repaired or any condition that poses an immediate threat to health or safety.
 - c. The repair must be made in a workman-like manner and according to the appropriate state or local law.
 - d. The tenant must give the landlord a paid bill from the tradesman or supplier and the tradesman or supplier's name, address, and

telephone number before you may deduct the amount from your rent.

- B. If the landlord sues the tenant for eviction for nonpayment of rent after tenant makes repairs, the tenant can argue that the rent is not owed because of costs of repairs. *American National Bank & Trust Co. v. K-Mart Corp.*, 717 F.2d 394 (7th Cir. 1983); *Book Production Industries, Inc. v. Blue Star Auto Stores, Inc.*, 33 Ill. App.2d 22, 178 N.E.2d 881 (2nd Dist. 1961); *Hareas v. Kyriakopoulos*, 101 Ill.App.3d 393, 428 N.E.2d 500 (1st Dist. 1981). The tenant must show that the costs incurred for the repairs are fair and reasonable. *Strode v. Brown*, 351 Ill.App. 194, 114 N.E.2d 467 (1st Dist. 1953).
- C. Chicago RLTO §5-12-110(c) gives tenants the right to repair and deduct if:
1. There is material noncompliance by the landlord with the rental agreement or with §5-12-070, dealing with the landlord's responsibility to maintain the premises;
 2. The reasonable cost of repairs does not exceed the greater of \$500 or one-half the monthly rent;
 3. The reasonable cost of compliance does not exceed one month's rent.
 4. The tenant gives written notice to the landlord stating the intention to correct the condition at the landlord's expense;
 5. The landlord fails to correct the defect within 14 days after written notice is given;
 6. The tenant has the work done in a workmanlike manner and in compliance with existing law.
 7. The tenant submits to the landlord a paid bill from an appropriate contractor or supplier;
 8. The amount deducted from the rent may not exceed reasonable prices customarily charged for such work.

VI. Warranty of Habitability

Illinois common law does not recognize a tenant's right to withhold rent as a method to compel landlords to fix defects. However, every residential lease includes an implied warranty of habitability. *Jack Spring v. Little*, 50 Ill.2d 351, 280 N.E.2d 208 (1972). Some leases also contain express warranties of habitability.

Breach of an express or implied warranty of habitability is a defense germane to a forcible entry and detainer action. The tenant is entitled to a rent set-off appropriate to the extent of the landlord's breach. *Glasoe v. Trinkle*, 107 Ill.2d 1, 479 N.E.2d 915 (1985). The claim may be made by affirmative defense and by counterclaim.

The elements of a claim based on breach of the warranty of habitability include:

1. Defects in the premises. These may be shown by failure to maintain the premises in substantial compliance with municipal building codes.
2. Landlord's knowledge of the defects.
3. Landlord's failure to repair defects.
4. The defects would cause a reasonable person to consider the premises unfit, unsanitary, unhealthy or unsafe. However, the tenant need not establish that the premises are uninhabitable. *Pole Realty Co. v. Sorrells*, 84 Ill.App.2d 178, 417 N.E.2d 1297 (1981).

In *Glasoe v. Trinkle*, 107 Ill.2d 1, 479 N.E. 2d 915 (1985), the Illinois Supreme Court approved two alternate methods for assessing damages due to the breach of the warranty of habitability:

- a. The "percentage reduction in use" method. The rent claimed due by the landlord is set off by the percentage of reduction in use of the premises by the tenant over the period of time the defect existed.
- b. The "difference in value" method. The rent claimed due by the landlord is set off by the difference in fair value of premises if they had been as warranted versus their value in their defective condition over the period of time the defect existed.

The court may consider the agreed monthly rent as the fair rental value. The landlord and/or the tenant may testify as to his or her opinion of the value of the

premises in their defective condition, but expert opinion is advisable. The court should consider the severity of the breach, the duration of the breach, and the effectiveness of the landlord's attempts to correct defects in determining the amount of rent abatement.

If the tenant's damages exceed the amount of rent due, the tenant has a complete defense, and is entitled to a judgment for the amount in excess of the rent owed. If rent is still due to landlord after appropriate abatement due to breach of the warranty of habitability, the tenant is entitled to a set off, but the landlord may still gain possession of the premises.

VII. Utilities

A. Illinois law

1. The Rental Property Utility Service Act, 765 ILCS 735 /1 et seq., provides that tenants may deduct from rent due payments they make for utility services that the landlord was obligated to make but failed to make. The landlord must have agreed, orally or in writing, to pay for water, gas or electricity services and have failed to do so in a manner that jeopardizes the continuation of service to the tenant. The tenant then has the right to pay for the utility service.
2. Another provision, 765 ILCS 735/1.2, states that a tenant shall not be required to pay utilities for any common area or other units unless, before entering into lease or taking security deposit, the landlord provides a specific written statement of the arrangement and 12 months of utility bills. The tenant may waive this provision in writing.
3. Under 765 ILCS 735/1.3, the tenant can recover actual damages from a landlord's violation and treble damages if the landlord's action was knowing or intentional. Fees and costs may be awarded if a judgment in favor of the tenant is over \$3,000.
4. Under 765 ILCS 735/1.4, a landlord may not cause utility service to tenants to be interrupted or terminated by nonpayment of utility bills for which the landlord is responsible or by tampering with equipment. Under 765 ILCS 735/2.1, if a landlord terminates service in violation of section 1.4, the tenant may recover damages from the landlord of 100% rent abatement for each month and consequential damages, although the tenant must mitigate. If the landlord showed reckless indifference or wilful disregard, each affected resident can get up to \$300 or \$5,000 divided by the number of such residents, whichever is less.

VIII. Retaliatory Eviction

A. Illinois law

Under 765 ILCS 720 /1, a landlord cannot terminate or refuse to renew a lease or tenancy because the tenant complained to a governmental authority of a *bona fide* violation of a building code, health ordinance, or similar regulation. Any lease provision to the contrary is void. In *Clore v. Fredman*, 59 Ill.2d 20, 319 N.E.2d 18 (1974), the Illinois Supreme Court held that retaliatory eviction is a defense germane to a forcible entry and detainer action.

The tenant must prove that the tenant complained in good faith to a governmental authority (not a newspaper, or some other organization) about potential building code or health ordinance violation(s); the landlord has knowledge of the complaint; and the landlord terminates the tenancy or refuses to renew the lease. The landlord can rebut the prima facie case of retaliatory eviction by establishing that the eviction was in fact motivated by other reasons. The mere existence of another independent reason to evict is not sufficient. *Clore v. Fredman*, 319 N.E. 2d at 867.

B. Chicago RLTO:

RLTO 5-12-150 protects tenants who complain of code violations to a governmental agency, elected representative, or public official charged with enforcement of a building or health code; complaint of a building or similar code violation or illegal landlord practice to a community organization or the news media; seek the assistance of a community organization or the news media to remedy a code violation or illegal landlord practice; request that the landlord make repairs to the premises required by a building code or other regulation; become a member of a tenant's union; testify in court or administrative proceeding concerning the condition of the premises; or exercise any right or remedy provided by law.

A landlord may not knowingly terminate a tenancy or refuse to renew a lease because the tenant has engaged in one of the forms of protected activity. In an eviction action, if the tenant presents evidence that the tenant engaged in protected conduct within one year prior to the alleged act of retaliation, such evidence creates a rebuttable presumption that the landlord's conduct was retaliatory.

IX. Condominium conversions

City of Chicago ordinances give existing tenants a right to an extended tenancy and a right of first refusal if their building is converted to condominiums:

Chicago Municipal Code §13-72-060 provides:

§ 13-72-060 Notice to tenants of intent to declare submission of property for condominium consideration required.

(A) No less than 120 days prior to recording the declaration submitting the property to the provisions of the Illinois Condominium Property Act, a developer shall give notice of such intent to record to all persons who are tenants of the building on the property on the date notice is given.

(B) Any person who was a tenant as of the date of the notice of intent and whose tenancy expires other than for cause prior to the expiration of 120 days from the date on which a copy of the notice of intent was received by the tenant shall have the right to an additional tenancy on the same terms and conditions and for the same rental until the expiration of such 120-day period by the giving of written notice thereof to the developer within 30 days of the date upon which a copy of the notice of intent was received by the tenant; provided, that in the case of any tenant who is over 65 years of age, or who is deaf or blind or who is unable to walk without assistance, said tenant shall have the right to an additional tenancy on the same terms and conditions and for the same rental for 180 days following receipt of said notice of intent to record by giving notice as aforesaid.

(C) During the period of 120 days following his receipt of the notice of intent, and during a period of 180 days following his receipt of notice of intent in the case of any person who is over 65 years of age, or who is deaf or blind or who is unable to walk without assistance, any person who was both a tenant on the date of the notice of intent and a current tenant shall have the right of first refusal to purchase his unit. The tenant must exercise the right of first refusal, if at all, by giving notice thereof to the developer prior to the expiration of 30 days from the giving of notice by the developer to the tenant that a contract to purchase the unit has been executed. Each contract for sale of a unit shall conspicuously disclose the existence of, and shall be subject to, such right of first refusal. The statement in the deed conveying the unit to a purchaser to the effect that the tenant of the unit either waived or failed to exercise the right of first refusal or had no right of first refusal with respect to the unit shall extinguish any legal or equitable right or interest to the possession or acquisition of the unit which the tenant may have or claim with respect to the unit arising out of the right of first refusal provided for in this section. The foregoing provisions shall not affect any claim which the tenant may have against the developer for damages arising out of the right of first refusal provided in this section, nor shall it affect the penalties provided in Section 13-72-110 hereof.

(D) No occupied unit shall be shown to any purchaser or prospective purchaser for 30 days after notice of intent to record, as provided herein, is given.

(E) Any notice provided for in this section shall be given by a written notice delivered in person or mailed, certified or registered mail, return receipt requested, to the party who is being given the notice.

Section 13-72-100 provides:

The rights, obligations and remedies set forth in this chapter shall be cumulative and in addition to any others available at law or in equity. The department or any prospective purchaser, purchaser or owner of a unit may seek compliance of any provision of this chapter, provided, however, that only the department may enforce the provisions of Section 13-72-110. In any action brought to enforce any provision of this chapter except Section 13-72-110 the prevailing plaintiff shall be entitled to recover, in addition to any other remedy available, his reasonable attorney fees.

X. Mobile Homes and Lots

People who rent mobile homes and/or lots in Illinois mobile home parks with 5 or more mobile homes have special rights under the Mobile Home Landlord and Tenant Rights Act, 765 ILCS 745/1 et seq. Renters of mobile homes and/or lots, have the following rights:

A. Content of leases

1. The landlord must offer a written lease for at least one year, not just a verbal agreement. 765 ILCS 745/6. The parties can agree to a different term, but only after the one year lease has been offered. Although not specifically required, any agreement for a term other than one year should be supported by documentation that the one year lease was offered.
2. The lease "shall contain an option which automatically renews the lease." 765 ILCS 745/8. Since all lease terms renew, the renewed lease should be for the same length of time as the original lease. The rent amount also renews automatically, unless "notification of a rent increase [is] delivered 60 days prior to the expiration of the lease," 765 ILCS 745/9. Under the Act, rent is the only lease term that may be modified unilaterally by the park owner.
3. The lease must specify the rent and other charges. It must "clearly set forth" the rent amount and due date, and itemize all other charges or fees. 765 ILCS 745/9. This provision also extends to "all billings of the tenant by the park

owner."

4. A five day grace period for rent payments is required before a late fee may be charged. 765 ILCS 745/12(a).
 5. Any fees not specified in the lease are prohibited, and therefore unenforceable. 765 ILCS 745/12(c).
- B. The Act states that "any lease . . . shall also contain" certain "covenants" specifying the landlord's obligations. These should be contained in a written lease, stating that the owner must:
1. Identify the tenant's lot. 765 ILCS 745/11(a).
 2. Keep the exterior areas free of weeds and noxious growth. 765 ILCS 745/11(b).
 3. Maintain in good condition all "electrical, plumbing, gas or other utilities." 765 ILCS 745/11(c).
 4. Maintain in good condition water lines, sewer lines, and roads. 765 ILCS 745/11(d) & (f).
 5. Respect the tenant's privacy. The owner can't enter a tenant-owned mobile home without permission. Unless it's an emergency, the owner can't enter a park-owned mobile home without giving "due notice." 765 ILCS 745/11(e).
 6. State all services and facilities provided by the owner, and the name and address of either the owner(s) or "the owners' designated agent." 765 ILCS 745/11(g) & (h).
 7. "Provide a custodian's office and furnish each tenant with the name, address and telephone number of the custodian and designated office." 765 ILCS 745/11(i). (In addition, the Manufactured Home Community Code now requires that "[a]n answering machine shall be connected to the manufactured home community manager's phone if someone is not normally available to answer the calls." 77 Ill. Admin. Code §860.400(d).)
 8. A lease provision that waives any provision of the Act is void. 765 ILCS 745/10. Any lease provision that conflicts with the Act is unenforceable. 765 ILCS 745/1. Illinois law prohibits a lease from exempting the landlord from liability for personal or property injuries caused by the landlord's negligence.

765 ILCS 705/1. Any lease provision attempting to do that is "void as against public policy and wholly unenforceable."

- C. The lease must contain a notice stating the tenant's right to "continue to reside in the park as long as you pay your rent and abide by the rules and regulations of the park." 765 ILCS 745/17.
- D. Security deposits
 - 1. The landlord can require a security deposit not exceeding one month's rent. 765 ILCS 745/12(b). The landlord can make deductions for unpaid rent or actual damages. Such deductions can only be made if the park owner delivers to the tenant within 15 days after termination or expiration of the lease, an itemized list of the damages incurred upon the premises and the estimated cost for the repair of each item. 765 ILCS 745/18(a). If the tenant does not object to the itemized list within 15 days of getting the list, the tenant has agreed "upon the amount of damages specified therein." Id. If the park owner fails to provide the itemization of damages within 15 days, the full deposit must be returned. The tenant must provide a forwarding address. Id.
 - 2. Interest on the deposit must be paid if the park contains 25 or more mobile homes. The Act requires landlords to pay interest on deposits computed from the date of the deposit at a rate equal to the interest paid by the largest commercial bank, as measured by total assets, having its main banking premises in this State on minimum deposit passbook savings accounts as of December 31 of the preceding year on any such deposit held by the park owner for more than 6 months. 765 ILCS 745/18(b)
- E. The tenant may terminate the lease if the park owner or manager does not abide by the terms of a lease;
- F. Tenants may organize and participate in meetings of residents and a home owner's association.
- G. The tenant must obey all reasonable rules made by the owner or manager of the park regarding the park and your mobile home or lot. The park owner or manager must give the tenant a copy of all rules and regulations "prior to his signing the lease." 765 ILCS 745/14(a). Thirty days' advance notice of any new rules must be given.
- H. Sale of mobile homes:
 - 1. The Act explicitly prohibits a park owner from prohibiting, limiting,

restricting, obstructing or in any manner interfering with the freedom of any mobile home owner to sell the mobile home or employ or secure the services of an independent sale person in connection with the sale. 765 ILCS 745/24.

2. In general, a park owner cannot require that a mobile home be moved after it is sold. The only exceptions are where "the mobile home is less than 12 feet wide or is significantly deteriorated and in substantial disrepair." 765 ILCS 745/24. In those situations, the park owner must have notified the tenant in writing, prior to the sale, that removal would be required.

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