

Best Practices for Lease Preparation & Security Deposits – Compliance with the Chicago Landlord Tenant Ordinance

By Gregory A. Braun, Partner, McCormick Braun Friman, LLC

Many of our clients contact us with thorny tenant issues. Most of the time, the tenant failed to pay the rent, yet the renter threatens to break the lease and demands the security deposit back, or worse. The summary below, written from the prospective of the landlord, provides the current best practices to comply with the demanding requirements of the Chicago Landlord Tenant Ordinance (“LTO”). The LTO applies, in general, to all rentals except where the premises are owner occupied AND the premises contain six units or less. Exempted apartments still must comply with eviction requirements of Illinois law. The ordinance would apply to a single condominium unit or a single family home. However the LTO would not apply to a home that is occupied by a purchaser or seller pursuant to a real estate purchase contract. Be mindful that when the landlord moves out of the exempt building, the requirements must be followed at that time.

The first section deals with getting off on the right foot with a proper written lease – one that will not subject the landlord to tenant claims and broken leases. Each and every point should be complied with as the LTO does not usually allow an out of compliance landlord time to correct the lease. The second section deals with handling security deposits. Deposit accounts need to be properly set up before the landlord accepts the funds. Further, receipts and interest payments and returns and deductions must be handled properly.

A word of caution: The requirements change frequently as regulations and court cases expand our understanding of the law. Novice and experienced landlords would do well to attend seminars in tenant screening, successful building management and compliance. No one resource can provide all the information needed, so please do your own research and use the links suggested below for further study.

Required Lease Provisions and Notices

1. LTO Summary. The landlord must include a current summary of the LTO Ordinance on new leases or renewals.

The latest summary as of the date of this article summary includes the following language:

“The porch or deck of this building should be designed for a live load of up to 100 pounds, per square foot and is safe only for its intended use. Protect your safety.

Do not overload the porch or deck. If you have questions about porch or deck safety, call the City of Chicago non-emergency Number 3-1-1."

2. Security Deposit Summary. A separate current summary of the security deposit obligations, including the new interest rate as well as the rate for each of the prior two years.

A copy of the 2 current summaries (LTO summary and Security Deposit summary) must be attached to each written rental agreement when initially offered to any tenant or prospective tenant by or on behalf of a landlord and whether such agreement is for a new rental or a renewal. For oral agreements, the landlord must give the tenant a copy of the summaries.

Remedy for non-compliance (for 1 and 2 above): the tenant may terminate the lease by written notice. The notice must specify the date of termination no later than 30 days from the date of the written notice. If a tenant in a civil legal proceeding against his landlord establishes that a violation of this section, he shall be entitled to recover \$100.00 in damages.

3. Disclosure of Owner and Agents. A landlord or its agent must give written notice to the tenant at or before the commencement of the tenancy the name, address, and telephone number of both the owner or person authorized to manage the premises; and the person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands, and such must be updated as it changes and successor landlords are liable to supply this information as well.

Remedy: A person who enters into a rental agreement and fails to comply with the requirements of this section becomes an agent of the landlord for the purpose of (i) service of process and receiving and receipting for notices and demands and (ii) performing the obligations of the landlord under this chapter under the rental agreement.

Remedy: If the landlord fails to comply, the tenant may terminate the lease with proper notice and if there is still no compliance, the tenant can recover one month's rent or actual damages, whichever is greater.

4. Disclosure of Foreclosure. Within 7 days of being served a foreclosure complaint or before signing a lease, a landlord must give written notice to all tenants and those paying on behalf of a tenant, that a foreclosure action has been filed. The written disclosure shall include the court in which the foreclosure action is pending, the case name, and case number and must include the following language:

"This is not a notice to vacate the premise. This notice does not mean ownership of the building has changed. All tenants are still responsible for payment of rent and other obligations under the rental agreement. The owner or landlord is still responsible for

their obligations under the rental agreement. You shall receive additional notice if there is a change in owner."

Remedy: the tenant may terminate the rental agreement by written notice.

5. Notice of Conditions Affecting Habitability. Before a tenant initially enters into or renews a rental agreement, the landlord 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 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. See the Links and Resources for Landlords section below to obtain code violations.

(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.

Remedy: the tenant may terminate the rental agreement by written notice.

6. Notices required in the Security Deposit section below.

7. Heating Cost Disclosure.

8. Lead Paint Disclosure.

Non-Permitted Lease Provisions

The following lease provisions are not allowed:

(a) Waiving rights granted in the LTO,

(b) Confession of judgment clauses,

(c) Limitation of any liability clauses,

(d) Waiver of notice,

(e) Waiver of the right of any party to a trial by jury;

(f) Payment of attorney's fees in a manner different than provided for by court rules, statute, or ordinance;

(g) Agrees that either party may cancel or terminate a rental agreement at a different time or within a shorter time period than the other party, unless such provision is disclosed in a separate written notice;

(h) Late fees in excess of \$10.00 per month for the first \$500.00 in monthly rent plus 5% per month for any amount in excess of \$500.00 in monthly rent for the late payment of rent; and

(i) Prepayment discounts or reductions in the rental amount in excess of \$10.00 per month for the first \$500.00 in monthly rent plus 5% per month for any amount in excess of \$500.00 in monthly rent.

Remedy: A provision prohibited in a rental agreement is unenforceable. The tenant may recover actual damages sustained by the tenant because of the enforcement of a prohibited provision. If the landlord attempts to enforce a provision in a rental agreement prohibited by this section the tenant may recover two months' rent.

Proper Security Deposit Procedures

Most every landlord requires a security deposit. The landlord must follow each and every requirement below to avoid the tenant exercising their remedies. Before making the deposit, provide a detailed receipt as explained below and set up an account at a bank in Illinois that is familiar with the account requirements.

1. Place security deposits in a federally insured interest-bearing account in an Illinois bank, savings and loan association.
2. The deposit must be in a separate / non-comingled account.
3. The account should be titled in such a way to indicate that it is a security deposit account and therefore not subject to the claims of any creditor or successors in interest.
4. If the Landlord accepts the payment of the first month's rent and security deposit in one combined check or one electronic funds transfer, it must transfer the deposit portion to the deposit account within 5 business days.
5. Disclose in the lease the name and address of the bank holding the security deposit account, and such must be clearly and conspicuously disclosed.
6. Upon sale, disclose the name and address of the new bank holding the deposit within 14 days of the transfer.

7. Provide a signed receipt to a tenant or prospective tenant at the time of receiving the deposit that indicates the date, amount, the name of the person receiving it and, in the case of the agent, the name of the landlord, and a description of the apartment. Failure to comply with this subsection shall entitle the tenant to immediate return of security deposit.
8. Pay interest to the tenant on the anniversary date of the lease at the posted City of Chicago rate within 30 days.
9. Return the deposit and interest back within 45 days after the date that the tenant vacates the dwelling unit or within 7 days after the date that the tenant provides notice of termination of the rental agreement because of fire or other destruction.
10. The landlord can deduct from the deposit or interest due:
 - a. Unpaid rent which has not been validly withheld or deducted, and/or
 - b. The reasonable amount of repairs caused by the tenant, reasonable wear and tear excluded, so long as the landlord delivers or mails to the last known address of the tenant within 30 days an itemized statement of the damages and the estimated or actual cost along with copies of the paid receipts for the repair or replacement. If estimated cost is given, the landlord shall furnish copies of paid receipts within 30 days from the date the statement showing estimated cost was furnished to the tenant.
11. The old and new landlord must notify the tenant of the deposit transfer. The written notice must be within 14 days from the date of such transfer, by delivering or mail, the successor landlord's name, business address, and business telephone number of the successor landlord's agent, if any. The old landlord remains liable too until the old landlord provides written notice, in writing, to the tenant of such transfer of the deposit or prepaid rent, stating the name, address and telephone number of the new landlord or his agent within 10 days of said transfer.

Remedy: If the landlord fails to comply with any provision (1-11) above, the tenant shall be awarded damages in an amount equal to two times the security deposit plus interest.

Attorney's Fees.

The prevailing plaintiff in any action arising out of a landlord's or tenant's application of the rights or remedies made available in this ordinance shall be entitled to all court costs and reasonable attorney's fees.

Gregory A. Braun represents both buyers and sellers of residential; and commercial real estate, as well as clients in distressed financial condition who could benefit from bankruptcy, foreclosure defense, or short sales. In addition, Greg assists clients in the compliance with federal, state and local development regulations, and he provides his clients valuable counsel for construction, insurance, corporate and tax matters, including 1031 exchanges. Direct 312-327-3354 or gbraun@mbflegal.com.

Links and Resources for Landlords

Full Copy of the LTO: <http://www.chicityclerk.com/tenantsVRSl landlords.php>

Community Investment Corporation has sample leases, disclosures and forms:
<http://www.cicchicago.com/htdocs/training/pmmanual.html>

Heat Disclosure PFD:

<http://www.cityofchicago.org/content/dam/city/depts/bacp/general/HeatingCostDisclosure.pdf>

Lead Paint Pamphlet: <http://www.epa.gov/lead/pubs/leadpdf.pdf>

Lead Paint Disclosure Form: http://www.lcpia.org/online_forms/Lessor%20LBP.pdf

LTO Summary:

http://www.cityofchicago.org/content/dam/city/depts/dcd/supp_info/housing/LanlrdSum.pdf

Security Deposit Rate Summary: <http://www.chicityclerk.com/InterestRates.pdf>

Freedom of Information Act (FOIA) Chicago Buildings:

http://www.cityofchicago.org/city/en/depts/bldgs/supp_info/bldgs_foia.html

FOIA Building Form:

<http://www.cityofchicago.org/content/dam/city/depts/bldgs/general/Miscforms/FOIform.pdf>

Building Registration Information and Forms (4 or more units):

<http://www.cityofchicago.org/city/en/depts/bldgs/provdrs/inspect/svcs/forms.html>