



If a landlord doesn't comply with the Tenant Security Deposit Act, what are a tenant's remedies?

The [Tenant Security Deposit Act](#) (the "Act") regulates the collection, handling and refund of security deposits in residential tenancies in North Carolina. If a landlord doesn't comply with the Act, what are a tenant's remedies? In the case of *Neil v. Kuester Real Estate Services, Inc.*, the North Carolina Court of Appeals considered this question.

This case was an appeal from the trial court's denial of the plaintiffs' motion to have their lawsuit certified as a class action lawsuit against various real estate entities which provided rental housing, largely to a college student population, in Boone, North Carolina.

According to the lawsuit, the plaintiffs entered into a lease agreement with Defendant Kuester Real Estate Services, Inc. for a unit in an apartment complex near ASU. Plaintiffs alleged that before they vacated the premises at the end of their lease, they thoroughly cleaned the apartment and returned it to the same condition as when they moved in, minus normal wear and tear. However, they later received invoices from Kuester which reflected charges for carpet cleaning, painting, cleaning bathrooms, replacing drip pans, and cleaning the washer and dryer, as well as for an "administrative fee" of \$40 which was explicitly authorized by the lease addendum to which the plaintiffs agreed in writing.

In their suit, the plaintiffs claimed that under the "Remedies" section of the Act ([NCGS 42-55](#)), the landlord's right to keep any part of their security deposit was voided. According to the plaintiffs, this remedy was triggered by the landlord taking the \$40.00 administrative fee from their security deposits and by withholding from the security deposits damages attributable to normal wear and tear and retaining amounts greater than the actual damages done to the units. Plaintiffs asserted that the proper remedy for these violations would be an automatic full refund of their security deposits.

In order to determine whether the case should be certified as a class action lawsuit, the Court of Appeals had to take a close look at the Act, in particular the Remedies section. The Court concluded that the Remedies section provides four distinct remedies for violations of the Act: (1) the "appropriate refund remedy;" (2) the "full refund remedy;" (3) the "damages remedy;" and (4) the "attorney's fees remedy." According to the Court, the damages remedy and the attorney's fees remedy could be sought together with each other and with the other two remedies. However, the appropriate refund remedy and the full refund remedy are mutually exclusive. The appropriate refund remedy allows only for the required accounting and proper refund of the security deposit, while the full refund remedy entitles a tenant to a total refund of the security deposit, even if the tenant's actions would otherwise subject his or her deposit to partial or complete forfeiture.

The Court concluded that the full refund remedy was only available for willful violations of [Section 52-50](#) of the Act. Section 52-50 is the section that requires landlords to hold security deposits in a trust account with an NC bank or savings institution or furnish a bond from a licensed insurance company, and to notify the tenant within 30 days after the lease starts of the name and address of the bank or institution where his deposit is currently located or the name of the insurance company providing the bond.

The Court upheld the decision of the trial court, disagreeing with the plaintiffs' argument that they were entitled to a full refund of their deposit as a result of the landlord's overcharging for damages, charging

for normal wear and tear, and deducting the administrative fee. Permitted uses of a deposit is covered under [Section 52-51](#) of the Act, and according to the Court, the “appropriate refund” remedy applies to violations of Section 52-51. Thus, the plaintiffs were entitled to a proper accounting and refund of any remaining portion of the security deposit they were entitled to, but not an automatic full refund.

NOTE: It is important to understand that, as noted above, whether the “full refund” remedy or the “appropriate refund” remedy applies, the damages remedy and the attorney’s fees remedy also apply. Thus, a tenant is also entitled to any damages they can prove they have incurred as a result of the landlord’s failure to comply with the Act, and attorney’s fees if the landlord’s failure to comply is willful. Property managers should therefore always seek to adhere strictly to the requirements of the Tenant Security Deposit Act.

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