

LAW CURRENTS An informational newsletter from Richard A. Klass, Esq.

Act like Audrey. Dress like Jackie. Party like Gatsby.

A “Summer in the Hamptons” story.

She rented a Hamptons house for the summer. At the time of entering into the lease with the landlord, she paid \$12,000 for the security deposit required under the lease.¹

Failure to return the security deposit

At the end of the summer, the tenant requested the return of her security deposit. The landlord failed to comply with the lease and return the money. The landlord never provided the tenant with an itemized statement alleging any basis to retain any portion of the money. The tenant retained **Richard A. Klass, Esq., Your Court Street Lawyer**, to sue the landlord, claiming she was liable to Plaintiff for the amount of the security deposit with interest from the date the tenant vacated the premises.

NYS Security Deposit Law

On June 14, 2019, the New York State Legislature enacted the Housing Stability and Tenant Protection Act of 2019 (HSTPA), which made widespread changes to various laws affecting tenants’ rights. One of the major changes made under the HSTPA was to strengthen the rent security deposit laws. General Obligations Law § 7-108 provides that, within 14 days after a tenant has vacated the



premises, the landlord has to provide the tenant with an itemized statement indicating the basis for the amount of the deposit retained, if any, and return any remaining portion of the deposit to the tenant. If the landlord fails to provide the itemized statement and deposit within 14 days,

¹ 3 (a) SECURITY DEPOSIT: Upon signing this lease agreement, Tenant shall pay the amount of \$12,000 to the order of Landlord by bank/cashier’s check drawn on a U.S. bank or by electronic wire transfer, to be held as security by Landlord in a segregated account, as required by law. The security deposit may not be used as payment of rent. It is expressly understood and agreed that Tenant’s liability to perform the terms of this lease is in no way limited to the amount of the security deposit. Within fourteen (14) days after the tenant has vacated the premises, Landlord shall provide Tenant with an itemized statement indicating the basis for the amount of any deposit retained and shall return any remaining portion of the deposit to the Tenant.

then the landlord forfeits any right to retain a portion of the security deposit.²

² General Obligations Law § 7-108 provides, in relevant part:

1. This section shall apply to all dwelling units in residential premises, unless such dwelling unit is specifically referred to in section 7-107 of this title.

1-a. Except in dwelling units subject to the city rent and rehabilitation law or the emergency housing rent control law, continuing care retirement communities licensed pursuant to article forty-six or forty-six-A of the public health law, assisted living providers licensed pursuant to article forty-six-B of the public health law, adult care facilities licensed pursuant to article seven of the social services law, senior residential communities that have submitted an offering plan to the attorney general, or not-for-profit independent retirement communities that offer personal emergency response, housekeeping, transportation and meals to their residents:

(a) No deposit or advance shall exceed the amount of one month's rent, unless the deposit or advance is for a seasonal use dwelling unit as provided for in subdivisions four and five of this section, or unless the deposit or advance is for an owner-occupied cooperative apartment as provided for in subdivision six of this section.

(b) The entire amount of the deposit or advance shall be refundable to the tenant upon the tenant's vacating of the premises except for an amount lawfully retained for the reasonable and itemized costs due to non-payment of rent, damage caused by the tenant beyond normal wear and tear, non-payment of utility charges payable directly to the landlord under the terms of the lease or tenancy, and moving and storage of the tenant's belongings. The landlord may not retain any amount of the deposit for costs relating to ordinary wear and tear of occupancy or damage caused by a prior tenant.

(c) After initial lease signing but before the tenant begins occupancy, the landlord shall offer the tenant the opportunity to inspect the premises with the landlord or the landlord's agent to determine the condition of the property. If the tenant requests such inspection, the parties shall execute a written agreement before the tenant begins occupancy of the unit attesting to the condition of the property and specifically noting any existing defects or damages. Upon the tenant's vacating of the premises, the landlord may not retain any amount of the deposit or advance due to any condition, defect, or damage noted in such agreement. The agreement shall be admissible as evidence of the condition of the premises at the beginning of occupancy only in proceedings related to the return or amount of the security deposit.

(d) Within a reasonable time after notification of either party's intention to terminate the tenancy, unless the tenant terminates the tenancy with less than two weeks' notice, the landlord shall notify the tenant in writing of the tenant's right to request an inspection before vacating the premises and of the tenant's right to be present at the inspection. If the tenant requests such an inspection, the inspection shall be made no earlier than two weeks and no later than one week before the end of the tenancy. The landlord shall provide at least forty-eight hours written notice of the date and time of the inspection. After the inspection, the landlord shall provide the tenant with an itemized statement specifying repairs or cleaning that are proposed to be the basis of any deductions from the tenant's

Motion for Summary Judgment

Once discovery proceedings were completed and both parties exchanged documentation concerning the claim, the tenant moved for summary judgment. It was urged that summary judgment be granted in favor of the tenant against the landlord for the full return of her security deposit. According to the tenant's affidavit, at the end of the lease term and after she vacated the premises, the landlord failed to return her security deposit despite her repeated demands.

Summary judgment is proper when there are no issues of triable fact (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]). Issue finding rather than issue determination is its function (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498, 144 N.E.2d 387 [1957]). The evidence will be construed in the light most favorable to the one moved against (*Weiss v. Garfield*, 21 A.D.2d 156, 249 N.Y.S.2d 458 [3rd Dept.1964]). "Where the court entertains any doubt as to whether a triable issue of fact exists, summary judgment should be denied." (*Daliendo v. Johnson*, 147 A.D.2d 312, 543 N.Y.S.2d 987 [2d Dept.1989]). To prevail on a summary judgment motion, the moving party must produce evidentiary proof in admissible form sufficient to warrant the direction of summary judgment in his or her favor (*GTF Mktg., Inc. v. Colonial Aluminum Sales, Inc.*, 66 N.Y.2d 965, 967, 498 N.Y.S.2d 786, 489 N.E.2d 755 [1985]). Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial (*Kosson v. Algaze*, 84 N.Y.2d 1019, 622 N.Y.S.2d 674, 646 N.E.2d 1101 [1995]).

deposit. The tenant shall have the opportunity to cure any such condition before the end of the tenancy. Any statement produced pursuant to this paragraph shall only be admissible in proceedings related to the return or amount of the security deposit.

(e) Within fourteen days after the tenant has vacated the premises, the landlord shall provide the tenant with an itemized statement indicating the basis for the amount of the deposit retained, if any, and shall return any remaining portion of the deposit to the tenant. If a landlord fails to provide the tenant with the statement and deposit within fourteen days, the landlord shall forfeit any right to retain any portion of the deposit.

(f) In any action or proceeding disputing the amount of any amount of the deposit retained, the landlord shall bear the burden of proof as to the reasonableness of the amount retained.

(g) Any person who violates the provisions of this subdivision shall be liable for actual damages, provided a person found to have willfully violated this subdivision shall be liable for punitive damages of up to twice the amount of the deposit or advance.

Landlord failed to provide any proof

It was incumbent on the landlord to put forward in opposition to the motion her evidence in admissible form in order to raise an issue of fact. She has failed to do so. As held by the NYS Court of Appeals in *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980], “We have repeatedly held that one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form.”

In her affidavit the landlord made the unsupported allegation that the tenant was notified of all damage “with [sic]” 14 days of the lease termination. However, she did not provide proof of compliance with General Obligations Law § 7-108(1-a)(e). There was NO itemized statement as required by statute (“the landlord shall provide the tenant with an itemized statement indicating the basis for the amount of the deposit retained, if any, and shall return any remaining portion of the deposit to the tenant.”). The email exchanges produced by the landlord in opposition did not indicate why certain areas and items needed to be cleaned or even whether items needed to be cleaned due to damage resulting from the tenancy or just being dirty from normal wear and tear. It was pointed out that General Obligations Law § 7-108(1-a)(f) provides: “In any action or proceeding disputing the amount of any amount of the deposit retained, the landlord shall bear the burden of proof as to the reasonableness of the amount retained.”

Summary Judgment Granted

In granting the tenant’s motion for summary judgment, the judge determined that the landlord “failed to proffer evidence to sufficiently rebut the plaintiff’s prima facie case. The emails nor the itemized invoices submitted indicated the basis for retaining the security deposit.” The judge granted judgment directing that the landlord pay the tenant back her \$12,000 security deposit.

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New Book by Richard Klass

Your Court Street Lawyer's Quick Reference Guide

The Consumer Credit Fairness Act

by Richard A. Klass

The Consumer Credit Fairness Act of 2021 was enacted in order to address various substantive and procedural issues dealing with consumer debt lawsuits. The legislation was enacted in 2021 with an effective date of April 30, 2022. Much of the Consumer Credit Fairness Act (CCFA) was passed to provide debtors with additional protection concerning consumer debt claims brought against them. Highlights of the CCFA include: New Statute of Limitations, Notice Requirements, Detailed Affidavits, Arbitration and Reduction of Rate of Interest.

Available now as a [free E-book in PDF format. 44 pages/816KB.](#)

Richard A. Klass, Esq., maintains a law firm engaged in civil litigation at 16 Court St., 28th Fl., Brooklyn, NY. He may be reached at (718) COURT•ST or RichKlass@courtstreetlaw.com with questions. Prior results do not guarantee a similar outcome.

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Your Court Street Lawyer's
Quick Reference Guide

The Consumer Credit Fairness Act

By Richard A. Klass, Esq.



*"Credit being so much like being a drunk. The buzz happens immediately, and it gives you a tilt. The hangover comes the day after."
— Dr. Joyce Brothers*

