

Landlord Tenant Act--Security Deposits  
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The Landlord Tenant Act (“Act”) governs security deposits (“deposit”) and the remedies available to a tenant when the landlord fails to comply with the Act. In *Gott v. Kanyuck*, a case decided by the York County Court of Common Pleas, the court entered a judgment in favor of the tenant due to the landlord’s failure to return the deposit within the appropriate time. The court not only awarded the tenant double the amount of the security deposit as damages but it also denied the landlord’s counterclaim against the tenant for damages to the premises.

In *Gott*, the tenant rented the premises and paid a security deposit in the amount of \$1,375.00 to Landlord who subsequently died. The new Landlord inherited the premises but she did not place the deposit into an escrow account. Prior to the expiration of the lease, Tenant gave proper written notice to Landlord indicating she would not be renewing the lease and informing Landlord of her forwarding address. Tenant also indicated that the deposit with interest could be returned to her within forty-five days.

Thirty-three days after Tenant terminated the lease and vacated the premises, Landlord sent an itemized list of damages to Tenant at her new address. Tenant sued Landlord for double the amount of the deposit plus interest for failure to place it into an interest bearing escrow account. Landlord filed a counterclaim for damages to the premises in the amount of \$4,207.32 minus the deposit.

The *Gott* case dealt with several issues relating to deposits. First, may the Landlord give written notice of damages to the tenant more than thirty days after the tenant terminates the lease if the tenant specifically agreed to receive the notice after thirty days? According to the Act, the answer is no and therefore, the court dismissed Landlord’s argument that her notice to Tenant was timely because Tenant had agreed that it could be sent within forty-five days. The Act stated that “[e]very landlord shall within *thirty days* of termination of a lease or upon surrender and acceptance of the leasehold premises, whichever first occurs, provide a tenant with a written list of any damages...” Furthermore, the Act clearly provided that “[a]ny attempted waiver of this section by a tenant... shall be void and unenforceable”. Tenant could not waive this section by agreeing to accept it within forty-five days and Landlord’s notice sent on the thirty-third day was three days late.

Second, is a tenant able to recover double the deposit if the landlord does not provide timely notice within thirty days? According to the court, the answer was yes because Section 250.512(c) governed this issue and it stated as follows:

If the landlord fails to pay the tenant the difference between the sum deposited, including any unpaid interest thereon, and the actual damages to the leasehold premises caused by the tenant within thirty days after termination of the lease or surrender and acceptance of the leasehold premises, the landlord shall be liable in assumpsit to double the amount by which the sum deposited in escrow, including any unpaid interest thereon, exceeds the actual damages to the leasehold premises

caused by the tenant as determined by any court of record or court not of record having jurisdiction in civil actions at law. The burden of proof of actual damages caused by the tenant to the leasehold premises shall be on the landlord.<sup>1</sup>

The court held the legislature intended an award of double damages to ensure a landlord would comply with the thirty day notice requirement. It viewed subsection (c) as a penalty provision even though the result may have been “harsh” to the Landlord.

Third, is the landlord prevented from recovering damages if landlord did not provide timely notice to tenant? According to the Act, “[a]ny landlord who fails to provide a written list within thirty days as required. ...shall forfeit all rights to withhold any portion of sums held in escrow, including any unpaid interest thereon, *or to bring suit against the tenant for damages to the leasehold premises.* (emphasis supplied.)

The York County Court interpreted this section to deny Landlord any claim for damages because the Landlord had provided notice to Tenant on the thirty-third day instead of on or before the thirtieth day.

Although the York County Court’s decision is not binding on other county courts, it provides insight into how certain judges view cases involving security deposits. The Allegheny County Court has interpreted the forfeiture of damages section in a different manner and it permitted a landlord to file a claim for damages even though he had not provided any notice within thirty days.

The remedy is for the legislature to clarify the Act and eliminate the conflicting decisions of the county courts. However, landlords do not need to wait for the legislature to act. Landlords who comply with the Act will be able to proceed with their claims and defend against those brought by a tenant.

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<sup>1</sup> 68 P.S. 250.512(c)