



Residential Security Deposits: Does A.R.S. § 33-1321 Require Itemizations?

By Robert S. Pearson

Section 33-1321 governs security deposits and is intended to protect tenants against dishonest landlords. One way the statute does this is by requiring the landlord to provide the tenant with an itemized list of all deductions made to the tenant's security deposit. What's unclear and unsettled in Arizona is whether this itemization requirement has any teeth. This article considers that question.

The statute. Section 33-1321(D) says that within 14 days after termination of a tenancy, delivery of possession of the premises, and demand by the tenant, the landlord must: (i) return the security deposit minus any lawful deductions, if any; and (ii) provide the tenant with an itemization of any deductions. Subsection E says that if a landlord fails to comply with subsection D, the tenant can recover the "money due" plus twice the amount "wrongfully withheld." Thus, the tenant's damages can be expressed like this:

$$\frac{\text{Money due}}{\text{Money due}} + \frac{\text{Wrongfully withheld}}{\text{Wrongfully withheld}} + \frac{\text{Wrongfully withheld}}{\text{Wrongfully withheld}} = \text{T's damages}$$

The issue. But there's a problem – the statute doesn't define "money due" or "wrongfully withheld." This raises the issue of whether there's a penalty to the landlord for not providing an itemization when the landlord's lawful deductions meet or exceed the tenant's security deposit; and if so, how to calculate that penalty. Consider a hypothetical:

Hypothetical. Tenant rents an apartment from Landlord and puts down a \$1,000 security deposit. When the tenancy ends, Tenant delivers possession of the apartment and demands return of the security deposit, along with an itemized list of deductions. Landlord retains the entire deposit and doesn't send an itemization. Tenant sues Landlord under § 33-1321 for wrongful withholding of her security deposit. At trial, Landlord proves that Tenant caused \$1,000 in damages to the apartment, and that Landlord was entitled to make those deductions from Tenant's deposit. Does Tenant have any damages under subsection E?

Answer. There's no clear answer in Arizona. Here are several options for defining those terms and calculating Tenant's damages:

- **Interpretation 1.** "Money due" and "wrongfully withheld" have the same meaning: both mean the amount of the security deposit minus any lawful deductions. Here, the security deposit is \$1,000, and Landlord's lawful deductions are \$1,000. The security deposit minus the lawful deductions equals \$0. Thus, there is no "money due" and no amount "wrongfully withheld." Tenant can recover \$0:

$$\frac{\$0}{\text{Money due}} + \frac{\$0}{\text{Wrongfully withheld}} + \frac{\$0}{\text{Wrongfully withheld}} = \frac{\$0}{\text{T's damages}}$$

- **Interpretation 2.** "Money due" and "wrongfully withheld" have the same meaning (but different than interpretation 1): both mean any amount of the security deposit withheld in violation of subsection D. Here, because subsection D requires the Landlord to provide an itemization, and because Landlord withheld \$1,000 without providing the itemization, the entire \$1,000 is withheld in violation of subsection D. Thus, the "money due" is \$1,000, and the amount "wrongfully withheld" is \$1,000. Tenant can therefore recover \$3,000:

$$\frac{\$1,000}{\text{Money due}} + \frac{\$1,000}{\text{Wrongfully withheld}} + \frac{\$1,000}{\text{Wrongfully withheld}} = \frac{\$3,000}{\text{T's damages}}$$

- **Interpretation 3.** "Money due" means any amount withheld in violation of subsection D; and "wrongfully withheld" means the amount of the security deposit minus any lawful deductions. Here, the "money due" is \$1,000 because Landlord withheld that amount without providing an itemization as required by subsection D. The amount "wrongfully withheld" is \$0 because the lawful deductions are equal to the amount of the deposit. Tenant can therefore recover \$1,000:

$$\frac{\$1,000}{\text{Money due}} + \frac{\$0}{\text{Wrongfully withheld}} + \frac{\$0}{\text{Wrongfully withheld}} = \frac{\$1,000}{\text{T's damages}}$$

- **Interpretation 4.** "Money due" means the amount of the security deposit minus any lawful deductions; and "wrongfully withheld" means any amount withheld in violation of subsection D. Here, the "money due" is \$0 because the lawful deductions are equal to the amount of the deposit. The amount "wrongfully withheld" is \$1,000 because Landlord withheld that amount without providing an itemization. Tenant can therefore recover \$2,000:

$$\frac{\$0}{\text{Money due}} + \frac{\$1,000}{\text{Wrongfully withheld}} + \frac{\$1,000}{\text{Wrongfully withheld}} = \frac{\$2,000}{\text{T's damages}}$$

Practice Pointer. If you represent the landlord, argue interpretation 1. *See Vardeman v. Llewellyn*, 17 Ohio St. 3d 24, 476 N.E.2d 1038 (1985). This author has successfully argued this position to an Arizona trial court. If you represent the tenant, argue interpretation 2, and stress that interpretation 1 is no good because it renders the itemization requirement meaningless – a landlord can violate subsection D by failing to provide the itemization, and escape with no liability. *See id.* (Douglas, J., dissenting). Interpretations 3 and 4 are somewhere in the middle because they both penalize failure to provide an itemization. They just differ in how much they value the itemization. Interpretation 3 is slightly pro-landlord because it values the itemization less. Itemization 4 is slightly pro-tenant because it values the itemization more.

About the author. Robert S. Pearson is an attorney with Rusing Lopez & Lizardi PLLC. Pearson practice primarily in civil litigation, and he also consults on trial and appellate court brief-writing. He can be reached at (520) 792-4800 or rpearson@rllaz.com.

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Bruce R. Heurlin

has 29 years' experience in representing stockbrokers and investors in arbitrations before FINRA (Financial Industry Regulatory Authority, formerly NASD), clients before the Securities and Exchange Commission (SEC) and the Securities Division of the Arizona Corporation Commission, and defendants in criminal cases involving securities.

Mr. Heurlin also serves as a FINRA arbitrator.

HEURLIN SHERLOCK

1636 N Swan Rd Ste 200, Tucson, Arizona 85712
Telephone: 520-319-1200 Fax: 520-319-1221

www.AZtopLawyers.com