

LEGAL ARTICLE

When involved in a residential lease, one should be cautious of this piece of subordinate legislation of the Consumer Protection Act.

SECURITY MONEY MUST BE RETURNED TO TENANT WITHIN 7 DAYS UPON EXPIRATION OR TERMINATION OF THE LEASE

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Whenever a lessee (tenant) takes on the lease of any residential property such as a house, a building, a residential condominium unit, an apartment room or any other dwelling from a lessor (landlord), the lessor typically requires the lessee to pay the specified amount to the lessor up front as the security for any damage that the lessee may cause to the property during the lease period. This security money is held by the lessor during the lease period and is supposed to be returned to the lessee upon expiration or termination of the lease.

As long as the lessor is trustworthy, the lessee should not have any problem in getting back the security money from the lessor upon expiration or termination of the lease. Of course, the lessee should get back the security money insofar as the lessee has not caused any damage to the property.

Unfortunately, all too often some lessors refuse to return the security money to lessees. Some lessors unreasonably delay the return of the security money. In many cases, the provision of the lease agreement does not clearly elaborate on when the security money is supposed to be returned to the lessee.

Due to this unfair practice, many lessees have a hard time in trying to recover the security money back from lessors. The lessees' complaint ultimately reached the consumer protection agency.



The Contract Committee under the Consumer Protection Act had come to realize that some lessees do not get the security money back upon termination or expiration of the lease partially due to the unclear provisions in the lease agreement or the unclear provisions in the lease agreement. Therefore, the Contract Committee decided to take some actions to prevent this unfair practice from occurring again.

In an effort to protect the consumers from this unfair practice, in 2006, the Contract Committee issued the Notification Re Making Residential Lease Business that Requires the Security Money a Controlled Business in the Money Receipt Evidence by virtue of the Consumer Protection Act.

Essentially, the notification requires the lessor (landlord) of any residential property to issue and hand out the receipt of security money to a consumer (individual lessee/tenant) upon taking any security money from the consumer. In this case, the consumer does not

include a lessee/tenant who is a legal entity, such as a limited company or a public limited company. After all, the Consumer Protection Act only works for the benefits of consumers.

Furthermore, the notification requires that the receipt of security money must include the required condition that a lessee (tenant) is entitled to get back the security money from a lessor (landlord) immediately upon expiration or termination of the lease unless the lessor (landlord) wishes to examine the damage that the lessee is liable for. If the lessee causes no damage to the property, the lessor must return the security money to the lessee within 7 days.

If the lessor (landlord) fails to issue the receipt of security money or the lessor (landlord) issues the receipt of security money without the required condition, or the lessor (landlord) issues the receipt of security money with the provisions different from the required condition, the receipt of security money is deemed to be issued with the required condition as explained above. In other word, even if the lessor fails to issue the receipt or fails to include the required condition in the receipt, the lessee still can enforce the required condition as if the required condition were included in the receipt. Moreover, if any lessor (landlord) of residential property fails to issue the receipt of security money with the required condition, the lessor could face up to one year in jail or the fine up to Baht 100,000 or both as a criminal consequence.

While this requirement is beneficial to the lessee (tenant), it puts a burden on the lessor because the security money must be returned to the lessee in such short period of time, either immediately or within 7 days. In practice, the public utilities bills might not reach the lessor within the 7 days period,

which the lessor is forced to return the security money to the lessee. The lessor might end up with no security money to pay for any damage that arise from any public utilities bills, but has to foot the public utilities bills for the lessee.

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