The Decision is In: A Move-In Fee Is NOT a Security Deposit or Pre-Paid Rent
By Jessica L. Ryan

The First District Appellate Court in Illinois has finally ruled on an issue that has had landlords sitting on pins and needles. But fret no more, the Court's decision favors landlords and protects a practice that has become routine in the last several years.

Because of the harsh penalties imposed by the Chicago Residential Landlord Tenant Ordinance for any security deposit infraction, many landlords have chosen to charge a flat "move-in" fee in lieu of taking a dreaded security deposit. However, the details were never clear – how much is reasonable before you cross the line into "security deposit" territory? Do you have to provide the court with office procedures to justify a "move-in" fee? What steps do you need to take to make sure the trial court deems it a "move-in" fee and not a security deposit? And, worst of all, how can you be certain that numerous trial judges will rule consistently? The Appellate Court's decision answers all of these questions and gives landlords the green light to minimize their risk by choosing a safer alternative to security deposits.

On July 23, 2014, the First District Appellate Court published its opinion, finding that a move-in fee is neither a security deposit, nor prepaid rent, as suggested by the tenant. *Steenes v MAC Property Management*, *2014 Il App (1st) 120719*, sets forth the differences between a security deposit or pre-paid rent and a "move-in" fee, as well as what constitutes an acceptable "move-in" fee that would not be subject to the security deposit provisions of the RLTO. The Appellate Court quickly found that a move-in fee does not fall within the definition of pre-paid rent because it is not a payment made in connection with the tenant's use or occupancy of the unit. With regard to the distinctions between a security deposit and a move-in fee, the Appellate Court drew the following lines:

Security Deposit	**Move-In Fee**
Purpose: To secure performance of the lease terms.	**Purpose:** A charge paid to move into the unit, which would cover a landlord's resulting expense, time, and the interruption of business related to the move. The Appellate Court did not indicate that a landlord needs to show specific actions or procedures to justify the fee.
Amount: At least the amount of one month's rent, taken as "security" for nonpayment of rent and to "secure" the tenant's *full* performance of the lease terms.	**Amount:** One half of the monthly rent or less was acceptable under the Appellate Court's ruling.
Refundable: A security deposit will be refunded, less any authorized withholdings.	**Non-refundable:** A move-in fee is non-refundable and the Appellate Court noted that the landlord's notice described the move-in fee as non-refundable **in writing**, so that the tenant had written notice that the fee would not be refunded.

Timing of Payment: At time of lease signing or with first month's rent.	**Timing of Payment:** The Appellate Court noted that the move-in fee in question was to be paid 5 days before the lease was signed and 10 days before move-in.
Language in Lease: Reference to a security deposit in the lease cannot be interpreted to include a non-refundable "move-in" fee.	**Language in Lease:** The lease does not need to refer to a "move-in" fee (landlord issued a "welcome statement" that discussed the move-in fee) but, if the lease does discuss the move-in fee, it should not state that the move-in fee was paid to secure performance of the lease.

Therefore, if you choose to take a move-in fee, rather than a security deposit from a tenant be sure you (1) give the tenant written notice that the fee is non-refundable, (2) charge an amount equal to half of the monthly rent or less, (3) require payment of the fee prior to the move-in date (or prior to lease execution, if possible), and (4) do not refer to the move-in fee as security for any obligations under the lease. If you follow these guidelines from the Appellate Court, you should feel confident in your practice and minimize your risk of RLTO violation complaints.

For further questions, to discuss in more detail, or to schedule a Lunch & Learn at your office, please contact:

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