

SUPREME COURT OF COLORADO

Mishkin v. Young

107 P.3d 393 (Colo. 2005) · No. 03SC848 · Decided February 28, 2005

SUMMARY

The Colorado Supreme Court held that a landlord may not avoid treble damages by providing an accounting of a retained security deposit during the seven-day period after the tenant serves a demand notice. Because the landlord failed to return or account for the deposit within the applicable forty-five-day lease period, the landlord forfeited the right to withhold the deposit, and the subsequent accounting did not eliminate liability for treble damages. The court affirmed the district court's judgment.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Martinez; Justice Kourlis
JURISDICTION	Colorado
DECIDED	February 28, 2005
DOCKET	03SC848
DISPOSITION	affirmed
PROCEDURAL POSTURE	Landlord petitioned for certiorari review after the district court reversed a county court judgment and directed an award of treble damages, attorney fees, and costs under Colorado's Wrongful Withholding of Security Deposits Act.
STANDARD OF REVIEW	De novo review of statutory construction.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Marc P. Mishkin v. Dean Young

TOPICS

landlord tenant damages statutory interpretation remedies

PRACTICE AREAS

Landlord-tenant law Real estate law Statutory interpretation Remedies

QUESTIONS PRESENTED

1. Whether a landlord who fails to return or account for a security deposit within the statutory or lease-authorized period may avoid treble damages by providing an accounting during the seven-day period following the tenant's demand notice.
2. Whether the landlord's failure to timely account made the entire security deposit wrongfully withheld for purposes of calculating treble damages.

HOLDINGS

1. A landlord may not avoid treble damages by accounting for the retention of a security deposit during the seven-day period following the tenant's demand notice. The landlord may avoid treble damages during that period only by returning the entire security deposit.
2. Because the landlord neither returned nor accounted for any portion of the deposit within the applicable forty-five-day period, the entire security deposit was wrongfully retained, even though the landlord later returned \$50.40 during the seven-day period.

KEY QUOTATIONS

“We hold that a landlord may not avoid treble damages by accounting for a security deposit during the seven-day period following a tenant's demand notice.” (399)

“A landlord may avoid treble damages only by returning the entire security deposit during the seven days following a tenant's demand notice.” (400)

“Thus, the entire security deposit was wrongfully retained even though the \$50.40 that the landlord returned within the seven-day period was not willfully retained.” (400)

FACTUAL BACKGROUND

The landlord and tenant entered into a residential lease requiring return or accounting of a \$1,625 security deposit within forty-five days after the tenant surrendered the premises. The tenant vacated on August 3, 2001, but the landlord neither returned nor accounted for the deposit within the forty-five-day period. After the tenant served a seven-day demand notice, the landlord provided an accounting for \$1,574.60 in alleged property damage and returned \$50.40. The tenant sought treble damages under the Wrongful Withholding of Security Deposits Act.

PROCEDURAL HISTORY

The county court found that the landlord failed to return or account for the security deposit within the forty-five-day period specified by the lease, but concluded that the retention was not wrongful because the tenant had damaged the property. The district court reversed, held that the landlord forfeited the right to withhold the deposit by failing to comply with the statutory deadline, and directed an award of treble damages, attorney fees, and costs, subject to an offset for property damage. The Colorado Supreme Court granted the landlord's petition for certiorari and affirmed.

DISPOSITION

affirmed

CASES CITED

- Lobato v. Industrial Claim Appeals Office, 105 P.3d 220, 223 (Colo. 2005)
- People v. Yascavage, 101 P.3d 1090, 1093 (Colo. 2004)
- State v. Nieto, 993 P.2d 493, 501 (Colo. 2000)
- People v. Luther, 58 P.3d 1013, 1015 (Colo. 2002)
- People v. Cooper, 27 P.3d 348, 354 (Colo. 2001)
- Turner v. Lyon, 189 Colo. 234, 539 P.2d 1241 (1975)
- Guzman v. McDonald, 194 Colo. 160, 570 P.2d 532 (1977)
- Heatherridge Mgmt. Co. v. Benson, 192 Colo. 190, 558 P.2d 435 (1977)
- Martinez v. Steinbaum, 623 P.2d 49 (Colo. 1981)
- Houle v. Adams State College, 190 Colo. 406, 547 P.2d 926 (1976)
- Martin v. Allen, 193 Colo. 395, 566 P.2d 1075 (1977)
- Schneiker v. Gordon, 732 P.2d 603 (Colo. 1987)