

A Payment by Any Other Name and a Cautionary Tale

In a recently published case, *E.S. Management v. Yingkai Gao, et. al.*, the landlord refused to return a security deposit equivalent to two-month's rent -- required to be wired to the landlord while the lease was being reviewed by the potential tenants but before the lease was signed merely to hold the apartment off the market for two days during the leasing process-- when the potential tenants decided not to rent the apartment (ie, no credit applications were completed and no lease was executed). Here, the courts determined that the landlord's conduct was so egregious that it found multiple violations not only of the Pennsylvania Landlord and Tenant Act (LTA), but the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL). The Pennsylvania Superior Court ruled that a landlord violated the LTA on the escrowing of funds by requiring tenants to pay a security deposit equivalent to two months' rent and advance payment of the last month's rent. The court rejected the landlord's argument that that this "prepayment" was not held a security for a potential default. Calling the payment something other than security deposit did not change the actual purpose of the payment. Moreover, the court found that the landlord violated the UTPCPL -- it's conduct was "deceptive, which created a likelihood of confusion or misunderstanding" -- and awarded punitive (treble) damages. While this case is complex, it is worth reading as a "cautionary tale" as it provides important guidance and is likely to be cited in the future. If, after reading this opinion, you question the terms of your lease or any of your leasing practices, please consult with your company's counsel to ensure compliance.