



## Complying with the Lease

In this case study, a property manager is found to have engaged in improper, fraudulent, or dishonest conduct when she modified the terms of a lease, failed to return prorated rent, and failed to comply with the lease when she did not conduct a moveout inspection. It is imperative that property managers comply with the terms of all written agreements.

### **THE SITUATION:**

On April 11, 1995, Zoë Deleon (“Deleon”) was issued a salesperson’s license. On July 27, 2000, she was issued a principal broker’s license. Since July 27, 2000, Deleon has been the principal broker of Contemporary Rentals. (“Rentals”).

On May 16, 2001, the Whitleys, as owners, entered into a Property Management and Exclusive Rental Agreement (“PMA”) with Rentals, as Agent, to manage 2620 Worley Avenue, Lynchburg, VA. The PMA stated, in part, that Deleon would “refund the deposit in accordance with the terms of the Lease, make inspections of the premises when Tenant vacates, and cancel or modify any existing leases.”

On May 30, 2014, the Whitleys, as Lessor, and the Avilas, as Lessees, entered into a Residential Rental Agreement (“Lease”) for the subject property. The Lease indicated that Deleon represented the Whitleys. The Lease term was June 1, 2014 to May 31, 2015.

The Lease contained two provisions relevant to this case:

1. A paragraph regarding early termination of occupancy, which stated that the Tenant would be liable for the full term of the lease unless the Landlord agreed in writing to release the Tenant.
2. A paragraph stating that the Tenant has the right to be at the move-out inspection, which would occur within 72 hours of the Tenant’s departure.

On April 15, 2015, the Avilas informed Deleon that they would not be renewing the lease and would be moving out on May 15, 2015.

Deleon responded "Is it okay if I list this house for rent asap since you are moving out on May 15? If a new tenant is found who can start a new lease between May 15 and May 31, you will be getting a credit for those days."

Per the PMA, Deleon, as Agent for the Landlord, had the authority to negotiate, prepare and sign all leases, and to cancel or modify existing leases.

Deleon stated that she negotiated with the Avilas to find a new tenant and prorate their May 2015 rent. Deleon quickly found new tenants who would start on May 16, 2015.

The Avilas stated that Deleon advised that she would not conduct a move-out inspection because it was not necessary. They vacated the subject property and left the required items on the kitchen counter.

The day before they moved out, the Avilas texted Deleon to tell her they would be out the following day and asked, in part, "Since the new tenants signed a lease starting the 16<sup>th</sup>, when will we get our prorated May rent back? And the security deposit?"

On May 19, the Avilas texted Deleon again since they had not received a response. They texted, in part, "Since the new tenants signed a lease starting the 16<sup>th</sup>, when will we get our prorated May rent back? And the security deposit?"

On May 19, Deleon responded "Send me the final utility bills paid proof. Then I will send you the refund check."

On May 19, the Avilas sent the proof of all utility bills being paid and asked, "What is the check amount you are sending?"

On May 25, after not receiving a response, the Avilas texted Deleon again and asked "Did you send out the refund? And what is the total amount?"

On May 25, Deleon responded "Not yet. We are doing paint touch ups (not whole house paint), repairs, and professional cleaning now. New tenant has not moved in yet."

On May 25, the Avilas responded, "We had the house professionally cleaned and bathrooms sanitized. What does touch up paint have to do with our deposit and rent? Please send out our deposit and ½ rent. We were excellent tenants, always paid our rent and bills on time. Did not cause any damage and had the place professionally cleaned. You are not returning our calls and that is concerning."

On June 15, the Avilas' lawyer sent Deleon an Immediate Demand for Deposit Return letter. The letter requested the full security deposit and prorated rent be paid within five days.

On June 17, Deleon sent the Avilas a repair invoice for work that was performed at the house after they vacated. The total amount of the invoice was \$1,021.73. Deleon stated she would send the security deposit refund, with the repair and cleaning deductions if she did not receive a receipt from the Avilas for the professional cleaning they had done.

On June 17, the Avilas sent Deleon their house cleaning receipt.

On June 24, the Avilas' attorney sent another request to Deleon, advising they were waiting Deleon's response and the refund check.

On June 30, the Avilas attorney contacted Deleon and stated, in part, "Despite a multitude of opportunities and a great deal of patience on my clients' part, we still have not heard a response from you. You leave us no choice but to report you to the regulatory authorities now."

In her written response to the VREB, Deleon stated, in part, "I don't know what the law says about breach of lease, but my understanding is the law should protect the party (landlord) who signed a lease (legal document) and abided by the law, not the tenant who breached the lease. My further understanding is when a tenant breaches the lease their security deposit should be forfeited or applied to unpaid rent."

On July 13, the Avilas filed a Warrant in Debt against Deleon. On August 11, the Avilas were awarded a judgment of \$4,546.66 plus 6% interest.

Deleon's actions of modifying the Lease in writing to allow an early termination and failing to return the prorated rent, and also by failing to abide by the terms of the Lease by not conducting a move-out inspection in order to give notice to allow the Tenants to be present at the inspection to determine if the Security Deposit would be returned, constitutes improper, fraudulent, or dishonest conduct.

**THE RESULT:**

The Board found that Deleon engaged in improper, fraudulent, or dishonest conduct when she modified the Lease in writing to allow an early termination and failed to return the prorated rent; and by failing to abide by the terms of the lease when she did not conduct a move-out inspection or give notice to allow the Tenants to be present to determine if the Security Deposit would be returned.

The Board issued Deleon a fine of \$1,800 and ordered her to complete at least three classroom hours of Board-approved education pertaining to Property Management within nine months.

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