



## **Dispersing the Security Deposit as a Property Manager**

This case examines a scenario in which a real estate licensee acting as a property manager incorrectly dispersed a tenant's security deposit to the owner. When a real estate licensee is acting as a property manager, the licensee must disperse the security deposit in accordance with the terms of the property management agreement and the lease. If an owner opts not to renew a tenant for a new lease term, the property management agreement is not terminated, nor is the owner entitled to receive the tenant's security deposit at the time of giving notice of non-renewal.

### **The Situation:**

On October 24, 2016, Artem Davidson was issued a real estate salesperson's license.

On August 12, 2023, the Board received a written complaint from Hal Kessinger regarding agent Artem Davidson.

### **The Investigation:**

In June 2022, Kessinger, as owner, entered into a Virginia REALTORS® Residential Property Management Agreement with Davidson's property management company, Davidson Co.. Davidson was to manage Kessinger's property located at 123 West Main Street, Culpeper, Virginia. The property management agreement was effective from June 1, 2022 through June 30, 2023. It was later renewed to last through June 30, 2024.

On July 1, 2022, Christopher Mays, as tenant, and Davidson Co., as landlord, entered into a Virginia REALTORS® Residential Lease for the subject property. The rent for the subject property was \$1,300.00 per month for a period of twelve months. Pursuant to the lease, Mays paid a \$1,300.00 security deposit which was deposited in Davidson Co.'s escrow account.

In April 2023, Mays submitted a notice of intent to vacate to Davidson Co., which included a forwarding address for his final statement and security deposit refund. Davidson emailed Kessinger and told him they had received notice from Mays that he would not be renewing his lease. Kessinger replied to the email, saying, "Thanks for informing me. Please do not sign a new tenant as I have decided to sell the property." Davidson replied via email, saying, "As Davidson Co. will no longer be managing the property, we will transition the security deposit to you by the end of the week and notify the tenant that you are in possession of the deposit."

Kessinger replied, saying he still wanted Davidson Co. to manage the property through the end of the lease. Davidson acknowledged Davidson Co. would continue to manage the property, but proceeded to disperse the security deposit to Kessinger without the consent of the tenant.

**The Result:**

Davidson was found to have violated Board Regulation 18 VAC 135-20-180.B.1 which states, "...[U]nless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant." Davidson was also found to have violated Virginia Code section 54.1-2134.A.1 which requires licensees engaged as property managers to perform in accordance with the terms of the brokerage agreement. Davidson was fined \$1,250.00 and was required to complete at least three classroom hours of Board-approved post-license education pertaining to escrow requirements within six months.

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