

## BACK IN SESSION

Thanks to some editorial staff reshuffling, this column has been off the radar screen for six months but we've now returned and have lots of ground to cover as the courts continue to interpret and apply the law governing residential landlords and tenants.

We start with *APT Management, Inc. v. Newcomb*, where the Appeals Court acknowledged that the service of multiple notices to quit for different reasons normally violates the requirement that a notice to quit be clear and unambiguous. The court saw fit to make an exception in this particular case, where a tenant who had received a termination notice for various mundane reasons, including failure to keep her apartment in a good, sanitary condition, was subsequently discovered setting fire to another resident's apartment. That justified a second notice to quit, this time under a special statute which allows landlords to take expeditious action against tenants who break the law; judges are authorized to issue injunctions ordering the miscreant to leave immediately.

The landlord in *Cimini v. Nicola* issued only one notice to quit but his method of service was somewhat novel. He blew the notice up to poster size and affixed it to the front door of the single-family home which the tenant had rented in Pittsfield. The Appeals Court held that this was a violation of the implied covenant of quiet enjoyment, unreasonably impairing the tenant's right to privacy.

Counterclaims in landlord-tenant cases are regulated by Chapter 239, Section 8A of the General Laws, but the Appeals Court held in *EMG Realty, LLC v. Read* that the special restrictions and procedures imposed by the statute have no applicability to an ordinary civil suit as opposed to a summary process action. The statute *was* applied in another Appeals Court decision, *James v. Familia*, where a tenant faced with eviction successfully pursued counterclaims alleging that the condition of her apartment was defective and that the landlord had imposed illegal utility charges while also violating the security deposit law.

The landlord and his tenant in *Kahyaoglu v. Sillari* got along very well -- so well that the landlord promised to leave his apartment building to her after he died. According to the Appeals Court, however, she had no legal recourse when he changed his mind and instead conveyed the property to his son, who took care of him when he became ill.

The Appeals Court held in *Lawrence v. Lei* that the sale of an apartment building in that city by a receiver did not amount to an unconstitutional taking of the property, which had been run into the ground by a landlord guilty of several code violations. Receivers are appointed by judges in extreme cases to take control of dilapidated properties after an owner has refused to do so, much like a trustee is chosen to manage the affairs of a bankrupt person.

In *Linardon v. WoodSpring Suites*, the Massachusetts Supreme Judicial Court upheld an order of a single justice allowing the ouster of a tenant whose appeal of an eviction order had been denied. Any tenant wishing to file such an appeal is required by statute to post a bond protecting the landlord from any delay in regaining possession. Because the legislature didn't impose a specific deadline for posting such a bond, the SJC held in *McNeff v. Cerretani* that trial judges may give the tenant reasonable time to comply.

Retaliatory residential evictions are prohibited in Massachusetts, and it's presumed that the landlord's motive is retaliatory if the eviction is commenced within six months after the tenant has complained about one thing or another. In *Rangel v. Mohamed*, a tenant filed a criminal complaint claiming to have been assaulted by the landlord's handyman, but that filing happened more than six months before the landlord initiated an eviction action so the Appeals Court held that the presumption didn't apply. In *S&B Property Management v. Miranda*, on the other hand, the tenant had complained to the local Board of Health that her apartment was infested with rodents, cockroaches and bedbugs less than six months before her tenancy was terminated for non-payment of rent. Be that as it may, the Appeals Court found that the tenant had improperly withheld rent because the landlord wasn't made aware of the infestation before the tenant missed her first payment.

The tenant in *Shattuck v. Donovan* had rented an apartment which was too big and too expensive so he brought in a roommate. The roommate paid a security deposit and the Appeals Court held that the it had to be returned after the roommate moved out. The landlord in *Slater v. Traynor Management, Inc.* also got into trouble for not returning as security deposit within the 30-day period prescribed by statute. He had offered to let the tenant retrieve a check in person at the management office but that didn't get him off the hook with the Appeals Court, especially where he knew that the tenant had moved out of town and was now living in New York.

In 2013, Sumner Slavin invited his girlfriend to share his house in Brookline. Eight years later, they broke up and Slavin was gracious enough to move out, living in hotels or at the homes of friends. He then sought an injunction to force the woman out, but in *Slavin v. Lewis* the Appeals Court upheld a judge's decision that the girlfriend had by now become a tenant so a full-blown summary process eviction action was necessary.

Expect to see us back on this page every month continuing to make you aware of the complex legal environment which makes being a landlord or property manager in Massachusetts an ongoing challenge.