***Lapatin on the Law***

HOTLINE HIGHLIGHTS

This is another in our series of columns summarizing discussions on the Massachusetts Apartment Association’s legal hotline. We’ve recently offered free advice to members on a variety of topics, for example:

Q. Do I need to provide the lead paint disclosure form to someone applying to rent an apartment in a newly-constructed building?

A. No. The form is required only in the case of buildings built before 1978.

Q. We have roughly 150 uncovered parking spaces for our residents that we charge $275 per month for. None are set aside or dedicated for handicap parking. If a resident is handicapped and has a handicap parking placard can the landlord still charge them for monthly parking?

A. Yes, so long as the rate is the same as that charged to everyone else. You clearly couldn’t require a handicapped tenant to pay a special premium for the privilege of reserving a space.

Q. I told a couple applying to rent one of my apartments that their dog wouldn’t be allowed. They replied that they would come without the dog, at which point I approved the application. After they took occupancy and a neighbor complained about barking, one of the tenants produced a doctor’s letter to the effect that she needed the dog in order to help combat depression. Am I required to let the dog stay?

A. Maybe not. Both federal and state advisories on support animals suggest that requesting a reasonable accommodation after a landlord has complained about an unauthorized animal may be evidence of bad faith. Even worse in this case, the tenants expressly assured the landlord that they wouldn’t bring the dog. Any argument that the depression didn’t begin until after that assurance was offered could be challenged as a pretext.

Q. Is a landlord required to furnish a refrigerator?

A. Pursuant to a recent amendment, the State Sanitary Code requires landlords to provide a refrigerator and freezer having a combined storage area of at least 11 cubic feet unless the lease obligates the tenant to supply these appliances.

Q. If a landlord leaves a washer and dryer in a rental unit as a “courtesy” can the landlord have the tenants maintain the appliances and if they break beyond repair, replace them?

A. Sorry, no. You have no obligation to supply a washing machine and dryer but once you do they must be maintained and repaired by the landlord. The alternative would have been to sell the appliances to the tenant, who would then become responsible for their upkeep, replacement and removal.

Q. I’ve noticed press reports about Lithium Ion Batteries from e-bikes, e-scooters, e-skateboards catching fire in New York City. Can we include language in our lese form that prohibits the storage and charging of “micro mobility transportation devices”?

A. I think it would be okay to include a clause like that in your lease form for new tenancies or lease renewals; it’s doubtful that you can unilaterally force the removal of devices already owned by tenants whose existing leases don’t prohibit them. A less extreme approach might be to establish guidelines for safe usage. For example, any device with this kind of battery should be charged and stored in a cool, dry place, and not left charging for too long or while you’re asleep – a recommendation likely at odds with how many consumers handle their devices. Batteries should also be routinely inspected to make sure there is no cracking, bulging or leaking, and people should always use the charger that came with the device or get one from a reputable supplier.

Q. May a landlord require tenants to pay a fee for Internet access?

A. In general, thanks to a recent court decision, landlords are able to impose fees during the term of a lease so long as the tenant has agreed (typically in the lease itself) to make payment.

Q. May a landlord who happens to be a notary notarize a signature by the guarantor of a lease?

A. No. The applicable Massachusetts statute prohibits someone from notarizing a document in which he or she has a financial interest. Be aware that guaranties are not legally required to be notarized.

We can be reached at 617-573-5822 and will normally return your call the same day. Remember that the hotline is no substitute for your own attorney.

 Philip S. Lapatin