

HOTLINE HIGHLIGHTS

It's been eight months since our last look at calls to the Massachusetts Apartment Association legal hotline, a free service for members (but no substitute for your own personal attorney). Here are some new exchanges to help bring you up to date:

Q. After we've acquired a new property may we pursue the existing tenants for rent outstanding prior to the closing?

A. The purchase contract with the prior owner should contain provisions addressing who is entitled to seek collection. Generally the buyer is allowed to enforce the lease but any collections related to the period before the closing must be forwarded to the seller.

Q. May I reject a rental application because the prospective tenant's income is insufficient? If so, must the applicant be advised of the reason for the rejection?

A. The application may be rejected so long as insufficiency is defined objectively and the landlord's guidelines are uniformly applied so as to avoid an inference of illegal discrimination. A federal court has blessed a policy of a landlord who insisted that tenants have a weekly net income equal to 90 percent of the monthly rent; the Massachusetts Commission Against Discrimination did not object to a requirement that the applicant have monthly income equal to at least three times the monthly rent. So long as the landlord isn't relying on information obtained through a consumer credit report, the applicant need not be informed of the reason for the rejection.

Q. A man and his girlfriend leased an apartment at our complex. After he obtained a restraining order against her we changed the locks so the girlfriend won't have access. Are we also able to remove her from the lease?

A. No. In fact, she remains liable for any unpaid rent accruing under the lease.

Q. Does a snake qualify as an emotional support animal under the fair housing laws?

A. Typically not. According to the U.S. Department of Housing and Urban Development, reptiles (other than turtles), barnyard animals, monkeys, kangaroos and other non-domesticated animals are excluded unless the tenant can meet the substantial burden of demonstrating a disability-related therapeutic need for the specific animal being requested.

Q. A tenant just informed me that she's gotten married and her new husband will be sharing the apartment. Can I insist on getting a satisfactory rental application from him?

A. Not if the landlord used one of the standard form Massachusetts Apartment Association leases, which entitle a tenant to allow a spouse into the apartment without the landlord's consent. If the spouse wants to be added to the lease, on the other hand, the landlord could require an application and undertake the regular screening process.

Q. Must a disabled adult living with another family member be excused from co-signing a lease?

A. Not unless the disability renders him legally incompetent. The types of accommodations required under the fair housing laws have not generally been extended to include relief from customary contractual obligations like the payment of rent.

Q. Can a landlord charge a \$200 fee to remove tenants' belongings in the basement after they move out and subtract the fee from their security deposit?

A. You can't charge a fee which the tenant didn't agree to pay. The tenant could be required to reimburse actual removal costs but they can't be deducted from the security deposit since the law limits deductions of this kind to the cost of repairing damage caused by the tenant.

Q. A tenant delivered a signed notice that he was relinquishing all rights of occupancy as of a certain date even though the term of the lease will not have expired. Is he now allowed to change his mind and stay in the apartment beyond the stipulated date?

A. The landlord can take the position that the tenant's surrender of the apartment has been accepted, precluding the tenant from remaining in possession. It may, however, be difficult to have the tenant evicted unless the landlord has already made other plans for the apartment, for example by leasing it to a third party.

Q. Can someone looking for a roommate insist on having someone of the same sex?

A. The provisions of the fair housing laws which normally prohibit discrimination on the basis of sex shouldn't apply where someone is looking for a roommate to share an apartment and wishes to ensure compatibility.

Q. A recent article in the *Boston Globe* suggested that security deposits don't need to be escrowed and that, in lieu of escrowing, the tenant is entitled to receive interest at the rate of 5% per annum. Isn't that inaccurate?

A. Yes. That provision of the statute applies only to last month's rent collected in advance. Security deposits are required to be kept in an escrow account and the tenant is entitled to receive only whatever interest is paid to the landlord, with a 5% cap.

Q. In those instances where a disabled tenant needs a reserved parking space as a reasonable accommodation, may we simply allocate one of the specially designated handicap spaces in our lot?

A. No. Designated handicap spaces are supposed to be kept available for visitors based on a ratio established by the Massachusetts Architectural Access Board. Reserved spaces for disabled residents must be supplied in sufficient numbers to meet their needs and should be identified by appropriate signage.

Whenever you have a question for us, don't hesitate to reach out at 617-573-5822.