<u>PASSING JUDGMENT</u>

The Massachusetts Appeals Court has recently handed down no fewer than seven new decisions of interest to the rental housing community. The opinions range from silly to significant, beginning with *Curtis v. Cambridge*, where Nicole Curtis sued the city of Cambridge because she objected to a motion-activated light which had been installed in the hallway outside her apartment unit. The only problem was that the building was owned not by the city but by a private landlord who had received financial and technical assistance from the city in exchange for agreeing to preserve affordable housing. The court refused to issue an emergency injunction requiring the light to be removed.

In *Pine Tree Village Residents Association v. Almeida*, a landlord sought to evict a tenant for failing to abide by certain maintenance requirements. A court-approved agreement was reached entitling the landlord to obtain an eviction order if necessary repairs were not made by a specified date. The fact that the landlord failed to take action until two months after that date passed did not constitute a waiver of the tenant's ongoing default. The landlord could proceed with the eviction.

The tenant in *Walker v. Pierre* did a lot better, persuading the court to vacate an eviction order because the judge had failed to find that a notice to quit had been received, either by the tenant herself or some other adult sharing possession of the premises. While the notice had in fact been mailed and there was a presumption that it arrived in due course, the tenant argued that the notice had never reached its destination and the judge should have made a specific finding as to whether or not he believed her.

Where a building has been neglected to such an extent that it's become untenantable for residential use, the landlord may be replaced by a court-ordered receiver who takes possession of the property in order to oversee the necessary repairs. In *Fitchburg v. Volk*, the receiver was a construction contractor who was allowed by the court to slap a lien on the property in order to secure reimbursement of his costs. The landlord alleged, but could not prove, that the receiver had spent an inordinate amount of money on the work. Keep in mind that under recent amendments to the State Sanitary Code a landlord whose property is condemned will be required to relocate existing tenant until the property is once again habitable.

Because Hebrew Senior Life is a non-profit, charitable landlord, the court held that it was not subject to liability under Chapter 93A of the Massachusetts General Laws, which prohibits unfair or deceptive trade practices and allows for the collection of punitive damages as well as reimbursement of a tenant's legal fees in seeking redress. The tenant in that case, *Hebrew Senior Life v. Novack*, also argued that the covenant of quiet enjoyment was breached when the landlord failed to prevent continued harassment by another resident. That claim failed in the absence of proof that the tenant had reported any of those encounters to the property manager. Even if she had, landlords are not expected to intervene in squabbles between residents except in extraordinary situations such as racial harassment or criminal misconduct. The tenant also complained that she hadn't received interest on her security deposit each year but Hebrew Senior Life was let off the hook since it had properly notified the tenant that the amount in question could simply be deducted from the rent.

In a similar vein, an eviction was allowed in *Pimental v. Galarza*, where a tenant had taken it upon herself to start withholding rent before notifying the landlord of various alleged Sanitary Code violations. While the Massachusetts rent withholding statute is oppressively broad, one saving grace is that the landlord must be made aware of any defective conditions while rent is still being punctually paid. Although the tenant could not keep her apartment, she contended that she should at least receive compensation for the code violation, namely a lack of heat while the landlord converted from oil to gas. Once again, she came up short. The court found that the landlord had adequately addressed any temporary problem by supplying portable units.

That leaves us with *DiSchino v. Lu*, where a landlord issued a notice terminating a tenancy at will agreement, adding that "utilities to your unit will be discontinued" as part of the renovation of the property beginning on the day following the date on which the tenant was supposed to leave. While it's certainly true that a landlord can't shut off utilities as a way of forcing a tenant to depart, this landlord had done no such thing. He testified that he would never stop utility service while a tenant was still in occupancy. Even if the landlord's notice could be construed as a threat, words alone cannot interfere with a tenant's right of quiet enjoyment. A Housing Court judge's award of $6,000 to the tenant was nullified, demonstrating that justice and common sense still occasionally prevail.