

Lapatin on the Law

HOTLINE HIGHLIGHTS

This is the latest in our periodic review of questions posed through the Massachusetts Apartment Association's legal hotline, a free member service designed to provide information of a general nature without the kind of detailed analysis and advice which can be obtained only by engaging an attorney. Here's what we've recently had to say:

Q. May a landlord delay the commencement of a lease term or reject a rental application where the prospective tenant has children under the age of six and the apartment hasn't been dealed?

A. Landlords may delay the commencement of new tenancies for up to 30 days where deleading must first be completed. Rejecting a rental application in order to avoid deleading is a violation of the fair housing law.

Q. Our lease form requires the tenant to return the apartment broom clean at the end of the term. Can we offer to do the cleaning ourselves in exchange for a fee?

A. Yes. This would be considered as the offering of a service which the tenant is free to accept or decline.

Q. Can a landlord charge tenants for gas in proportion to the size of their apartments?

A. No. Under the State Sanitary Code, unless a valid variance is obtained, tenants can be required to pay for gas only if it's separately metered and billed by the utility company.

Q. I understand that the State Sanitary Code amendments which recently took effect require landlords to inspect apartments for pest infestation prior to a new occupancy. Must a professional exterminator be used for this purpose?

A. No, but landlords will be required to keep a record of these inspections which the local health board will be entitled to review. The documentation should include evidence of any actions taken following the inspection, for example eliminating entry points and engaging the services of an exterminator where necessary.

Q. A prospective tenant had several felony charges show up on their criminal background check. They claim the charges are not theirs and are working on getting it resolved through they county court. It is our policy not to accept felon applicants. Are there any documents they can provide that would be accepted as temporary proof of innocence?

A., You should ask for copies of whatever he's submitted to the court in order to clear his record. An alternative would be to get a letter from his attorney stating what course of action is being taken. Keep in mind that automatically rejecting applicants with criminal records may be viewed as a form of illegal discrimination against members of minority groups.

Q. A landlord collected the last month's rent in advance when a lease was signed. The term has been extended five times, including an increase in the rent, but the last month's rent payment was not supplemented. Will the landlord be able to collect the difference for the last month when the time comes?

A. Yes. The tenant agreed to the current rental rate and will be liable for any excess above what the landlord originally received for the last month.

Q. Can a tenant utilize a hallway electrical outlet in order to recharge her car outside in the parking lot? If not, can I force her to park her car at the end of the lot so as to be beyond the reach of the electrical cord?

A. The tenant has no right to obtain power from a source outside her own apartment. Instead of relocating the car, which could be construed as the deprivation of an existing amenity, the landlord should monitor the use of the outlet and disconnect the cord whenever necessary. The tenant should be instructed in any event to cease and desist.

Q. Children living in apartments next door to my property keep entering my back yard through the driveway; they play there, including various dangerous activities such as jumping from a porch. I can't totally fence off the area. What else do you suggest?

A. The caller should reach out to the owner of the next door property and urge him to tell his tenants that they shouldn't allow their children to continue making use of the back yard. If he refuses to oblige, he might at least be willing to supply the names of the tenants so the caller can contact them herself. Another option would be to place a NO TRESPASSING sign on the property, threatening to notify the police of an illegal activity.

Q. May a landlord impose a \$600 fee for reviewing a sublease proposal?

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. The amount of the fee should bear some reasonable relationship to the cost of qualifying the proposed subtenant.

Q. May a landlord charge a tenant \$1,000 for each day on which an unauthorized subtenant remains in an apartment?

A. The premium would in all likelihood be viewed as an unenforceable penalty far exceeding any damages which the landlord has actually suffered.

The hotline can be accessed at 617-573-5822; we'll normally get back to you the same day.

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