***Lapatin on the Law***

CLIMATE CHANGE

This column has been replete with instances in which tenants claiming to have a disability were entitled to all kinds of special dispensation, like being allowed in keep a dog in a building where pets are generally banned or getting relocating to another apartment in order to escape stressful interactions with a neighbor. There are occasionally limits to how far a court is willing to go, as we just saw when the Massachusetts Appeals Court handed down its decision in *Shoreline Corporation v. Pena*.

Benjamin Pena rented an apartment in Lawrence with the assistance of a Section 8 federal housing subsidy. He took hot water baths to ease his frequent pain from various physical disabilities, including diabetes, osteoporosis and arthritis. He also continually ran hot water from all of the faucets in the apartments, supposedly to create a warm and humid environment which acted as a topical treatment for his pain.

The tenant’s excess water usage caused condensation resulting in water dripping from the ceiling of the apartment below, the buildup of about two inches of ice on the windows and – most seriously – lack of hot water for other residents. To compensate, the landlord’s maintenance supervisor had to raise the water temperature for the entire building, creating a risk of scalding the occupants.

In 2018, with the assistance of a housing specialist, the tenant and the landlord entered into an agreement under which hot water could not be run for more than ten minutes at a time. A Housing Court judge approved the agreement, at which point it became a legally binding order. By 2021, the tenant’s refusal to abide by the terms of that order led the landlord to obtain a court-issued injunction instructing the tenant to utilize the water in a reasonable manner, including not running water without a specific purpose or using hot water for longer than twenty minutes. When the tenant failed to comply, the landlord initiated a full-blown eviction action alleging that the tenant had violated his lease and interfered with the health, safety and welfare of the other residents. A judge agreed, issuing an eviction order accordingly.

The tenant appealed, citing several reasons why he should be allowed to remain in occupancy. It was first contended that the landlord’s maintenance supervisor was not qualified to offer expert testimony about how the tenant’s use of hot water affected the water temperature in other apartments. The Appeals Court disagreed, noting that much of the supervisor’s testimony was based on his own personal observations. To the extent that he then opined as an expert by explaining how the tenant’s excess water use was the cause of insufficient hot water elsewhere in the building, it was altogether appropriate to take his words at face value. He had worked in his position for almost seven years and checked the boiler systems in the building on a daily basis. Thanks to his experience and familiarity with the heating apparatus, he did indeed qualify as an expert even without any specialized education in the field.

The tenant then argued that his eviction was not warranted by the provisions of his lease, which incorporated federally-mandated provisions designed to offer a greater level of protection to tenants. The court ruled, however, that even under the stringent requirements of the Section 8 lease form, there was ample evidence to conclude that the tenant was being evicted for good cause, defined to include repeated violations which disrupt the livability of the project, adversely affect other residents’ quiet enjoyment, or interfere with the management of the building.

That was all a precursor to the key issue on appeal, namely whether the tenant was entitled to a reasonable accommodation on account of his disability. For whatever reason, he based his claim not on his physical ailments but rather on the fact that he suffered from a cognitive disability. A homemaker who assisted the tenant in his apartment four days a week submitted an affidavit concluding that he had “trouble facing reality with things that make him stressed.” The tenant alleged that he suffered “from some undiagnosed capacity issue or mental disability”, warranting reconsideration of the eviction order and exploration of possible reasonable accommodations.

The Appeals Court was willing to assume, without deciding, that the tenant indeed had a cognitive disability. Be that as it may, he was unable to demonstrate a therapeutic connection between that disability and his excess hot water use. A similar result was reached in a case several years ago when another tenant failed to show that keeping a python snake in his apartment alleviated his mental distress.

The court in *Shoreline* went on to find that even if creating excess humidity did improve the tenant’s mental condition, there was nothing “reasonable” about an accommodation which jeopardized the other tenants in the building. The tenant suggested that the problem could be solved simply by installing shut-off attachments on the apartment’s faucets, but Appeals Court accepted the landlord’s position that such attachments were not compatible with the building’s plumbing.

The final arrow in the tenant’s quiver was essentially an argument that the court should use its so-called “equitable” powers to prohibit an eviction which would be unfair given the circumstances of the case. The court was not persuaded, noting that equitable relief from an eviction is historically available only where a tenant’s breach resulted from an oversight or mistake and no harm has resulted. That was hardly the case here, given that the tenant’s repeated infractions were deliberate and had wreaked havoc within the building. The landlord, not to mention the other tenants in the building, were relieved to learn that the tolerance of the courts is not boundless.

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