

## *Lapatin on the Law*

### HOTLINE HIGHLIGHTS

It's been a few months since we shared conversations with members on the Massachusetts Apartment Association's legal hotline. Here are some of the questions we received and how we responded:

**Q. I allowed a tenant to share her apartment with a friend and his children. Subsequently, I renewed the tenant's lease for another year. May I now require the additional occupants to leave?**

A. Not yet. Renewing the lease after letting the friend and his children take occupancy would in all likelihood be construed as approving the continuation of a subtenancy. The landlord will need to wait until the current lease term expires.

**Q. May an alleged victim of domestic violence, perpetrated by his co-tenant girlfriend, vacate an apartment and be released from further liability to the landlord?**

A. Yes, subject to various conditions set forth in legislation which took effect in April, 2013. The landlord may request verification that the tenant is entitled to the benefit of the statute and the tenant must vacate the apartment within three months after notifying the landlord of the intention to do so. The remaining tenants, including the abuser, remain liable for all obligations under the lease.

**Q. What is the going rate that landlords should be paying their tenants for the interest on their security deposit?**

A. Security deposits need to be held at a Massachusetts bank in a specially-designated escrow account; the tenants are entitled to whatever rate of interest the landlord gets from the bank.

**Q. How do I return a security deposit where there were three tenants named in the lease?**

A. A single check in the amount of the full deposit should be made payable to all three tenants.

**Q. When a landlord engages a broker to rent an apartment and the tenant isn't told about a defective condition which would have deterred the tenant from renting the apartment can the broker as well as the landlord be held liable?**

A. Failing to disclose the defect could be viewed as a violation of the Consumer Protection Act (Chapter 93A). The landlord would clearly be liable for renting an apartment which endangers or materially impairs a tenant's health, safety or well-being while the broker would share responsibility if he or she was aware of the problem.

**Q. A disabled tenant requires a live-in health care aide. Am I allowed to screen the proposed aide in order to make sure that he or she will not threaten the quiet enjoyment of the other residents?**

A. Yes. It probably also makes sense to have an agreement making clear that the aide does not have the status of a tenant.

**Q. We had a burst water pipe that flooded five apartments, making them uninhabitable and requiring major repairs to ceilings, walls etc. that will take a few months to fix. Someone suggested that the tenants are covered by Chapter 79A of the Massachusetts General Laws related to relocation assistance. Is that correct?**

A. No. Chapter 79A doesn't apply to privately owned and financed rental housing. You clearly are obligated to pay the \$750 relocation benefit to which residential tenants are entitled under a different statute and must abate the rent for the period during which the apartment is untenable. No additional relocation payments are legally required unless (thanks to last year's Sanitary Code amendments) the apartments are condemned by the local health board. You'd have the right to challenge any condemnation, including taking an appeal to a court. Normally condemnation takes place only when the building is unsound and beyond repair.

**Q. May I include a provision in our lease form requiring tenants to pay a fee for processing a sublease consent request?**

A. Yes, thanks to a 2021 court decision validating charges of this type.

**Q. May we enforce a lease clause requiring the tenant to reimburse the fees charged by a constable who served a notice to quit before the rent was 30 days in arrears?**

A. Not according to a 2020 court decision holding that requiring reimbursement of the constable's fees would be equivalent to imposing a penalty for late payment, which is prohibited by statute until 30 days have passed after the rent became due and payable.

**Q. Instead of allowing a sublease, may I suspend a lease for nine months while the tenant will be abroad, enter into a direct lease with the proposed subtenant for the same nine months and agree to relet the apartment to the existing tenant when she returns? The tenant will be leaving her furniture in the apartment while she's away.**

A. Landlords may enforce a policy prohibiting subletting altogether but what you suggest is a cumbersome alternative, particularly where the tenant will not have removed her belongings and the interim tenant may not depart when required. A sublease would much more closely reflect what the parties actually intend. The landlord should in any event be sure to screen any new occupants before allowing them into the building.

The hotline is not intended to take the place of your own attorney but if you need legal information of a general nature feel free to leave us a message at 617-573-5822.

Philip S. Lapatin