Lapatin on the Law

FEES, FORMS AND MORE

Before taking a look at this month's three new court decisions, permit us to say just a word or two about rental fees. Brokers are understandably continuing to grapple with the ambiguities of the law which was passed last year in order to regulate the fees which they're allowed to charge tenants looking for an apartment. The provisions of the statute and tips on how to comply with them were outlined in a July 16 member advisory distributed by the Greater Boston Real Estate Board. While there are several situations in which brokers are still allowed to collect fees from tenants, the same cannot be said in the case of landlords.

Way back in 1977, the legislature prohibited landlords from requiring a tenant or prospective tenant to pay, at or prior to the commencement of a tenancy, anything more than the first month's rent, the last month's rent, a one-month security deposit and the actual cost of purchasing and installing a new lock and key. Conspicuously absent from this list are brokerage commissions. That's why it was distressing to read, on the front page of the *Boston Globe* last month, that some landlords have been caught requiring new tenants to reimburse the commission payable by the landlord to a broker. One tenant forced to pay such a fee complained to GBREB, forwarding copies of the forms she had been asked to sign. Included was an outdated version of the Massachusetts Apartment Association Rental Application, asking the prospective tenant whether she had ever been convicted of a felony. That question was stripped from the form in 2019 in order to comply with some new legislation. It turned out this particular landlord was not a member of the MAA and would clearly have benefited from the continuing education and updated forms we make available. Landlord-tenant laws are tricky and continually changing. Understanding and complying with them is an imperative of the first order.

The first of our three new cases, all handed down by the state Appeals Court, is *Morecroft v. CPF Taylor Pond, LLC*. The tenant in that case made several requests for reasonable accommodations, which the landlord denied after deciding that they were not based on a disability-related need. When he tried to terminate the tenancy on account of certain alleged lease violations, the tenant complained to the Massachusetts Commission Against Discrimination, alleging that the attempted eviction was in retaliation for her accommodation requests.

The MCAD essentially refused to hear the case, dismissing the tenant's complaint for lack of probable cause. At that point she sued the landlord in Housing Court, making the very same allegations which the MCAD had rejected. The landlord contended that the tenant was entitled to choose between filing an MCAD complaint or taking the landlord to court, but could not do both. The Appeals Court disagreed. If, instead of dismissing the tenant's complaint at the outset, the MCAD had conducted a full hearing before finding in the landlord's favor, the tenant might indeed have been barred from starting the case all over again in court. On the other hand, where the MCAD had refused to entertain the tenant's complaint, the landlord could legally be forced to defend himself in a court of law.

In *Phillips Street Greenfield Realty, LLC v. Kimplin*, a landlord initiated an eviction action against a tenant who had stayed in her apartment in defiance of a notice to quit. The

parties entered into a settlement agreement under the terms of which the tenant would vacate the apartment and remove all of her possessions within nine months. If she failed to comply, she reserved the right to request more time from the court. Sure enough, the tenant asked the judge for an extension. The landlord objected and so did the judge. The Appeals Court upheld the judge's decision, emphasizing that nothing in the settlement agreement required the judge to delay the eviction. In the words of the opinion, "the judge was not obligated to grant a stay under the agreement; he only needed to consider the tenant's request for a stay, which he did."

Our third new decision is *S-K Management Company, Inc. v. Casalinuova*, where the landlord's property manager sent the tenant several notices of lease violation, including for storing belongings outside the unit, locking bikes in unauthorized locations and installing a camera outside her residence. In January, 2004, the tenant notified the landlord that she had slipped and fallen on the property, sustaining various injuries. Three months later, the manager issued a termination notice, citing additional violations which included allowing unauthorized occupants to live on the premises and failing to report income as required by a subsidy program. The manager then commenced an eviction action, identifying itself in the complaint as the landlord's agent. Consistent with decisions reached in earlier cases, the Appeals Court ruled that the complaint was defective. Only landlords are allowed to evict tenants and must do so in their own name.

Even if the complaint had been properly brought, the court noted that the attempted eviction, initiated within six months after the tenant's personal injury claim, was presumptively retaliatory and illegal. The landlord had not met its statutory burden of demonstrating by clear and convincing evidence that it had sufficient independent justification for terminating the tenancy and would have in fact acted in the same manner and at the same time even if the tenant had not complained about an unsafe condition on the property.

At a time when the Attorney General has vowed to aggressively enforce the new rental fees statute, rental housing practices and procedures continue to be closely scrutinized. Forewarned is forearmed.

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