



REBUKED AND REBUFFED

From a legal perspective, the world hasn't been too kind to apartment brokers and landlords in Massachusetts of late. Their misfortunates may soon be compounded by technological advances designed to help tenants complain about alleged housing defects.

In *De La Cruz v. Louis*, a rental applicant claimed to have been denied housing in Lynn because of her pregnancy and the presence of lead paint in the apartment she wanted to lease. A Massachusetts Commission Against Discrimination hearing officer found that the real reason for her rejection was failure to supply adequate income verification. The applicant herself had no job while her husband was employed as a taxi driver. The couple had two children and was expecting a third. There was no way for the landlord to assure himself that the monthly rent could be paid.

In the meantime, the broker who had processed the application on the landlord's behalf told the prospective tenant that the landlord wouldn't be able to accept her because the apartment hadn't been delead. That was a mistaken assertion given that, in the words of the hearing officer, the law "does not permit rejection of tenants with children but rather places an affirmative obligation on property owners to ensure the abatement of lead paint." The broker had breached the section of the fair housing law forbidding any statement which indicates an illegal refusal to accept members of a protected class. Because the broker continued to process the rental application, no damages were awarded but he was ordered to cease and desist from any further violations and undergo training. The landlord was lucky to emerge unscathed given earlier MCAD decisions to the effect that property owners can be held responsible for the misconduct of their rental agents.

Rental Property Management Services v. Hatcher was a fairly important decision handed down by the Supreme Judicial Court. A property manager initiated a summary process eviction action in the local Housing Court against a tenant. He listed himself as the plaintiff rather than the landlord. The justices unanimously held that this was improper, ruling that an eviction complaint must name the landlord – not a property manager or some other agent – as the plaintiff. Moreover, because the property manager wasn't an attorney, he had no right to sign the complaint or prosecute the case for the landlord. The fact that the tenant did not object was irrelevant. As Chief Justice Gants explained, "where a court learns that a person is engaged in the unauthorized practice of law, the court is obligated to take corrective action, regardless of whether the adverse party requests

such action. A court has no discretion to tolerate the unauthorized practice of law, and may not allow a person to engage in the unauthorized practice of law simply because the adverse party does not object.” The judge should order immediate dismissal of the complaint or suspend the proceedings while the landlord obtains an attorney.

In those cases where rental property is owned by an individual (e.g., Robert Jones or Mary Smith), nothing precludes that person from signing an eviction complaint and representing himself or herself in court, regardless of whether he or she is an attorney. Parties are always free to manage, prosecute or defend their own suits personally. But if that individual asks another person to sign and pursue the complaint, the person doing so must be an attorney. Likewise, a corporation, partnership, limited liability company or other artificial legal entity may be represented only by an attorney.

In a footnote to the opinion, it was observed that 33% of landlords in Housing Court eviction cases during 2017 represented themselves; for tenants, the figure was 93%. These findings are consistent with a study done by JustFix, a New York-based tenants’ rights organization, which found that 90% of tenants who go to court don’t have a lawyer. The company decided to create an application in order to give these tenants more ammunition. JustFix.nyc.app has been described as “like a Turbo Tax for your crappy landlord”. Users are able to photograph and document defects using a room-by-room checklist. They’re then guided through the process of filing complaints; in fact, the app automatically sends a legal notice to the tenant’s landlord. More than 2,500 tenants used the app in 2017. At one hearing in the Bronx, the judge noted that even though the tenant represented herself, she was more prepared than the landlord’s entire legal team. In the words of the organization’s founder, the goal is “to really start to put the real bad actors, the city’s worst landlords, in our crosshairs.” Forewarned is forearmed.

