



Lapatin on the Law. . .

HELPFUL HINTS

Since its inception in 2004, the Rental Housing Association's legal hotline, a free member service, has offered advice to landlords, property managers and apartment brokers on a broad range of topics. Although we're not acting on behalf of callers as their own attorneys, hopefully the hotline has managed to fulfill its mission of providing useful information and demystifying a complex body of law. Here are some of our latest exchanges:

Q. We sent a notice in March terminating a tenancy as of April 30. The April rent hasn't been paid. Do we now need to send a 14-day notice to quit for nonpayment of rent?

A. No. The tenant can be evicted pursuant to the original notice; a claim for the outstanding rent can be included in the summary process complaint.

Q. A landlord lives on the top floor of a two-family house. The downstairs tenants plan to leave at the end of the month even the term of their lease doesn't expire until the end of August. The landlord would like to move downstairs. Will she be able to leave the first floor vacant while she tries to find a tenant for her own apartment?

A. Yes, but that probably wouldn't be considered using reasonable efforts to mitigate the damages for which the downstairs tenants would otherwise be liable. In essence, by keeping the vacated apartment off the market, the landlord might legally forfeit the right to sue the departed tenants for rent.

Q. We have a tenant who is having a noise problem with another tenant at her current residence. We offered her a unit in another building. At the time we showed her that new apartment she requested that we pass on her email address to the existing tenants in the building. She wants to have a conversation with them before she decides to move. Are we required to comply with her request?

A. The landlord has absolutely no obligation to pass along any message from the tenant and should not share any personal information regarding the other residents. If she already knows who some of the tenants are she's certainly free to contact them directly and request information as to the noise levels in the building.

Q. A month or so ago, we gave a prospective tenant a lead paint disclosure form indicating that we didn't know whether lead paint was present in the apartment. Since that time, and before the tenant took occupancy, we had the apartment inspected, found lead paint and completed a remediation. The final deleading certification hasn't been issued yet but the tenant is supposed to take possession today. What should we do?

A. The tenant should be given a copy of the inspector's report and told that a copy of the deleading certificate will be provided when available.

Q. I know there's a statute requiring landlords to countersign leases within 30 days; when does the 30-day period begin to run?

A. When the landlord obtains the tenant's signature after agreeing orally to execute the lease. A violation of the statute can be criminally punished by a \$300 fine but the statute doesn't entitle the tenant to civil damages (at least so long as the landlord hasn't tried to repudiate the lease), nor is the tenant given the express right to cancel the lease if the landlord misses the deadline.

Q. A landlord whom I represent as a managing agent is ready to allow the cancellation of a lease by a tenant who claims to have been sickened by the presence of mold. Should a formal release be prepared?

A. Yes, and the caller was advised to solicit the assistance of an attorney. It was also explained that the landlord could have insisted on an opportunity to remove the mold before allowing the lease to be terminated.

Q. Do I need to pay interest on prepaid last month's rent where a lease doesn't remain in effect for a full year?

A. Yes. Interest must be paid from the first day of the lease term until the last.

Q. A tenant recently died, leaving behind various belongings. His brother, who was named as an emergency contact, has offered to remove everything from the apartment. Is this okay?

A. Not necessarily. The tenant may have wanted his property to go to someone else. It's best to deal with the executor of the tenant's will; if there's no will a public administrator would need to be appointed (see publicadministrator.org). If the landlord is willing to take the risk of dealing with the brother, he should be asked to pay any outstanding rent and sign an indemnity form protecting the landlord from third-party claims.

Q. Is a judge allowed to give a tenant who I tried to evict six months before having to leave his apartment?

A. Yes, if the tenancy was terminated without any fault on the part of the tenant and comparable premises haven't been found despite the tenant's reasonable efforts to locate a new place to live. Rent will need to be paid into court and remitted to the landlord while the eviction is delayed. Note that the six month period can be doubled to twelve months in the case of an elderly or handicapped tenant.

RHA members can reach the hotline by calling 617-573-5822

