

Lapatin on the Law

HOTLINE HIGHLIGHTS

Members of the Massachusetts Apartment Association are continuing to take advantage of our free legal hotline, offering answers to rental housing questions of a general nature. Here's some of what we've had to say in recent months:

Q. May a broker charge prospective tenants an administrative fee in addition to a commission?

A. In general, landlords and their management agents may require prospective tenants to pay only the first month's rent, the last month's rent, a security deposit equal to one month's rent and the cost of installing a new lock and providing a key. While independent third-party brokers screening rental applicants are not subject to this prohibition, they must disclose the amount of their commission and other charges whenever first meeting the prospective tenant.

Q. A landlord kept a security deposit in his personal account for two days before transferring the money to an escrow account. Would that be considered a violation of the law? The tenant somehow discovered what happened and has brought suit seeking damages.

A. The applicable statute provides that any security deposit received by a landlord must be held in an escrow account; there's no grace period, although a judge would hopefully grant some leeway. The landlord can wait up to thirty days before letting the tenant know where the money is being kept. Any violation of this section technically entitles the tenant to the "immediate return of the security deposit"; if the landlord fails to oblige upon receiving a demand from the tenant, punitive damages can be assessed.

Q. Can we require that prospective tenants receive a favorable recommendation from a prior landlord?

A. Yes, so long as that policy is applied uniformly to all applicants.

Q. Is a landlord required to repair or replace appliances such as a dishwasher or an air conditioning unit if tenant is not on a lease?

A. Yes, the landlord is responsible for any appliances included with the apartment when the tenant took occupancy. It makes no difference whether the tenant is subject to a lease.

Q. Is a tenant entitled to be told why a rental application was rejected?

A. Only in two circumstances. The first is where the application was rejected on account of information received from a commercial credit reporting agency, in which case the prospective tenant must also be furnished with the company's contact information so an attempt can be made to correct or supplement the data on file with the company. Second, landlords must provide a copy of whatever report they've obtained regarding a prospective tenant's criminal

history (whether through a government agency or a different source) before taking adverse action against an applicant based on the contents of the report.

Q. How long must a landlord wait before evicting a squatter?

A. A squatter is normally defined as someone like a trespasser who takes over a house or an apartment without ever having had any right to be there. The police may be willing to intervene. If not, or if the person in question was initially on the premises legally (like a tenant or subtenant), the landlord will need to seek a court order.

Q. Does a special form need to be used in order to obtain a rental applicant's consent to a criminal background check?

A. Yes. The form can be downloaded from the website of the Massachusetts Department of Criminal Justice Information Services.

Q. A client of our brokerage firm added a guest house to his property ten years ago and has been renting it to a tenant ever since. Can the use be challenged if the local zoning district allows only single-family dwellings?

A. Maybe not. By statute, any illegal use of property authorized by a building permit becomes lawfully nonconforming if nobody objects to the use for a period of six years. It's also possible that the guest house was in fact legally constructed and occupied if the zoning code permits accessory units such as so-called "in-law apartments". Note that a recently-enacted state statute will make it easier to maintain an "accessory dwelling unit" on the same lot as an existing house.

Q. Am I required to allow a tenant to keep a camera outside her apartment in order to monitor activity in the interior hallways of my apartment building? The resident across the hall has complained about unauthorized surveillance of her apartment.

A. The common areas of an apartment building are controlled by the landlord, who has the right to forbid any installations by a tenant. No device of any kind may be used to secretly record an oral communication in Massachusetts. Video surveillance alone is not expressly regulated but a statute generally prohibits unreasonable, substantial or serious interference with anyone's right of privacy.

Q. May I refuse to renew a lease because I've discovered mold in the apartment? I also don't want this tenant to remain in occupancy for various other reasons.

A. So long as the tenant remains in the apartment, the landlord will be required to remediate the mold but is under no legal obligation to extend the lease term.

Remember -- the hotline is no substitute for an attorney of your own. We'd be glad to answer your questions if you leave us a message at 617-573-5822.

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