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VICTORY FOR TENANTS

Bane of the Unwary Landlord

SJC Rules On Security Deposit Violation

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SPECIAL TO BANKER & TRADESMAN

The ongoing wave of residential-apartment development makes now a good time for a reminder that Massachusetts' residential landlord-tenant law is favorable to tenants and aggressively enforced by the courts.



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Perhaps the most vexing legislation to landlords is the security deposit statute, M.G.L. c. 186, § 15B, which contains 3,761 words that are rather difficult for a lawyer (never mind a modest residential

landlord) to decipher. The requirements and penalties contained in the statute are sufficiently onerous that it has long been debatable whether every landlord should insist upon a security deposit in every case.

Among other things, accepting a security deposit will require a landlord to, at the inception of the tenancy, provide a statement of the property's condition, a formal acknowledgment of the deposit, and evidence of the bank account where the deposit shall be held; and, at the conclusion of the tenancy, the landlord will have to provide another statement of condition (if any of the deposit is to be withheld) and pay interest on the deposit. Meanwhile, the amount of the deposit cannot exceed one month's rent. Violating any of the requirements can result in a penalty of three times the deposit, plus any attorney's fees incurred by the tenant.

On top of this, in the recent case of *Meikle v. Nurse*, the Massachusetts Supreme Judicial Court (SJC) ruled that a landlord's vio-

lation of the security deposit statute can be raised by a tenant in defense of a landlord's claim for possession of rental property.

In *Meikle*, the landlord commenced an eviction lawsuit – a “summary process action” in legal parlance – against the tenant, whose lease had expired. The landlord sought possession of the property and recovery of the tenant's unpaid rent.

In defense of the action, the tenant alleged – and the trial judge agreed – that the landlord had committed security deposit violations, such as failing to document the security deposit properly. While the trial judge reduced the landlord's rental award in the amount of his security deposit violations, the trial judge did not find these violations to constitute a valid defense to the landlord's claim for possession and, therefore, possession indeed was granted to the landlord.

On appeal, the SJC did not disturb the trial judge's security deposit findings or rent/damages calculations. However, the SJC disagreed with the trial judge that a security deposit violation cannot be used to defeat a landlord's claim for possession.

Potential Consequences

The source of this conflict is found not in the security deposit statute, but rather in the summary process statute, M.G.L. 239, which provides that any “violation of law” relating to a tenancy can be raised in defense of a summary process action, and which also provides that – if a tenant is awarded damages for any such violation – she can retain possession of the property, so long as she pays the difference (if any) between the damages awarded to her and the rent awarded to the landlord.

Before *Meikle*, as evidenced by the trial

judge's ruling, it was questionable whether a violation of the security deposit statute could be used to defeat an eviction claim, and there does seem to be a tenuous philosophical connection between a possession claim and a violation of the security deposit statute. But the SJC had little difficulty in finding that the summary process statute – a “remedial” statute requiring “broad interpretation” – puts security deposit violations on equal footing with, for instance, habitability violations.

Still, the SJC made clear that a tenant's successful security-deposit defense will not allow her to occupy the rental space in perpetuity. While a summary process action involving non-payment of rent can be defeated by a security deposit violation, in order to remain in possession, the tenant will have to pay any rent in excess of the violation (and she later must continue to pay rent as it comes due).

Meanwhile, in a summary process action involving an expired lease, such as *Meikle*, even a tenant who proves (and retains possession because of) a security deposit violation likely will have no defense to an immediately renewed summary process action based upon the expired lease. So while a tenant may get two bites at the eviction apple, she will not get two bites at the security deposit apple. In any event, the potential consequences of violating the security deposit statute just became even more intimidating for landlords than they already were. ■

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