

REAL ESTATE ALERT MAY 2016

YET ANOTHER REASON TO BE WARY ABOUT SECURITY DEPOSITS: SUPREME JUDICIAL COURT RULES SECURITY DEPOSIT VIOLATION IS DEFENSE TO EVICTION

Security deposits in residential leases are subject to strict statutory requirements. A landlord who violates those requirements can face an award of treble damages and attorney's fees to an aggrieved tenant. Add now the loss of an eviction to those potential pitfalls.

In Meikle v. Nurse, No. SJC-11859 (April 27, 2016), the Massachusetts Supreme Judicial Court ruled that a tenant may assert a violation of the security deposit statute as a defense against a landlord's eviction action.

In Meikle, the tenant paid the landlord a \$1,300 security deposit at the start of her lease. In violation of the statute, the landlord failed to give the tenant two receipts required by the law and then failed to pay the tenant interest on the deposit. When the landlord later brought an eviction action seeking possession of the apartment and back rent, the tenant counterclaimed with a laundry list of alleged violations, one of which was a failure to comply with the security deposit statute.

The Housing Court judge found for the landlord on all counts except for the security deposit violation, ruling that the landlord's failure to provide the tenant with an "acceptance receipt," a "bank deposit receipt," and the interest earned on the security deposit violated the statute. As a result of the violations, the judge awarded the tenant damages of \$1,304.61. The landlord was awarded three month's back rent (\$3,900), which was offset by the damages he owed the tenant, leaving \$2,595.39 due him. The landlord was also awarded possession.

The Supreme Judicial Court reversed the Housing Court's judgment, ruling that a violation of the security deposit statute may be asserted as a defense against a landlord's claim for possession in a summary process eviction action. The Court reasoned that violations of the security deposit statute are "serious violations" and that it would be contrary to the legislative intent to interpret the summary process eviction statute "in a manner that would undermine a tenant's right to assert the range of protections available..." The case was sent back to the Housing Court with an order that, per the eviction statute, if the tenant paid the money she owed within one week, she could remain in the apartment.

The Court did note that the tenant is not entitled to a permanent tenancy and that the landlord could bring another eviction action. Of course, that action would be at the landlord's additional time and expense.

The takeaway for landlords is that careful compliance with the security deposit statute, G.L. c. 186, § 15B, is more crucial than ever. The statute sets out various requirements that apply to security deposits and rent paid in advance. These include requirements for written receipts, the payment of interest, record keeping, and documentation about the pre- and post-tenancy condition of the apartment. Even an honest mistake can result not merely in damages and attorney's fees, but in a lost eviction case and more time, expense and aggravation for the unwary landlord.

CONTACT

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