

## Landlords Beware Improper Deposits, Eviction Can Spell Trouble

*By Samantha P. McDonald, Esq.*



Residential landlords in Massachusetts are subject to strict rules. For instance, if landlords do not have a written agreement from the tenant to pay for heat and electricity, the tenant could obtain a judgment against them for three months' rent and attorney fees and court costs, or the actual amount the tenant has paid for heat and electricity over the entire tenancy, whichever is greater. It does not matter what size or type of residence the tenant has rented. Whether an entire house, one floor of a triple decker or an in-law apartment over a garage, if there is no agreement signed by the tenants to pay for their own heat and electricity, the landlord is in violation of the covenant of quiet enjoyment. This covenant is implied in every residential tenancy. In an eviction for nonpayment of rent, if the tenant raises this issue and the judge finds that the landlord owes the tenant more for heat and electricity than the tenant owes for rent, the landlord loses the case and is unable to evict the tenant.

This predicament can be compounded by the concept of retaliatory eviction. Essentially, if a landlord tries to evict a tenant within six months of certain activities, one of which is enforcing the tenant's rights regarding payment of heat and electricity, the court must presume that the eviction is done in retaliation for the tenant's assertion of those rights. The presumption can be overcome, but only by "clear and convincing" evidence. If the court is not convinced that the landlord had a clear and substantial reason for initiating the eviction other than retaliation, the tenant can compound his or her award of damages by bringing a claim, in the same proceeding, for the landlord's violation of Massachusetts' Consumer Protection Act, also known as General Law Chapter 93A. This statute allows the judge to double or triple the tenant's damage award as discussed above. What's worse, this claim can even be brought by former tenants, up to four years after the violation occurs.

Security deposits are another area where landlords, despite the best of intentions, often find themselves with a legal problem. Many landlords are unaware that the only deposits that can legally be obtained from a tenant are a security deposit, the first month's rent, the last month's rent and a small deposit for the lock and key. The amount of the security deposit and the last month's rent, each, cannot exceed the amount of the

first month's rent. So if rent is \$1000 per month, the most the landlord can collect is \$3000 at the start of the rental. The amount of the security deposit cannot be increased as the years go by and the rent increases, but the amount of the last month's rent can be increased.

The most frequent problems seen with security deposits are the lack of the required Statement of Conditions, no written receipts for the deposits, the failure to pay annual interest on the deposits and issues arising from improper accounting. A landlord must provide a written Statement of Conditions of the unit to the tenant within ten days of the landlord's receipt of a security deposit. The statement must list all existing damage in the unit and any common areas and must be signed by the landlord. The tenant must sign the statement within fifteen days and return it to the landlord. However, if they don't return it, it is considered accepted by them as written. Additionally, the landlord must provide the tenant with a written receipt for all the money collected at the start of the tenancy. The receipt must state the amount of money received; the date it was received; the intended use of the money (i.e., "\$500.00 for a security deposit, \$500 to be applied to the last month's rent"); the name of the landlord and the name of the person receiving the money; a statement that the tenant is owed interest on the money; and a statement that the tenant should give a forwarding address when s/he leaves so the landlord can forward the remaining interest. A second receipt for the security deposit, setting forth the location and name of the Massachusetts bank holding the funds and the account number, needs to be given to the tenant when the money is deposited. Needless to say, keep copies of these documents for your files!

The deposit money must be held in a separate Massachusetts bank account and the name on the account must make clear that the money is held in trust for a tenant. Each year at the lease anniversary, the landlord must provide a statement to the tenant telling her or him how much interest was earned and either paying that amount to the tenant or instructing the tenant to deduct it from the next payment of rent.

If a landlord fails to comply with the letter of the law regarding security deposits, he or she may be subject to a court order requiring the landlord to pay the tenant three (3) times the

amount of the security deposit, along with court costs and attorney fees. The landlord may also lose the ability to deduct the cost of repairing damages caused by the tenant or unpaid rent from the security deposit.

As you can see, it is important to ensure you have covered all your bases when renting residential property in Massachusetts. The above examples are just a few of the pitfalls awaiting unsuspecting landlords. We can put together a lease or tenancy agreement to ensure your compliance with the many rules and regulations applicable to residential housing. We can also provide you with the forms and information needed to successfully navigate the unforgiving laws and regulations regarding security deposits, or assist you with an action or demand brought by your tenants.

## RESPONSIVE SOLUTIONS

Two simple words that explain our commitment to you. Being responsive is a critical element in building a strong attorney-client relationship. Whether you are a new or existing client, we'll be quick to respond to your needs with the knowledge necessary to find solutions to your legal concerns.

[www.fletchertilton.com](http://www.fletchertilton.com)



**Samantha P. McDonald**

**P:** 508.459.8026

**F:** 508.459.8326

**E:** [smcdonald@fletchertilton.com](mailto:smcdonald@fletchertilton.com)

**Fletcher Tilton** PC  
Attorneys at law

### THE GUARANTY BUILDING

370 Main Street, 12th Floor  
Worcester, MA 01608  
TEL 508.459.8000 FAX 508.459.8300

### THE MEADOWS

161 Worcester Road, Suite 501  
Framingham, MA 01701  
TEL 508.532.3500 FAX 508.532.3100

### CAPE COD

171 Main Street  
Hyannis, MA 02601  
TEL 508.815.2500 FAX 508.459.8300

*This material is intended to offer general information to clients and potential clients of the firm, which information is current to the best of our knowledge on the date indicated below. The information is general and should not be treated as specific legal advice applicable to a particular situation. Fletcher Tilton PC assumes no responsibility for any individual's reliance on the information disseminated unless, of course, that reliance is as a result of the firm's specific recommendation made to a client as part of our representation of the client. Please note that changes in the law occur and that information contained herein may need to be reverified from time to time to ensure it is still current. This information was last updated Winter, 2012.*