

A Fee by Any Name Is Probably Prohibited

By Samantha P. McDonald, Esq.

A new case interpreted a law limiting the amount a landlord may collect from a residential tenant. Under G.L. ch. 186 §15B, landlords are limited to collecting first month's rent, last month's rent, a security deposit and a small key deposit from the tenant. The amount of the last month's rent and of the security deposit cannot be higher than the first month's rent, so effectively landlords are limited to collecting three times the first month's rent. In *Hermida v. Archstone*, the apartment complex charged a \$475 user fee for the pool, gym and grill areas shared by all the residents. 826 F.Supp.2d 380. Although the landlord collected this fee at the start of the tenancy along with the first month's rent, no last month's rent or security deposit was requested by the landlord or paid by the tenants, so the total collected from the tenants was less than that allowed under §15B. *Id.* at 382. However, because the user fee or amenity fee was not specifically allowed under the statute, the court ruled that the landlord violated both the security deposit law and the consumer protection law. *Id.*

Other cases have interpreted different charges under this statute. One held that a tenant cannot be charged an application fee once the application is accepted - charging at the time of application but prior to offering the rental seems to be acceptable. *Dolben Co. v. Friedmann*, 2008 Mass. App. Div. 1 (unreported). Another case held that charging a fee for the remote garage door opener separate from and in addition to the security deposit violated the statute. *Carter v. Seto*, 2005 Mass. App. Div. 62 (unreported).

These cases have wider ramifications for standard lease provisions, such as pet fees and requirements that tenants prepay insurance costs. For now, it would appear that any fees other than those strictly permitted by the statute are invalid. Therefore, landlords would be better off to include these costs of doing business within the rent structure and recoup them in that manner. Landlords are subject to triple damages and liability for the tenant's attorney fees if the security deposit law is violated. Consequently, landlords must make sure to comply with all regulations regarding security and last month's rent deposits. The law is complicated, and non-compliance with even the smallest detail can subject a landlord to triple damages. Please call if you would like assistance with understanding and adhering to the rules or need the proper forms to ensure compliance.

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