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A D V I S O R Y

It is well-settled that a residential landlord has to act reasonably and fairly towards its tenants. If a landlord engages in unfair or deceptive acts or brings an eviction action without any basis, the landlord may be subject to liability for double or triple damages and the tenant's attorneys fees under M.G.L. Chapter 93A.

This same type of liability applies to commercial landlords. In a case decided by the Massachusetts Appeals Court in late February, it was held that a commercial landlord had violated Chapter 93A because of its unreasonable interpretation of a lease and subsequent unjustified eviction action.

The tenant in the case had owned and occupied a building for a number of years, but subsequently sold it to the landlord and leased back a small part of the building. The lease provided that the tenant would pay the landlord additional rent for the tenant's share of electricity charges attributable to the tenant's occupancy of the premises, with the share to be based upon the tenant's historical costs of electricity. The historical costs were not set forth.

After the tenant was in the space, it became known that the electrical costs had historically been \$8,000.00 per month for the entire building. Under the lease with both landlord and tenant occupying the building, the electrical costs were only \$2,500.00 per month for the building. Even though the costs had gone way down, the landlord demanded that the tenant pay \$8,000.00 per month for electricity and started an eviction action when this was not paid.

The Appeals Court found that the landlord's interpretation of the lease was inconsistent with common sense, and that only the landlord's "thoroughly tortured reading of the lease could distort the operating costs for the entire building, thus conferring a windfall upon the landlord and abandoning the duty of good faith and fair dealing." The Court held that the landlord acted unreasonably and in bad faith, and had, therefore, engaged in a willful and knowing unfair practice in violation of Chapter 93A.

This case makes it clear that, whether it is in a residential or commercial setting, landlords must always act reasonably toward their tenants and never threaten an eviction action in bad faith.

If you need any further information, please feel free to contact any member of the Shaevel & Krems Real Estate Management Team.

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