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Landlord's Rights Under Warranty of Habitability Affirmed

Residential warranty of habitability cases are rarely decided by the Massachusetts Supreme Judicial Court or Appeals Court, but in a recent decision, the Appeals Court upheld a landlord's right to evict a tenant even though some state sanitary code violations were present in the apartment.

In this case the landlord commenced an eviction action in August after the tenant owed rent for July and August. The tenant counterclaimed for violation of the state sanitary code and breach of the warranty of habitability, alleging that there were dryer-vent odors, leaky windows, problems with bathtub drainage, a torn linoleum floor, ant infestation, a noisy refrigerator, cracks in the walls and a leaky toilet. The Court found that the tenant first notified the landlord of these problems in September, around the time that the Board of Health inspected the apartment. The inspection documented several of these defects as violations of the sanitary code. Within two weeks of receiving notice of the violations, the landlord had repaired almost all of them.

The Court reiterated the settled principle that a landlord must keep the premises in habitable condition, but added that not every violation of the sanitary code constitutes a breach of the warranty of habitability. The Court stated that a tenant is not excused from paying rent unless there are significant problems with the apartment. Here the documented defects were not particularly serious. Moreover, the tenant's case was weak because she stopped paying rent several months before the landlord learned of the defects, and once the landlord got notice he quickly made the repairs.

The most important point to remember in these types of cases is that when a tenant complains about conditions in the apartment, the landlord must make the repairs as soon as possible and document that the repairs were made. Doing so reduces potential counterclaims and greatly enhances the landlord's chances of prevailing if the case ever ends up in Court.

Fair Housing

Fair housing and reasonable accommodation are areas in which landlords must be extremely careful so as not to expose themselves to claims of housing discrimination. In February Ken Krems taught the half day, Fair Housing component of the Certified Apartment Manager course developed by the National Apartment Association and offered by the Rental Housing Association.

Carbon Monoxide Detectors

As you know, all landlords are required to install approved carbon monoxide detectors by March 31, 2006 for battery operated detectors, and by January 1, 2007 where a hard-wired system is required, provided that the landlord filed a notice of intent to install the hard-wired system with the head of the local fire department by May 15, 2006.

Pursuant to the statute, landlords must inspect, maintain, and replace, if necessary, all carbon monoxide alarms annually or at the beginning of any rental period, whichever is more frequent. Further, all carbon monoxide detector batteries must be replaced on an annual basis by the landlord.

As always, please feel free to call any member of the Shaevel & Krems Real Estate Management Team with any questions that you may have.

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