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Landlord slammed with \$62K judgment for keeping \$3,400 ‘hold’ fee

■ PAT MURPHY

It started as a dispute with a prospective tenant over a \$3,400 “hold” fee. But by the time all was said and done, a residential landlord and property manager found themselves writing a check to a would-be tenant for \$62,076.68.

In 2021, Yekaterina Merkulova sued Premier Property Solutions and LDJ Development in Housing Court, alleging that they violated the state’s security deposit statute, G.L.c. 186, §15B, and engaged in unfair trade practices in violation of Chapter 93A by refusing to return the \$3,400 deposit she paid to hold a Boston apartment she ultimately did not rent.

In October 2022, Judge Irene H. Bagdoian entered summary judgment for Merkulova, awarding her \$10,200 in damages, the amount of her hold fee trebled pursuant to Chapter 93A. Bagdoian also awarded the plaintiff interest, costs and \$11,000 in attorneys’ fees.

The defendants had argued that, notwithstanding the protections afforded tenants under the security deposit law, they were allowed to keep the plaintiff’s \$3,400 under the terms of the rental application she had signed. The application stated: “Deposit is to be applied as shown above [for first month’s rent], or applied as actual damages sustained by the Owner, except it is to be refunded if said application is not accepted by owner.”



Ami Clifford



Lin Wang

Bagdoian was having none of it.

“The rental application makes no mention of a ‘hold deposit,’” the judge wrote. “This is unsurprising, as no such deposit is permitted under G.L.c. 186, §15B.”

The defendants pressed their contract argument by citing to an 1879 decision by an English appeals court, which held that a deposit intended to temporarily remove real property from the market is subject to forfeiture.

Bagdoian still wasn’t buying it.

“This court need not point out that the British Court of Appeals in 1879 was not construing a circa 2022 Massachusetts statute intended to offer very particular protections to Massachusetts landlords and tenants,” she wrote.

In finding that the defendants, by demanding a hold deposit, had engaged in unfair and deceptive

practices under 93A, Bagdoian wrote that “[t]hese defendants knew or should have known that there is no provision for a nonrefundable ‘hold deposit’ under Massachusetts law. They knew or should have known that a landlord (or its agent) cannot demand more than first month’s rent, last month’s rent, and a security deposit prior to the commencement of a tenancy. They should have known that the payment obligation of a tenant commences at the inception of the tenancy – and not beforehand.”

The defendants fared no better at the Appeals Court, which affirmed the lower court’s judgment in an unpublished opinion handed down in March. The court punctuated its decision a month later by awarding the plaintiff \$37,256.86 in appellate attorneys’ fees and costs.

The saga unfolded in spring 2020 when Merkulova started searching for an apartment in Boston, intending to relocate from New York for her medical residency.

The plaintiff expressed interest in a unit in the defendants’ building in the Fenway and was allegedly told by Premier’s leasing manager that she would need to “reserve the unit” by paying the first month’s rent as a hold fee.

The following month, the plaintiff completed a rental application and wired Premier \$3,400, which was placed in escrow.

While negotiations for a lease were underway, the plaintiff had a change of heart and decided to rent another apartment. Premier refused the plaintiff’s request for a return of the deposit and relisted the unit for rent.

The defendants claimed they had to lower the rent for the unit twice before finding a tenant who

agreed to a monthly lease of \$3,000, starting on Sept. 1, 2020.

Though asking for a “hold deposit” is illegal, plaintiff’s counsel Ami Clifford of Boston says the “bizarre practice” is not uncommon in the commonwealth.

“It only really happens in Massachusetts,” she notes. “That’s because there are so few housing units and there’s so much competition that [landlords] feel they can ask for these fees up front and get away with it. A lot of my friends are going through the housing search process and have encountered this as well.”

According to Clifford, it highlights an access to justice issue because so many prospective tenants simply don’t have the resources to contest the retention of their deposits.

“We stuck with our tenant, but there were over \$40,000 in legal fees that were accumulated only to get a \$3,400 deposit back. And we didn’t even get paid for all of our work in the trial court,” she says.

Clifford’s colleague and co-counsel, Lin Wang, says the judge found the defendants’ arguments relying on 18th Century British contract law “quite funny.”

“They tried to analogize to [real property] purchase and sale agreements, arguing that it was the same as buying a house where you put down a deposit and can lose it [if the deal falls through]. The defendants were ignoring the fact that this area of the law – specifically with regard to security deposits and what can be taken from tenants – is heavily regulated.”

Defense attorney David Frye of Russo & Scolnick in Boston did not respond to a request for comment.