Suits target landlord 'amenities fees'

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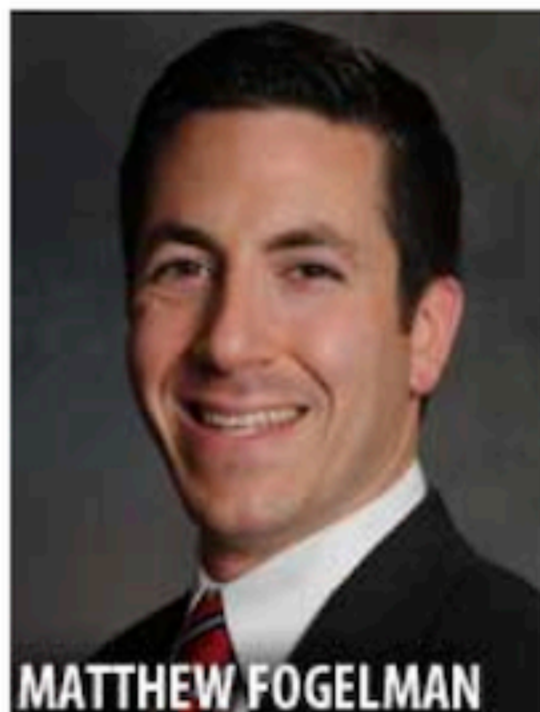

Buoyed by a federal court ruling in his clients' favor, a Newton attorney is on a crusade against landlords who charge illegal front-end "amenities fees" in Massachusetts.

Matthew J. Fogelman said the law, G.L.c. 186, §15B(1)(b), is straightforward and unambiguous: Before the commencement of a lease, landlords can require tenants or prospective tenants to pay first and last month's rent, a security deposit, and the cost of a new lock and key.

Anything else presented as a mandatory fee violates the law in Massachusetts, Fogelman said. That includes amenities fees for cleaning, concierge services, or use of a gym, pool or common space.

U.S. District Court Judge William G. Young **concurred with Fogelman when he found last fall that property management company Archstone Reading LLC violated the state's security deposit statute and Chapter 93A by charging such fees.**

Fogelman represented the named plaintiffs — two tenants — in the case.

Archstone had argued that four clauses in the security deposit statute dealing with what is permissible to charge tenants up-front should be read as a "total maximum dollar amount resulting from the sum of the amounts listed in the clauses."

In other words, landlords could include an amenities fee so long as the total up-front dollar amount charged to tenants did not exceed first and last month's rent, the security deposit, and new lock and key costs.

But Young was unconvinced, finding that Archstone's interpretation was "incompatible with prior caselaw and legislative intent."

Young ordered Archstone Reading to refund all amenities fees paid by its more than 200 tenants between August 2006 and the end of 2008, a dollar figure that tops $160,000, according to Fogelman.

"Essentially, everyone is going to get their money back, plus interest," he said.

The judge also awarded attorneys' fees, though he denied Fogelman's request for multiple damages last month, ruling that Archstone did not knowingly and willfully violate the law.

Fogelman said he expects Archstone to appeal Young's decision.

Meanwhile, Fogelman filed two new amenity-fee lawsuits against property management companies last month, and he said he may file additional cases given the state's current rental market.

"There are more than a handful of companies that have been charged or are charging up-front fees that I believe violate the statute, and I do intend to pursue those cases on behalf of consumers," he said.

Class action

In May 2007, Maeve and Jefflee Hermida entered into an initial, year-long lease agreement with Archstone for a rental property in Reading.

The couple was required to pay a one-time amenity fee of $475 for use of the property's outdoor grill, pool and gym.

In October 2010, the Hermidas filed a putative class action suit in Housing Court in Boston, challenging the legality of the fee. Shortly thereafter, Archstone removed the action to federal court.

The case of first impression pitted the Hermidas against the property management company and 14 other Archstone-affiliated entities.

According to court filings, Colorado-based Archstone owned and managed some 3,000 properties across the state. The company charged as much as $750 in amenity fees at some of the properties, according to the complaint.

The underlying facts of the case were undisputed. Young denied Archstone's motion for summary judgment and instead granted it for the Hermidas.

Archstone's attorney, Diane Rubin of Prince, Lobel, Tye in Boston, declined to comment.

New litigation

The Hermidas are not alone in their fight against amenities fees.

Brian and Kim Perry, residents of Equity Longview Place in Waltham, are suing their property management company over similar allegations.

Equity Residential Management LLC, an Illinois company, manages more than two dozen apartment complexes in Massachusetts.

Fogelman filed a complaint in federal court on behalf of the Perrys in early May, claiming that Equity has charged its tenants a move-in fee between $99 and $400 over the years. The Perrys paid a $99 fee, reduced from an original charge of $350.

On May 17, Fogelman filed another lawsuit against Archstone, this time a class action in the Suffolk Superior Court's Business Litigation Session that names nine plaintiffs. The prospective class numbers in the thousands, given the typical turnover in apartments, along with the number of units managed by Archstone, according to the complaint.

Fogelman's co-counsel in the Archstone suits, Kevin T. Peters of Arrowood Peters in Boston, said allowing amenities fees sets a troubling precedent by permitting landlords to sidestep the rules that regulate security deposit accounts.

"If we allow Archstone an up-front fee that's not sanctioned or is unauthorized, that gives the green light for companies to make up fees that are in effect security deposits without actually being security deposits," Peters said.

Unlike a security deposit, an amenities fee is not held in an interest-bearing account for the benefit of the tenant and is nonrefundable at the termination of the tenancy. If there is damage to the tenant's unit, the fee is not used to offset the cost of any damage attributable to the tenant.

Joshua Garick, who is also representing the plaintiffs in the recently filed Archstone case, said the issue could have wider ramifications for standard lease provisions, such as pet

fees and whether a prospective tenant can be required to pay insurance for a rental apartment up front.

"Landlords are trying to get away with as much nickel-and-diming as possible," Garick said. "Why not just call everything rent and charge a monthly rent?"

Stephen P. Rahvay, a Dedham attorney who represents landlords, said security deposits and the red tape associated with them has long been an area of concern for property management companies.

Calling the state's rules governing rental fees draconian, Rahvay said his clients often forgo security deposits so that they will not have to navigate "the minefield" that the statute presents.

The Legislature "really needs to address this issue," Rahvay added in an email.