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Residential security deposit law primer for R.E. developers Part 1 - by Nelson Santos

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You are a real estate developer and have recently developed a mixed-use or residential apartment complex that contains residential apartments. You went through the difficult process of planning, permitting, and building your state-of-the-art development. Now, rather than development and construction, your focus turns to filling each unit with occupants to maximize your return on investment. You are now becoming the owner/landlord. Though there are still many pitfalls on the road ahead, some of the most significant ones can arise when developers decide to self-manage an income-producing property. What you can and cannot do as a residential landlord is heavily regulated by statutory requirements, common law, attorney general guidelines, and other laws.

The most common problem for landlords relates to the security deposit and typically arises when trying to evict a tenant for nonpayment of rent or other lease breach. G.L. c. 186, § 15B sets out the Massachusetts Security Deposit Law (hereinafter "the Security Deposit Law"). It is absolutely imperative that a landlord understands and executes the Security Deposit Law correctly. Otherwise, the profits of development will slowly be eroded by litigation and settlement costs due to noncompliance.

The Security Deposit Law governs what monies a landlord may accept at the inception of the tenancy, which sounds simple. But even the most minor mistake by the landlord in handling the security deposit may automatically result in penalties, potentially including an award of three times the amount of the security deposit plus attorney's fees and costs incurred by the tenant.

"The legislative history of G.L. c. 186, § 15B, conclusively shows that the Legislature intends any violation of G.L. c. 186, §§ 15B(6)(a), (d), and (e), to result in the imposition of treble damages." Mellor v. Berman, 390 Mass. 275, 283 (1983).

"The Security Deposit Statute is intended to afford protection to both the landlord and the tenant. It protects the landlord by allowing it to charge certain advances of money prior to the commencement of the tenancy; the statute also limits the up-front charges that the landlord legally can collect from the tenant in order to prevent unfair or deceptive charges." Jinwala v. Bizzaro, 24 Mass.App.Ct. 1, 7, 505 N.E.2d 904 (1987)." See also: Hermida v. Archstone, 826 F. Supp.2d 380, 386 (2011).

The whole purpose of collecting a security deposit is to allow a mechanism by which the landlord has the funds to make repairs for unreasonable damages–not normal wear and tear–caused by tenants. The security deposit can also be used to reimburse the landlord for unpaid rent at the end of a tenancy. Therefore, the Security Deposit Law's intended purpose is to help the landlords and protect the tenants. But, in so many cases, the landlord's mistakes can turn the security deposit into a way for tenants to get big cash awards.

What Monies Can a Residential Landlord Accept From a Tenant at The Start of The Tenancy?
Under the Security Deposit Law, at the start of the tenancy a landlord may request and accept only the following: (1) first month's rent, (2) last month's rent, (3) a security deposit, and (4) the cost of a new lock. See G.L. c. 186, § 15B(1)(b)(i)-(iv).

Sounds simple, but it is not. Neither the last month's rent nor the security deposit can exceed the amount of the first month's rent. And the cost of a new lock must be reasonable.

The Proper Way Accept a Security Deposit From a Tenant
By breaking down the Security Deposit Law into a checklist format, the landlord can use it for its actual purpose and benefit, rather than falling afoul of the Security Deposit Law and having tenants use it to gain monetary damages.

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