

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, SS
No. 07-SP-00993

Western Division
Housing Court Department

MICHAEL A. DEEP,,
Plaintiff

v.

JOHN BUCIER,
Defendants

**FINDINGS, RULINGS, AND
ORDER FOR ENTRY OF JUDGMENT**

The above-captioned matter came before the court for trial on May 16, 2007, after which the parties were extended time within which to submit memoranda of law. Upon consideration of the evidence admitted at trial and the parties' written submissions, the following findings of fact and rulings of law are to enter:

1. ***Findings of Fact:*** The plaintiff (landlord) owns the manufactured housing community known as Berkshire Mobile Home Park. The plaintiff has been a professional landlord for thirty years, and owns 300 mobile home lots and 50 apartment units.
2. Effective November 1, 1993, the landlord rented Lot B4 to the defendant (tenant). On December 2, 2002, the parties executed a written lease.¹ The lease provided that a late fee of \$25 per month would be charged for any monthly rent or portion thereof that was more than 30 days past due. The lease also provided that "if this agreement constitutes a tenancy at will, rent may be increased by the park upon written notice to the resident at least 60 days in advance of the next monthly rent payment."

¹ See ruling below.

3. The lease executed on December 2, 2002 established a contract rent of \$252 per month. No subsequent lease has been executed by the parties. Since then, the landlord has attempted to increase the tenant's rent three times. The first increase was to \$257 per month, to which the tenant agreed. In or around June, 2004, the landlord attempted to increase the rent to \$267 per month, to which the tenant did not agree. In or around December, 2004, the landlord attempted to increase the rent to \$277 per month, to which the tenant did not agree. There is no written agreement between the parties increasing the rent beyond \$252 per month.

4. The tenant has paid \$257 per month for every month since July, 2004, except for the months of February and March, 2005, for each of which he paid \$252. On 29 occasions since August, 2004, the landlord has imposed \$25 late fees on the tenant as a result of the tenant's failure to pay the increased monthly rents to which he had not agreed. The payments made by the tenant since August, 2004 have been applied at the first instance to unpaid rent at the increased rates of \$267 and \$277 per month, and accrued late fees. As a result, the tenant has had an unpaid balance since June, 2004, despite the fact that he has paid the full monthly rent to which he agreed for every month through March, 2007, with the exception of underpaying in the amount of \$5 each for February and March, 2005, and further despite the fact that he made additional payments in January and October, 2006.

5. As of May 31, 2004, the tenant had a credit balance of \$1.58. Since June 1, 2004, total rent in the amount of \$8,993.42 has come due, at the last monthly rate to which the tenant agreed, \$257 per month. Since June 1, 2004, the tenant has paid a total of \$8,771.

6. ***Statutory and Regulatory Framework:*** Manufactured housing communities are

governed by statute and the Attorney General's regulations. G.L. c.140, section 32 P provides in pertinent part as follows:

All terms and conditions of occupancy must be fully disclosed in writing by the manufactured housing community owner to any prospective manufactured housing community resident at a reasonable time prior to the rental or occupancy of a manufactured home lot. Said disclosure shall include, but shall not be limited to, the amount of rent, an itemized list of any charges or fees, the names and addresses of all the owners of the manufactured housing community, and the rules and regulations governing the use of the manufactured home lot and community. Said writing shall contain a bona fide, good faith offer to each new tenant and to each person renewing or extending any existing arrangement or agreement for occupancy of premises in a manufactured housing community for a rental agreement with a term of five years...

7. Under the Attorney General's regulations, it is an unfair and deceptive practice for a manufactured housing community owner "to impose any interest or other monetary penalty for late rent, except pursuant to an occupancy agreement and in an amount reasonably intended to compensate the operator for the delay in payment, and provided that no such interest or penalty may be charged until payment is 30 days overdue." 940 CMR 10.03(2)(I). It is also unlawful for the owner "to seek to recover a fee or charge that is not separately listed in the occupancy agreement." 940 CMR 10.03(2)(k).

8. ***Rulings of Law:*** The landlord's conduct violated the applicable statute and regulations in several ways. The lease executed by the parties in 2002 is internally inconsistent and inherently deceptive: it is entitled "Lease and Occupancy Agreement," purports at paragraph 3 to create a tenancy at will, referred to itself in the body of the document as a lease, and was for the term December 1, 2002 to December 1, 2003. The terms created a one-year lease, which could not be transformed into a tenancy at will as attempted.

9. In addition, the “Lease and Occupancy Agreement” purports to authorize the landlord to increase rent unilaterally in the case of a tenancy at will, upon 60 days notice.² This conflicts with the requirements of G.L. c. 186, § 12 (which applies to manufactured housing communities pursuant to 940 CMR 10.03), and is void as such under G.L. c. 186, §15A

10. Finally, the landlord seeks to recover rent in amounts greater than that disclosed on the last rental agreement, and assess late fees for the tenant’s failure to pay them. This is improper, irrespective of whether the December, 2002 document is a lease or a written tenancy at will agreement: as a lease, its terms would survive the expiration thereof until and unless new terms were mutually agreed upon; as a written tenancy at will, its terms would survive unless modified by operation of G.L. c. 186, §12. The last rent mutually agreed upon was \$257 per month, and rent beyond that was never established by executing a new lease, or terminating the existing tenancy and establishing a new one under G.L. c. 186, §12.³

11. **Unpaid Rent:** The tenant owes \$222.42 in rent. At the agreed upon rate of \$257 per month, rent totaling \$8,993.42 has accrued since June, 2004, and two \$25 late fees were properly assessed in February and March, 2005, for a total due since June, 2004 (when the tenant had a

² The document actually reads “rent may be increased by the park management upon written notice to the resident at least 60 days in advance of the next monthly rent payment.” As rent is paid monthly, this notice standard is nonsensical.

³ The tenant acknowledges an obligation to pay \$257 per month, and I am therefore not reaching the question of whether this amount can properly be charged despite the fact that it is not established by a written agreement.

credit balance of \$1.58), of \$9,043.42.⁴ The tenant has paid \$8,771 since June, 2004, and the landlord is therefore entitled to \$272.42 in unpaid rent.

12. **Chapter 93A:** Charging rent beyond that last amount agreed to, and assessing late fees for failing to pay it constitute separate and distinct violations of law, each of which are actionable under Chapter 93A. The tenant's damages for the landlord's unfair and deceptive trade practice are the 29 late fees he has been wrongfully charged (\$725); nominal statutory damages for the increased rent which was improperly charged (\$25); and nominal statutory damages for the unfair and deceptive "Lease and Occupancy Agreement" (\$25). The tenant's total damages are \$775.

13. In addition, the tenant is entitled to multiple damages (double or treble), if the landlord's conduct was "willful or knowing." G.L. c.93A, §9(3). In this regard, the question for the court is not whether the landlord knew that his practices violated applicable statutes and regulations, but rather whether he knowingly or willfully engaged in the practices. See *Montanez v. Bagg*, 24 Mass. App. Ct. 954, 956, 520 N.E.2d 298 (1987). The court may consider the "egregiousness" of the landlord's conduct in determining whether to double or treble damages. *Brown v. LeClair*, 20 Mass.App.Ct. 976, 980, 482 N.E.2d 870, 874 (1985).

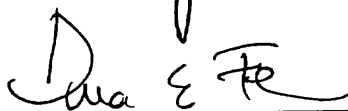
14. The landlord's conduct here clearly meets that "willful or knowing" standard, as he pursued rent and late charges to which he was not entitled up to and through a summary process action. In addition, I consider the landlord's conduct to be "egregious." Mr. Deep is a professional landlord. He has been in the rental property and mobile home park businesses for

⁴ The records submitted by the landlord suggest that on several occasions the tenant may have failed to pay the last agreed upon rate of \$257 per month within 30 days of its due date. Due to the landlord's practice of including unjustified late fees, unauthorized rental increases, and other miscellaneous charges in the tenant's account balance, however, the court would be required to subtract out each improperly assessed charge and then recalculate the correct rental charge for each month in order to determine whether any of these late payments justified imposition of late charges. It is not the court's responsibility to do the math; that responsibility lies with the party who bears the burden of proof - here, the landlord.

many years, and it is incumbent upon a landlord of his scale to know and follow the governing regulations. Mr. Deep seriously shirked his legal responsibilities in this regard, and I am therefore awarding treble damages, totaling \$2,325, plus attorney's fees and costs as provided by statute.

15. **ORDER:** Pursuant to G.L. c. 239, §8A, an order, but not a judgment, shall enter, awarding the tenant possession and \$2,325 (tenant's damages) - \$272.42 (unpaid rent) = **\$2,052.58**. At the election of the tenant, this sum may be applied to future rent at the agreed upon rate of \$257 per month. Counsel for the tenant has already filed his request for attorney's fees. The landlord shall have 14 days from the entry date of this order to file his opposition, if any, to the tenant's request for attorney's fees, after which the court will rule on the papers, and final judgment will enter.

So entered this 25th day of June 2007.



Dina E. Fein
Associate Justice