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CAHA

APRIL 2010 NEWSLETTER

CAPITAL AREA HOUSING ASSOCIATION “LANDLORDS WORKING TOGETHER”

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PRESIDENT'S MESSAGE

The March 9th regular CAHA meeting was again very poorly attended by the membership, despite an interesting description by Jack Brown, a certified Radon tester, of his services and fees and of the requirements for having residential rental structures tested by 2012.

Also present was Brian Kothman, President of CMAOA, the Waterville area landlords' group. Their membership is more than double that of CAHA and they are active participants in current legislation affecting landlords. It was Brian who brought to my attention the LD 1790 that we e-blasted to all CAHA members who had e-mail addresses on file in our database.

This proposed law would again discriminate against residential landlords. With LD 1790 we would be required to mitigate bed bug problems and be responsible for costs which are totally out of our control, as well as store the tenants' belongings left behind for 24 days, up from the current 12. This proposed law 1790 may be passed by the time you have this newsletter, but hopefully you were motivated by the message we sent to call those on the Committee and voice your objections.

Where does it end? Well, we need your help in making your voices heard; otherwise these discriminatory laws will just keep coming and landlords' rights will be eroded further. CAHA is only as good as its members who actively participate. While many of you are mostly interested in the fuel oil discounts that we have fought for, the big picture is how much cost will we incur in trying to comply with the effects of LD 1790 as well as the radon testing and mitigation, carbon monoxide tester retrofits, lead paint issues, energy efficiency reports, etc. The total costs of these new rules as written may dwarf any savings attributed to fuel oil deals.

The oil bidding process is something that CAHA has done for you, but fighting for your rights is something that requires your active participation. I invite you to become more active in this fight by putting your energies into learning more about what confronts us, and having a willingness to participate individually in fighting these discriminatory laws. For those who don't have computers or email, please consider getting them, as this is how we can best keep you informed and how you can get your message to us and to those in the legislature who need to hear from you.

CAHA leadership can try to get the message out and will be making changes to better serve your needs, but you should realize that we need you to be heard and only you can speak for yourselves as individual landlords. We need your participation at our monthly meetings, or else we see no reason to have them every month. Next month's meeting features Tim Murphy of Tenant Net, an organization to help you screen prospective tenants at a modest fee, which can save you thousands of headaches in choosing only the best of tenants. I hope to see you there.

Charlie Anderson

NEXT MEETING:

APRIL 13, 2010 • 7 – 8:30 P.M.
K.V. FEDERAL CREDIT UNION
TIM MURPHY FROM TENANT NET.

UPCOMING MEETING:

MAY 11, 2010 • 7 – 8:30 P.M.
K.V. FEDERAL CREDIT UNION
GENERAL BUSINESS WILL BE DISCUSSED.

ASK THE LAWYER

WARRANTY OF HABITABILITY, EXPANSION AND IMPLICATIONS

Landlords who rent residential dwelling units are subject to an Implied Warranty of Habitability, whether or not a written lease is involved. In basic terms, the landlord must provide a dwelling which is suitable for human habitation, free of conditions that endanger or materially impair the health or safety of the tenant.

Title 14 §6021 provides a statutory definition of the Warranty and Covenant of Habitability, and provides for a means by which the tenant can prosecute a complaint against the landlord regarding conditions that violate the warranty.

Independently, a breach of Warranty of Habitability defense is specifically permitted to be asserted by a tenant at will in an eviction brought by the landlord for non-payment of rent. If the Court finds the premises unfit for human habitation, the Court must allow the tenant to either terminate the tenancy without prejudice, or to continue the tenancy at a reduced rental determined by the Court. This defense, if successful, can effectively stop the eviction and result in a Court-ordered reduction of ongoing rent which cannot be increased to the full rental value until the dwelling is restored to fitness for human habitation.

Further, a good faith complaint by a tenant of conditions in the dwelling that may violate the Warranty of Habitability, or any other code, ordinance, regulation or statute creates a rebuttable presumption that any eviction commenced within six months of such complaint (whether or not actually founded) is in retaliation against the tenant. A landlord cannot obtain a writ of possession to complete an eviction unless the landlord rebuts that presumption of retaliation.

The Implied Warranty of Habitability was expanded in 2009 to include an ambiguous provision that allows a landlord and tenant to enter into a written agreement to provide heat below 68° Fahrenheit to a limit of not less than 62° where there is a fair and reasonable stated reduction in rent. Such agreements are not available where a tenant is more than 65 years of age or a tenant under 5 years of age resides in the dwelling. In the absence of a written agreement it is unclear whether the law implies the requirement for provision of heat of at least 68° Fahrenheit (as construed by Pine Tree Legal attorneys) or whether the heating system simply must be capable of generating at least 68° Fahrenheit at an outside temperature of -20° Fahrenheit (a position supported by Maine's Attorney General).

Proposed Title 14 §6021-A which is part of LD 1790 appears to be approaching final passage in the Legislature. If passed, the Statute will primarily allocate responsibility for treatment of bed bug infestations to the landlord, and again expand the Warranty of Habitability. Failure of the landlord to comply with any of the proposed provisions could result in a penalty of \$250.00, or actual damages if greater, plus attorney's fees. The landlord's failure to comply would also be deemed to create a condition in violation of the Warranty of Habitability which endangers or materially impairs the health or safety of tenants. This would expand the availability of the Breach of Warranty defense in tenant at will evictions for non-payment of rent. Another provision will automatically create a presumption of retaliation in any eviction begun within six month of the date a tenant exercises any newly created rights under the proposed §6021-A. Those rights will impose new responsibilities and expenses upon the landlord.

New Title 14 §6021-A as proposed would require a landlord to do a visual and manual inspection of the tenant's bedding and upholstered furniture within 5 days of a bed bug complaint from a tenant. If an infestation exists, the landlord must contact a licensed, insured professional pest control agent within 10 days to determine reasonable and effective measures to eliminate and control the infestation. The landlord must disclose to the tenant any costs of control measures that will be incurred by the tenant (presumably for treatment or replacement of bedding and furniture).

A landlord could not rent an apartment which the landlord knows or suspects may be infested. Further, the landlord must disclose to prospective tenants whether adjacent apartments are currently infested or are being treated. Upon request, a landlord must also disclose the last date that the apartment or adjacent units were inspected and found to be free of infestation.

Perhaps most controversial is the proposed requirement that the landlord make unspecified reasonable assistance available to a tenant, including financial assistance. If the tenant is not able to financially comply with control measures, it appears that the landlord may be required to advance those costs on behalf of the tenant, subject to a repayment schedule of up to six months. For instance, a tenant may not be able to afford the specialized laundering or treatment of the tenant's furnishings recommended by the pest control agent, or to replace a couch, mattress or other items that must be discarded. The extent of the landlord's exposure to provide financial assistance to a tenant is unclear. In my view, it is also unclear whether a law that seems to require that a landlord extend an out of pocket loan to a tenant passes constitutional muster.

There are numerous other significant changes proposed in LD 1790 beyond the further expansion of the Warranty of Habitability that would impose other burdens and expenses upon landlords. Landlords should track this legislation carefully and make their views known. If this legislation should become law, I have no doubt that future columns will address the numerous implications.



Disclaimer: For general information of CAHA members; not intended as legal advice. Consult a lawyer for your specific situation © 2010 Eric S. Dick, Esq., Augusta, Maine (207) 622-5872.

**Minutes of Board Meeting
Capital Area Housing Authority (CAHA)
Held at Hatties Chowder House Restaurant, Hallowell
February 16, 2010**

After a social time, President Charles Anderson called the meeting to order at 5:34 p.m. with the following present:

- Secretary & Board Member, Barbara A. Eckhardt
- Treasurer & Board Member, Emmy Swanton
- Board Member, Venita Barley
- Board Member, Gerard (Tiny) Bechard, Jr.
- Board Member, Harold Booth
- Board Member, Ratna Don
- Board Member, Ramona Venskus

President Anderson opened the meeting with the first order of business to review the Board Meeting minutes of January 26, 2010 and the Annual Board Meeting minutes of February 9, 2010, plus the Annual Member Meeting minutes of February 9, 2010. Motion was made by Hal, and seconded by Ramona, to approve the January 26, 2010 minutes as written. Motion passed unanimously.

President Anderson made his selection for the Vice President position. Motion was made by Ramona, and seconded by Harold, to approve Stefanie Barley for the Vice President position. Motion passed unanimously.

President Anderson requested an update on all the various business matters the members took care of from meeting to meeting. Those matters pertained mainly to the newsletter such as the Presidents and Eric Dicks Ask the Lawyer columns, advertisements, minutes, editing, and printing. Other matters were management of the web page and database.

The CAHA newsletter was brought up for discussion by President Anderson. The end result was for CAHA to look into finding another printing company.

Motion was made by Ramona, and seconded by Tiny, for CAHA to purchase a Microsoft word program for the CAHA Secretary. Motion passed unanimously.

President Anderson inquired about the auditing of the CAHA books. Both Ramona and Venita have a person in mind to contact.

Meeting adjourned at 7:42 p.m.

Respectfully submitted, Barbara A. Eckhardt, Secretary

**Regular Meeting Notes
Capital Area Housing Association (CAHA)
Held at KV Federal Credit Union – March 9, 2010**

President Charles Anderson opened the meeting at 7:10 p.m. No quorum was established. Therefore, the February 9, 2010 Annual Meeting minutes and Treasurer's report could not be voted on, as the business part of the meeting was cancelled.

However, President Anderson introduced the speaker for the evening, Jack R. Brown of D. J. Brown Associates, Inc. Jack is a state licensed and certified building inspector. Also, Brian Kothman, President of CMAOA, was introduced to speak on the issue of LD1790.

President Anderson was concerned about LD1790, a thirty-page document, which is, at this date, still in legislative committee. LD1790 benefits tenants, not landlords. For instance, if LD1790 goes through, landlords would be required to store a tenants goods from fourteen days to twenty-four days. Also, landlords would be required to replace bedding, mattresses, furniture, etc., for tenants who are infested with bedbugs.

Brian stated he is hoping that CMAOA and CAHA members could join together regarding legislature issues. For as it stands right now, the legislature believes MAOMA represents all landlords in the state, and that all landlords support LD1790.

Jack informed us that landlords should have their buildings tested for radon right now and not wait until December 31, 2011. He is willing to give landlords a deal on the cost of the radon test, if they act soon.

Meeting adjourned at 8:45 p.m.

Respectfully submitted, Barbara A. Eckhardt, Secretary

**Minutes of Special Board Meeting
Capital Area Housing Authority (CAHA)
Held at KV Federal Credit Union
March 9, 2009**

President Charles Anderson called a special Board meeting together right after the member meeting at 8:50 p.m. with the following present:

- Secretary & Board Member, Barbara A. Eckhardt
- Treasurer & Board Member, Emmy Swanton
- Board Member, Stefanie Barley
- Board Member, Gerard (Tiny) Bechard, Jr.
- Board Member, Harold Booth
- Board Member, Ratna Don
- Board Member, Ramona Venskus

Motion was made by Harold Booth, and seconded by Ramona Venskus, to approve the Annual Board meeting minutes held on February 9, 2010 as written. Motion passed with seven yeas and one nay.

Meeting adjourned at 9:00 p.m.

Respectfully submitted, Barbara A. Eckhardt, Secretary

**Minutes of Board Meeting
Capital Area Housing Authority (CAHA)
Held at Pats Pizza Restaurant, Augusta
March 16, 2010**

After a social time, President Charles Anderson called the meeting to order at 5:40 p.m. with the following present:

- Vice President & Board Member, Stefanie Barley
- Secretary & Board Member, Barbara A. Eckhardt
- Treasurer & Board Member, Emmy Swanton
- Board Member, Venita Barley
- Board Member, Harold Booth
- Board Member, Ratna Don
- Board Member, Ramona Venskus

Motion was made by Harold, and seconded by Stefanie, to approve the February 16, 2010 Board Meeting Minutes as written. Motion passed unanimously.

Motion was made by Harold, and seconded by Ramona, to approve the March 9, 2010 special Board Meeting Minutes as written. Motion passed unanimously.

President Anderson inquired about the newsletter printer and mailer process. A lengthy discussion followed. Stefanie informed us that Quality Copy and the Copy Center are roughly equivalent in price. Consideration was given to either keeping Cory as our layout person, or going with Venita as our in-house lay out person. President Anderson decided that further research is still needed as to which printing company to go with cost wise and time wise in getting the newsletters out on the Thursday or Friday prior to the monthly member meeting. Stefanie said she would continue to look into this matter.

Next, President Anderson wanted to know why CAHA membership late fees were necessary? A short discussion followed, as Ratna assured him that late fees were necessary in the processing of the CAHA membership for the year.

Ratna of the Oil Committee stated that Don Gasink will hold a meeting at his office on March 17, 2010. Brian Kothman, President of CMAOA, will be invited to attend that meeting.

There was much concern by the Board regarding the membership no shows at their monthly meetings. Motion was made by Ramona, and seconded by Ratna, to revise the by-laws for flexibility to reduce regular member meetings and flexibility to reduce newsletters. Motion passed unanimously. After a lengthy discussion, the Board will look to propose changes of the by-laws at its April meeting.

Motion was made by Ratna, and seconded by Venita, that members be given a free copy of the eviction and lease PDF file if requested by e-mail. Motion passed unanimously.

Meeting adjourned at 7:05 p.m.

Respectfully submitted, Barbara A. Eckhardt, Secretary



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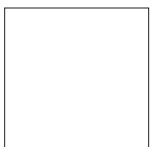
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