

ASK THE ADMINISTRATOR

Records (and Keeping Them!)

As is usually the case, the subject for this column results from a recent discussion with an RSA member. The question from the member dealt with rent increases resulting from improvements to a now vacant apartment. These improvements are known as Individual Apartment Improvements (IAIs), which differ from Major Capital Improvements (MCIs), which are building-wide improvements. As was the case here, IAIs are almost always done after a tenant vacates an apartment and before a new tenant moves in.

The member is new to RSA and has, like many of you, been running her family-owned properties based upon a set of standards put in place by a parent or other family member. While those standards may have worked for the parent, they are often improper. The problems aren't known until sometimes years later and can result in major problems. One example of this relates the fundamental importance of record-keeping.

In order to protect the IAI rent increase from future challenge, whether from the Tenant Protection Unit (TPU) or in an overcharge proceeding brought by the tenant or in the context of a non-payment proceeding in Housing Court, **record-keeping is essential.**

For example, when the TPU unit sends a letter auditing the rent increase (never ignore it), the Owner needs to justify and prove the work and supporting monetary expenditures used to increase the rent. To do so, you need photographs, before, during and after. You need itemized bills for the improvements done which are itemized, along with proof of payment. You need separate bills for each apartment if more than one is being worked on at the same time. Copies of your checks for payments, and, if cash is used, corresponding withdrawals from a bank account. And remember that only improvements-not repairs- qualify towards the IAI rent increase.

Make sure you scan and save the information (including photographs) on your computer, and also, on a disc and thumb drive. Make sure you save the originals in a fireproof safe or filing cabinet. All of the information, including store receipts, should be saved. Contractors retire, companies close, people move or pass away, so years later trying to reconstruct paperwork usually won't work.

So, by way of proof, in a recent case, *La Casa Nuestra HDFC v Harris*, a Housing Court judge allowed a tenant to withdraw

their previously agreed upon stipulation and interpose a new answer, through legal counsel, that included a claim of rent overcharge for a "suspicious" rent increase that took place in 2008, where the legal rent went from \$649.36 to \$2,331.00.

Although the 1997 Rent Reform Act established a strict four-year look back period, the courts have allowed claims beyond four years to proceed if a tenant can show a "colorable claim of fraud." In a case such as this, even though more than four years had passed since the date of the increase, the owner still had the burden of justifying the increase and needed the records to prove it. All of this is true even when you purchase a property. It is essential that your counsel carefully review the rent roll history for any property and make sure that the records are available to justify prior increases in the event an overcharge claim is brought against you after you become the owner. Remember: a rent overcharge finding can result in treble damages.

What you do after a tenant complains about needed repairs is important. Tenants often miss appointments or refuse access. Where is your written proof detailing your attempts to communicate with the tenant? You should always obtain a certificate of mailing for any letters to tenants.

The same is true when you attempt to renew a lease with a tenant. The law requires it to be mailed and you should retain your mailing receipts and copies of what you mail.

One final comment on record-keeping: Judges require great specificity when alleging that a tenant is a nuisance. Merely stating that a tenant has engaged in nuisance behavior will almost always fail unless the notice gives specific dates and times when the behavior took place. If the offensive conduct was recorded on camera, save and protect the videos.

Taking the time to keep your paperwork in order or making sure a building you buy has correct and complete paperwork, or making notes about a nuisance can save you grief later on. ■



Article provided by Howard Stern, Esq., Administrator of the RSA Legal Plan for small property owners, who is solely responsible for its content.