

By Mr. Businger of Brookline, petition of John A. Businger relative to the receipt and return of tenants' security deposits by landlords. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Five.

AN ACT RELATING TO THE RECEIPT AND RETURN OF TENANTS' SECURITY DEPOSITS BY LANDLORDS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 186 of the General Laws is hereby
2 amended by adding after section 15E the following new section
3 15F: —

4 *Section 15F — Security Deposit*

5 1. Any landlord, or agent of a landlord, who receives a
6 security deposit from a tenant or prospective tenant shall give to
7 said tenant or prospective tenant at that time a written receipt
8 indicating the amount of the security deposit received, the name
9 of the person receiving it, and the date on which it is received.

10 No landlord shall require a security deposit equivalent to more
11 than one month's rent. For purposes of this section the term
12 "security deposit" shall mean all funds received from the tenant
13 in advance for any purpose whatsoever other than for payment
14 of the first month's rent. Any funds required of a tenant or held
15 by a landlord as a condition for continued occupancy of premises
16 already occupied shall be deemed to be a security deposit.

17 2. (a) Any person engaged in the rental of property for
18 residential purposes shall furnish to each prospective tenant,
19 prior to execution of a lease or creation of a tenancy, a separate
20 written statement as to the present condition of the premises

21 intended to be let, as well as a copy of the verified written list of
22 damage, if any, provided to the immediately preceding tenant of
23 the premises in question.

24 (b) Each written statement of the present condition of a
25 premises intended to be let shall contain a comprehensive listing
26 of any then-existing damage to the dwelling unit, including but
27 not limited to, any unrepaired damage caused by the immedi-
28 ately preceding tenant in the premises, and all certified violations
29 of the State Sanitary and Building Codes, and any ordinance,
30 by-law, rule, or regulation relative to the fitness of premises for
31 human habitation then existing in the unit, and the estimated
32 dollar cost of repairing such damage. The statement shall be
33 sworn to by the landlord or his agent under pains and penalties
34 of perjury. The statement shall indicate that the tenant has the
35 right to inspect the premises prior to the commencement of his
36 tenancy to ascertain the accuracy of such statement, and that the
37 tenant must either sign the statement as verification of its
38 accuracy or attach to the statement a separate list of damage
39 which he believes exists in the premises.

40 (c) Every landlord accepting security deposits shall maintain
41 records of such security deposits containing at least the following
42 information:

43 (1) A description in precise detail of any damage done to the
44 dwelling unit for which all or any portion of a security deposit
45 was withheld from any tenant, or for which the landlord brought
46 suit against any tenant;

47 (2) The amount withheld from the security deposit, or
48 amount for which a judgment was obtained, for said damage;

49 (3) The date the tenancy of the tenant or tenants charged
50 with such damage was terminated; and

51 (4) Whether repairs were subsequently performed to remedy
52 any of the damage; the dates of the repairs; the cost thereof; and
53 receipts therefor.

54 It shall be the duty of every landlord to make available for
55 reasonable inspection the records required to be maintained by
56 this section at the request of a tenant or prospective tenant.
57 Upon a wrongful failure by the landlord to make such records
58 reasonably available upon the request of a tenant or prospective

59 tenant, said tenant or prospective tenants shall be immediately
60 entitled to the return of his security deposit, with any interest
61 due.

62 3. (a) Every security deposit received by a landlord shall be
63 deposited in a separate interest-bearing account used only for
64 that purpose and held for the tenant and shall not be
65 commingled with the funds of the landlord or any other person.
66 The landlord shall not hypothecate, pledge, or in any other
67 manner use such moneys until such moneys are actually due the
68 landlord. The landlord shall inform the tenant of the location of
69 the separate account and the account number. The security
70 deposit is considered the lawful property of the tenant until the
71 landlord establishes a right to the deposit or portions thereof.
72 The claim of the tenant to the security deposit shall be prior to
73 the claim of any creditor of the landlord, including a foreclosing
74 mortgagee or trustee in bankruptcy.

75 (b) If the landlord who required and received a security
76 deposit transfers his interest in the dwelling unit, whether by
77 sale, assignment, death, appointment of a receiver or otherwise,
78 the landlord shall transfer all security deposits he received from
79 tenants, with any interest earned thereon, to his successor in
80 interest, and said successor in interest shall be liable for the
81 retention and return of security deposits with interest pursuant
82 to the terms of this section, from the date title to the premises is
83 acquired by the new landlord. The successor in interest shall,
84 within 30 days after acquiring title to the premises, notify all
85 tenants whose security deposits were transferred to him of the
86 fact that he is now holding their security deposits; of his address
87 and phone number; and of the location and number of the
88 account in which the deposit is being held. Any landlord who,
89 after transferring his interest in a dwelling unit, fails to transfer
90 all security deposits to his successor in interest shall be liable in
91 damages in twice the amount of said deposits.

92 (c) A landlord of residential real property who holds a
93 security deposit pursuant to this section shall pay to the tenant
94 the actual interest earned by the deposit or interest at the rate of
95 five per cent per year, whichever is greater. The interest shall

96 accrue from the date the security deposit is received by the
97 landlord or his agent until it is refunded to the tenant or applied
98 as set forth in section 4 herein. Said interest shall be paid to the
99 tenant at the end of each year of the tenancy. If a tenancy is
100 terminated prior to the end of a full year of tenancy, then the
101 landlord shall pay to the tenant whatever proportionate amount
102 of interest was earned for that portion of the year.

103 4. (a) The landlord shall, within 30 days after the termination
104 of the lease or tenancy, return to the tenant the security interest
105 or any balance thereof, and any interest due thereon. The
106 landlord may deduct from the security deposit an amount equal
107 to:

108 (1) Any unpaid rent which has not been validly withheld
109 pursuant to MGL Ch. 239, §8A, deducted for repairs pursuant
110 to MGL, Ch. 111, §127L, or lawfully withheld or deducted in
111 compliance with any other law;

112 (2) Any unpaid increase in real estate taxes which the tenant
113 is obligated to pay pursuant to a tax escalation clause which
114 conforms to the requirements of MGL, Ch. 186, § 15C; or

115 (3) A reasonable amount necessary to repair any damage
116 caused to the dwelling unit by the tenant or any person on the
117 demised premises with his knowledge or consent, reasonable wear
118 and tear excluded. In the case of such damage, the landlord shall
119 provide the departing tenant within 30 days after the termination
120 of the lease or tenancy with an itemized list of damages, sworn to
121 by the landlord or his agent under pains and penalties of perjury,
122 itemizing in precise detail the nature of the damage and of the
123 repairs necessary to correct it, and written evidence, such as
124 estimates, bills, invoices, or receipts, indicating the actual or
125 estimated cost thereof. No amount shall be deducted from the
126 security deposit due to any damage to the dwelling unit which
127 was listed in the separate written statement of the present
128 condition of the premises which was required to be given to the
129 tenant prior to the execution of the lease or creation of the
130 tenancy pursuant to section 2(b) herein, unless the landlord
131 subsequently repaired or had repaired said damage and can prove
132 that the renewed damage was entirely unrelated to the prior
133 damage, and was caused by the tenant or someone on the
134 premises with his knowledge or consent.

135 No deduction of any amount may be made from the security
136 deposit for purposes other than those set forth in this section.

137 5. Any of the provisions of this section relative to security
138 deposits which may be in conflict with the terms of a mortgage
139 guaranteed by the United States or any authority or agency
140 created under the laws thereof shall not apply to security
141 deposits held by a landlord who appears as the mortgagor in such
142 a mortgage; however, if such guaranteed mortgage does not
143 expressly forbid the payment of interest, interest shall be paid
144 pursuant to the terms of section 3(c) herein.

145 6. Any provision of a lease which conflicts with any provision
146 of this section, and any waiver by a tenant of any provision of
147 this section, shall be deemed to be void, unenforceable, and
148 against public policy.

149 7. Any tenant may sue in the Housing Court for the City of
150 Boston, or in any other court which has jurisdiction, to recover a
151 security deposit, or any portion thereof, alleged to be wrongfully
152 withheld.

153 8. (a) The landlord shall forfeit his right to retain any portion
154 of the security deposit for any reason, or to sue the tenant for
155 any money owed for unpaid rent or under a valid tax escalation
156 clause, or for any damage to the premises, and he shall be liable
157 to the tenant for court costs and reasonable attorney's fees in
158 any action by the tenant to recover the security deposit if he:

159 (1) Fails to furnish to the tenant, prior to execution of the
160 lease or creation of the tenancy, the separate written statement
161 as to present condition, and the verified written list of damages,
162 if any, furnished to the immediately preceding tenant, in
163 compliance with § 2(a) herein; or

164 (2) Fails to deposit the security deposit in a separate account,
165 in compliance with section 3(a) herein; or

166 (3) Fails to furnish to the tenant within 30 days after the
167 termination of the lease or tenancy the itemized list of damages,
168 if any, in compliance with section 4(a) (3) herein; or

169 (4) Uses in a lease any provision which conflicts with any
170 provision of this section and attempts to enforce such provision;
171 or attempts to obtain from a tenant a waiver of any provision of
172 this section.

173 (b) If the landlord fails to return to the tenant the security
174 deposit, or the balance thereof to which the tenant is entitled,
175 with the required interest thereon, within 30 days after the
176 termination of the lease or tenancy, he shall be liable in damages
177 in an amount equal to twice the amount of such security deposit
178 or balance thereof to which the tenant is entitled, plus interest at
179 the rate of five per cent from the date which such payment
180 became due, plus court costs and reasonable attorney's fees.

181 9. Any violation of this section shall constitute a violation of
182 Massachusetts General Laws, Chapter 93A.

1 SECTION 2. Section 15B of chapter 186 of the General
2 Laws is hereby amended by striking the entire section except for
3 the first paragraph thereof. Said section is further amended by
4 striking in the third sentence of the first paragraph the clause: "a
5 security deposit equivalent to more than two months' rent, nor".

HOUSE OF REPRESENTATIVES

COMMITTEE ON THE BUDGET

REPORT

ON THE

PROPOSED BUDGET

FOR THE FISCAL YEAR 1964

U.S. GOVERNMENT PRINTING OFFICE

