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**SOUTHERN MAINE
LANDLORD ASSOCIATION**

**NEXT MEETING:
TUESDAY MAY 15**

BEDBUGS - Did you know that Maine law requires a landlord to eradicate bed bugs even if a tenant is responsible for creating the infestation? I was not until I defended a landlord in a law suit involving beg bugs and a slip and fall.

My client owned a 4 unit building. He purchased the building in 2009. It was in reasonably good condition particularly for an older home. My client lived in the second floor apartment with his young daughter and wife for 4 years. Plaintiff was a first floor tenant with her long time companion when my client bought the building. Plaintiff had lived there for more than 10 years. A few years later, Plaintiff's adult daughter moved into the apartment. Plaintiff did not consult with or seek my client's permission although he would have consented. In fact, even after he found out, my client never raised Plaintiff's rent in all of the years he owned the property.

Plaintiff, who is now 71, was obese and plagued with mobility issues. She experienced many health issues and falls. In December 2015 Plaintiff tripped while climbing one of two granite stairs in the front of the building. Medical evidence showed that Plaintiff's left leg gave out. Plaintiff alleged the stairs were irregular and the lighting was poor and that the stairs were not equipped with a railing. Plaintiff contended that my client knew or should have known that she had difficulty with the stairs given her limited mobility and that he should have installed a railing. Plaintiff sustained a bad break to her ankle and lower leg which required surgery and lengthy hospital and rehab stays. Her medical bills totaled approximately \$145,000.

A few weeks after returning home,

Plaintiff said that her apartment became infested with bed bugs. Plaintiff testified that she alerted my client to the problem in April 2016. My client recalled that he was notified sometime in August. My client was not aware that 14 M.R.S.A. §6021-A required him to arrange for an inspection of the unit within 5 days of receiving notice of an infestation. It also required him to take steps to eradicate the infestation within 10 days of an inspection. Instead, my client told the tenant to "make a couple of calls." After hearing nothing from the tenant for several days, my client assumed the problem had resolved. Several weeks later, my client received a legal notice from Plaintiff's attorney informing him of his obligations under the Bed Bug Infestation statute.

My client retained a pest control company which inspected the property on October 3, 2016. The pest control specialist testified at trial that although he found live bed bugs, he could not effectively treat the apartment because it was so cluttered with personal property. The one bedroom apartment included Plaintiff, her companion, adult daughter, two dogs and all of their worldly belongings. It took Plaintiff about 3 weeks to remove enough of the clutter for treatment to begin. The apartment was treated 9 times over several months. Plaintiff cancelled several appointments, some at last minute. Over last few treatments the pest control specialist reported seeing no live bugs. My client discontinued treatments at the end of April. Plaintiff continued to complain of bites. She brought suit alleging violations of the Warranty of Habitability and Bed Bug Infestation statutes. Plaintiff submitted numerous stomach churning photographs depicting bites to her arms, face and scalp.

The Bed Bug Infestation statute places obligations on both a landlord and tenant. In addition to those

listed above, a landlord must make a reasonable effort to eradicate the bugs. Similarly, a tenant must give timely notice of an infestation and reasonably cooperate with a landlord and/or pest control agent to eradicate the bugs.

Prior to trial, my client's insurance carrier offered Plaintiff \$50,000 to settle the case but she refused. After a 3 day trial, a jury concluded that my client had no obligation to install a hand rail despite knowing about Plaintiff's mobility and health issues and was not negligent regarding her fall. Regarding the bed bugs, the jury found my client negligent for taking too long to inspect the apartment and to hire a pest control specialist. However, it also found Plaintiff negligent for not fully cooperating with the pest control agent. The jury then compared the negligence of each party and determined that Plaintiff's negligence was greater than my clients which resulted in a verdict in favor of my client and no damage award for Plaintiff.

Lessons to be taken from this unfortunate saga are that a property owner is responsible for moving quickly to inspect and treat a bug infestation regardless of how the bugs were introduced to the property. Do not delay because you may be in violation of statute which provides for payment of the other side's attorney's fees which are generally **not** covered by insurance. Also, the sooner the problem can be identified the more likely treatment will be successful.

Cost was \$20k-\$25k that insurance company paid for representation.



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NOTABLE FEBRUARY SALES



3 Pleasant Avenue in Portland.

The historic John Calvin Stevens church was adapted in 25 residential apartments in 2017. With 17,852 SF of living space and 25 parking spots, **the building sold for \$4.3 million.**



86 Morning Street in Portland

The historic 5039 sq ft 3-unit has water views and is perfectly situated right above the Eastern Promenade in Portland. **The building sold for \$950,000.**

NOTICES OF TERMINATION & SERVICE OF TENANTS

In assisting my clients with evictions that they have already started in FED eviction cases or where they have already served notices of termination, I see common errors that could lead to the process being started over. Astonishingly, I am seeing a trend of landlords using form internet leases that require service of notices to be made by certified mail, return receipt requested. The focus of this month's article is to offer advice regarding the form of notices of termination, the appropriate names on the notices and service of notices. In cases where some of my landlords generate and serve their own notices of termination, I still see a fair number of times where the landlord or property manager only name one tenant that is on the lease or one of the tenants-at-will. If you have multiple tenants that are on the lease or are tenants-at-will, each tenant should be served with their own notice of termination/notice to quit. At a minimum, if you are only using one notice, you should list all of the tenants' names on the notice to quit along with the standard phrase "And All Other Occupants". All of the known tenants have to have their lease or tenancy terminated before you can successfully evict all tenants. By listing "And All Other Occupants", you are bringing within the eviction net any and all persons that may be residing there in an unauthorized capacity.

Tenant-at-will notices of termination are completely governed by Maine state law. Nonpayment notices require specific statutory language. Title 14 M.R.S.A. § 6002 states "If a tenant who is 7 days or more in arrears in the payment of rent pays the full amount of rent due before the expiration of the 7-day notice in writing, that notice is void. Thereafter, in all residential tenancies at will, if the tenant pays all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually expended by the landlord before the issuance of the writ of possession as provided by section 6005, then the tenancy must be reinstated and no writ of posses-

sion may issue." The notice must contain the following language:

1. **If you pay the amount of rent due as of the date of this notice before this notice expires, then this notice as it applies to rent arrearage is void.**
2. **After this notice expires, if you pay all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually paid by the landlord before the writ of possession issues at the completion of the eviction process, then your tenancy will be reinstated.**

Now that we know the timing and form of the notice, we have to serve it properly. Title 14 M.R.S.A. § 6002 provides that notices in reference to tenancies-at-will must be served in hand or, after three (3) good faith attempts at in-hand service have been made, the notice can be left at the unit and must also be mailed to the unit. If you actually serve the tenant in hand, there is no mailing requirement. However, if you do have to post it or slide it under the door after 3 good faith attempts, you must also mail a copy to the tenant at the property address.

The form of notices of termination involving cases where the tenant has a lease is governed by the actual termination language in your lease. Your notice of termination must track the language in your lease. State law does not govern the timeframe required to terminate a lease – your lease does. Your termination language can call for the notice to be 3 days, 5 days or 7 days. It is your preference. However, in no uncertain terms, the form of your notice of termination of your tenant's lease must conform to the termination language of your lease.

Service of a notices of termination for tenants under a lease must also comply with the terms of your lease as state law does not govern the method of service of notices of termination in leaseholds. As I mentioned above, I am seeing a number of leases that require notices to be served by certified mail, return receipt requested. We are all aware that tenants are more likely to not

accept certified mail. It is the one form of service of notices where you actually get proof that the tenant was not served when you get the green card in the mail showing that the certified mail was not received. In your lease, you should have multiple methods of service that give options as to the method of service that works best for your particular situation with your tenants and further make service easy. An example of a lease provision with multiple service options is as follows: "The Lessor must notify the Lessee in writing when the lease is terminated. This notice must be served on the Lessee by sending a prepaid first class properly addressed letter to the Lessee at the residence or by delivering a copy of the notice to the residence (by leaving a copy attached to the door or slipped under the door or other reasonable means) or to a person of suitable age and discretion residing within the residence or to the Lessee. Any notice sent by mail is effective two (2) days after it is mailed." Accordingly, if you have a tenant-at-will situation and your notice of termination does not comply with state law or if the notice is not served in accordance with the statute, your ensuing eviction action will be dismissed by the judge for technical deficiencies. Similarly, if a notice of termination in the case of a leasehold is not drafted to mirror the termination language in your lease or is not served in a method prescribed by your lease, the ensuing eviction action will also be dismissed by the court. An ounce of prevention with the form and service of your notices can clearly prevent a pound of cure. If have any questions concerning the intricacies of the eviction process, do not hesitate to contact me.



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No One Sells More Portland Properties Including Multi-Families

Property Types: Single-family, Condo, Multi-family, Land/Lot

Town: Portland, Maine

Dates: Between 1/1/2017 and 12/31/2017



Market Share Rankings – Sold Listings By Sold \$ Volume			
Ranking	Agent Name	MLS ID	SOLD VOLUME IN DOLLARS
#1	Tom Landry	008182	\$27,613,150

Numbers don't lie - only one agent/team is your best choice for real estate success.

"I knew Tom and his team were experts because they had the most listings and recently sold multi-units in the area. They were professional, responsive, honest and effective, putting my building under contract in days. Tom then guided me through the process to 1031 exchange my proceeds into two new buildings. It was a positive experience from start to finish."

- Rita Ready



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207-775-0248

**MAY
2018
NEWSLETTER**

**SMLA'S NEXT
MEETING:**

TUESDAY

MAY 15

**At: The Italian
Heritage Center
40 Westland Ave.
Portland, Maine**

Free Parking

**Social Hour
5:30 - 6:30 p.m.**

Cash Bar

**Per IHC please do not
arrive before 5:30 p.m.**

Buffet Menu

Cheese & Crackers

Turkey Carving Station
Ziti Marinara
Homemade Meatballs
Broiled Haddock
Roasted Potatoes
Garden salad
Assorted rolls
Assorted desserts
Coffee/Tea

Cost: \$30/pp.

**Please register by 5 p.m.,
Friday May 11.**

Southern Maine Landlord Association

Liability Insurance

One of the results of the Noyes Street event is that we are frequently being asked by building owners if they have enough Liability Insurance. There really isn't any "cookie cutter" answer to the question, because we really can't predict the extent of a particular catastrophic claim. That said, your Liability limits should reflect the size of the exposure (how many units, in which buildings, where they are located, type of tenancy, etc) and the value of what you are protecting (assets, net worth, etc.). Corporate structure is important as well. How visible are you? How deep are your pockets?

A \$1,000,000 limit is the absolute floor for me. At Clark, we do not write less than this. Many companies now have an option to increase this limit to \$2,000,000 on the same policy for very minimal additional premium. If this is available to you, do it, no matter how many units or buildings you have. If any of your buildings have more than 4 units, I think you should consider additional limits on a separate Umbrella policy. Premiums vary quite a bit depending on company, so you'll need to ask your agent. If you decide not to increase your limits, at least you'll have made a properly informed decision.

**For more information,
contact:**

**Bill Exley
Clark Insurance
207-523-2263,
wexley@clarkinsurance.com**

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(207) 799-8485**

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ML MONAGHAN LEAHY, LLP

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To Join: smlamaine.com

\$60/yr - emailed newsletter
or
\$80/yr - mailed hardcopy

**Maine Apartment Owners
and Managers Association
(MAOMA)**

P.O. Box 282
Bath, ME 04530

1-800-204-4311
maoma.org

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Advertise 9 months,
get a 10th month free.
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month & ads are pre-paid.

Call 883-8016 for more
information.



SMLA

Upcoming SMLA Meetings

May 15, 2018 - A Legal and Professional Landlord Panel: join David Chamberlain and a panel of other professional management companies to discuss best practices and legal challenges. The floor will then be opened up for a hold lively discussion around current hot topics and answers to your questions. **Goodwill** will share information about their cleaning services. This service may help landlords handle unit turnover and project clean up while also supporting our community members. **Smoke Free Maine** will give a brief update on their resources, including an addendum to help with your smoke free policy.

The above is subject to change.

"Vital Ideas" Portland's Housing Rental Survey

Portland has commissioned its first Housing Rental Survey which that was just completed and presented to the Housing Committee in late April. You may remember that I sent an email out to our members encouraging you all to participate in the survey. In the end, the survey is the best report ever done on the rental market as it was able to get a good data set from both large and small landlords. Thank you to those who volunteered their data.

Here are some experts from the report summary

- The median monthly rent for all rental units in Portland, regardless of size, is \$1,200, and the average rent is \$1,225.
- Two-bedroom units, representing about 40% of the City's rental units, have a median rent of \$1,380.
- Compared to last year, rents are flat.
- Across the City, almost two-thirds of rental units include heat, either by itself or with electricity. Fifteen percent of rental units include both heat and electricity, and about one-third of units don't include any utilities. Utilities are significantly more likely to be included in the rent for smaller size units.
- For two-bedroom units, the East End and West End neighborhoods have the highest average rents. Rents in the

Oakdale, Parkside, and Bayside neighborhoods are about average, although that masks considerable variation within the neighborhood. North Deering, Downtown, Deering Center, East Deering, Riverton, and Valley Street had rents below the city-wide average.

- I encourage you to read the entire report. It is undecided if this report will be commissioned again and if so, how frequently. I have said to the Housing Committee and others that as landlords, landlords are not afraid of real data and information. We do object to bad data (like the Zillow based numbers in the PPH reporting) and scare-driven anecdotes of certain tenant advocates.

The report can be found at the City's website (under the Housing Committee) and posted on the SMLA homepage.



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SMLA

DISCLAIMER

Please note all positions are voluntary and may not be legal professionals. Any interpretations of articles within this newsletter should be independently verified.

“44 YEARS - SMLA PROMOTING RESPONSIBLE HOUSING MANAGEMENT AND OWNERSHIP”

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Lead \$

For all cities except Portland:
Right now restrictions have been lifted, so as long as the tenants' income qualifies, then the building will!
\$ Available for 200 units!!
1 bedrooms now qualify!
Single or Multi-family apply!
For more information contact:
Kevin Leonard, Community Concepts, 333-6443

For Portland Lead \$:
www.portlandmaine.gov/1006/Loan-Programs. Then, click: Portland Lead-Safe Housing Program.

Portland FREE RRP Training
Call Colleen Hennessy
874-8983

Go Smoke-Free

Smoke-free policies saves landlords money and attract tenants!
Maine law requires property owners and managers to disclose, in writing, if and where smoking is allowed on their property!
Order your free signs (see below, others are available) and key chains at: **smoke-freeforme.org** or call **662-5888**.



Forcible Entry & Detainer Dates

Portland:
All at 9 a.m. in Court Room# 2
May 10 & 24
June 7

(The above is subject to change. To verify dates, 822-4200, #3)

Biddeford:
All at 8:30 a.m.

May 11 & 25
June 8 & 22

(The above is subject to change. To verify dates, 283-1147, #5)

Have You Registered Your units?

Portland Ordinance - (Chapter 6, Article 5, Sec 6-151), states all rental units in Portland, Maine must be registered with the City of Portland and pay a fee. Failure to do so may result in a fine of \$100/day.

The office location is "Permitting & Inspections", Room 315, City Hall, 389 Congress Street, Portland, ME 04101. 207-756-8131.

Office hours are 8-4:30 p.m., Monday to Friday.

Their email address is: housingsafey@portlandmaine.gov

Giroux Energy Oil

girouxenergy.com

Giroux's offer to our members for oil, is daily rack + \$.10 on an auto-fill basis. This price was lower than the lowest cash price every day we checked last year!

With fixed prices impossible to pick and no attractive fixed-price offers, the Giroux offer is who SMLA is recommending.

To enroll, download the application from our website:

smlamaine.com.

You can send the application in to us via fax, email, or drop off at my office:

Brit Vitalius
President SMLA
Fax: (207) 631-2054,
Email: brit@vitalius.com
Office: 306 Congress St, Suite 3, Portland

Heating Season

ENDS
MAY 15

Radon

March 1, 2014 was the deadline to have your units tested for radon!

Northeast Lab at: New Address, 120 Main Street, Westbrook is **STILL** offering SMLA members a deal on *1 vial kit of (1 each) radon test canister for **\$15!**

Be sure to show them your membership card! 873-7711
There is a drop box at 347 Main St., Gorham. In hall of Focus Property Inspections



P.O. Box 3115, Portland, Maine 04104
Return Service Requested

Next Meeting:

MAY 2018

15

TUESDAY

SMLA's meeting will be held at:

The Italian Heritage Center, 40 Westland Avenue, Portland, ME.

**SMLA's regular dinner meetings are the third Tuesday of each month
(except July, August & December).**

Please invite other landlords to join our organization and meetings!

Land lording is a business; don't treat it any other way and you'll survive!

Know the law and know what is going on inside your rental units.

IGNORANCE OF THE FEDERAL LEAD LAW IS NO EXCUSE!