

**SEPTEMBER
2018
NEWSLETTER**

smlamaine.com

President
Brit Vitalius
541-3755
brit@vitalius.com

Vice President
James Ernst
228-5136
seaesta2go@yahoo.com

Secretary
Advertising & Newsletter
Priscilla Dunn
883-8016

Treasurer
Membership
Josephine Yim
text only 809-9982 or
msjyim@hotmail.com

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**SOUTHERN MAINE
LANDLORD ASSOCIATION**

**Next SMLA Meeting
September 18, 2018**

**NEW VENUE
The Elk's Lodge
1945 Congress Street
Portland
(see page 3 for details)**

MAOMA

To MAOMA members:

I have been contacted by Christine Crocker [Maine Indoor Air Quality Council]. She receives 400 phone calls a year from tenants with complaints of unhealthy apartments; "Usually Mold in apartment and usually landlord will not fix".

Her organization is holding seminar on subject September 25th in Augusta. Participants include Tenants Association, Maine Public Health, MBOIA, Public Health Officer, Maine CDC, Housing Authority, A Physician, Pine Tree Legal, A Legislator, American Lung Association, Environmental Health Center, Mold Remediation, Healthy Maine Partner and MAOMA.

We have been asked to attend and I think we should. MAOMA and our Legislative Committee will have its first meeting of year September 12th. Our members will discuss the subject, for the September 25th meeting, and choose two members to represent our interests.

If you would like to participate or share your ideas contact your local landlord group or me.



Peter Flaherty - MAOMA President
207 841-2756
flahertypeter@comcast.net

LEGISLATION

There is little if anything to report on the legislative news front. The Maine legislature will not be in session (other than for Governor's special bills or emergency items) until January.

The Portland City Council's Housing Committee meets again on September 6th but at this time I do not know what will be on the Agenda. If something comes up of importance to Portland property owners, we will do our best to get it on our website ahead of the meeting, so please check the SMLA website on September 5 or 6.

I also wish to point out the passing of longtime member Robert "Bob" Margiloff on August 28th. Bob was a former newsletter editor and MAOMA representative for many years who was very loyal to and hardworking for our organization. Bob passed after a courageous 8 year battle with cancer and will be sadly missed by the members of SMLA/GPHA who knew him and whom he represented so well for so long. May he rest in peace !

Tobacco Policy & Prevention Opportunities for Landlords!

Kirsten Faucher is the new Tobacco Prevention Coordinator for York County. The tobacco coordinator can provide free materials, offer resources and strategies to assist landlords with developing smoking policies. If a tobacco policy is passed by a landlord and meets the policy requirements, financial incentives are available. The incentive can help with smoke detectors, fire detectors, cleaning supplies, painting supplies, etc. in hopes to assist with the transition of becoming smoke free.

Statistics: In the state of Maine, at

least 30% of fatal fires have been related to tobacco products. Smoking is the leading cause of death and costs landlords 5-10% more to turnover a unit that smokers were in. Approximately 65% of rental buildings are smoke free and 8 out of 10 tenants are looking for smoke-free units. Having smoke-free buildings and units is becoming the norm for rental buildings.

Quick Tips for Landlords: A reasonable timeline to enforce a new tobacco policy is about 30 days. This gives tenants time to prepare for the new policy changes. Landlords should state their smoking policy in their lease and have the tenant sign. Be specific! Is smoking allowed in front of the building? Is smoking allowed anywhere on the grounds? Be sure to take the time to include marijuana. It is always a good idea for landlords, when advertising a vacancy, to state their smoking policy in the posted ad. There are always more possible tenants looking for smoke-free housing, rather than housing that allows smoking! Recent Maine public housing surveys indicate that 78% of tenants would choose to live in a smoke free housing option.

For More Information... Developing and implementing a new tobacco policy can be easy with the help of your local tobacco coordinator, as the tobacco coordinator can provide you with policy templates and/or can draft policies that are specific to your buildings. If you are interested in receiving more information, need tobacco materials/resources, or are interested in policy assistance, please reach out to Kirsten Faucher via phone at (207) 490-7854 or by email at: kfaucher@smhc.org, if are a landlord in York County. If you are a landlord in Cumberland County, please contact Karlene Hafemann at: khafemann@portlandmaine.gov.

For more information visit: www.BreatheEasyMaine.org

Setting Multi-Family Records



(Based on MLS data for 1/1/18 to 8/21/18)

Greater Portland Prices up 23%

Multi-family sale prices are setting new records in Greater Portland and have increased 23% over last year. There has never been a better time to sell your multi or a more qualified team to help.

Multi-Family Specialists

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**SEPTEMBER
2018
NEWSLETTER**

**SMLA'S NEXT
MEETING:**

**TUESDAY
SEPTEMBER 18**

at: The Elk's Lodge
1945 Congress St.
Portland, Maine

Free Parking

**Social 1/2 Hour
5:30-6 p.m.**

**Buffet /Dinner Meeting
6-8:30 p.m.**

**Fruit/Cheese & Crackers
Garden Salad
Baked Stuffed Haddock
Rice Pilaf
Sautéed Vegetables
Baked Ziti
Meatballs
Bread
Assorted Desserts
Coffee Station**

**Cash Bar
\$2.50 drafts
\$3.25 bottle beer
\$4 well drinks**

**Please register by
September 14.
\$30 Members
\$40 Non-Members**

**After September 14
\$35 Members
\$45 Non-Members**

Southern Maine Landlord Association

Clark Insurance Tip

One of the most common situations we encounter is when an insurance company requires that something be done that goes beyond what is required by building codes. For example, some insurance companies require two clear means of egress from all units on the second floor or above, when many codes only require them from the third floor and up. Or, some insurance companies want wall mounted fire extinguishers in common areas on each floor, while most codes don't require this. It is very frustrating for landlords who are thinking "if my building complies with all codes, shouldn't it be safe enough?"

The simple answer is that being up to code doesn't necessarily mean the building is as safe as it could, or should, be. If a hazard that exists and is left uncorrected, and someone is injured as a result, it can lead to a liability claim against the landlord that the insurance company has to defend and for which it might have to pay damages. The fact that the building was in compliance with all codes at the time of the incident may not mean much in a court of law.

At Clark Insurance, we advise all of our landlord clients to reduce their risk of claim by removing ANY hazard that could be dangerous, whether required by code or not. If you have questions regarding this, feel free to call me.



**Bill Exley
523-2263,**

wexley@clarkinsurance.com

ML MONAGHAN LEAHY, LLP

**KENNETH D. PIERCE
ATTORNEY AT LAW**

95 EXCHANGE STREET
P.O. Box 7046
PORTLAND, ME 04112-7046
PHONE: 207-774-3906
FAX: 207-774-3965

EMAIL: kpierce@monaghanleahy.com

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ATTORNEY AT LAW**

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REASONABLE WEAR AND TEAR AS TO SECURITY DEPOSITS

When determining damages or cleaning charges reasonable wear and tear in terms of retaining the portions or all of the security deposit, Title 14 §6031 specifically outlines what is considered normal wear and tear. Title 14 §6031 states:

Normal wear and tear. "Normal wear and tear" means that deterioration that occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident or abuse of the premises or equipment or chattels by the tenant or members of the tenant's household or their invitees or guests.

There are obvious examples of damages to the premises that constitute damage or cleaning beyond normal wear and tear, such as, holes in the wall, kicked in doors, changing the locks necessitated by the tenants changing the locks and not providing the landlord with a key, broken windows and carpets needing replacement due to significant pet or burn damage. Also, "the term 'normal wear and tear' does not include sums or labor expended by the landlord in removing the rental unit articles abandoned by the tenant such as trash." In other words, if the tenants leave trash or abandoned property in the premises that need to be removed, the landlord may charge for the expense thereof.

Furthermore, "if a rental unit was leased to the tenant in a habitable condition or if it was put in a habitable condition by the landlord during the term of the tenancy, normal wear and tear does not include sums required to be expended by the landlord to return the rental unit to a habitable condition, which may include costs for cleaning". Thus, the landlord may charge the tenant for costs and expenditures to return the premises to a habitable condition.

Questions often come up about whether certain types of damages or conditions constitute proper deductions. The standard whether some condition is beyond normal wear and tear is whether the condition is such that it was used in a manner for which it was intended. If a carpet is in fine condi-

tion due to it being used in its intended manner while being vacuumed regularly, it may not be reasonable for the landlord to even charge for the carpet to be shampooed and professionally cleaned.

Questions often come up as to whether pull shades, vinyl shades or blinds are considered beyond normal wear and tear when they are removed or not operational. If tenants remove or damage such shades or blinds, the replacement thereof is clearly beyond normal wear and tear.

When assessing whether to charge damages to the tenant beyond normal wear and tear, the landlord should employ the reasonable person test as to whether the premises was used in a manner for which it was intended.

If you have any questions please feel free to contact me.



David P. Chamberlain, Esq.,
represents only landlords and
can be reached at: 70 India Street,
Portland, ME 04112-0066
Tel.# (207) 775-0060, cell 650-5640
dchamberlain@dpclawoffice.com

THE SOPO ANGLE "UPDATE"

AFFORDABLE HOUSING - GOOD FOR THE CITY, GOOD FOR LANDLORDS

The lack of affordable housing in South Portland is still a major concern. This fact poses two problems. 1) A place for working-class families to be able to live in the same town in which they choose to work and, in some cases grew up in, is very hard to come by. 2) It's crucial to have young people make up part of our population so that our town stays vibrant and active and we don't become a city of old, "well off," retired people. Having young folks in our city

keeps the rest of us older folks feeling and acting younger. For those of us who have rental property, a vibrant city makes our property more valuable because it is where people want to be.

Since my last article, we have made some progress in increasing the number of affordable rental units in South Portland. The St. John's Church project, proposed by the South Portland Development Corp. and the South Portland Housing Authority, has finally been approved. This will place 42 affordable units with retail space on Route 1 in South Portland. Although there was some push-back from nearby residents, the project was approved. Once federal funding is obtained, the groundbreaking could begin as early as the spring of 2019.

The lack of affordable housing is not only a problem for the city; it is also a problem for us as landlords. In my opinion a lack of affordable housing affects market forces, in such a way the result of which is rents climbing out of sight across the board. This in turn puts pressure on City officials to come up with measures to combat this. As we have seen in the past, this pressure could manifest itself as the City Council again looking at rent control as a way to fix the problem.

The Affordable Housing Committee in South Portland, of which I am a member, is working hard to come up with creative ways to encourage development of affordable units through tax incentives and density bonuses for developers. This is certainly a challenge, but nevertheless worth the effort. Stay informed and get involved.



Mike Duvernay
SMLA Board Member
207-233-5949
mike@duvernayproperties.com

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SMLA

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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 qualify!
- Single or Multi-family apply!
- **Vacant units now qualify!**

For more information contact: Kevin Leonard, Community Concepts, 333-6443

For Portland Lead \$:

Grant funding available up to \$10k/unit for lead prevention. Free RRP Training. For more information, go to www.portlandmaine.gov/1902/Lead-Safe-Housing or call Theresa Galvin 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

**September 6 & 20
October 4**

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

Biddeford:

All at 8:30 a.m.

September 7 & 21

(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

**BEGINS
SEPTEMBER 1**

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

**Southern Maine
Landlord Association
(SMLA)**

306 Congress St.
Portland, ME 04101
1-207-541-3755

To Join: smlamaine.com

\$60/yr - emailed newsletter
or
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**Maine Apartment Owners
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(MAOMA)**

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maoma.org

**MAOMA
Representatives**

Carleton Winslow
318-8284
Priscilla Dunn & Mat Leighton

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SMLA

Upcoming SMLA Meetings

September 18, 2018 - Welcome Back Members! Ken Pierce Esq. - Bedbugs. Short version of "Back to Basics". Habitat 4 Humanity on 10/27 "Volunteer Day".

October 16, 2018 - Interim Portland Fire Chief Keith Gautreau, presentation on Portland's Consolidated Inspection Department. Rich Brobst, the owner of Guardian Systems of Maine on smoke/co detectors.

November 13, 2018 (not the 20th) - Matt Barbour, of McLeod Ascanio, on tax matters for landlords. Jason Straetz, of Gorham Savings Bank, on Commercial Lending. And a panel on consumer lending for multi-family owners.

December 2018 - No Meeting. Happy Holidays. See you **January 15, 2019!**

The above is subject to change.

TWO TRESHOLDS WITH DIFFERENT RESULTS

I recently defended two property owners in separate law suits who were alleged to have been negligent for not maintaining their properties in a reasonably safe condition. As we have discussed on many occasions, a property owner has a duty to ensure that his/her property is reasonably safe from defects for individuals lawfully on the property. This means that a responsible owner should make regular inspections of the property. Maine law also provides that an owner is not liable for defects which arise in a premise in which a tenant has exclusive possession and control except under limited circumstances which did not apply in either case.

In the first case, a tenant claimed that she tripped over a threshold in her apartment injuring her back. The threshold was damaged by the tenant while moving a refrigerator and protruded higher and at an odd angle than when it was originally installed. Tenant did not notify the owner of the defective threshold until after she fell. Once notified, the owner installed a new threshold. Tenant subsequently underwent spine surgery which was caused by the fall. Her medical bills were approximately \$46,000 and she claimed lost wages of approximately \$13,000.

In the second suit, a tenant claimed that she tripped over a damaged threshold in a common hallway causing her to fall and break her arm which required surgical repair. The evidence showed that children playing in the hallway hit the threshold with a hammer causing it to splinter. Tenant did not regularly use that hallway and was not aware of the defective threshold.

Other tenants did not notify the owner of the problem. The evidence was that the threshold was likely damaged several months before the fall and that the owner rarely visited the building. Tenant's medical bills were about \$18,000 with lost wages of \$5,000.

Both tenants had written leases which required the owners to make repairs and provided the owners with access to inspect the apartments upon reasonable notice.

In the first case the jury ruled in favor of the owner finding that the threshold was damaged by the tenant after she took possession of the apartment. Tenant never notified the owner of the problem. And, although the owner could have inspected the property and discovered the defective threshold, he was under no obligation to do so since it had been inspected at the time the lease was signed several months before.

The second case produced a different result. In that case the jury ruled against the owner reasoning that the defective threshold was not in an apartment under the tenant's exclusive possession and control, but rather, in a common hallway used by all of the tenants and their guests. The jury concluded that the landlord was negligent for not discovering and repairing the problem before the tenant fell. The jury awarded the tenant \$65,000 which was paid by the owner's insurance carrier.

Once again, the moral of the story is to make regular inspections of hallway and common areas to be sure your buildings are safe for your tenants and guests.



**Ken D. Pierce Esq.
Monaghan Leahy, LLP
Tel.# (207) 774-3906**



Next Meeting:

SEPTEMBER 2018

18

TUESDAY

SMLA's meeting will be held at:

NEW VENUE:

The Elk's Lodge, 1945 Congress Street, Portland, ME.

SEE PAGE 3 FOR MORE DETAILS

- 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!**