City of Madison

Meeting Minutes - Approved

LANDLORD AND TENANT ISSUES SUBCOMMITTEE

City of Madison
Madison, WI 53703
www.cityofmadison.com

Thursday, December 20, 2007 **4:30 PM** **Room LL-130 Madison Municipal Building
215 Martin Luther King, Jr. Blvd.**

CALL TO ORDER / ROLL CALL

Staff Present: Tom Adamowicz and Meg Zopelis
Doran Viste was also present for the meeting.

Present: 6 -
Eli Judge; Curtis V. Brink; Philip P. Ejercito; Detria D. Hassel; Rose M. LeTourneau and David R. Sparer

Excused: 1 -
Brenda K. Konkel

APPROVAL OF MINUTES

A motion was made by Sparer, seconded by LeTourneau, to Approve the Minutes of October 18, 2007. The motion passed by voice vote/other.

PUBLIC COMMENT

Mr. Greiber spoke in opposition of Ordinance 07615. He works for Madison Property Management, but he was not appearing on behalf of them. He deals with this situation often and believes this will lead to increased costs for tenants overall, either through the cost of complying with the cataloging, organizing, and maintenance of such a photograph database.

In cases where there are not photographs and there are legitimate disputes about damages, if they go to court, they normally fall down on the side of the tenant. If there are photographs of every single incident of every single piece of damage of property, it will fall against the tenant so they end up losing a lot of them.

Ordinances like this are cumbersome to comply with and the numbers of Ordinances that are passed tend to drive the smaller landlords towards management companies, which is usually not in the tenants' best interest. Once that happens, the management companies are able to comply with all of these Ordinances, and this is usually not in the best interest of the tenant.

In the vast majority of cases, if there is a checkout completed and the tenant is present and they are looking at the place together and marking things, the tenant acknowledges that is what they see. He is not sure having a picture in addition to that is absolutely necessary. The tenant knows the condition of the place, if they have lived there a year, and they know there is a hole or damage.

He is concerned that if two weeks after checkout a tenant says you do not have a pictures that the landlord cannot deduct for it.

Most security deposit deductions for areas of damages are usually not disputed. The tenants normally agree that the checkout form is an accurate representation of the apartment. The disagreement almost always falls with whether or not the damage is listed as normal wear and tear. There could be a dispute that the cost of the repair is too high and it should have been a lower cost or there should be a depreciated value on what they damaged.

This Ordinance is establishing whether or not the damage actually existed and that is not usually what the dispute revolves around. He just had a trial this past week wherein all they had was a check-in/check-out form and the tenant brought in photos because they took pictures at the end. However, he still won the damages because the form said no damage at move in, damage at move out and the pictures were not clear and relevant.

This Ordinance is going to create an enormous amount of photographs being taken for a very tiny purpose. He thinks it is a waste of time and is ultimately going to cost more money.

Nancy Jensen, Apartment Association of South Central Wisconsin, spoke in support of Ordinance 07615. She was there in support of Ald. Judge's reasoning behind this Ordinance. She has had many discussions with Mike Greiber.

Most of the calls they receive in their office related to damage are disputes over whether damage exists. Almost 100% of the calls are over did the damage exist and what the landlord deducted for. Just as a general good business practice, they advise all housing providers that they should be taking pictures. Digital cameras are inexpensive. They also advise all tenants they should be taking pictures. Ms. Jensen suggested that digital cameras should be available through the Tenant Resource Center so that it is easy for all parties to take pictures.

Ms. Jensen indicated that there is labor with it, as you have to put post-its showing where damage is, if lights are there or not there, so that the picture is taken properly. It may possibly increase the cost of housing. However, it is a good practice.

There was a question by Mr. Sparer about the Ordinance at the section that references that the landlord should keep the photograph for 90 days. This seems like a short amount of time and he was wondering what Ms. Jensen thought. If a tenant does not request the photos, and the landlord deletes them, as they only have to keep them for 90 days, then what happens at a hearing when no one has the photos?

Ms. Jensen reviewed the information and said the photos have to be requested within 30 days of receipt of notice of withholding. She indicated that you should keep the photos because if the tenant comes to you within the 30 days to see the photos, you will have them. She recommends tenants and landlords keeping their photos as proof. The idea was not to require the landlord to keep the photos endlessly. However, it would be wise to keep the photos, especially when buying/selling buildings. The Statute of Limitations is six years and Ms. Jensen recommends to people that they should keep records that long.

Brende Hofer spoke in opposition of one section of Ordinance 07734. Ms. Hofer owns and manages rental properties in Southeast Madison. She opposes the section that requires owners/managers to place compact fluorescent light bulbs in every unit. Ms. Hofer supports energy savings and lives modestly in one of her units and drives an efficient car. She tried the fluorescent light bulbs in her unit first. They cost more money and the existing fixtures would not house compact fluorescent lights (they are bigger). In the six-light bar in the bathroom there was a delay in the lights coming on. The light is not pleasing and not as good for vision. She also tried putting four of one light type and two of another in the light bar to see if that was better; however, that was her choice. She would not want to go to an aging tenant and tell them that the lights were being put in and that would be the requirement. The new fixtures are not the same size and the owners/managers would have to touch up paint, which would cause extra expenses for fixtures, material and labor. Ms. Hofer did put the fluorescent lights in the common areas 20 years ago, in the interest of saving money.

Nancy Jensen, representing the Apartment Association of South Central Wisconsin, spoke on some issues on Ordinance 07734, and is not completely ready to support this Ordinance yet. She agrees with the lights being placed in the common areas and that has been done for a while. The issue they have is with the cost of the exit lighting. Their concern is not with the retrofitting kit, but with the labor required to do the retrofitting. Would they have to replace current fluorescent lighting and retrofit with LED lighting? LED lighting stays lit and last 25 years versus 2 – 3 years. The cost to place the lights inside the unit is a factor due to the timeframe and the number of bulbs. What can be done to offset costs? The Madison Community has 60% - 70% rental housing so there are very high numbers. She averages that a one-bedroom unit has 15 light bulbs, a two-bedroom apartment has 18 light bulbs, and a two-bedroom two-bath unit has 21 light bulbs. This is going to place too much of a burden on the private owner without a guarantee of user savings. They would suggest an electrician or someone from Focus on Energy attend a meeting to speak on this issue. Ms. Jensen has a card with the Focus on Energy contact information.

Tom McKenna spoke in opposition to Ordinance 07734. Mr. McKenna lives on the west side and owns one apartment building. His home is retrofitted with all compact fluorescent lights. He has changed his building with MGE over the years with all of the energy saving options. He is in favor of energy saving and he does not oppose that issue. Mr. McKenna believes that the Alders who have sponsored this Ordinance are doing it for political issues and that their rationalization is very weak. It reads, "This amendment is intended to decrease energy use in certain..." and Mr. McKenna wants to know why not "all". Why is this not for the entire City? They reference two things, save energy and tenant safety. Is this because they don't have to change light bulbs as frequently? Mr. McKenna stated he feels Alders Solomon and Palm don't have the "brass cajones" to compel all Madison residents to get involved in energy saving. Half of the City of Madison is excluded and it is for their own political purposes of getting re-elected to their constituents. Mr. McKenna stated that if the Landlord & Tenant Issues Subcommittee goes along with this Ordinance, they would be as guilty as the Alders are of excluding half of the City from saving energy. Mr. McKenna believes in equal application of the law. This would create differences. Two days ago the White House came out with a better plan than what the Subcommittee is looking at in this Ordinance, and that speaks to how pathetic

this Ordinance is, when the White House can have something better than what we are discussing. When this came up a year ago, Ald. Brandon spoke extensively to the Council about giving a little bit of time so that the American companies can get their production up and running, and we can make American made compact fluorescent lights. No one wants to pay attention to him because they are coming in from offshore. Mr. McKenna brought in the November issue of the US Mayor's Magazine, of the November 1st and 2nd Mayor's Climate Protection Summit. It was sponsored by TCP, that means that they paid for everything and they further paid to subsidize the cost of the Mayors going to the meeting. This was just five weeks ago. TCP is one of the seven founding charter members of the Mayor's Group for Climate. One of the seven members who paid for all of this is the Chairman of TCP in China and their company makes one million compact fluorescent light bulbs per day. Why can't the subcommittee let Ald. Brandon's suggestion of having GE and American companies to get their production up because quality is an issue. The light bulbs he buys at Menard's don't last 10,000 hours or 8,000 hours. A lobbyist is paying for all of this stuff that is influencing people to come back and say lets get into this quickly; he is asking for a little time. Mr. McKenna brought in a sheet that indicated the differences in light bulbs. He asks that this be sent back to the Council to include the entire City and not just the Ordinance as it is written. Mr. McKenna stated that as some subcommittee members are probably tenants, those subcommittee members should recuse themselves from any voting because it is an ethical question of voting on an issue that it is bettering something for themselves.

Dan Seeley spoke in opposition to Ordinance 07734. He is a resident of Sun Prairie but works as a Property Manager/Community Manager for Steve Brown Apartments; however, he is not speaking on their behalf. He had different numbers than Nancy Jensen in regard to the number of light bulbs per unit. He agrees that there are approximately 15 bulbs in a one-bedroom apartment. He figures 6 light bulbs per bathroom, 3 bulbs in a bedroom but more if there are ceiling fans, 4 bulbs in a living room and possibly more for ceiling fans, 2 bulbs in the kitchen, 1 bulb for every closet and common area bulbs. He then figured maybe 1 extra bulb per number of bedrooms per unit. For Steve Brown Apartments at the one of their latest projects on University Avenue, they are going to have 956 units, everything from studios to 7-bedroom units. Of those 956 units, they are going to have approximately 1,800 bedrooms, 1,5000 bathrooms. If you start carrying that cost through, that is 5,300 bedroom light bulbs, 3,800 living room light bulbs, 1,900 kitchen bulbs, 1,800 common living space bulbs, 1,900 dining room bulbs, 8,700 bathroom light bulbs, 900 closet light bulbs, for a total of approximately 24,000 light bulbs. The cost is too large to change out everything at a cost of $3.00 per light bulb (average). That is a cost of $73,000 in light bulbs in year one to retrofit all of those. That is on the assumption that the bulbs fit and they don't have to replace any of the light fixtures they are talking about. There is also a labor charge included with this, an additional amount of $143,000 in labor. This makes a total year one investment of $216,300 to change out all of the light bulbs. He figures that there would be a 25% loss due to breakage, theft from the residents and burnout. For owners in general, this is financially difficult to swallow. They are not opposed to energy efficiency, as it makes sense both financially and environmentally. The cost would be passed on to tenants in a rent increase. Aside from the cost, how do you enforce this? Who is responsible to replace a light bulb when it burns out during a tenancy? Mr. Seeley then referred back to how he would now have to take photos that all light bulbs were put in at the time of residency. Incandescent lights are going to be phased out

anyway because of what the President just signed so why are they being forced to make this change so quickly? It is going to happen as incandescent lights will be phased out, so why force the financial and labor timeframe?

ORDINANCES

1. 07615

SUBSTITUTE--Amending Sections 32.07(5), (7), (9) and (14) of the Madison General Ordinances to require landlords to obtain, maintain, and provide or make available, upon request, photographic evidence of damage, waste or neglect being charged against a tenant's security deposit.

The Landlord & Tenant Issues Subcommittee voted to return Ordinance 07615 to the Housing Committee with the recommendation for approval, with the following amendment:

Insert language in the Ordinance on it being subject to photographic evidence as some items cannot be photographed (i.e. smells).

A motion was made by Ejercito, seconded by Sparer, to Return to Lead with the Following Recommendation(s) to the HOUSING COMMITTEE: Insert language in the Ordinance on it being subject to photographic evidence as some items cannot be photographed (i.e. smells).

Ald. Judge said the Ordinance was drafted as the timeframe being 90 days beyond the latest deadline set forth here. If there is overlapping tenancy, there is not an issue. However, if there is a gap between someone moving out, the apartment sits vacant for a couple months, someone moves in and they then get noticed that the last person was charged, that is when the deadline starts for that person

Ald. Judge gave background on how this Ordinance came about. Constituents have called him and complained that they were charged for things that by no means matched the charges. Within six months of him taking position, he had already received four calls about frivolous charges. It is a good business practice and is to protect both the tenant and the landlord. It was discussed if labor costs would be extreme. However, he indicated it is not costly because you can even take a photo on a cell phone. There is some time involved with labeling photos; however, legal costs would outweigh maintaining photos for however long you need to. This Ordinance would help those with the devastatingly large charges on matters that are frivolous. Ald. Judge has discussed this with Ald. Konkel in her capacity at Tenant Resource Center and this is an ongoing problem. Ald. Judge reiterated that this is an extremely important tool because for some people the charges can be devastating amounts of money.

Ms. LeTourneau completely disagrees with this Ordinance. Just because something is a good business practice, does not mean it should be an ordinance or a law. There is a misperception about who the landlords are in this City. You can Photoshop photos and make it look however you want. The matter should be taken care of in court if there is damage that is being disputed. Some things cannot be photographed, i.e. smells, things in pipes, etc. It is second nature for younger people, such as students, to photograph as they have the technology on hand, in the form of cell phones. However, this is not second nature for older people who are landlords. Some may not even have cell phones, let alone a digital camera. She would never support this but thinks it is a good business practice to take photos. People do sometimes agree to the damage, but not the cost of repair. Ms. LeTourneau is concerned about the clarity and quality of

photographs as some people are better photographers than others.

Ms. Hassel thinks this is a good business practice, but disagrees on some issues. She disagrees with the comment that people do not know how to use the technology. She has seen some residents with small things wrong in their apartments after they have moved out, when they have already been having problems with management, and months later she happens to know that those people received bills for $3,000 - $6,000. These people moved out of town and then months later received letters about the frivolous charges/damages, so she has seen this issue go both ways. Ms. Hassel pointed out that when you go through multiple management companies, the check-in/check-out sheets are not maintained for the tenants. Sometimes people get mad at landlords and put sand and rocks in tubs/drains, but you cannot take photos of that. What is the point of having a check-in/check-out sheet if the photos are required?

Mr. Ejercito pointed out that the photos do not have to be digital. The cost is higher when using film/disposable cameras. Film is more the set medium than digital if you are concerned with authenticity. Mr. Ejercito asked what procedures/standards the courts have set up in terms of authenticity and acceptability of photographs. Mr. Viste said they accept film and digital photos, as long as someone testifies that they truthfully and accurately depict what it is supposed to be depicting. Both digital and print photographs can be altered. Mr. Ejercito asked what the penalty was for altering photographs/evidence. A case was referenced wherein a landlord was proved to have completely fabricated evidence and the judge denied their claim and awarded all the damages to the tenant as a punishment for doing that. It is considered perjury.

Sparer thinks this is a good Ordinance. Photographs of damage are simply helpful in court. It is not the end all as you cannot photograph pet smells; however, it is helpful to both the landlord and tenant to support their claims. Mr. Sparer thinks that the 90 days of maintaining the photos should be longer, possibly one year. The cost of maintaining the photos would not be very much per tenant and the fact that it is any type of photograph, film or digital, gives people flexibility.

Mr. Brink thinks the language should be phrased differently and referred to the last page of Subsection 9, of Section 3207, entitled Security Deposit Refund Procedures (Madison General Ordinance). After referencing Section 3207 7(b), Mr. Brink said you should not lose everything on the technicality of losing one photo. The photo should be specific to the item being disputed. The Ordinance already says that you have to have receipts/documentation for everything you are charging for.

Ald. Judge clarified that the language should state that you should have photographs for the things you expect to get damages from. Photographs are a piece of evidence and that is why they are put next to receipts. A student he spoke with had photographs that she took to the landlord and because she had proof, it was dropped right then and she was not charged for it. The photographs are not the sole source of evidence in these cases. They are to help prove whether or not the damage existed.

Mr. Viste thinks that it basically means that the landlord could not take out of the security deposit for something that pictures don't exist for. If there are 10 things

broken and the landlord documents 9 things with photographs, then Sub 14 allows them to charge for the 9 things against the security deposit. If they then charge for the 10th thing and the picture does not exist, then they cannot charge for that. The landlord must have photographs to deduct from the security deposit. If the landlord persisted in deducting for something they did not have a photo of, then they would forfeit the entire claim. This would require landlords to photograph any damage, waste or neglect regardless. If they do not do that, they are not entitled to deduct it. Obviously, smells cannot be photographed. If a tenant leaves water running and runs up a massive water bill, that cannot be photographed. It may be wise to consider adding in something, such as if it is possible to photograph it.

Brink thinks there should be clarification and it should be re-worked.

Mr. Sparer gave background information on State Law/City Law. There is case law that says if you don't send the security deposit in 21 days, then it does not matter what your claims are or how legitimate they are, you automatically owe double damages and attorneys fees (under State Law). The City Ordinance was adopted at the time that was already the law. The City added additional requirements to what the 21-day letter has to say and it has to include receipts and estimates in addition to simply a listing of claims. This provision, if you do not do it in the way that we are saying you should do it, causes you to lose your right to the entire deposit and the penalty provisions go into play. This is the same as the case law, but the City wanted to add extra documentation in the 21-day letter, beyond what the state required.

Amendment to Motion:

An Amendment to the Motion was made by Sparer, seconded by Judge, to insert language in the Ordinance on it being subject to photographic evidence as some items cannot be photographed (i.e. smells). The Amendment passed by voice vote/other.

Michael Greiber spoke again and said this is unnecessarily burdensome for such a small percentage. It usually falls to the side of the tenant if there are no photos of the damage. The City is going to be taking millions of photographs for a handful of cases that go to court each year.

Ald. Judge yielded time to Nancy Jensen. Ms. Jensen agrees with the amendment and does not think this is overly burdensome and it may reduce the number of cases that go to court. She would like to see the industry come to table on this dialogue.

The motion passed by the following vote:

Excused: 1 -
Brenda K. Konkel

Ayes: 5 -
Eli Judge; Curtis V. Brink; Philip P. Ejercito; Detria D. Hassel and David R. Sparer

Noes: 1 -
Rose M. LeTourneau

2. **07734** SUBSTITUTE - Creating Sections 27.05(2)(aa), (bb), (cc), and (dd) and Section 29.20(21) of the Madison General Ordinances to require bulbs with an energy efficiency of at least thirty (30) lumens in some common areas and dwelling units in residential buildings.

Attachments: 07734-Version 1.pdf

ROLL CALL

Present: 5 -

Eli Judge; Curtis V. Brink; Philip P. Ejercito; Rose M. LeTourneau and David R. Sparer

Excused: 2 -

Brenda K. Konkel and Detria D. Hassel

ADJOURNMENT

A motion was made by Sparer, seconded by Brink, to continue discussion of Ordinance 07734 at the next Landlord & Tenant Issues Subcommittee, move the remaining Agenda items to the next Agenda for the Landlord & Tenant Issues Subcommittee, and to adjourn the meeting, as the meeting had run overtime.

The motion passed byvoice vote/other.