

CASE NO. EVO87-108  
ADDRESS: 20 Chilton St., #6  
HEARING DATE: July 30, 1987  
& July 31, 1987  
BOARD MEETING: Oct. 21, 1987

Rent Control Board  
City of Cambridge  
678 Massachusetts Avenue  
Cambridge, MA. 02139

Attn: D. Margaret Drury, Executive Director

Dear Sirs and Madams:

We wish to comment on the Hearing Report regarding an application for eviction for our daughter's occupancy of the subject apartment.

The apartment that is in question is part of a six family that was previously owned by Patrick J. Sullivan (David's father). Patrick has lived in Cambridge continuously for more than sixty years. He purchased this house approximately thirty-five years ago. During this time he provided low rental rates to tenants including three of his children (which included ourselves) and two grandchildren. We lived in this house when we were first married. Our first child (Mary) was born there and she later lived there when she was married as a tenant of Patrick Sullivan. Patrick Sullivan is 81 years old and resides in a two family house which he owns. There are sufficient chores there for a person his age. He wished to lessen his responsibilities as a landlord and decided to convert the six family to condominiums in 1984. This was accomplished in September 1985. Three units were sold to existing tenants. Patrick retained ownership of three units. The sale price for each unit was \$42,000. Mary was living there during the conversion process. She wanted to purchase a unit and stay in Cambridge but was not able to because, although she was born in the house, she was not a pre-1979 tenant. She purchased a house in Arlington and lives there with her husband and daughter.

On August 1, 1985 Patrick sent notices to the tenants regarding the general adjustment rent increase. The tenant in unit #6 (Cynthia Cox) responded that she would not pay the increase until certain code violations were remedied. One of the items in her letter was a faulty refrigerator. Patrick did not think the refrigerator was his responsibility. His son David went to the rent control office to ascertain whether he was correct. David received a copy of the property record summary and was assured by Rent Control that the refrigerator was not an included service and therefore was not the landlord's responsibility. David and his brother Brendan visited the

apartment, reviewed the items with Cynthia and agreed that Brendan would fix the violations except for the refrigerator. It is our understanding that this work was done within the next few weeks. Cynthia continued to withhold the rent increase and Patrick sent her an eviction notice for failure to pay rent in July 1986. There was a hearing on this matter in September 1986.

In December 1986 we purchased the three rental units from Patrick in order to provide affordable apartments for our children. One son (David who is 26) was living in one unit at that time. We also have a son (Patrick who is 28) and a daughter (Jill who is 24) living at home. Our children were raised in the neighborhood and wish to stay in Cambridge. Our purchase price for these units was the same as the other unit owners.

In February 1987 there was a Board Hearing on Patrick's case. The hearing officer's recommendation was that the abatement for violations was 42 cents more than the amount of rent withheld. The major part of this abatement was for the refrigerator. The hearing officer determined that the refrigerator was included with this apartment. At this same time the tenant was withholding \$40 per month from us although all code violations had been corrected. David reviewed the hearing examiner's report with his father and brother. It appeared to him that the evidence may not have been presented well. He then assisted his father in writing a letter to the Board commenting on the report. The Board overruled the hearing officer's recommendations and required the tenant to pay \$302.20. The withheld rent was paid and the case was settled. David's involvement in this case was visiting the apartment with his brother in 1985 and assisting his father write a letter in 1987. He cosigned the letter because he was co-owner of the apartment and rent was being withheld from us at the time the letter was written (refer to LL Exhibit #1).

After the previous case was concluded, David visited Rent Control and inquired if we could ask for a security deposit. He was advised by Public Assistance that we could ask, but that we could not enforce the request. A letter was sent to the tenant requesting a security deposit. The tenant replied in the negative and we accepted the reply. There was no further action in this matter. If we had been advised that this request could be a problem, we never would have asked.

The recommendation of the hearing examiner is not to allow our daughter to move into the apartment because of a history of disputes between the current landlord and the tenant. There is absolutely no evidence stating any disputes between us and the tenant. The first time that either of us ever met Ms. Cox was in September 1985 (when

David went to the apartment with his brother). The next time that David had a conversation with Cynthia was in March of this year in order to correct the refrigerator problem. Aline Sullivan met Cynthia only once and that was in August of this year. The hearing examiner stated that our daughter is living at home in a comfortable situation. This is true, but it will no longer be true when she marries (she was engaged last March).

We request the hearing examiner to review this case and to reconsider her decision. If she feels that her recommendation is correct, we then appeal to the Board to look at the facts in this case, consider our purpose when we purchased the apartments and our daughter's desire to occupy the apartment. There has been absolutely no bad faith on our part. We can not imagine that we could be penalized in our attempts to provide affordable housing for our children because a son assisted his elderly father in writing a letter which the Board agreed with and because we asked the tenant for a security deposit after consulting with Rent Control. If the hearing examiner's recommendation prevails it appears that if an eviction proceeding for non payment of rent is settled when a tenant pays the rent owed, then a landlord's rights become very greatly diminished. This would encourage rents to be withheld and then paid after an eviction proceeding is held. A tenant could then claim retaliation in any future proceeding. In our case we are not even the landlord who sought to recover withheld rent.

Very truly yours,

David P. Sullivan

Aline M. Sullivan

cc: Jeanne M. Medeiros  
Cynthia Cox  
Frederick Hayes

## IN GENERAL

1. There was no testimony or evidence of any dispute between the tenant and either David or Patrick Sullivan. Testimony was reported incorrectly, testimony was omitted from the report and there were incorrect findings of fact.
2. Prior to the hearing, David was advised by the tenant's attorney that if he did not allow the tenant to stay six months and pay \$10,000.00 that the proceedings would take longer and cost him more.
3. David relied on information he received from Rent Control on two occasions and is being penalized for relying on this information.

## TESTIMONY REPORTED INCORRECTLY

On page 5, Item 34 should be for six months and not twelve months. The rental income for this period was \$3503 and not \$3000. (Refer to landlord's Exhibit #6 which is part of the report to confirm this).

On page 5, Item 38 should be that David works for a general contractor and not that he is a general contractor.

## INCORRECT FINDINGS OF FACT

17. Cynthia began withholding rent in September 1985, not the summer of 1986 when she complained to Inspectional Services. (Rent was being withheld for 10 months prior to complaining to Inspectional Services).
23. David anticipated that Cynthia "might" not "would" stop paying rent. (Refer to page 5, #33).
26. The finding that Mr. Sullivan has not shown the requisite good faith in seeking to recover possession is not correct.

# TESTIMONY NOT IN REPORT

## DAVID SULLIVAN

David was asked to characterize his relationship with the tenant and his response was that there were no problems.

David stated that he had a dual purpose when he purchased the remaining units. He purchased them to relieve his 80 year old father of the responsibility of managing the property and also because he had a son and daughter living at home and one son living there then. He would never have purchased the units if his daughter and son could not move in. Both son and daughter wanted the apartment. Other members of family have lived in this house in previous years.

David had talked with Rent Control before sending his request for a security deposit. Rent control advised him that he could ask for a security deposit but he could not enforce his request.

David had a copy and read from Chapter 186, Section 15B of the laws: "No lessor shall require a security deposit equivalent to more than two months rent--"

Jill received a promotion at work last month.

He would have asked for a security deposit earlier if the other case had not been pending. He did not want to be accused of harassment.

Cynthia had paid him less than the legal maximum rent and did not give a reason.

Cynthia was not able to get an exemption certificate and that prior to the sale of the units there had been no problems between her and his father.

Cynthia's proposal to purchase her unit was \$10,000.00 less than the others and she wanted a repurchase clause.

Rent control had told him and his brother Brendan in September, 1985 that the refrigerator was not part of the unit and then determined that it was in February, 1987.

## JILL SULLIVAN

She recently received a promotion at work.

## CYNTHIA COX

David told her she could live there indefinitely.  
(David denied saying this.)

David denied Ms. Cox's statement that "ever since house was converted to condominiums, the Sullivan's-- Patrick, David, and David's brother, Brendan have said they want to sell the units, for financial reasons." This statement by Ms. Cox is not true.

## "HISTORY OF DISPUTES"

### PATRICK'S "DISPUTE"

1. In September 1985, the tenant began withholding the general rent adjustment (\$40/month).
2. Patrick's sons visited the apartment to review deficiencies claimed by Cynthia and to correct same.
3. In the summer of 1986 Patrick contacted his attorney to collect rent that was owed. His attorney asked Cynthia to contact him. Cynthia did not contact either Patrick or his attorney. She called inspectional services.
4. Patrick's attorney started eviction proceedings for non-payment of rent.
5. There was a hearing in September 1986.
6. The property was sold by Patrick to his son David and David's wife in December 1986.
7. The Board Hearing for Patrick's case was in February 1987. The hearing officer's recommendation was that the abatement was 42 cents more than the rent withheld. Patrick asked David to help him write a letter to the Board. David was now the owner and knew that it may hurt him to get involved but could not refuse his elderly parent.
8. A letter was written and the Board agreed. The tenant was required to pay \$302.20. Payment was made and the case was settled and accepted by all parties.

### DAVID'S "DISPUTE"

David checked with Rent Control regarding security deposits and was advised that he could ask but could not enforce his request. He also reviewed Chapter 186, Section 15B of the law (copy enclosed) and wrote a letter requesting two months security deposit. After sending the letter David was advised that security deposits could be more trouble than they were worth. He was not at all unhappy that his request was denied.



# CITY OF CAMBRIDGE

678 MASSACHUSETTS AVENUE  
CAMBRIDGE, MASSACHUSETTS 02139

TEL 498-9077

RENT CONTROL BOARD  
D. MARGARET DRURY  
EXECUTIVE DIRECTOR

Date: November 4, 1987  
Case No.: EV087 108  
Property: 20 Chilton Street, #6

## Notice of Ruling

(Please see Notice of Appeal Rights)

The Board at its meeting of October 21, 1987 voted by a 3-1 margin to affirm and adopt the findings and recommendation of Assistant Counsel Jeanne Medeiros in this case. Therefore a certificate of eviction is denied.

PER ORDER OF THE BOARD

*D. Margaret Drury*  
D. Margaret Drury  
Executive Director

DMD/jmj

cc: Reg. File  
Case File  
Computer  
Docket Clerk  
Cheryl Donohue  
Jeanne Medeiros



# CITY OF CAMBRIDGE

678 MASSACHUSETTS AVENUE

CAMBRIDGE, MASSACHUSETTS 02139

TEL. 488-6077

RENT CONTROL BOARD

MARGARET DRURY, EXECUTIVE DIRECTOR

## NOTICE OF APPEAL RIGHTS

The date on the attached Notice of Ruling is the date of the final administrative determination of the case.

Any party has the right to request a rehearing within twenty (20) days of the date of the Notice of Ruling. Board Regulation 41-03 sets forth the procedures for requesting a rehearing.

Any party has the right to seek judicial review of this Board decision. Judicial review must be filed within thirty (30) days of the receipt of this Notice and may be filed in either the Cambridge District Court or the Middlesex Superior Court in accordance with Board Regulation Series 42 and c.36 of the Acts of 1976; the Rent Control Act, as amended by c.399 of the Acts of 1985.

If a request for rehearing has been timely filed with the Board, the time for seeking judicial review shall be computed as thirty (30) days from the receipt of notice denying the rehearing.

BY HAND

ANDREW J. LASHENSKE  
ATTORNEY AT LAW  
11th Floor (MAIL: P.O. BOX 402)  
675 MASSACHUSETTS AVENUE  
CAMBRIDGE, MA 02139  
(617) 492-2575

November 24, 1987

D. Margaret Drury  
Executive Director  
Cambridge Rent Control Board  
678 Massachusetts Avenue, 5th Fl.  
Cambridge, MA 02139

Re: EVO 87-108  
20 Chilton Street, #6

Dear Ms. Drury:

On behalf of the petitioner in the above referenced matter, David P. Sullivan, I request a rehearing before the Board. The reasons for my request is as follows:

I. The following relevant testimony at the hearing was not reported by the examiner to the Board.

- 1) Petitioner had discussions with the Rent Control Staff as to sending the tenant a request for a security deposit and the Boards advice to him is not reported.
- 2) Petitioner showed the examiner and read for the record a version of the security deposit law which he had relied upon.
- 3) Jill Sullivan's testimony that she had recently received a promotion at work.
- 4) Petitioner denied the tenants statement that he had told her that she could live there indefinitely.

II. General Concerns and requests:

- 1) There was no testimony or evidence of any dispute between the tenant and the petitioner or the former owner.
- 2) It is not fair to look at one piece of evidence from a prior case involving a prior owner without looking at the entire case.
- 3) Since the petitioner believed that no legitimate dispute existed between the parties, legal counsel was not deemed to be necessary and a new hearing with benefit of counsel is now requested.

I personally became involved in this matter after the fact finding hearing was held and a report issued. My study of the case and the facts unreported by the examiner, have led me to believe that the Board had before it inadequate information in order to render a fair and impartial ruling in this matter.

I therefore request a rehearing before the Board to address the inadequacies of the examiners report and to argue for a rehearing and/or remand of this eviction.

My client was advised of his rights to refile a new eviction before the Board based on new information and/or appeal this matter to court. As of now my client wishes to resolve this matter with as little cost and disagreement between the parties as possible, and a rehearing before the Board is believed to be the most cost effective and peaceful way of meeting this objective.

I await your reply to this request.

Sincerely,

Andrew J. Lashenske

AJL/dmh

cc. Frederick Hayes, Esq.



# CITY OF CAMBRIDGE

678 MASSACHUSETTS AVENUE  
CAMBRIDGE, MASSACHUSETTS 02139

TEL 498-9077

RENT CONTROL BOARD  
D. MARGARET DRURY  
EXECUTIVE DIRECTOR

Date: December 2, 1987

Case No.: EV087 108

Property: 20 Chilton St., #6

## Notice of Ruling

(Please see Notice of Appeal Rights)

Pursuant to Regulation 41-03, the owner's request for rehearing, dated November 24, 1987 is hereby denied for lack of good cause.

PER ORDER OF THE BOARD

*D. Margaret Drury*  
D. Margaret Drury  
Executive Director

DMD/jmj

cc: Case File  
Reg. File  
Docket Clerk  
Computer  
Cheryl Donohue  
Jeanne Medeiros

287 Huron Avenue  
Cambridge, MA 02138  
December 9, 1987

Councilor Al Vellucci  
City Hall  
Cambridge, MA 02139

Dear Councilor Vellucci,

I wish to thank you for the consideration given to my daughter Jill at the recent Council meeting.

The statements of the Tenant's Union spokesperson, Mr. Neil Rohr, were particularly interesting. Mr. Rohr acknowledged that it is highly unusual for an owner occupancy eviction to be denied. Since the hearing examiner did find that my daughter intended to move into the subject apartment, would do so if vacated, and there was no finding of bad faith on my or my family's behalf in the hearing examiner's report, I request that the Council ask the Rent Control Board to cite other instances where such a petition was denied in order to determine if the facts and findings of this case reach a comparable standard. Mr. Rohr suggests that we can appeal to the Courts. This, of course, takes more time, more money, more efforts and more headaches. The expense is passed on to future tenants and the unpleasant aspects fade very slowly.

The hearing examiner's finding of fact No. 23 was that I requested a security deposit because I intended to evict the tenant at some point in the future. Her recommendation to the Board was that my request for a Certificate of Eviction be denied because the tenant's refusal of my request for a security deposit created the presumption that the eviction was a reprisal against the tenant. I certainly do not understand this reasoning.

The hearing examiner failed to report my testimony that prior to requesting the security deposit, I inquired of Public Assistance at Rent Control if such a request was permissible. I was informed that indeed it was but that I could not enforce the request if the tenant did not wish to tender same. If I had been informed that proceeding with an eviction application after denial of this request would be construed as retaliation, I certainly never would have made the request. It is now necessary for me to pay an attorney to manage this apartment for me.

My family has serious questions as to whether we were dealt with in good faith by Rent Control. It is unfortunate that contemporaneous with the eviction proceedings, Councilor David E. Sullivan was investing considerable time, energy, and money focusing his campaign

on a claim that my son David (who is also a tenant in the subject building) was not running for office in good faith but was in reality part of a conspiracy to dismantle the rent control system and put an end to the tenant's rights which Councilor David E. Sullivan has pursued with considerable diligence. We feel that our rights to a fair hearing were impacted by the inflammatory comments of David E. Sullivan and his associates.

I would therefore request that if the City Council is not satisfied with Rent Control's explanation concerning my good faith or lack thereof, that the City Council pass an order to the effect that we be allowed a prompt hearing with the presumption that Rent Control was not acting in good faith and was retaliating for my son's decision to exercise his legal right to run for public office and my family's decision to support his candidacy.

I would also request that a study be conducted in regard to what the Tenant's Union acknowledges is a common practice of asking for significant sums of money in lieu of contesting an eviction. If this is standard practice, then it would seem appropriate that the payment of such sums as demanded be considered a normal operating expense which would then be factored into rent adjustments and the cost passed on to future tenants. A small landlord does not have the financial resources of Harvard, M.I.T., or ComElectric and should not be subjected to having their property held hostage. Future tenants should not be required to repay charges of this nature.

I should mention that the tenant's lawyer told me that he was very experienced in these matters and that I should allow the tenant to stay six months and pay her \$10,000.00 (which is more than three years rent for this apartment) since there was no question that the eviction process would take longer and that it would cost me more money. He has proven to be correct with regard to the time aspect and I am currently incurring additional expenses.

I wish to thank you for your consideration in this matter.

Very truly yours,



David P. Sullivan

cc: D. Margaret Drury  
Cambridge City Council

## HEARING REPORT

Case No.: EVO87-108

Address: 20 Chilton Street, #6

Hearing Dates: July 30, 1987, and July 31, 1987

Owner: Chilton-Sullivan Trust

Purpose of Hearing: Eviction for use of owner's relative--  
Section 9(a)(8)

Examiner: Jeanne M. Medeiros

Persons Present: David P. Sullivan - trustee and beneficiary  
Jill Sullivan - daughter of trust beneficiaries and intended future occupant  
Cynthia Cox - tenant, apartment 6  
Frederick Hayes - tenant's attorney

**Exhibits:**

Landlord's

- #1 - check payable to Chilton-Sullivan Trust, dated 2/1/87
- #2 - letter of Cynthia Cox to David Sullivan, dated 5/23/87
- #3 - letter to David Sullivan to Rent Control Board, dated 2/11/87
- #4 - note dated 7/30/85
- #5 - letter of Cynthia Cox to David Sullivan, dated 4/14/87
- #6 - letter of David Sullivan to Cynthia Cox, dated 4/21/87
- #7 - page 6 of Regulation 72 petition, dated 7/8/87

Tenant's:

- #1 - letter of David Sullivan to Cynthia Cox, dated 4/23/87

#2 - Notice of Ruling in case no. EVN86-135,  
dated 4/2/87

Examiner's:

#1 - letter of Patrick Sullivan and David  
Sullivan to Rent Control Board, dated  
2/10/87

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I. Procedure:

The hearing was conducted pursuant to the Administrative Procedure Act (Massachusetts General Laws Chapter 30A). I explained to the parties that this hearing would be their only opportunity to present evidence; that appeal of the decision would be limited to a review of the Rent Control record; and that all parties had a right to legal representation, to call witnesses, introduce exhibits, and cross-examine the other party's witnesses.

I administered the oath to all those who testified. The hearing was taped and began at 10:25 a.m.

I have omitted from the summary of testimony all testimony which had no probative value.

II. Summary of the Testimony and Evidence of the Landlord

Testimony of David Sullivan:

1. The Chilton-Sullivan Trust has owned 20 Chilton Street #6 since December 1986. He is the trustee, and he and his wife are the beneficiaries. Each has a 50% beneficial interest.
2. 20 Chilton Street was a six-family house that was converted to condominiums. Three of the units, #2, #3, and #5, are owner-occupied by owners other than the trust.
3. The Chilton-Sullivan Trust owns units #1, #4, and #6.
4. The current occupant of unit #1 is a tenant in her late eighties. The current occupant of unit #4 is Mr. Sullivan's son.

5. Apartment #6 consists of four rooms. The legal maximum rent is \$252. No services are included.
6. He knew Cynthia Cox, the current tenant of apartment #6, prior to his purchase of the building. His father was the previous owner of the building.
7. His daughter, Jill, currently lives with him and his wife in a two-family home they own at 287 Huron Avenue.
8. He would like his daughter Jill to be able to move into 20 Chilton #6.
9. Apart from the Chilton Street units and his home on Huron Avenue, he does not own any other property.
10. He would not want to evict the tenant at 20 Chilton #1 because of her age. He would not want to evict the tenants at Huron Avenue because they are a family with two children and because their apartment is too large for Jill.

Cross-Examination of David Sullivan:

1. The trust purchased these units from his father.
2. His father decided to convert these units to condominiums around March 1984. Three of the tenants, who were pre-1979 tenants, purchased their units in September 1985.
3. He told his father, in July 1985, that he would purchase units that were not sold to tenants.
4. His father is in his eighties and owning this building was causing him a lot of headaches.
5. He would never have purchased these units if he would not be able to have his son and daughter move in.
6. The delay in purchasing the units was caused because his father did not accept his offer right away.
7. He paid \$42,000 for each unit, the same price paid by the tenants who purchased units.
8. He paid a down payment of \$1,000 for each unit. He obtained a mortgage from his father. The monthly payment is \$1,000.

9. The trust form of ownership was chosen because it has certain advantages. For example, people do not call him looking for apartments.
10. His son has lived in apartment 4 since 1985. He pays the legal maximum rent.
11. Apartment 4 is essentially the same as Ms. Cox's.
12. His home at 287 Huron Avenue contains four bedrooms. He and his wife, a son, and his daughter, Jill, live there. Jill has her own bedroom. She has lived there since returning home from college in 1985.
13. The house at 287 Huron is about four blocks away from the house at 20 Chilton Street.
14. His daughter would like to stay in the same neighborhood.
15. He knew Cynthia Cox prior to purchasing the units.
16. He knew that his father had attempted to evict Cynthia in September 1986.
17. He knew that she had withheld rent, claiming substandard conditions in her apartment.
18. In February 1987 the Rent Control Board denied the certificate of eviction.
19. He was surprised by the Board's decision.
20. He was neither happy nor unhappy about the Board's decision. He was neutral.
21. It was not his idea or plan to evict Cynthia Cox; it was his father's case. He was not even at the hearing.
22. He has tried to convince Jill to stay at home to save money. He and his wife have both talked her out of it.
23. Jill has decided that she definitely wants to move. She told him this last month.
24. The February ruling from the Board did not interfere with his plan because he had no plan. That case was separate.
25. He has intended, from the purchase, to have his daughter move in, but not right away.

26. He has no animosity toward Cynthia; neither does his father.
27. In the back of his mind when he purchased the units, he intended to have his daughter move in. His daughter has wanted her own apartment for about a year.
28. He sent Cynthia Cox a letter of April 23, 1987 requesting that she pay him two months' rent as a security deposit. (Tenant's Exhibit #1).
29. He requested the security deposit because he knew that he would eventually want his daughter to move in and he wanted security for future rents.
30. When he sent the letter, he expected Cynthia Cox to remain in apartment 6 indefinitely.
31. At the time he sent the letter he thought that Massachusetts State Law allowed him to collect two months' rent as a security deposit.
32. His tenants at Huron Avenue paid him a security deposit equal to one month's rent.
33. He asked Cynthia Cox for two months because eventually he would want to evict her and she might then stop paying rent.
34. He has filed a rent adjustment petition and the case is to be heard on August 28th. His operating annual expenses are about \$10,000, and his annual rental income is about \$3,000. He cannot take this loss indefinitely.
35. His son currently pays \$173 rent monthly. His daughter Jill would pay the legal maximum if she move in to apartment 6.
36. His daughter currently pays no rent at Huron Avenue.
37. He knew what the property's rental income was prior to purchasing the property, but he was not completely aware of the cost of maintaining it.
38. He is a general contractor.

Additional Direct Testimony of David Sullivan:

1. Upon receiving Cynthia Cox' letter of May 23, 1987, he dropped his security deposit request.

2. He was surprised at the hearing examiner's report and the Board's ruling in the eviction case began by his father. He knows that his father was not happy with the decision, but he dropped it. His attorney had wanted to pursue it further.
3. He would like to minimize the unpleasantness. This case is a matter of moving his daughter in, not moving Cynthia out.
4. He would prefer that the old eviction case not even be brought up, but since it has been, he would like to say that there were no problems between Cynthia and his father prior to the condo conversion.
5. Following the conversion to condominiums, Cynthia and his father could not agree on a sale price. He thinks the problems were due to their lawyers. Forty-two thousand dollars was a fair price.
6. Following the general adjustment in September 1985, Cynthia made a number of complaints about the building. After that, things between Cynthia and his father deteriorated.
7. There were a number of disputes, about whether a refrigerator was included in the rent, and about conditions cited by Inspectional Services.
8. Cynthia withheld a total of \$700 in rent.
9. He would rather not discuss the previous eviction case any more.

Additional Cross-Examination of David Sullivan:

1. He disagreed with some of the hearing examiner's recommendations in the previous eviction case.
2. He did not see the Inspectional Services report sent to his father until February 1987.
3. He thought the hearing examiner and the Inspectional Services Department were wrong.
4. He thought that the Board's decision in the previous case was not fair when he heard about it.

Testimony of Jill Sullivan:

1. She is David Sullivan's daughter.
2. She would plan to remain at 20 Chilton Street #6 indefinitely if allowed to move in.
3. She does not own any property anywhere.

Cross-Examination of Jill Sullivan:

1. She is almost 24 years old.
2. She lived at Huron Avenue with her parents until she went away to college at Salem State College.
3. She returned to live with her parents after graduating from college in 1985.
4. When her father purchased the Chilton Street units in 1986, she decided that she wanted to move there.
5. She told her parents in December 1986 that she wanted to move to Chilton Street.
6. Her parents convinced her to wait a while and save money before moving.
7. Sometime around June 1987 she told her parents that she definitely wanted to move.
8. She has saved about \$1,300 which will be enough to pay a security deposit, first month's rent, and other moving costs.
9. She does not pay any rent currently. She has her own bedroom.
10. She works for Shawmut Bank in Boston.
11. She wants her own apartment because of her age; she feels that she wants to and can be more independent.
12. It will cost her money to move, and to live at Chilton Street.
13. She will be in the same neighborhood she is in now. She will have the same commute to work.

14. She is aware of housing prices in Cambridge. She thinks an apartment comparable to 20 Chilton #6 would cost about \$800 a month.

The hearing was concluded at 12 noon and continued to July 31, 1987, at 3 p.m.

### III. Summary of the Testimony and Evidence of the Tenant

#### Testimony of Cynthia Cox:

1. She has lived at 20 Chilton Street #6 continuously since September 1984.
2. She also lived there between December 1979 and January 1981.
3. She lives by herself in the apartment, which consists of four rooms.
4. Her brother and her sister live a few blocks away. Most of her friends live in the neighborhood.
5. She works at Harvard University in visual services.
6. She has been looking for comparable housing. She has looked through newspapers and the Harvard Real Estate Office. She thinks comparable housing would cost her \$800 to \$1,000 a month.
7. She has not found another apartment.
8. She would like to remain at 20 Chilton Street, because it is her home and because her friends live nearby.
9. She is currently under the care of a psychopharmacologist. She has been diagnosed as manic-depressive.
10. She currently takes Lithium regularly. She also sometimes takes Mellaril and Haldol, which are anti-psychotics.
11. She last had a psychiatric episode about three weeks ago. Her sister came over to help her at that time.
12. When she experiences psychiatric episodes, her sister, her brother, or her friends help her.
13. The possibility of being evicted is very upsetting.

14. Her medical costs are about 25% of her income. She earns about \$20,000 and she spends about \$300 a month for medical care.
15. After the 1985 general adjustment she requested certain repairs.
16. Some repairs were made, but not all. That was when she complained to Inspectional Services.
17. Mr. Patrick Sullivan started an eviction case against her. It was heard in September 1986.
18. The Board issued Notices of Ruling in that case in February 1987 and April 1987. She was ordered to pay some of the rent she had withheld.
19. She received David Sullivan's letter demanding two months' rent as a security deposit a few weeks after receiving that April Notice of Ruling.
20. Ever since the house was converted to condominiums, the Sullivans-- Patrick, David, and David's brother, Brenda--have said they want to sell the units, for financial reasons.
21. She has never met Jill Sullivan before today. The first time she heard of Jill's wanting her apartment was when she was served with the application for a certificate of eviction in this case.

The hearing was concluded at 3:45 p.m.

IV. Findings of Fact:

1. 20 Chilton Street is a six-unit building which was converted to condominiums in late 1984 or early 1985.
2. Prior to and at the time of the conversion to condominiums, the property was owned by Patrick Sullivan, who is the father of David Sullivan, the petitioner in this case.
3. Following the conversion to condominiums, three of the units, numbers 2, 3, and 5, were sold to the tenants who were residing in them and had resided in them since prior to 1979. These sales occurred in September 1985.
4. The Chilton-Sullivan Trust purchased the three remaining units, numbers 1, 4, and 6, from Patrick Sullivan in December 1986.

5. David Sullivan is the trustee of the Chilton-Sullivan Trust. He and his wife are the sole beneficiaries. Each has a 50% beneficial interest.
6. Unit 6 at 20 Chilton Street consists of four rooms. The legal maximum rent was \$252 prior to the 1987 general adjustment. No services are included in the rent.
7. Cynthia Cox has lived at 20 Chilton Street #6 continuously since September 1984. She is a tenant-at-will.
8. David Sullivan intends to have his daughter, Jill Sullivan, occupy 20 Chilton Street #6 as her principal residence.
9. The current occupant of apartment #1 is an elderly woman in her late eighties. David Sullivan does not want to evict her for his daughter's occupancy because of her age.
10. The current occupant of apartment 4 is one of David Sullivan's sons.
11. Jill Sullivan currently resides with her parents in a home which they own at 287 Huron Avenue. The Huron Avenue property is a two-family house.
12. The Sullivan family occupies one apartment at 287 Huron Avenue, and rents the other apartment to a family of four. The Sullivan's apartment contains four bedrooms.
13. Apart from the three Chilton Street units and the Huron Avenue house, David Sullivan and his wife do not own any other property.
14. Jill Sullivan has resided in her parents home since graduating from college in 1985. She is 24 years old and works at Shawmut Bank in Boston.
15. Jill Sullivan wants to move in order to be more independent from her parents.
16. In late 1985, Cynthia Cox complained to the previous owner, Patrick Sullivan, about the existence of certain unsafe or unsanitary conditions in her apartment.
17. Cynthia Cox subsequently complained about these conditions to the Inspectional Services Department and began withholding rent due to the existence of these conditions.

18. Patrick Sullivan commenced eviction proceedings at the Rent Control Board against Cynthia Cox for nonpayment of rent in September 1986, docketed as No. EVN86-135.
19. By Notices of Ruling dated February 20, 1987, and April 2, 1987, the Rent Control Board ordered certain abatements in the rent and ordered that a Certificate of Eviction should issue unless the tenant paid the remainder of the withheld rent monies to the landlord within a fixed time period.
20. Cynthia Cox paid the sum directed, and no Certificate of Eviction issued.
21. David Sullivan did not take part in the fact-finding proceeding in Case No. EVN86-135. He did, however, send a letter to the Board prior to its February hearing, commenting on "inaccuracies and deficiencies" in the hearing officer's report. (Examiner's Exhibit #1).
22. On April 23, 1987, David Sullivan wrote to Cynthia Cox, requesting that she pay him two months' rent as a security deposit.
23. At the time that David Sullivan wrote this letter, he intended to evict Cynthia Cox at some point in the future. He anticipated that she would then stop paying rent, so he wanted two months' rent in advance in preparation for this eventuality.
24. After discussing Mr. Sullivan's security deposit demand with staff at the Rent Control Board, Cynthia Cox responded to Mr. Sullivan, stating that he was not entitled to two months' rent as a security deposit under Massachusetts state law, and that she would not comply with the request in his April 23rd letter.
25. David Sullivan filled out an Application for Certificate of Eviction on July 6, 1987. The application was served on Cynthia Cox on the same date.
26. Mr. Sullivan has not shown the requisite good faith in seeking to recover possession.

V. Recommendation:

Based on the aforementioned findings of fact, I recommend that the petitioner's request for a Certificate of Eviction pursuant to Section 9(a)(8) of the Act be denied.

I find that, while the petitioner's daughter may intend to move into 20 Chilton Street #6 should it become vacant, the eviction has not been brought in good faith as required by the applicable section of the Act. The Board has determined that intent to occupy alone is insufficient to support a decision in favor of the landlord. Other considerations in determining good faith include whether or not the relative's occupancy is the primary motive for bringing the eviction action and whether the landlord possesses ulterior reasons. Kaldro v. Lefkowitz, R.C. #19, (December 1973).

In this case, there had been a dispute between the tenant and the previous owner, Patrick Sullivan, who is the father of the petitioner, David Sullivan. This dispute concerned sanitary code violations in the tenant's unit, and culminated in a nonpayment eviction proceeding at the Board. Pursuant to that proceeding, it was determined that Cynthia Cox had lawfully withheld a portion of her rent, and she was ordered to pay an abated amount back to the landlord to retain possession. She did so in April 1987. Although David Sullivan was not a party to that case, and stated repeatedly that it had nothing to do with him, I find that the history and disposition of that case are relevant here. David Sullivan did participate in the case (Examiner's Exhibit #1), and was completely familiar with its details. In his testimony, he described the issues, the claimed conditions, the amount of rent withheld, and the amount ordered repaid, with particularity.

Mr. Sullivan's subsequent request, within weeks of the Board's final disposition of the eviction case, for a security deposit in excess of the statutory maximum deposit, cannot be seen as an isolated event unrelated to the just-concluded eviction case. Mr. Sullivan himself indicated that he anticipated that Ms. Cox would stop paying rent if and when he commenced an eviction proceeding against her. The basis for this belief could only be her previous rent-withholding. While Mr. Sullivan has attempted to distance himself from the previous eviction case, his actions tie him closely to it.

In April 1987 Cynthia Cox paid the legally-determined arrearages in Case No. EVN86-135. The following month, she informed David Sullivan that she would not pay a security deposit in excess of that allowed under state law. In both these instances she was acting to enforce her rights under state law. She was served with an application for a Certificate of Eviction on July 6, 1987. The commencement of this eviction action within six months of the tenant's action to enforce her legal rights creates a rebuttable

presumption that the eviction attempt is a reprisal against the tenant for engaging in such activity. Such a presumption is rebutted only by clear and convincing evidence that the eviction is not a reprisal and that independent justification exists.

In this case the reasons offered for choosing to evict Ms. Cox at this point in time were weak in comparison to the history of disputes between this landlord and tenant. Mr. Sullivan's daughter has been living at home for two years in a living situation which is comfortable, in a location as convenient to her employment as Chilton Street, free of charge. While I do not doubt that she would prefer to live on her own, she could not state any reason why she chose this particular point in time to move from her parents' house. The presumption of retaliation was not rebuttal by clear and convincing evidence.

Because the petitioner failed to prove his good faith in bringing the eviction as required by Section 9(a)(8) of the Act, I recommend that the Certificate of Eviction not issue.

Respectfully submitted,

*Jeanne Medeiros / DAT*  
Jeanne M. Medeiros  
Assistant Counsel

JMM/dfa

LL'S  
EX. 1

CYNTHIA A. COX  
20 CHILTON STREET  
CAMBRIDGE, MA. 02138

404

Feb. 1 1987

9-21/13

PAY TO THE  
ORDER OF

Chilton - Sullivan Trust \$ 212.00

Two Hundred Twelve and <sup>xx</sup>/<sub>100</sub> DOLLARS

Cambridge Trust Company,<sup>03</sup>  
CAMBRIDGE, MASS.

MEMO

⑆011300595⑆ ⑆02⑆966⑆⑆0⑆0404

*Robert H. Cox*

LL's #5

20 Chilton Street  
Cambridge, MA 02138  
May 23, 1987

David P. Sullivan  
Trustee  
The Chilton-Sullivan Trust  
287 Huron Avenue  
Cambridge, MA 02138

Dear David:

I am writing in response to your letter of April 23 requesting a security deposit in the amount of \$504.00, i.e. two months' rent.

Massachusetts General Law Chapter 186, Section 15B limits security deposits to an amount not exceeding one month's rent.

The same section further indicates that a security deposit may be collected in advance of the tenancy, which in my case begins on the first of each month. However, last month's rent can be collected in advance of occupancy only. Since I have lived at 20 Chilton Street since December 1, 1979, you are not eligible to collect last month's rent.

I cannot comply with your request for a security deposit that is double the legal maximum. I suggest you review Chapter 186, Section 15B or consult your attorney if you question this.

Sincerely yours,



Cynthia A. Cox

CAC/s

U's  
#3

287 Huron Avenue  
Cambridge, MA 01238  
February 11, 1987

CASE: EVN 86 135  
ADDRESS: 20 Chilton St., #6  
HEARING DATE: Sep. 9, 1986  
BOARD MEETING: Feb. 11, 1987

Rent Control Board  
City of Cambridge  
678 Massachusetts Avenue  
Cambridge, MA 02139

Attn: D. Margaret Drury, Executive Director

Dear Sirs and Madams:

Please be advised that I am the current owner of the subject apartment. It is my understanding that I am entitled to the legal maximum rent minus whatever adjustments may be made for the refrigerator since there were no other problems on the date of my purchase.

I request that this be considered in the resolution of this matter.

Ms. Cox has recognized me as the new landlord and is currently paying me \$212.00/month which is \$40.00/month less than the legal maximum rent.

Would you kindly notify Ms. Cox regarding this.

Very truly yours,



David P. Sullivan

cc: Donna M. Turley

4  
#11

7-30-85

Call to Walsh:

Cox's were going to each buy a unit & rent to the other. Those units would still be subject to Rent Control. I told Bill that I would buy vacant unit & rent to my son, I would also have to buy Cox's unit so my father could stop being a landlord. He said he would send them a letter tomorrow. I asked to read letter first. He will call & read letter before sending it.

Call to P.J.:

He was not aware that Cox's units would be still subject to rent control and

certainty would not agree  
to buy them back -  
this agreement by  
Walsh to Cox was  
never discussed with  
P. J.

Examiner's  
Ex. 1

CASE: EVN 86 135  
ADDRESS: 20 Chilton St., #6  
HEARING DATE: Sep. 9, 1986  
BOARD MEETING: Feb. 11, 1987

Rent Control Board  
City of Cambridge  
678 Massachusetts Avenue  
Cambridge, MA. 02139

Attn: D. Margaret Drury, Executive Director

Dear Sirs and Madams:

We wish to comment on the Hearing Report prepared by Donna M. Turley regarding an application for a certificate of eviction for the subject apartment.

The Hearing Officer's report contains many inaccuracies and deficiencies. A listing of some of these deficiencies include the following:

PAGE	PARA	COMMENT	
1.	7	10	Exhibit G shows that the service date of the exterminator was 8-8-86 and not 8-26-86.
2.	11	14	Ms. Cox stated that "the window broke during Hurricane Gloria." Hurricane Gloria occurred on 9-27-85 which is 34 days later than her letter (Exhibit K) dated 8-24-85 in which the broken window is mentioned as item 4. Attached is a copy of part of the front page of the Boston Globe for 9-28-85.
3.	12	6	The date of acceptance of the new rent should be September 1, 1985 and not October 1, 1985. Please refer to Exhibit B.
4.	12	7	The total amount of rent due on the date of the hearing was \$520 and not \$480. The first due date should be September 1, 1985 and not October 1, 1985.
5.	13	12	The woodwork that was shown to Brendan and David Sullivan on 9-10-85 by Ms. Cox was not rotted. This wood was sanded and painted within two weeks. The inspectional services report on 6-25-86 noted defects in the pulley stiles. This condition was promptly repaired.

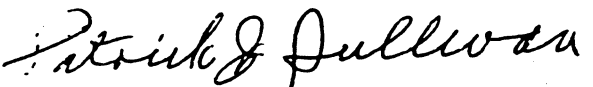
PAGE	PARA	COMMENT
6. 13	13	The Hearing Officer ignored the testimony that the two broken windows were inside the storm windows. The storm windows were in place and not damaged. The Hearing Officer also did not check the date of Hurricane Gloria which somehow caused the windows to break more than one month before happening.
7. 13	14	The holes in the screens that were shown Brendan and David on 9-10-85 were repaired within two weeks. The holes noted in the inspection report on 6-25-86 were different ones and these were promptly repaired.
8. 14	8	Mr. Sullivan did not consider the refrigerator to be his responsibility since he did not provide any refrigerators to the tenants. The refrigerator in this apartment had been left there by a previous tenant. On 9-9-85, David Sullivan went to the Rent Control office and obtained a copy of the Property Record Summary (a copy of this record is attached). David inquired if refrigerators were furnished by the landlord to any of the tenants and was assured by Rent Control that refrigerators were not required to be furnished by the landlord to any of the six apartments. We relied on this information to confirm our position and we offered to remove the problem refrigerator from the apartment. This offer was declined by Ms. Cox.
9. 15	19	The meal moth problem was not mentioned in Ms. Cox's letter dated 8-24-85 (Exhibit K). The first time that we were aware that meal moths were a problem was when this was noted in the inspection report dated 6-25-86. Cambridge Chemical Company treated the apartment on 8-8-86. A telephone call to their office by the Hearing Officer would have determined the cause of this problem. The Hearing Officer could have checked whether any other apartment has ever required the services of an exterminator.

	PAGE	PARA	COMMENT
10	16	23	The landlord did <u>not</u> fail to make reasonable efforts to cure any problem of moths, rotting and loose windows, and screens. The refrigerator has never been fixed or replaced by us since we relied on the information furnished to us by your office that it was not our responsibility. Pursuant to Regulation 61-02, the landlord's application should <u>not</u> be denied.
11	16 17		We obviously disagree with the table of violations and the abatement calculations due to the many deficiencies in this report.

The amount of withheld rent is currently \$720 (18 months x \$40/month). The tenant by her own admission (page 10, para 8) has not been depositing the proper amount into an escrow account as she said she would do in her letter dated 9-19-85 (Exhibit C).

We do not feel that the Hearing Officer has made a fair and objective recommendation in this matter. We request that the Board reject the Hearing Officer's recommendations, require the tenant to promptly pay all unpaid rents, and issue a Certificate of Eviction so that this matter may be resolved.

Very truly yours,



Patrick J. Sullivan



David P. Sullivan

cc: Donna M. Turley  
Cynthia Cox  
John Collier

LL5#5

20 Chilton Street  
Cambridge, MA, 02138  
April 14, 1987

David P. Sullivan  
Chilton-Sullivan Trust  
287 Huron Avenue  
Cambridge, MA 02138

Dear David:

I am writing to inform you that last Thursday morning (April 9) I woke up to find 10 eggs in my refrigerator frozen solid. I had not changed the controls, nor was the unit overloaded. So this is a good example of the common but intermittent problems I have with this refrigerator.

I know you had planned to have a refrigerator repairman look at the refrigerator on Tuesday, March 31. Since I have not heard anything from you concerning that visit and I wasn't home at the time, I am wondering what the result was of the visit. Did the repairman come? Did he make any repairs? If he did make repairs they were not adequate because the egg problem occurred nine days later.

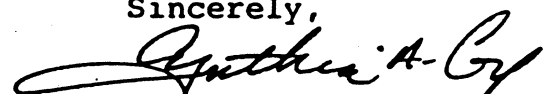
Since there has been no improvement or change in the refrigerator since I complained about it several years ago, I will continue to withhold the 6% of the rent considered by the Cambridge Rent Control Board to be appropriate compensation for a malfunctioning refrigerator.

Also, the ceiling in my bedroom began to leak during the heavy rains recently. Currently, it is not dripping but there is a water stain and it appears the potential is there for some leaking in the future so I am requesting that <sup>you</sup> inspect it.

Finally, you mentioned that you planned to have keys made for my unit. Do you now have keys in your possession? As we discussed on the telephone, I expect that if you or any of your family or agents need to enter the apartment, I will be informed and given reasonable notice.

Thank you for your attention in these matters.

Sincerely,



Cynthia A. Cox

287 Huron Avenue  
Cambridge, MA 02138  
April 21, 1987

U#6

Cynthia A. Cox  
20 Chilton Street  
Cambridge, MA 02138

Dear Ms. Cox:

Please refer to your letter dated April 14, 1987.

My wife waited in my son's apartment from 9:45 A.M. to 5:00 P.M. on March 31st for the refrigerator repairman. He did not show up despite assurances during the day that he would be there.

It is unfortunate that Rent Control advised both me and Brendan in September, 1985 that the refrigerator was not included in the rent structure for your apartment. They subsequently stated at the Board Hearing in February of this year that the refrigerator was part of the rent structure. During March two different repairmen were contacted with no results. I have decided to purchase a new refrigerator and have it delivered prior to May 1, 1987. Please advise me when delivery may be scheduled. You have currently withheld \$309.32 over a 20 plus month period. I would fully expect you to continue to withhold rent until the "malfunctioning" refrigerator problem is resolved.

Repairs to the roof are the responsibility of the 20 Chilton Street Condominium Trust. I am one of three trustees and will advise the other trustees regarding this matter. Kindly advise me when your ceiling may be inspected.

I had not forgotten your recent request for a key to the side door to the cellar. My first two trips to a hardware store were unsuccessful. The third trip was more productive and a cellar key has been put in your mailbox. You have been advised that I do not have a key to your apartment. This has not changed. I have been a landlord continuously in Cambridge for almost thirty years and have never entered a tenant's apartment without their knowledge. I cannot imagine circumstances that would cause me to change this policy.

If you have any further questions or problems please telephone me. I believe it would be more efficient than letter writing. If the matter is not answered or resolved within a reasonable period of time then documentation would be appropriate.

Very truly yours,



David P. Sullivan

cc: Cambridge Rent Control Board

VII. FILING FEE

The filing fee will be included as an expense in this adjustment. The total fee is allowed, without interest, over a period of three years.

VIII. ADDITIONAL INFORMATION

Is there any other information that the Rent Control Board should know in consideration of this petition?

  X   yes             no

If yes, please explain below.

These units are part of a six family that was converted to condominiums in 1985. Units 2, 3, and 5 are owner occupied. Units 1, 4 and 6 were sold to the Chilton-Sullivan Trust on December 22, 1986. My wife and myself are beneficiaries of this trust.

Our expenses for the first six months of 1987 are as follows:

Mortgage	\$ 6,035
Condo Fees	2,382
New Refrigerator	326
Repairs	190
Miscellaneous	537
Taxes	624
Total	<u>\$10,094</u>
Rental Income	<u>3,503</u>
Net Loss	<u>\$ 6,591</u>

Our reduction of principal for this period is \$417. We have not included any compensation for our time and labor in the above figures. The tax figure is based on 1986 as we have not received our current tax bill. Our net loss exceeds \$1,000.00 per month.

IX. PETITIONER'S SIGNATURE

The foregoing statements in this petition are true to the best of my knowledge and belief. Signed under the pains and penalties of perjury.

July 8, 1987

Date



Petitioner's signature

THE CHILTON-SULLIVAN TRUST  
287 Huron Avenue  
Cambridge, MA 02138

April 23, 1987

Cynthia A. Cox  
Apartment #6  
20 Chilton Street  
Cambridge, MA 02138

Dear Ms. Cox

We wish to advise you that a two months rent security deposit is required as a condition of your tenancy. This deposit is authorized by Massachusetts General Law Chapter 186 Section 15B.

We expect that \$504.00 security will be tendered within 30 days of this notice.

Thank you for your cooperation.

Very truly yours,



David P. Sullivan  
Trustee

Certified Mail  
P 692 781 881

T/S Et.  
1



# CITY OF CAMBRIDGE

678 MASSACHUSETTS AVENUE  
CAMBRIDGE, MASSACHUSETTS 02139

TEL 495-9077

T's Ex.  
2

RENT CONTROL BOARD  
D. MARGARET DRURY, EXECUTIVE DIRECTOR

DATE: April 2, 1987  
CASE # EVN86-135  
PROPERTY: 20 Chilton St. #6

**CORRECTED**  
**NOTICE OF RULING**  
(Please see Notice of Appeal Rights)

This Notice corrects and supercedes the February 20, 1987 Notice of Ruling in the above-entitled case. The Board at its meeting of February 11, 1987 voted by a 3-2 margin to affirm and adopt in part the findings and recommendation of Assistant Counsel Donna Turley. In particular, the Board rejected Ms. Turley's finding that the landlord did not make reasonable efforts to repair. The Board also found that there was no diminution in the fair value of the apartment due to moths and, therefore, did not find an abatement of \$144.83 due to moths (finding 29 #7). In addition, the Board ruled that the correct effective date of the increase was September 1, 1985, not October 1, 1985. Because the legal maximum rent was \$252 on September 1, 1985, the following adjustments have been made to the abatements:

	<u>Condition</u>	<u>Abatement</u>	X	<u>Daily Rent</u>	X	<u>Days</u>	=	<u>Total</u>
29 #1	window rot							
	8/24/85-8/31/85	.04		7.07		8		2.26
	9/1/85-8/20/86	.04		8.40		353		118.61
#2	broken windows							
	8/24/85-8/31/85	.03		7.07		8		1.70
	9/1/85-9/14/85	.03		8.40		13		3.28
#3	screens							
	8/24-8/31	.01		7.07		8		.57
	9/1-10/30	.01		8.40		59		4.96
	4/1-7/15	.01		8.40		106		8.90
#4	lock							
	8/24/85-8/31/85	.01		7.07		8		.57
	9/1/85-9/14/85	.01		8.40		13		1.09

	<u>Condition</u>	<u>Abatement</u>	X	<u>Daily Rent</u>	X	<u>Days</u>	=	<u>Total</u>
29 #5	fallen plaster							
	8/24/85-8/31/85	.01		7.07		8		.57
	9/1/85-9/14/85	.01		8.40		13		1.09
#6	Refrigerator							
	8/24/85-8/31/85	.06		7.07		8		3.39
	9/1/85-2/11/87	.06		8.40		528		266.11
#7	moths							
	no abatement	-		-		-		-
#8	drain, etc.							
	6/25/86-8/20/86	.01		8.40		56		<u>4.70</u>
	8/24/85-2/11/87 Total Abatement							<u>417.80</u>

The amount withheld from 9/1/85 to 2/1/87 at \$40 per month was \$720. The difference is \$302.20. The Board did not order this amount increased for the exterminator's bill. Therefore, a Certificate of Eviction shall issue if the tenant has not paid to the landlord the total \$303.20 due within seven (7) days from the date of this corrected Notice of Ruling.

PER ORDER OF THE BOARD

*D. Margaret Drury*  
D. Margaret Drury  
Executive Director

DMD/jmj

CC: Registration File  
Case File  
Docket Clerk  
Computer

POC

145

40 WPC 2 PS

287 Huron Avenue  
Cambridge, MA 02138  
February 22, 1988

Cambridge City Council  
City Hall  
Cambridge, MA 02139

Attention: Joseph E. Connarton, City Clerk

Dear Ladies and Gentlemen,

Please refer to letters dated December 16, 1987, January 7, 1988, and January 21, 1988 from the Cambridge Tenants Union signed by Mr. Geoffrey Gardner.

I wish to advise you that not all the statements in his letters or in the reports enclosed with his December letter are factual. When fact, fiction, misinformation, misquotes and incorrect assumptions are mixed in order to arrive at a preconceived conclusion, that conclusion may be attained as Mr. Gardner has demonstrated.

Enclosed is a copy of a letter to the Rent Control Board dated October 21, 1987 and a copy of a letter dated November 24, 1987 from Attorney Andrew J. Lashenske which is also to the Board. Mr. Gardner ignored these letters in his investigation of this matter. He also failed to state in his letters that the presumption of retaliation is rebuttable by evidence to the contrary and that this evidence was presented at the hearing.

Councilor Walsh did not represent the Sullivan family in either case referred to by Mr. Gardner. Mr. John Collier from his firm did represent my father in a case to collect withheld rent. Members of my family had been unsuccessfully attempting for several years to free my eighty year old father from the responsibilities of managing this six family house. We were pleased when he sold three units in 1985 and the other three in 1986. We were pleased further when his case was concluded and we thought put to rest. He also was pleased that his responsibilities to manage this property had ended. My involvement in my father's case was after the hearing examiner had written her report and recommended that the abatement was 42 cents greater than the amount of withheld rent. My father then asked me to assist him in writing a letter to the Board to point out errors in the report. At the time of the Board hearing my wife and myself were now the owners of the apartment. Rent was being withheld from us without any reason being given to us although inspectional services had certified that all repairs had been completed several months earlier. I did not think that it would be considered wrong for me to assist my father. The Board agreed that there were errors in the report and ruled that \$302.20 of withheld rent should be paid. Payment was made. The case was settled and accepted

by all parties. In our case involving my daughter Jill, we were not represented by any attorney since the regulations were clear and we were not aware of any problems or anything that would prevent us from exercising our rights of owner occupancy. Contrary to Mr. Gardner's speculations neither Councilor Walsh nor any member of his firm was involved in this case. The tenant's attorney also incorrectly assumed that Ferrarro & Walsh was representing me. He called them and was advised that they were not. This is another example of an incorrect assumption in this case. Councilor Walsh is not and never has been the family attorney.

When Jill appeared at the Council meeting on December 7th, she had no intention of speaking. When she was invited to speak, she was not presenting "her case to the City Council as an example of supposed inequitable and unjust treatment of property owners and their rights by the Rent Control Board" as stated by Mr. Gardner. Jill is neither a property owner nor an advocate for property owners. She desires her own apartment. She is engaged to be married and she can not afford nor does she think it appropriate to pay \$10,000.00 to a tenant to obtain an apartment to which we believe she is legally entitled.

The eviction hearing in our case was last July. This was the first time that we were exposed to the resulting process which was very unpleasant. The mediating process amounted to attempted bribery. I was shocked when I was asked to allow the tenant to stay six month's and to pay \$10,000.00. The tenant's attorney advised me that he was very experienced in these matters, that this was a good deal, and that if I did not pay, it would take longer and cost me more. Although these conversations were not recorded, a hearing examiner was present and took an active part. The formal hearing then took place after the mediating process. Testimony at the hearing was mostly about my father's case. The only other issue discussed at the hearing was my request for a security deposit. I thought it was unfair to bring up selected items of a concluded case when principals who were involved were not present and I was not a witness to the previous matter. There is absolutely no "close and direct" relationship between the two cases as stated by Mr. Gardner. My father's case was to collect rent which was withheld for approximately one year. Our case was to provide an apartment for our daughter and her future husband.

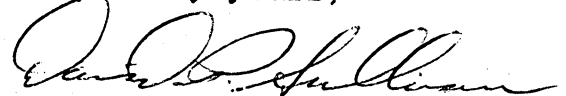
I could not believe the hearing examiner's report when I read it in October. The hearing examiner omitted from her report my testimony that I had previously discussed the matter of a security deposit with rent control and was advised that I could ask for a security deposit but I could not enforce the request. She also failed to report my reading of the law (copy enclosed) which I had relied on and my testimony that after I had written the letter, I was advised that security deposits could be more trouble than

they were worth. I testified that I was not at all displeased when the request was denied. This is evidenced by the fact that the tenant offered one month but never tendered same and I did not pursue it. Both myself and Jill testified that she had recently received a promotion at work. I testified that I had a dual purpose in purchasing the units from my father. One purpose was to relieve an elderly parent of the responsibility of managing three rental units in a hybrid building. The other purpose was to provide housing for our children who were born in Cambridge and want to stay. These statements and many other items of relevant testimony were omitted from the report. The report also contained several incorrect findings of fact. The hearing examiner did determine that my daughter intended to move in (pg. 10, Items 8 & 15) and that I requested a security deposit because I intended to evict at some point in the future (pg. 11, Item 23). She then recommended that the request for eviction be denied citing that the eviction was retaliation for not receiving a security deposit. This reasoning is convoluted. She also stated that there was a history of disputes between myself and the tenant. At no time during the hearing process was there any testimony of any disputes between myself and the tenant. The hearing examiner did not make any findings of fact in support of her conclusion. We never would have purchased the units if our children could not occupy them. We certainly would not create any problems to jeopardize their future occupancy.

It appears from the hearing examiner's report that if a tenant withholds rent and then action is taken to collect this rent, a landlord's legal rights are seriously impacted. Apparently this impact may also be passed on to a future owner. This is obviously very dangerous. The Council must consider the options that are available to an elderly Cambridge landlord when he wishes to sell rent controlled property. The options are limited and mostly undesirable. I would hope that if any of the Councilors or anyone else saw their eighty year old father cutting grass in the summer, worrying about the snow in the winter, and answering calls whenever a drain was plugged or there was no hot water would do what myself and my wife did and relieve that parent of those responsibilities.

At this point we would like to know what effect my father's case has on my family's legal rights. We also wish to know whether we have legal rights for owner occupancy of this apartment. If our children can not occupy the apartment, we have no desire to retain ownership.

Very truly yours,



David P. Sullivan

## ESTATES FOR YEARS AND AT WILL 186 § 15B

dence that there was such a change. *Drouin v. Motta* (1960) 19 Mass.App.Dec. 53.

### 96. Findings, generally

In action by occupant of third floor tenement for injuries sustained as a result of fall on platform at rear entrance of three-family dwelling shortly after conveyance of building to defendants,

auditor's finding that a new tenancy at will was created between plaintiff and defendants on the same terms as tenancy formerly existing under oral agreement between plaintiff and former owner was not supported by subsidiary facts found by auditor. *Cairns v. Giumentaro* (1959) 162 N.E.2d 61, 339 Mass. 675.

### § 15A. Agreement to waive notices; effect upon lease

Any provision of a lease or other rental agreement relating to residential real property whereby a lessee or tenant enters into a covenant, agreement or contract, by the use of any words whatsoever, the effect of which is to waive the notices required under section eleven or twelve, shall be deemed to be against public policy and void.

Added by St.1969, c. 115, § 1.

#### Historical Note

St.1969, c. 115, § 1, was approved April 1, 1969.

Section 2 provided: "This act shall apply only to rental leases and agreements entered into on and after the effective date of this act."

#### Library References

Landlord and Tenant §24(1), 94, 118(3), 120(3).

C.J.S. Landlord and Tenant §§ 80, 142, 173, 183, 203 et seq.

### § 15B. Agreement to allow entrance of premises; effect upon lease; exceptions; security deposit, interest, deductions and return

No lease relating to residential real property shall contain a provision that a lessor may, except to inspect the premises, to make repairs thereto or to show the same to a prospective tenant or purchaser, enter the premises before the termination date of such lease. A lessor may, however, enter such premises in accordance with a court order or if the premises appear to have been abandoned by the lessee. No lessor shall require a security deposit equivalent to more than two months rent, nor a charge of more than the purchase and installation cost for a key or lock, nor any interest or penalty for failure to pay rent until at least thirty days after such rent shall have been due.

A landlord of residential real property who holds a security deposit pursuant to this section for a period of one year or longer from the commencement of the term of the tenancy shall, beginning with the first day of the tenancy, pay interest at the rate of five percent

186 § 15B

TITLE TO REAL PROPERTY

per year, payable to the tenant at the end of each year of the tenancy. The landlord shall, within thirty days after the termination of the lease or tenancy, return the security deposit or any balance thereof, and interest thereon, after deducting the amount of any damage caused by the tenant, or any person on the demised premises with his knowledge or consent, reasonable wear and tear excepted, and less any unpaid rent; provided, however, if any lease agreement contains a provision requiring the tenant to pay all or a proportional share of any increase in real estate taxes levied against the property and becoming due and payable during the term of the lease, the landlord shall not be required to return the security deposit or any balance thereof or pay any interest thereon until the tenant has paid all or his proportional share of said increase or it has been deducted from said security deposit or balance thereof.

Any deduction for damage pursuant to this section shall be itemized by the landlord with particularity indicating the nature of the repair necessary to correct any damage and the actual or estimated cost thereof.

If the landlord fails to return to the tenant such deposit or the balance thereof as provided herein, he shall be liable in damages in an amount equal to twice the amount of such security deposit or balance thereof as provided herein, plus interest at the rate of five percent from the date which such payment becomes due. For purposes of this section the term "security deposit" applies to all funds received from the tenant in advance for any purpose whatsoever in excess of the monthly rent. Any funds required of a tenant or held by a landlord as a condition for continued occupancy of premises occupied by the tenant for one year immediately preceding commencement of the continued occupancy shall be deemed to be a security deposit held for a period of one year or longer.

Any provision of a lease in violation of the provision of this section shall be deemed to be against public policy and void.

Added by St.1969, c. 244, § 1. Amended by St.1970, c. 666, § 1; St.1972, c. 639, § 1; St.1973, c. 430, § 11; St.1975, c. 154.

Historical Note

St.1969, c. 244, was approved May 5, 1969, under renewal options contained therein."

Section 2 of St.1969, c. 244, provided: "The provisions of section fifteen B of chapter one hundred and eighty-six of the General Laws, inserted by section one of this act, shall not apply to leases executed before the effective date of this act, nor to renewals of such leases

St.1970, c. 666, § 1, approved Aug. 12, 1970, inserted a former second paragraph which read:

"A landlord of residential real property who holds a security deposit pursuant to this section for a period in excess of one year from the commencement of

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Comm. from David P. Sullivan & Aline M. Sullivan  
enclosing a copy of their letter to D. Margaret  
Drury, Exec. Dir., Rent Control Board Re: 20  
Chilton St., #6.

In City Council,  
February 22, 1988