

Small Property Owners NEWS

April 1999

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Small Property Owners Association P.O. Box 398115, Cambridge, Massachusetts 02139 617-354-5533 Membership: \$35

How to get **FREE RENT** legally in Massachusetts

1. Got an eviction notice for not paying your rent? Call the housing inspector immediately. Stop paying rent if you haven't already.
2. Get all code violations cited. If you don't have any, make some by damaging your apartment. It's your castle. Nobody will know. The system blames your landlord.
3. You are legally entitled not to pay any rent until all code violations are repaired. You cannot be evicted. It's called "rent withholding."
4. If anyone asks, tell them you've complained repeatedly to the landlord about the violations. It's your word against the landlord's. Yours will win.
5. Obstruct repairs. Require 24-hour written notice for every entry. Miss appointments. Don't answer the door. Say "now is not a good time." Stop repairs in the middle, make them come back. It's your castle.
6. When old violations get fixed, report new ones. It's easy. Remove screens. Pull down light fixtures. Put holes in the walls. Always see roaches and mice. Be creative. No one can prove anything.
7. Let your unpaid rent pile up in your bank account. You can even call it "escrowing." When you finally have to move, just take it with you. Your landlord will never find you.

LIVE RENT FREE
1 year. Landlord
will pay you \$1000,
to leave !!! I did it...

Find out how. Send
postcard to:

Rent Runners
PObox 836
N'ton MA 01061



I will meet you for consultation on going
process "how-to" help or write you or
we can talk on phone or meet one-on-one
very legal, effortless small
donation
accepted

All we are asking is:

enforce the law!

The law says the landlord must know about code violations prior to rent withholding. The law is not enforced.

The law says the tenant cannot be in arrears in rent prior to rent withholding. The law is not enforced.

The law reduces rent for code violations typically up to 20% only, the balance being due the owner. The law is not enforced.

MANDATORY RENT ESCROWING would enforce the law. That's all we are asking.

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OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

Frequently Asked Questions about

FAQ Mandatory RENT ESCROWING**Q. What is mandatory rent escrowing?**

A. If a tenant wishes to “withhold rent” to pressure a landlord to repair code violations, the tenant must place the unpaid, “withheld” rent into an escrow account. If the tenant does not escrow, the tenant can be evicted for non-payment of rent (but only after a standard eviction hearing).

Q. What’s wrong with the present “rent withholding” law?

A. Nothing, except it’s not enforced as it’s written. Tenants who aren’t paying their rent can falsely claim they are “rent withholding,” which stops their eviction, allows them to live rent-free and gives them a strong incentive to damage their apartments and obstruct repairs to prolong their rent-free stay.

Q. How does this “free-rent” trick work?

A. After getting an eviction notice for non-payment of rent, the tenant calls the housing inspector and reports code violations never complained about before. That stops the eviction and turns the non-payment into “rent withholding.” Instead of helping with repairs, tenants obstruct, delay and damage – all to keep the code violations and free rent going as long as possible. “Professional” tenants go from apartment to apartment using this trick.

Q. How are small property owners hurt?

A. This code violation trick devastates small owners. All at once, they are getting no rent, they get hit with expensive repairs, and their legal bills go up – all getting worse as the tenant continues the “free-rent” trick. Many owners go bankrupt. Many abandon their properties. Many just leave apartments vacant.

Q. Will rent escrowing help tenants?

A. Yes. When one tenant does this “free-rent” trick, all the owner’s resources go into this one tenant. Meanwhile, the owner’s other tenants suffer from reduced services and higher rents later. In severe cases, the housing gets abandoned and everyone must move out. Even the tenant who uses this legal trick is hurt: he or she will have a harder time finding a new home after eviction, because owners screen them out and homeless counselors can’t place them.

Q. Isn’t escrowing already required?

A. It used to be. But legal services lawyers made it only a judge’s option and only after a hearing. The option is almost never exercised. A survey of five courts in Eastern Massachusetts showed that judges ordered rent escrowing in less than 1% of eviction cases, 90% of which are for non-payment of rent, 70% of which are contested with code violations.

Q. Is rent escrowing constitutional?

A. Yes. The U.S. Supreme Court in 1972 ruled that rent escrowing does not deny a tenant’s rights to due process or equal protection under the law. In fact, the Supreme Court said that if a tenant keeps possession of the apartment *and* keeps the rent too, the owner is denied his/her property rights, and *that’s* what’s unconstitutional. (Lindsey v. Normet, 92 S.Ct. 862 (1972))

Q. Won’t rent escrowing require poor tenants to “put up money” (like a bond) before they can have their cases heard in court?

A. No. Rent escrowing applies only to code violations. Tenants

always have the right (even if they haven’t paid rent for months) to a hearing before their eviction, and they can make many arguments in their defense: that they paid the correct amount of rent, that they did not agree to a rent increase, that the landlord is overcharging or retaliating, and others. Only code violation defenses against eviction are prohibited if the tenant fails to escrow. That’s the only way to stop the property damage and the “free-rent” trick. And that’s precisely why the U.S. Supreme Court ruled it constitutional. The only money they are “putting up” is the ordinary rent due.

Q. Is escrowing right even when an apartment is in deplorable condition?

A. Yes, even then. Housing in poor condition is especially vulnerable to the “free-rent” trick. With no rent coming in, this housing will be quickly abandoned and lost forever. How can a landlord, especially a small one, make repairs without the rent? Code enforcement, combined with rent escrowing, would be a new way to get poor housing fixed up.

Q. Couldn’t landlords ask for too much rent to be escrowed?

A. No. Only the agreed-upon “contract” rent has to be escrowed. The tenant always has the right to a hearing before eviction, and judges would eliminate a phoney trick like that.

Q. Isn’t litigation to best approach to stop tenants getting thrown out in the streets?

A. No. Virtually all tenants are evicted at the end of their “free-rent” ride anyway. Escrowing will just shorten the free-rent time period and make tenants face their income problems sooner. Most of these tenants have simply mismanaged their money and take advantage of this legal loophole. Escrowing will encourage them and their advisors to mediate with owners, to ask for time to move or to “do better” in paying their rent. Owners always prefer working with tenants, not evicting them.

Q. What if tenants really can’t pay their rent?

A. Escrowing will push them to seek public assistance, as they should. Indigent tenants should be a public burden, not a burden that hits a few owners arbitrarily, destroys housing, and endangers other tenants.

Q. Will escrowing help improve housing conditions?

A. Yes. First, it will stop tenants from interfering with repairs or actually doing damage to their apartments to get additional months of free rent. Second, a judge can order the escrowed rent to be used for repairs, and anyone can ask the judge to order it (tenant, landlord, health officer, city official).

Q. Who supports rent escrowing?

A. Housing inspectors, mayors, community development officials, bankers, lenders, and many state legislators, because it is fair, stops an obvious abuse in the law, and will help reduce abandoned housing and deteriorating neighborhoods.

Lawyers Weekly, the state’s primary legal news journal, recently endorsed rent escrowing to correct the injustice.

The Massachusetts Bankers Association supports rent escrowing because it will reduce foreclosures and help them make home-improvement loans to lower-income rental properties.

U.S. Supreme Court ruled rent escrowing is constitutional

Does not violate due process or equal protection

Court says: If tenant keeps possession of premises and keeps the rent too, the property owner's rights are infringed.

"We see no constitutional barrier to [the State's] insistence that the tenant provide for accruing rent pending judicial settlement of his disputes with the lessor. The Court has twice held that it is permissible to segregate an action for possession of property from other actions arising out of the same factual situation..." "The tenant is not foreclosed from instituting his own action against the landlord and litigating his right to damages..." "There are unique factual and legal characteristics of the landlord-tenant relationship that justify special statutory treatment inapplicable to other litigants. The tenant is, by definition, in possession of the property of the landlord; unless a judicially supervised mechanism is provided..., the tenant would be able to deny the landlord the rights of income.... Holding over by the tenant beyond the term of his agreement or holding without payment of rent has proved a virulent source of friction and dispute. We think [the State] was well within its constitutional powers in providing for rapid and peaceful settlement of these disputes." "Nor should we forget that the Constitution expressly protects against confiscation of private property or the income therefrom."

Lindsey v. Normet, 92 S.Ct. 862 (1972)

In this issue

Legalized rent-theft because the law is not enforced

LIVE Rent Free 1 year. Landlord will pay you \$1000. to leave !!! I did it... Find out how. Send postcard to:
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 N'ton MA 01061
 I will meet you for consultation on going process how to help or write you or we can talk on phone or meet one-on-one very legal, effortless

Small Property Owners NEWS

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Special edition

How crazy are tenant activists?



Small Property Owners NEWS

February 1999

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Small Property Owners Association SINGLE-FAMILY MULTI-FAMILY CONDO PART-TIME OWNERS FULL-TIME OWNERS

why abandoned housing?

Lawrence's housing chief says rent escrowing would help her city's desperate problem

"Last night the City Council ordered four more houses torn down," Louise Ferris started out the interview.

For 12 years, Ferris has been Commissioner of Inspectional Services in the city of Lawrence, which has been plagued with abandoned housing since the early '90s.

"Next week, five more buildings will come before the Council for demolition," Ferris went on. Cost to the city: \$12,000 to

demolish each house.

Since 1992, Ferris has overseen 407 abandoned houses torn down, at enormous taxpayer cost, by the city. Most were three-family houses, some larger, just a few "singles." Most were owned by small owners. Ferris believes tearing them down, despite the cost, is better than letting them spread further decay. With over 200 buildings still on Ferris' abandoned housing list, Lawrence's problem remains far from solved.

Why such rampant abandonment? "It's a combination of things," both Ferris and her assistant commissioner in charge of code enforcement, Dick Galle, agreed. A major factor is the economy. And then there's unchecked rent withholding. For years, Ferris has wanted a state law requiring rent escrowing, to help stop uncontrolled rent withholding.

A spreading disease

Most of Lawrence's abandoned housing is in "the heart of the city," the old millworker

continued on next page



Louise Ferris (right) heads the inspectional services department in Lawrence, a city ravaged by abandoned housing. She has advocated rent escrowing for years. Her chief code enforcement officer, Dick Galle, also supports it.

Abandoned housing & troubled neighborhoods

Even in these boom times . . .

- **Lawrence**, profiled in this issue, still suffers desperately from the early '90s recession, when many small owners went under.
- **Roxbury & Dorchester**, where most of Boston's abandoned housing lies, are on the "thin edge" between decay and prosperity. Small owners are the first line of defense.
- **New Bedford**, known as an entry point for heavy drugs, is struggling to turn around its abandoned housing problem.
- **Even small towns** in Massachusetts have all the same problems of the inner city, housing inspectors report.

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Special Legislator Edition

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housing that grew up around the city's once-thriving textile industry.

A new wave of immigrants, mostly hispanic, hit the city in the 1970s and '80s. When the nationwide recession of the early '90s caused businesses to leave and tenant incomes to fall, the city's lower-income neighborhoods went into a tailspin. Ferris calls 1992-93 the "Arson Year," when Lawrence's vulnerable vacant housing blazed into the national media.

Lawrence realized it had to do something, and the only thing was to tear down the housing. "Demolition is not the final answer," Ferris says, "but if we didn't demolish those buildings,

landlord-tenant laws are killing the housing in my city."

Isn't the problem, we asked, that a big landlord can absorb the cost of one non-paying tenant, but for an owner of just three or four apartments, that one non-paying tenant is devastating?

"You got it right on the nose," said Galle. "That's exactly what's killing the small landlords here."

Of course, Ferris and Galle know about non-paying tenants, because their housing inspectors are called in by tenants who report code violations and justify their nonpayment as "rent withholding."

pens constantly," Ferris says. "We



Built back to back along the same alley, these identical multi-family row houses tell an amazing story. Left & center photos: Deterioration has spread unchecked down the entire row of houses on one side of the alley. Note graffiti. Inspectors say the insides are deplorable. Right photo: When owners have more control, as do the owner-occupants on the alley's other side, tenant behavior and deterioration are well controlled.

we'd look like a war zone."

"The main problem is squatters," Galle points out. The squatters are typically drug addicts, drug dealers and prostitutes. Then problems spread throughout the neighborhood.

Ferris and Galle describe abandoned housing as an infection, a spreading disease. Vacant buildings attract criminals. Having criminals in the neighborhood reduces rents and housing values. Marginal tenants move in and can't pay their rent. They become unevictable by reporting code violations and even damaging their apartments. In these circumstances, small owners can't pay their mortgages and can't fix up their properties. So they "take a hike," in Ferris's words, abandon their properties, and the neighborhood just sinks deeper into trouble.

Asked for rent escrowing

Two years ago, Ferris and a group of Lawrence's city councilors finally went to then Senator John O'Brien from their district and asked for a rent escrowing law to help their situation and stop unchecked rent withholding. O'Brien supported a bill in the last legislative session and testified that "the state's

have a full-time prosecutor who goes to court every day. If you look at the evictions, the landlords are evicting the same non-paying tenants who are reporting code violations."

"It's all about delay," Galle explains. "Lots of times, it's not about getting the apartment fixed up, it's about delaying eviction and living rent-free. The tenants are great at making the complaint, but the owners can't get in to repair and we can't get back in the door to reinspect."

Ferris points out the so-called "professional tenants" who use the law to get free rent: "We can follow some of these tenants from one building to another."

Galle interjects: "We have inspectors who plead, 'Please don't give me these tenants.'"

"The sad part is," Ferris laments, "we know we are being used, and we can't do a darned thing about it."

Escrowing is 'fair'

Ferris also struck a loud note for fairness.

"Rent escrowing is fair for both parties," Ferris asserts. "I can't imagine anyone against it. Put the rent in escrow [if the tenant claims code violations and wants to withhold rent]. Leave it up to the judge to decide. Maybe the judge will say the owner doesn't deserve it all. But at least rent escrowing is fair. Right

The problem of uncontrolled tenants and abandoned houses is a spreading disease.

Left: Three abandoned houses in a row. Center: Two in a row. Right: Two more in a row. Nearly every block in Lawrence's old-city section has at least one abandoned house.



A man appeared from behind this abandoned house (left) and disappeared when he saw us. We walked around the house and, sure enough, found the plywood torn away from a cellar window (center). Fresh tracks in the snow lead up to it. The house harbors drug addicts or dealers or prostitutes – take your pick. Another house (right) a few blocks away was also missing the boards on just one window – the first-floor corner window – where squatters get access.



now, the tenants take it all and vanish. The tenants know they can get away with it, and there's nothing to stop it."

Galle insists: "Rent escrowing has got to be mandatory."

Ferris resumes her point on fairness. "Even for the landlords who aren't that good, rent escrowing will teach them a lesson."

"To be fair," she says, "a lot of apartments have code violations, but those apartments need paying tenants or they won't get fixed up. I want rent escrowing so I have an answer to the landlords who say 'I can't fix it up because I don't have the money because the tenants aren't paying rent.'"

Controlling tenant behavior

But the conversation with Ferris and Galle is not just about the rent money. It's about culture and attitudes and behavior among the tenants, which they think rent escrowing will change.

"There is a lack of pride and respect among some of the ten-

landlord to change their light bulbs and smoke alarm batteries. We had to pass an ordinance to stop people from hanging laundry on their front porches or on lines tied to bushes."

How will rent escrowing help? "I think it will educate the tenants," Ferris says. "They will know, 'I can't complain for a foolish reason, I can't tear up the place, but if I have a good reason, the courts will back me up.'"

Ferris makes it clear, "Officially, rent withholding does not affect us. We are in the middle. But I think rent escrowing will help both parties. I don't think it will hurt the tenant."

Ferris is also clear that she thinks rent escrowing will be a useful weapon against Lawrence's problem. "We are on the up now. I believe rent escrowing would help get properties back into shape. It would have stopped some houses from being abandoned and will save others."

If tenants were actually escrowing their rent and landlords were not repairing, would you go to court to get a judge to order those escrowed rent funds used for repairs and improvements? "Definitely yes."

Bankruptcy hits Lawrence inspector

Even a Lawrence housing inspector could not avoid bankruptcy in his own multi-family property.

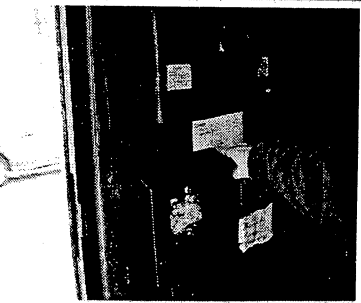
An immigrant from the Dominican Republic 23 years ago, this long-time inspector faced a number of tenants in a row who refused to pay their rent. Three of them reported code violations to delay their eviction. When he finally got them evicted, all his money went into fixing up the apartments to re-rent them.

When several tenants left at once, the combined effect of no rent from several apartments plus needed repairs was just too much. "I finally just walked away," he says. He lost the entire seven-unit building.

Here is one example of many small one-family bungalows that dot this neighborhood. Their occupants have lived here "since day one," our inspector-guide says. But now they are besieged by conditions in their neighborhood. Note the six-foot-high chain-link fence all around, the closed-in windows to stop vandals throwing rocks, and the guard bars on all the (remaining) first-floor windows.



'Our guide, a Lawrence inspector, looks at an unpaid collection bill he picked out of the trash pile. The bill's address tells him the trash in being thrown over the fence out of windows from the half-vacant house behind him. On the left: the boarded-up house whose yard has the trash pile. Across the street: another boarded-up house. Right photo: Mailboxes inside the half-vacant house have the same address on another collection bill – and show over-crowding: three different surnames on one mailbox, six different names on another.



ants." Ferris clarifies what she means: "Lack of pride and respect for other people's property. If you have pride, you have an incentive to keep your apartment and your yard clean."

"My parents always lived in tenements," she says. "When I was first married, I lived in a tenement. We sanded the floors and tiled the kitchen floor. I even tiled my bathroom. I didn't think anything about it. I remember some old-timers washing the [common area] stairs."

Galle picks up the same point: "You see so little of people today keeping the place clean. Today some tenants expect the

Are landlord-tenant laws creating **SLUMS?**

Housing inspectors tell their experiences

We did not go to the inner city. We visited small towns in the countryside. We interviewed local housing inspectors. Every day they go into many homes. Usually it's the worst housing around.

What turns buildings into slums? Do the laws help or hurt?

They all agreed: rent withholding, a state law, is actually creating worse housing conditions in their towns.

Tenants live rent-free as long as bad housing conditions remain. So cash-starved housing gets run rapidly into the ground – literally in many cases.

All these inspectors support mandatory rent escrowing, which preserves a tenant's right to withhold rent – but doesn't let the tenant pocket the money, so that ultimately the landlord will have the money to save the housing.

Here is what these inspectors told us.

Inspectors Lisa Hebert & Sharon White

Tenants in control, owners immobilized

"This was a great vent session," said Sharon White, a roving county inspector who stops once a week in the small town of Greenfield, Massachusetts, population 18,600. "I just dropped ten pounds of frustration."

Their frustration is with the kind of tenant-landlord situations that "take up so much of our time," Sharon explained. "They want hearings. There are accusations and counter-accusations. They refuse mediation. It's a very time-consuming process for us. Meanwhile, the housing is not getting fixed up."

She and Lisa Hebert, Greenfield's full-time inspector, had been talking for nearly two hours about the problems in Greenfield's low-income housing. And their sympathy went out to the many little landlords hurt in the process.

"The majority of landlords are people who have bought one house," Lisa said. "They don't know how to treat the property as a business, they don't know the state sanitary code, they don't know how to screen tenants, and they wind up in a situation they can't control."

"Yep," Sharon agreed. "Problems escalate, the tenant basically has control of the property, and the owner can't afford to do the repairs."

Lisa went on to describe the "problem-type" tenant who is not paying rent, claiming code violations and even damaging the property. "The owners are not savvy on how to use the court system," Lisa said, "and it becomes a major emotional deal for small owners. Their nerves are on edge."

"I've had landlords in this office crying," Lisa said, referring to a husband and wife who got cited for lead paint, tried several different methods to finance the lead paint abatement – and failed because there was not enough value in the building to support a loan. The owners asked the tenant to leave; the tenant refused. The problem was only solved when the owners took a radical step: they sold the single-family home they lived in, moved into the rental property, and used the sale proceeds to abate. "It was solved at a very high cost to the family," Lisa admitted.

Picking up the point, Sharon said: "The lead law has killed many mom-and-pop landlords." She was referring to the high cost of deleading that hits at the very moment that tenants stop paying their rent. "The tenants call us and boast that they have lead paint or boast that they have roaches. It kills these small investment owners," she repeated. "The tenants are thinking: 'Good, now I can live rent-free.'"

Now Lisa picked up the point: "I think that's what these tenants are told by legal services. They are pretty much savvy legally by the time they come to us. They have talked to legal

services.”

“Some tenants won’t allow landlords in to repair,” Sharon said.

Then Lisa told of a case that went on for month and months. “Every time we went,” Lisa said, “there was another code violation to look at. The tenant hadn’t paid rent for a full year. Finally, it was settled out of court with four more months of free occupancy.”

Sharon continued the story: “It was a tremendous settlement for the tenant, but still the tenant could not drop the code violations. ‘I’m earthquake-scared,’ the tenant said to us afterwards. ‘What about these floor boards?’”

How much do tenants deliberately damage? “If it’s filth, like a filthy refrigerator,” said Lisa, “it’s easy to write up the tenant and we do. But broken windows? We can’t determine who. I went into one apartment where every screen was ripped. ‘How did this happen?’ I asked. ‘I don’t know,’ says the tenant. Even if the tenant did it, the landlord has to fix them, so we write up the landlord. And it happens over and over. That landlord told me ‘I want to be there for the reinspection. I’ve fixed that screen three times.’ That’s the part of the system that really doesn’t work. The owner fixes an eave, the tenant pulls down the board. The tenants are owning the building at this point. And I can’t blame the owner. The owner just puts his hands over his face. Some owners don’t even try to evict. They become immobilized.”

“The balance is off in the laws,” they agreed. Mandatory rent escrowing “would tighten up the system. The only other alternative besides escrowing is receivership, but that’s very hard to do.”



JOB WELL DONE. Inspectors Lisa Hebert (left) and Sharon White stand before a multi-family house in Greenfield they “rescued” after it went downhill fast. “It was a cute property,” the neighbors said. Then it went into foreclosure. “The tenants were using the system, definitely creating code violations,” Sharon said. “The tenants refused a financial offer to move out.” Lisa and Sharon described how it used to look: five unregistered vehicles in the driveway, including a school bus leaning on the house next door; animals; two dangerous chimneys spewing black smoke; trash all around. And the worst: a basement they would not even walk in. It was filled with raw sewage from a broken pipe. It had to be shoveled out.

What the Inspectors Said:

“The code is being manipulated not for public welfare but as a tool for litigation between tenant and landlord.”

“The lead law has killed many mom-and-pop landlords.”

“This town is crumbling before our eyes.”

“It’s a progressive-type problem that turns into a cancer in the community.”

“We are a tiny town with every single problem that a major city has.”

“Rent escrowing will remove the landlord mantra that they have no money to repair their property.”

“I believe rent escrowing has a lot of merit.”

Inspector Charlie Kaniecki

A cancer in the community

About once every six months, Charlie Kaniecki boards up another multi-family house in Easthampton, Massachusetts, a small town of 17,000 population where Charlie is the health inspector.

Typically, there is a non-paying tenant, a tenant who is “withholding” their rent. But when a house gets boarded up, all the tenants get evicted including paying ones. They are being evicted by Charlie’s Board of Health, not their landlord.

And as Charlie said, “the town is losing housing stock.”

What kind of housing is it? It’s all woodframe housing. Usually, it’s housing in the center of town, originally built for working-class and immigrant families, with four to ten units in each building. “Rarely do you see duplexes turn into slums,” Charlie said.

What kind of tenants? Charlie described them as lower-income families, usually three or four children, living somewhat crowded, earning a living in machine work, warehousing, manufacturing.

What kind of owners? We thought we’d hear about high-income speculators. But Charlie said most of them were long-term owners, typically in their 50’s, usually a husband and a

wife working together full-time in the rental business.

"This section of the community has become stagnant," Charlie explained, "and it affects the entire neighborhood."

Many of these tenants are left out of the current economic boom, Charlie went on, so tenant incomes limit how much these landlords can charge for rent. As a consequence, the owners, too, are missing out on the economic boom, and that limits their maintenance and repairs. There is no equity to take out loans to do capital improvements. So the only work done on these properties is "response-type" repairs or "crisis management."

These owners do "some repairs," Charlie said, like fixing broken hot water heaters, keeping furnaces operating, basic plumbing repairs. They do their own repairs themselves (because they can't afford to hire tradesmen), and they do "zero capital improvements," Charlie said. Of course, there's no money for capital improvements either.

"For example, they won't change an electric hot water heater into a gas hot water heater that's more efficient for everyone," Charlie said. "And they'll tack up a piece of No. 2 grade pine instead of higher-quality moulding wood."

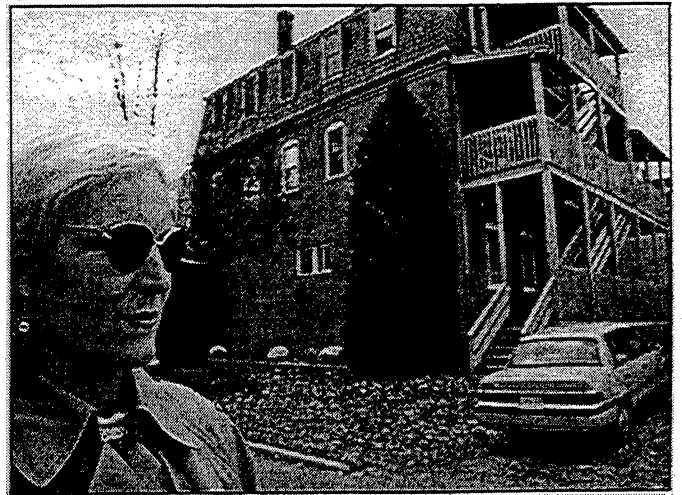
So the quality of the unit gradually goes down hill. "It's a progressive-type problem that turns into a cancer in the community," Charlie said.

The real killer of this marginal housing is, finally, the rent-withholding tenant, Charlie explained. When there is suddenly no income from rent, "this only magnifies the repair problems," he said. "That's what's causing the landlord to fall into the 'slumlord' category."

Most of the time, rent withholding does not start with code violations. It starts with tenants who can't pay their rent. Charlie explained: "The first comment I get at the door from the tenant is: 'I'm going to withhold my rent.' They don't even talk about code violations. The bulk of the calls come in after they get the eviction notice."

Do the tenants actually damage their apartments? "It's hard to call that issue," Charlie said. "Coming in two days later, I've got no way of knowing whether the tenant did the damage."

But deliberate damage or not, Charlie was very clear: "The code is being manipulated not for public welfare, but as a tool for litigation between tenant and landlord. I believe rent es-crowing has a lot of merit. It would free up my time for bona



BEFORE INSPECTOR Joan Barry came on the scene, this house, one block from the town's center, had rotting back porches, junk cars parked in back, dogs tied up to fences, a dumpster overflowing with trash, a garage with no doors filled with debris for all to see, and no grass or flowers. Joan worked with the owner, letting him take time. "The owner is now grateful," Barry said. Tenants living rent-free could stymie an owner's efforts to fix a place like this up and force the owner to walk away.

fide cases." Charlie estimated that maybe 5% of rental housing is marginal, "but it takes up 50% of my time." Charlie also has to inspect restaurants and septic systems, do "perk" tests for new septic systems, and other responsibilities.

Then Charlie outlined the typical scenarios that follow rent withholding, as the housing goes, in most cases, rapidly to its death.

"You've got a non-paying tenant and orders to do repairs," Charlie explained. "The landlords can't do the repairs without any money and no equity for loans. So the Board of Health must take the owners to courts as 'criminals.' Finally, the Board of Health must condemn the buildings, evict the tenants including the paying ones, and board them up. Condemnation is the 'kiss of death' in most cases."

"The property sits there for a time," Charlie went on. "There are several scenarios. Maybe the owner finally finds money for repairs. Maybe the abandoned building attracts vagrants and squatters and becomes a public nuisance. Maybe the city takes it for back taxes and puts the building up for auction. If nobody bids, the city must pay to tear it down."

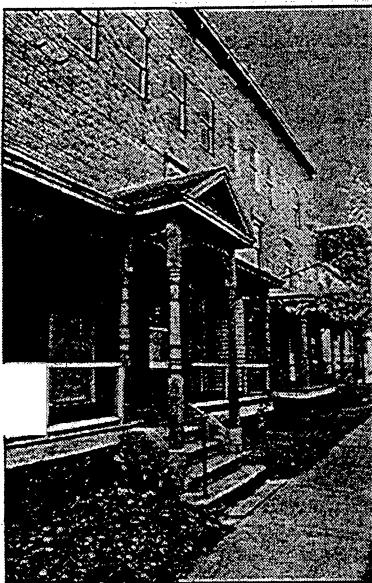
Inspector Joan Barry

Saving the housing

The town of Montague, Massachusetts, has a population of just 8,300, but its health inspector, Joan Barry, complains: "We have every single problem that a major city has, right in our center."

Those problems are drug activity, domestic violence, poor housing, abandoned housing, and businesses that have closed out of fear of crime.

"This town is crumbling before our eyes," Joan said. "It feels hopeless sometimes." Just a couple blocks from her town hall



This large multi-family house just one block from the main street in Montague has been abandoned and condemned for years. It was recently purchased. Rent withholding contributes, the inspectors say, to this type of abandonment.



office, Joan pointed out two abandoned houses and one former "wreck" she helped save.

Her description of the housing at the center of the problem was very similar to Charlie Kaniecki's description for Easthampton: 4-to-10-unit woodframe buildings originally built in the town's former industrial center. It's occupied, Joan said, by tenants who pay little or no rent, whether it's because of low incomes or – in the case of "professional tenants" – a pattern of rent withholding for code violations.

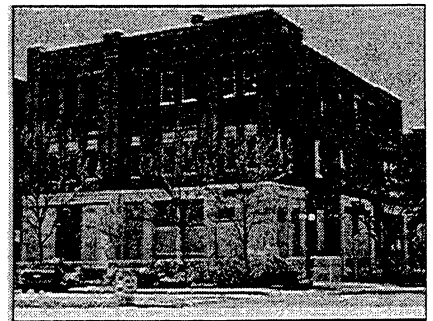
"I've been in the houses, it's all the same people, it's all one package," Joan said.

Joan's goal is to "recapture" the housing. When a rent-withholding situation gets to the point where the Board of Health wants to condemn it, Joan knows the housing is on the brink of the downward spiral to destruction and abandonment.

"The last thing we want to do is go to court," Joan said. "It never helps anyone. It is our last resort. If someone is interested in fixing up their property, we work with them, even if it takes time. We are 100% supportive."

Rather than condemning a property or putting it into receivership, Joan has worked out a device called non-occupancy

No one was paying rent in this Montague commercial/residential building when a fire broke out, killing one person and seriously injuring another.



agreements. The city negotiates a period of non-occupancy with the owners, who get time to fix the property up or sell it to someone who will fix it up.

Another device Joan would like is mandatory rent escrowing. "The system supports 'professional tenants' who have nothing to lose and everything to gain by not paying rent," she said. "Rent escrowing will discourage them." And she added: "Rent escrowing will remove the common landlord mantra that they have no money to repair their property."

The state and our cities and our towns spend millions paying housing inspectors to keep housing in good shape. And then the state cuts off their legs – by encouraging rent withholding that makes it impossible to improve (or even save) the housing.

HUMOR

INSPECTORS in HEAVEN and HELL

HUMOR

Health Department
INSPECTION REPORT

Attention: **LUCIFER**

After an inspection of the premises located:

DOWN BELOW

which you own, manage, occupy or control, it has been determined that the premises are in violation of the State Sanitary Code, to wit:

1. Excessive and unhealthy heat.
2. Insufficient means of egress – in fact, no exits whatsoever; correct condition immediately.
3. Inadequate ventilation.
4. No smoke detectors.
5. Door knobs missing; unable to open from the inside.

The above violations materially impair the health, safety and well-being of persons occupying said location.

You are hereby ordered to remedy the above violations of said Sanitary Code within 30 days.

Signed: *Inspector*

P.S. Do you maintain a fire-safe mailbox? My previous notices have been ignored.

Health Department
INSPECTION REPORT

Attention: **THE ALMIGHTY**

After an inspection of the premises located:

IN THE GREAT HEREAFTER

which you own, manage, occupy or control, it has been determined that the premises are in violation of the State Sanitary Code, to wit:

1. No security devices on pearly gates. Install.
2. Floors consisting of white fluffy material are not cleanable nor impervious to water. Replace.
3. No screens. Install.
4. Geez, no windows either.
5. God, no walls whatsoever! This place is a disaster.

The above violations materially impair the health, safety and well-being of persons occupying said location.

You are hereby ordered to remedy the above violations immediately. If conditions are not corrected forthwith, we will board up the premises – if we can find some place to nail the boards to.

Signed: *Inspector*

P.S. We have received a complaint that your gatekeeper (the one with the long, white beard) has been discriminating in his entry policy. We shall notify the Commission Against Discrimination.

Small Property Owners

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NEWS

June
1998

SPOA P.O. Box 398115, Cambridge, Massachusetts 02139 617-354-5533 Membership & One-Year Subscription (10 issues): \$35

Rent withholding

If a tenant claims an owner is not putting any money into the house, the tenant's rent money should go into the house, not into the tenant's pocket.

Massachusetts law lets the tenant pocket the money. It's a rip-off.

It's a law that is **wrecking owners
wrecking housing
wrecking neighborhoods.**

**In
this
issue:**



Levant Street, Dorchester

Free lawyer for tenant - 11 months no rent - owner goes bankrupt.

Powellton Street, Dorchester

20 months no rent! - 'I never want to be a landlord again.'

Sumner Street, Revere

Six units - no rent for a year - owner walks - city condemns - housing boarded up.

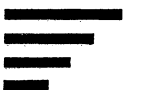
Norfolk Street, Cambridge

Free lawyers for tenants - six units - coordinated attack - owner forced to sell cheap.

What Dorchester residents think about it.

EVERYBODY knew about it - NOBODY thought it was right.

**In
our
April
issue:**



High Street, Waltham

Free lawyer for tenant - 2-1/2 years of partial rent - owner goes bankrupt.

Vera Bartolo and her house



This Dorchester homeowner was bankrupted by 1 tenant

Tenant, advised by free lawyer, lived rent-free for 11 months

You would not know that Vera Bartolo is a landlady. She lives alone. She rents from her sister. She works 60 hours a week as a hospital lab technician for less than \$400 a week. She doesn't own a car. She's always worked hard, never had much.

But Vera is also a landlady, ever since she bought a "triple decker" on Levant Street in Dorchester in 1979. Vera charges just \$600 a month for her two-bedroom apartments.

But Vera was declared bankrupt in January. Because a tenant, with free legal advice, did not pay rent for 11 months. That was all that did it. Vera almost lost her house.

Now Vera's life has changed. She buys all her clothes at a *continued on next page*

continued from p. 1

thrift store. She depends on her sister for food. A few months ago, she had to hock all her traditional Trinidad jewelry at a pawn shop to get \$500 to pay her bills.

Vera got her no-rent tenant from Joseph Johnson, a welfare worker in the Massachusetts Transitional Assistance program. Johnson told Vera the tenant was "a good tenant" and promised he would relocate the tenant if there was any trouble. Johnson inspected Vera's apartment and said it was fine.

The tenant, a mother with five children between one and 12 years old, paid rent for two months, paid late the third month, and then stopped paying altogether.

Then the tenant started complaining. "Rats are peeping at my children from holes in the bedroom ceiling," the tenant said on the phone. Vera came over immediately. "Where are the holes?" Vera asked. There were no holes. The complaint was a fake.

But the tenant pulled open a drawer full of children's clothes and showed Vera what appeared to be rat droppings on top of the clothes. Vera was not sure they were real droppings. And with five children, Vera thought to herself, this tenant must be pulling clothes out of that drawer several times a day. How could a bunch of rat droppings accumulate in that one spot? "Either she is crazy or I am crazy," Vera said to herself.

Vera always exterminated two or three times a year. The last time was just two months before this complaint. Vera ordered another extermination.

Shortly after the rent stopped and the complaints began, Vera's handyman went into the apartment to do repairs and suddenly noticed: all brand new furniture. Out on the back porch was all the old furniture.

The handyman couldn't figure it out. How could the tenant buy all new furniture if she wasn't able to pay the rent?

Vera knew. The tenant had bought it with her unpaid rent.

So the tenant had one complaint after another, all used to justify not paying the rent, all used to stop the eviction that Vera filed for in court. It all stretched out for 11 months, until Vera went bankrupt.

Some of the complaints were phony, like the rats. Another phony complaint was lead paint. Vera had already delead the apartment, but just complaining put another month's free rent into the tenant's pocket. Other complaints resulted from deliberate damage: a missing doorknob, a piece from a brand new tub enclosure put out in the back hall – to keep the violations going. Or repairs of repairs, because the tenant was not satisfied with the "quality" of the work. The eviction case went "back and forth in court," Vera's lawyer said. There were rounds of inspections, repairs, and reinspections.

"Things get fixed, and they keep breaking," Vera said. "Seemed like the tenant had done this before." It didn't matter. What the tenant got was advice from someone who had done it before: a free "legal aid" attorney from the Legal Services Center in nearby Jamaica Plain. "They just stall," said Vera's attorney. "Eviction hearings get delayed with new code violations or some other reason. But when push came to shove, the tenant just skipped out, never showed up when, at long last, the real hearing came."

Remember Joe Johnson's promise to relocate the tenant if there was trouble? Vera called him and told him about her non-paying tenant. He didn't lift a finger to help

her. He did spend an hour and a half on the phone recently arguing with Skip Schloming that rent escrowing is wrong. "This is going to be fun," he said at the start of the conversation. His "fun" was paid for by taxpayers. His agency helped bankrupt Vera Bartolo, a little landlady.



Sumner Street, Revere

Zero rent, housing dies

There is no doubt that the three 6-family houses on Sumner Street in Revere were in bad shape – after years of drug dealers.

The question is: once the drug dealers were gone, did the housing have to go from bad to worse? Massachusetts' rent withholding law was a death sentence.

When the housing was sold at auction several years back, the druggies were gone and a new owner thought he had a chance. Only six of the 18 units were occupied, but the owner planned to invest all the rents and gradually improve the property.

What could be better? But the six remaining tenants had a different idea. They just refused to pay any rent at all – for over a year. With a zero rent stream, the owner could do nothing. Finally, the heating systems began breaking down and the city condemned the property.

The tenants were happy. Besides all the free rent, they got placed on the top of the list for public housing. But the private housing died – it's been boarded up for the past three years – because Massachusetts law does not make sure that, when there are code violations, the rent money goes into the housing, not into the tenants' pockets.

Source: Revere official who preferred to be unnamed.

The Lucy Panian and Vera Bartolo
bankruptcy stories were featured
on a recent **WBZ-TV** newscast
by anchor Sean Mooney.

This newsletter is being distributed
to all Massachusetts legislators
as an informational service.

A tenant's home is their 'castle'...

... so there are no witnesses when a tenant damages their own apartment to create code violations, get free rent and stop eviction.

It's a crime that's impossible to prove – and thus very easy to do.

The only way to stop it: stop giving free rent to tenants for doing damage.

We're calling it **The Lucy Panian Rent Withholding Reform Bill** to save owners, save housing and save neighborhoods. Lucy is the Waltham homeowner featured in our April newsletter who went bankrupt when her tenant delayed eviction two and a half years with endless code violations.

What Dorchester residents say about this tenant tactic

By Skip Schloming

I wanted some community opinion.

So I walked around a little bit of Dorchester one Sunday in May. At my side was Vera Bartolo, the immigrant from Trinidad 20 years ago who went bankrupt this January when her tenant didn't pay rent for 11 months.

We walked up and down her neighborhood, Olney and Bowdoin Streets. We talked to every person we met on the streets this warm, sunny day.

It's a neighborhood of two- and three-family houses mainly. But there are a lot of single-family houses mixed in, and here and there are some bigger buildings, too.

A few houses are boarded up. But the drug dealers are gone. Vera thanks Mayor Menino for that. And people think the neighborhood is improving.

Both of us were wondering about her neighborhood – just exactly how typical or unusual her treatment at the hands of her tenants had been.

"Could I ask you a question?" I said to everyone we met. Four persons owned rental property. One was a single-family homeowner. The rest were tenants.

"Have you ever heard of the situation," I asked each one, "where a tenant deliberately damages their apartment so they don't have to pay rent?"

Almost everyone said "yes" or nodded their head with a knowing smile. "People do it." "I see it all the time." "The tenant below me is doing it." "I've known a few people that have done that." "My uncle has that problem." Out of 15 people, only one – a 16-year-old girl and the youngest person we spoke to – didn't know what we were talking about.

"What do you think about it?" I asked them all directly, as I kept writing down notes.

"It's wrong." "They should be thrown out." "I hear you –

it's wrong." "It's all messed up." "I think it's bogus." "It's not a nice thing to do." "I think it's lousy."

Everyone had a negative opinion of the practice. No one refused to answer the question or suggested that this practice of deliberate damage might be okay.

"What should be done about it?" I asked them.

"They should be thrown out." "They should be made to pay for everything they did." "They need to get out, damage or no damage." "If you can't pay, you should be evicted immediately, not even three months of free rent." "There should be a legal procedure to stop the damage."

Some saw the neighborhood consequences very clearly. "It hurts the property – no one wants to move into an area like that." "We're working hard to make our properties nice, and they are tearing it down."

What about rent escrowing? I explained a proposed law that, if the tenant thinks the landlord is not fixing up the property and they want to withhold rent, they have to put the rent in an escrow account in the bank, they can't keep the rent to themselves. "That's good." "That's fair." "Don't they have to do that already?" (No, they don't.)

Skip explained that landlords could take the money out of the escrow account only if they used it to fix up the property. No one – not one single person – disagreed with the idea of rent escrowing.

Vera Bartolo was really surprised. "I didn't think you would get that response," she said. "I thought people just wouldn't talk about it."

More stories
about rent withholding ▶▶▶
Lenore's trip to Russia p. 6

Free lawyers advised all the tenants in these cases.

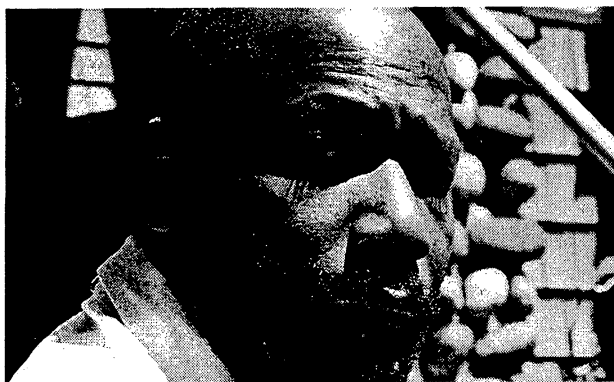
Free lawyers gave these "tenant clients" bad credit records and poor reputations for all their future housing transactions.

Free lawyers pushed all these tenants into public housing. They didn't help them survive in private housing.

Free lawyers don't care about tenants.

After all, who's paying them? Not the tenants.

Powellton Street, Dorchester



'I never want to be a landlord again.'

Etson Cameron, at 44, is finishing medical school, about to start his residency to become a doctor. He owns a single-family house in Dorchester where he lives with his wife. He also owns a triple-decker on Powellton Street. He is Afro-American. Not exactly your picture of a slumlord.

Etson desperately wants to sell the triple-decker. "I never want to be a landlord again," he says. That's because he has a tenant who has not paid a penny of rent for 20 months. 20 months!

The tenant, a woman with a do-nothing husband and two children in their early teens, calls Etson a slumlord.

"I'm pulling up in an '88 Chevy Blazer with rust, and I'm a slumlord?" Etson asks.

"Every time she calls me, I get up and come over. I'm a good landlord. But she calls me a slumlord," he goes on.

"It's crazy," he says, about the laws that allowed the tenant to delay paying rent so long. "I'm shell-shocked. When she goes, I'm leaving the place empty until I sell it."

When the tenant lost her section 8 rent subsidy, Etson reduced the rent from \$635 to \$375. When she couldn't (or wouldn't) pay even that, he said she could stay six months rent-free and then leave. The tenant agreed. This is a

slumload?

Six months later, the tenant claimed no agreement to leave, still paid no rent, and – of course – called the health department.

"It was 16 incredibly nit-picking violations, a lot of them were vague, nothing serious," Etson said. "Like mildew on the linoleum. Nothing like no heat or an inoperable toilet."

"If my apartment was so bad, why was she staying 20 months?" he added. The apartment was, in fact, the very one that the woman who later became his wife lived in for seven years. "A very nice apartment," she (now his wife) said.

"It was all stalling tactics," Etson said. "She always made it difficult to get workers in. I'd make an appointment a week ahead for the exterminator at 4:00 p.m. At 3:30, I'd call her to confirm. She'd be there, but she'd say there was no way she could let the exterminator in. Embarrassed, I had to call off the exterminator and reschedule. Workmen just weren't willing to come on this basis. She wanted all repair work done starting at 2:30 p.m.. Workers don't work that way."

"The judge didn't believe that I did not have access to the apartment. I had to go to court and pay \$60 to get the tenant to give me a key. Still, I wasn't willing to go into the apartment without the tenant present. I knew she would accuse me of stealing something."

"The tenant was \$5,500 behind in the rent. It would have been \$10,000 if the rent were realistic. She told the judge she had saved \$6,000 and put it in 'escrow.' The judge believed her. Later, he ordered her to pay up in 10 days. She didn't. It's not that I care about the money, I just want her out. But now I am probably going to have to pay to put her furniture in storage for six months. It's crazy."

Speedwell Street, Dorchester

The tenant was four months behind in rent, there had been seven or eight inspections, and finally, one day, the inspector okayed everything.

The very next day, in court, despite the inspector's report, the tenant said he heard the furnace "making a funny sound."

Judge Daher of Boston Housing Court believed the tenant and ordered another inspection. "Another month's rent down the tubes," said the owner.

Norfolk Street, Cambridge

A coordinated effort to force owners to sell cheap

A "radical" tenant approach in Cambridge

At 59 Norfolk Street, a six-unit building just one block from desirable Central Square in Cambridge, all the windows have signs saying "Resist Eviction." No rent has been paid by any of the tenants for two months.

It's a well-coordinated effort. It's not about better housing. In fact, the tenants have asked that all repairs on the property cease. In a letter they declared they want to "negotiate" with the new owner to sell to a nonprofit "affordable housing" organization. They are expecting their rent strike will force the owner to sell.

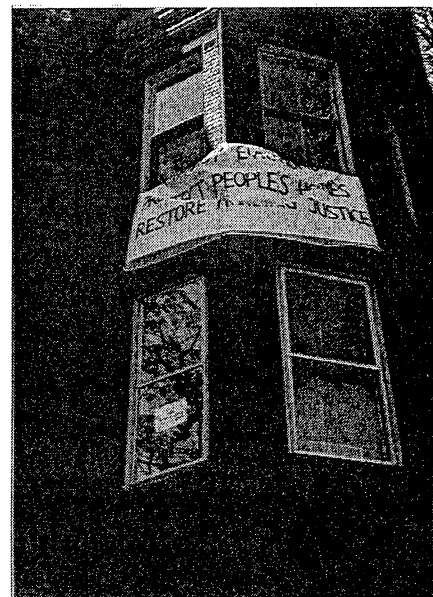
Can the owner evict them for nonpayment? Nope. Because of code violations. There's a file two inches thick in the Cambridge inspectional services office, a history of complaint after complaint in every apartment stretching back four years.

It was the same old story - stall and delay on repairs - while the tenants snubbed their noses at rent increases. Current rents before the rent strike averaged about \$450 for 5-room apartments, well below market. Then, a few months ago, the

old owner (his family had owned the house for a hundred years) finally sold at a severe loss. A new owner came charging in and did a slew of repairs in three weeks. He even got citations against the tenants for refusing to let workmen in to repair.

The tenants were in danger. If the housing became code perfect, they could be evicted. That's when they asked the city to halt code enforcement. That's when they stopped paying any rent at all.

So rent withholding and code violations are being used to give tenants virtual control of someone else's property.



Iffley Road, Jamaica Plain

The tenant in this triple-decker was evicted seven times before, now owed five months rent, and forced the owners to pay \$1,400 to move and store her furniture. Of course, she called the city health inspector about minor code violations - like the tub not draining. The inspector took the tenant's word for it and didn't check that the tenant had simply lifted the stop lever on the drain.

Code violations take toll on the soul

Hi. I'm a Code Saboteur.

—Submitted by ace reporter Jon Claflin, taped from his hidden mike at a recent Saboteurs Anonymous meeting (names have been changed to protect the guilty):

Meeting Leader: Who would like to share tonight?

Dan: I'll start. Hi, my name's Dan and I'm a Code Saboteur.

Gang: Hi, Dan!

Dan: It started one month when I'd had some trouble scraping rent together, I guess I'd been foolish with my money. Well, my brother suggested breaking a refrigerator tray and then calling the Health Inspector. I knew that it was wrong, but I... ah, I... ah... I'd never done anything like that before, so I was scared, but it was so easy! The Health Inspector came over, I showed him the broken refrigerator tray and I was hooked. Within a year, I had become so accustomed to my new rent-free environment that I was spending all of my money on whatever I wanted. I knew it was wrong, but I couldn't stop. I broke windows, sash cords, I pulled down light fixtures, removed door knobs, it was awful. Before I knew it, I was into the system

like a comfortable pair of shoes. All of my legal representation was free, so that's how I started to justify this whole mess. I would tell myself that I'd make it up later, but I knew deep down that I had no intention of stopping.

Meeting Leader: Is that when you joined Saboteurs Anonymous?

Dan: Hell, no! I was still in denial. I went on like this for about a year. Friends and family knew that I had a problem, but they didn't want to admit it either. It got so bad that I was removing smoke detectors and hiding them in my car, exposing wires and even scraping paint onto the floor. I'd hit rock bottom I guess. Finally what woke me up was reading the Small Property Owners NEWS. I picked it up and realized that I wasn't alone, others were out there doing the same thing. I was filled with shame. It was a vicious cycle of lying and cheating and I didn't know how to stop.

Meeting Leader: Boy! That newsletter's an eye opener!

Dan: Yeah, I thought no one knew about my scam until I read it. I knew then I'd have to get help.

Elderly black landlord

6 months of no rent, 2 months behind in mortgage, can't get a lawyer, afraid to rent, leaving third floor apartment empty

Vernon Taylor, 74 years old and hard of hearing, was a life-long tenant until three years ago when he bought a 3-family house in "just about the roughest section of Dorchester." A couple of blocks away is the crack house on Stanwood Street that recently had two drug-related murders.

By any standard he is poor. He lives on nothing but social security. He put just \$500 down to buy his house. So his equity is nil. He can't afford a \$200-an-hour private lawyer. And legal service lawyers, whose justification for existence is to "serve the unmet legal needs of the poor," refuse to represent him.

So Mr. Taylor has been trying himself – without success – to evict the only tenants he has in his house: a mother with two kids, a grandmother, plus an assortment of illegal tenants in the 3-bedroom apartment – boyfriend, sister, sister's children etc., etc.

When we met Mr. Taylor a month ago, his tenant owed him over \$5,000 in unpaid rent since last August. As a result, Mr. Taylor was two months behind in his mortgage payments.

When the tenant first moved in to Mr. Taylor's apartment, she had a Section 8 certificate. The Section 8 authorities paid \$841 a month. The tenant's share – 30% of her supposed \$27-a-month income – was \$9 a month.

The trouble began over a year ago when this very-low-income lady hired a private attorney to sue Mr. Taylor for a security deposit she never gave him. He won that suit. So his tenant decided to get even!

Despite the fact that the apartment had passed the strict Section 8 inspection when the tenant moved in, code violations began popping up in her apartment: broken door bell, loose door hinge screws, hanging light fixtures, missing ceiling tiles, defective electric outlets, defective stove – and mice and cockroaches surviving on the bags and bags of garbage and trash the tenant leaves in her apartment and on her back porch. Of course, she called in the city inspector and stopped paying rent.

And just as you would expect, the tenant would not let the landlord in to do the repairs – part of the usual tenant tactic to delay eviction. A contractor gave Mr. Taylor a letter proving that the tenant denied him access to repair. The letter got the inspector to pressure the tenant to stop denying access.

The repairs got done. But not soon enough for Section 8 authorities, who, citing his failure to repair, cut off their \$841 portion of the \$850 rent.

In addition to the complaints of code violations and no rent, the tenant started harassing Mr. Taylor, who lives below her in the first-floor apartment. Heavy banging noises that "shook the whole building" emanated from her apartment day and night. Late one night, the television was going at full volume. The tenant refused to answer the door for Mr. Taylor, who then called the police. The tenant still refused to answer the door. The police finally told Mr. Taylor to turn the electricity off and on again to switch off the television.

Fire department abuse

The harassment led further. One rainy evening, the tenant's kitchen ceiling started to leak. But the tenant didn't tell Mr. Taylor, who lived right downstairs. Instead, she called the fire

department. The firemen inspected the tenant's kitchen ceiling, then went upstairs to the unlocked back door of the vacant third-floor apartment. A leak is not a fire. And firemen are not roofing contractors. There was nothing they could do.

By this time, Mr. Taylor, alerted by sirens and fearing a fire, raced up the back stairs to the third-floor apartment. The firemen told a panicked Mr. Taylor there was no fire, but a leak in the second-floor kitchen.

Ready to leave, the firemen asked Mr. Taylor if he had a key to the front door. "You don't need a key. We're *inside*. Just let me get to the door," said Mr. Taylor. The firemen were standing between Mr. Taylor and the apartment's front door.

Ignoring him, one fireman rammed his crowbar behind the door's casing, ripped it off along with plaster, then rammed it again between the lock and the door jamb, busting the lock away with a huge splinter of jamb. The firemen left. Mr. Taylor was incredulous.

Fire department denial

On behalf of Mr. Taylor, SPOA complained to the fire department, which tracked down its records, denied Mr. Taylor's story, claimed the firemen were entering the third-floor apartment from outside the front door, and said the firemen had called Boston Edison to have the electricity shut off.

The physical damage is consistent with Mr. Taylor's account: inside exit, not outside entrance. Boston Edison maintains records of its calls and says none was made. And why such emergency-style response for a rain leak? Any possible hazard is solved by shutting off electric power in the basement, not by calling the electric company.

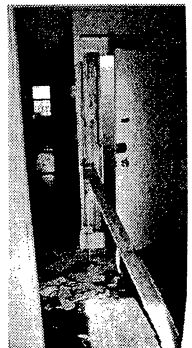
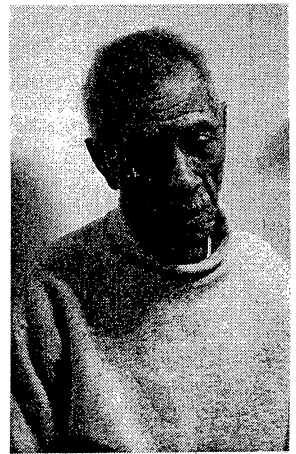
The firemen were all white. Is this a case where racism is added to prejudice against an elderly landlord?

Devastating settlement

Finally, SPOA referred Mr. Taylor to the Ecumenical Social Action Committee (ESAC) in Jamaica Plain (see related story), where a lay advocate went to court with him. The \$27-a-month tenant once again hired her own private attorney. They went to mediation.

The tenant wanted to stay at least three more months in the apartment and refused to pay more than \$100 a month – any more would disqualify her from another Section 8 rental subsidy. Paying back any of the \$5,000 rent owed was out of the question.

When the tenant said to the hard-of-hearing Mr. Taylor that he still had her \$850 security deposit, Mr. Taylor said "yes." He either couldn't hear or he forgot the prior court judgment that he did not have her security deposit. The ESAC advocate knew nothing about the prior litigation, so poor Mr. Taylor signed an agreement to actually *pay his tenant to live in his own apartment!* No wonder Mr. Taylor is afraid to rent to any more tenants.



Small Property Owners

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Tenants' legal tricks bankrupt this small owner

She cried days, she didn't sleep nights. Lucy Panian feared she would lose her two-family house in Waltham and everything she and her husband worked so hard for.

Two and a half years of hell

No rent + high repair bills = bankruptcy for small owners



"Don't call here," Lucy almost shouted into the phone. "We don't own that store any more. We lost everything. I'm not giving anything." And she hung up.

"Every day I get a call," she said.

We sat in Lucy Panian's immaculate kitchen on the second floor of their two-family house in Waltham. The apartment below was empty. Two months ago, the tenants who forced her and her husband into bankruptcy had finally moved out.

For two and a half years, those tenants were enemies in her own home, driving Lucy through endless days of worry and tears, though endless, sleepless nights.

The nightmare starts

Lucy and her husband have owned the house for 12 years. They had had a number of tenants. One family didn't pay for three months, but they survived. This would be different.

Lucy's fellow volunteer Pat from a Framingham help-the-poor agency came to her with tenants who needed housing urgently.

"But it's not ready yet," Lucy said. Paint equipment and her daughter's "stuff" were still in the apartment. It would be ready August 1, Lucy said. This was mid-July.

"But it's better than my in-laws' basement," the tenant said, and he asked to stay "for one night." Lucy agreed.

The next day, Lucy saw a truck out front and furniture being moved in.

"What's going on?" she asked. "The apartment's not ready." "Don't worry," said the tenant. "I'll finish the painting."

Lucy didn't like it and went to Pat. Pat got the Framingham agency to pay \$800 to Lucy for the tenants' last month's rent. After two weeks of free rent in July, the tenants paid just \$400 on August 1. They didn't pay the remaining \$400 for August until the end of the month. Pat wrote on a piece of paper a tenancy agreement calling for three months' probation, to see if the tenants could work out their financial problems. They all signed it.

The tenants did pay - for three months. During that time, the tenant-wife gave birth to their fourth child. Lucy gave her a present. And then, after the three months were over, Lucy saw the tenant in the supermarket and said "hello." The tenant stiffly turned a cold shoulder. Something had

continued on p. 5

A Crisis in Our Housing

INSIDE: Legalized abuse. Bankruptcy. Abandoned housing.

BOSTON COLLEGE LEGAL ASSISTANCE BUREAU
GREATER BOSTON LEGAL SERVICES
34 CRESCENT STREET • SUITE 202
WALTHAM, MASSACHUSETTS 02154
TEL (617) 893-4793

LEGAL NOTICE
NOTICE OF MORTGAGEE'S SALE OF
REAL ESTATE
By virtue and in execution of the Power of Sale contained
in a certain mortgage given by Seirag Panian and
Lillian Panian to Waltham Savings Bank, dated July 20,
1987 and recorded with the Middlesex County Clerk
(Book Registry of Deeds at Book 14437, Page 228, a
copy of which is on file in the office of the Registrar
of Deeds in Waltham Savings Bank is the present holder,
inasmuch as the mortgagee has defaulted in the pay-
ment of the mortgage, the same will be sold at Public Auc-
tion at 11:00 a.m. on July 1, 1997, on the premises
situated at 34 Crescent Street, Waltham, Massa-
chusetts, at and subject to the provisions of the
said mortgage.

Mr. and Mrs. Seirag Panian
Waltham, Ma 02154
Dear Mr. and Mrs. Panian:
I am a student attorney currently
through the Boston College Legal Assistance
Bureau. Mrs. Panian has expressed concern to me regarding the condition of the
apartment she rents from you.

**legal services letter
& foreclosure notice**

THE NEWS TRIBUNE EDITION • MONDAY, JUNE 9, 1997

Lucy's story *continued from p. 1*
changed.

From this point on, Lucy's tenants began a pattern of seldom paying the full rent, claiming deductions for things wrong with the apartment. They were using a loophole in Massachusetts law that allows tenants to block eviction by turning unpaid rent into "withheld rent" for supposed defects in their apartment. By the time these tenants are finally evicted, small owners can go bankrupt.

Their first deduction was for mice. In 16 years, Lucy had never had mice, and the tenants never told her directly. Instead, Lucy got a letter from the health department. There were mice, the letter said, and three other minor violations - one "a draft under the front door."

Lucy offered immediately to exterminate. The tenant objected. She didn't want poison. After some discussion, they agreed on a different extermination. It cost \$120. The day after the extermination, the tenant told Lucy she was not satisfied, and Lucy ordered a second round of extermination. Another \$110. Total cost to Lucy - \$230.

Next month's complaint was about the broiler on the stove. Lucy's daughter, who had just moved out of the apartment, had had no problem with it, but Lucy said she would call the repairman. Lucy paid an appliance company \$150 for the repair. Two days later, the stove was "not working again." So Lucy bought a new stove for \$400.

Lucy knew her tenants were having trouble paying the rent and finding excuses not to pay. So Lucy gave them an eviction notice in February 1996 for nonpayment of rent and to take the apartment back for her own son.

Soon Lucy received a letter from a "student attorney" at the Boston College Legal Assistance Bureau, part of Greater Boston Legal Services, saying that the tenants had informed Lucy about their stove's "deficiency" way back in July when they moved in. The letter warned Lucy that her tenants "had a right to withhold rent from you until repairs were complete." That's the loophole in the law that allows tenants to "find" defects in an apartment and never pay rent while the owners go bankrupt.

From this point forward, Lucy's tenants would have free legal advice from Boston College on how to play the "free rent" game under Massachusetts law. Eviction would always be called "retaliation" for her tenants' "just" complaints.

At first, Lucy's tenants said, "We're gonna move." But then they said they couldn't find an apartment. Lucy knew why. No one would rent to them. They had played these same tricks on other landlords. The Waltham Health Department told Lucy: "They have done this before. We know how she is. We don't want to see them any more. We want them out of Waltham."

The tenants stayed on, complaining and never paying the

full rent.
But Lucy was not vindictive. Seeing they now had a car, she wrote them a note saying: "There is a parking space for you for free. Please use it." Lucy kept a copy of the note. But the tenants would not use the parking space. They parked on the street. And then deducted another chunk of rent, complaining they had been denied an off-street parking space.

Four months later, Lucy gave her tenants another eviction notice. The tenants' response? Call in a lead inspection company. Lucy had de-leaded the apartment in 1987, to qualify for a section 8 tenant. The scrape marks on the door and window frames were obvious. But the inspection company noted that the scrape marks only went up to 4 feet 11 inches. The official requirement is 5 feet. What had happened? Wall-to-wall carpeting with a pad under it had lifted the floor level one inch.

Would Lucy have to re-delead her apartment over that one inch? The district attorney in the eviction trial said there was no lead violation. So the tenants called in an inspector from the state's lead agency. After looking at the apartment, the state inspector said to Lucy: "I understand. These are all excuses (to not pay the rent). But there is noth-

What Lucy's lawyer said:

"The tenants badly abused the system. They had a myriad of complaints. They figured, 'We don't have any money, we've got to make things up.' The lies were just beautiful to listen to."

"The biggest joke of the case was the eviction. The tenants were ordered to pay the rent, and they kept not doing it. The court would keep giving them another chance. Finally, the court ordered them to pay in three days. They did. Then they'd deduct it again unilaterally the following month and claim some phantom new violation."

"The free student attorneys for the tenants filed motion after motion regardless of merit or veracity, I guess to learn about litigation. That doesn't happen with regular attorneys."

ing we can do. We are with the state." Yes, Lucy would have to re-delead. It cost her \$3,200, plus \$500 for the inspection.

Lucy would also have to pay to house her tenants elsewhere during the hazardous de-leading. Lucy paid \$352.34 for two nights that her tenants spent at the Home Suites Inn in Waltham, including half a dozen phone calls. Then her tenants demanded to stay in the presidential suite at the Double Tree Guest Suite. That cost Lucy \$320.15 for one more night. Total cost: \$679.24, almost a whole month's rent. While Lucy wasn't getting any rent at all.

Lucy's tenants had not paid rent for seven months, and she was in serious financial trouble.

Talking in her kitchen about her bankruptcy, Lucy pulled out a white plastic bag full of envelopes neatly rubber-banded in stacks and papers stuffed in large envelopes.

"Everything was an excuse not to pay rent," Lucy said. And it didn't need to be a good excuse. Remember the parking space? The judge ruled that failure to provide a parking space was not a valid claim to rent reduction. There were many

continued on the next page

Another small owner going under

This single older woman was denied food stamps and fuel assistance. She was finally given food by a private charity – St. Vincent de Paul Food Pantry – which also paid her long distance phone bill and her fuel bill. As we go to press, this woman is facing foreclosure and homelessness because, with months of no rent from her tenant, she has not been able to pay her mortgage. The following are excerpts from a letter she sent to us.

From Bankrupt on Cape Cod:

Legal aid has empowered my non-rent-paying tenant to threaten me with arrest and fines in my effort to be paid my monthly rent.

My one and only agenda is to collect rent for property given. No where did I agree to have a total stranger manipulate my life, deny me my income, and reduce me to a street person.

I have no funds. Creditors and collection agencies call daily with threats and further harassment. I have to screen my calls. I go to my neighbors for essentials. My long distance service has been suspended, denying me my ability to generate income.

My well-kept cottage is my only income producing asset. My credit is destroyed.

I've sent baked goods to this tenant. I've made holiday wreaths to give to my tenant that I was selling to buy holiday gifts.

I have been forced to put my home, my children's legacy, up for sale as I now am in default, unable to meet my monthly expenses.

Has anyone addressed the archaic law that lets this hap-

**“This tenant rights law
needs serious re-vamping
... in this lifetime.”**

pen? Everyone I've approached agrees the law is outrageous. Tenants can always run to legal aid to arm them with enough ammunition to gain control of the landlord's property. YUP, that's the way the system works, folks.

The state allows tenants to rule and intimidate landlords who have given them lovely, clean and safe surroundings to live in, while the landlord goes belly up and cannot even get food stamps because that agency declares “the property is an asset” while legal aid and the courts deny the landlord the very income needed to survive, as in my particular case.

For four months I have been following the doctrine of sacrifice and suffering. Guess I missed the clause in the lease where it dictates that in the case of a tenant blatantly responsible for cruel and abusive treatment toward a landlord, that tenant

shall prevail and reign supreme.

There is something radically wrong with this “INJUSTICE SYSTEM” running rampant. What ‘educated’ group proposed this bizarre law that forces property owners to be threatened with utility shut-off, along with other unbelievable issues directly resulting from not being paid income to have the basic necessities of life?!

How long am I supposed to endure this cruelty and abuse? I've become physically and emotionally distraught and totally debt-ridden, help is non-existent. I am formerly a peaceful, life-loving individual, now embittered, totally frustrated and about to snap. Thanks to this state, I now qualify for a [welfare] benefit to restore my life to the standard that I worked 40 years to achieve.

Lucy's story continued from previous page

invalid claims. But it was too late for Lucy.

Lucy lost \$4,000 in unpaid rent. And was forced to spend \$5,230 on repairs. This added up to a net loss of \$10,000 for Lucy. At the very same time that they were not paying rent, Lucy's tenants forced her to spend heavily. The lethal combination of unpaid rent and expensive repairs sank her and her husband.

Lucy and her husband had barely enough money for food and fuel, and not enough for her mortgage. Nevertheless, Lucy was shocked when one day, without warning, a foreclosure and auction notice on her home appeared in the local newspaper.

Suddenly, Lucy realized she could become homeless. She cried constantly, thinking “I know we are going to lose everything.” She could not sleep. When people called, she would tell them desperately: “Don't call, don't ask, don't talk to me, change the subject, I'm going through hell, I'm waiting for the justice to come.”

“**There is no justice,**” a law professor had told their son, who gave up his goal of being a lawyer after his parents' experience.

Lucy and her husband had to cut their spending to the bone. “Some days I didn't have food on my table,” she explained, “and my tenants were bringing free food home from the Salvation Army. With food stamps, they were buying ice cream and chocolate. I just could barely get basic food. There were days when there wasn't a penny in my purse.”

Lucy got fuel assistance for one year, but was turned down for food stamps, because “the house was an asset.” (An asset? With nonpaying and demanding tenants?) When the bank attorney came to look at the house for foreclosure, he told Lucy: “I know it's very bad. I've been a landlord, too. Why don't you file for a Chapter 13 bankruptcy? That's the only thing you can do now.”

Lucy now had to get an attorney. “I was calling many attorneys from the Yellow Pages, and they all wanted money.” Finally, an attorney came along who didn't ask for money up front. He put his bill into the bankruptcy claim, which meant he might not get paid at all. “It's like God sent an angel to me,” Lucy said.

So Lucy and her husband filed for bankruptcy. They had to sell his jewelry store to save their home. But it was devastating. They lost their principal source of income. Lucy's

continued on p. 8

Lucy's story continued from p. 6

husband had to commute to New Hampshire or New Bedford daily, now as an employee. That lasted for less than a year. He got laid off this past January and has been searching for work ever since. At age 55, he is in one of the most difficult positions to find work or start a new career.

Lucy had gone bankrupt - and still no rent. By December 1997, after two and a half years of continuous problems, the tenants were \$3,971 behind in their rent. After yet

another eviction notice, a judge finally ordered them to leave on December 31.

On December 31, Lucy waited painfully for her tenants from hell to leave. Finally, at 2:30 a.m. on January 8, 1998, Lucy's son saw two little children and their father carrying things out of the house, not in boxes but one by one, to a van.

But Lucy was afraid to enter the apartment. She waited another week. And then her bankruptcy attorney called the Boston College Legal Assistance program and asked them to allow the owner to open the door. Their attorney finally called them back and said: "Go in, the keys are on the counter."

The tenants still owe Lucy \$3,971. But Lucy will never get that money. The tenants cannot be found. The car plate is the same, but it's registered under a different name. They left no forwarding address and pick up their mail at the post office instead. The Boston College Legal Assistance Bureau does know where they live, but won't tell Lucy.

Owner Test ANSWERS

1: c. 2: d. 3: c. 4: a. 5: d, all of the above. Even if the owner does all these things, they may not sufficiently prove that the tenant refused or failed to cooperate. The tenant may claim the times were not reasonable, or that he or she was available at other times and the owner did not cooperate.

6: e, any of the above. The re-draft is not clear on where the escrow account is to be opened, whose money goes into it, or how a judge and a tenant will get the needed information to order the rent deposited into the account.

YOUR SCORE:

A perfect score: Congratulations! You qualify for rent escrowing by a nonpaying tenant. (By the way, are you the legal services lawyer who redrafted our rent escrowing bill?)

One wrong answer: Very good, but sorry, you would not qualify for rent escrowing. (Are you a lawyer, too? Because only lawyers can follow this complicated scheme.)

Two to four wrong answers: Not bad. Of course, you still don't get rent escrowing, but you are beginning to catch on about how the law works with landlords. After thousands of dollars of legal and tenant-induced expenses, you might just be able to save your property.

Five or more wrong answers: Don't feel bad. Just about all of us scored here. Let's face it, this redrafted rent escrowing bill is no help to us at all.

SPOA Hotline & FAX
617-354-5533
Visit us
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SPOA P.O. Box 398115, Cambridge, Massachusetts 02139

The voice of
small property owners

Families that own & maintain
60% of the rental housing market

In this issue:

Tenants' legal tricks
bankrupt a small owner

Editor: Skip Schloming Contributing Editor: Lenore Schloming
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No. of rental units owned or managed:

Dues: \$35 a year. Paid lately?

TO BECOME A MEMBER: Fill in the information above and return with \$35. TO RENEW YOUR MEMBERSHIP: Please update your address label above and return with \$35. Every donation of \$35 or more updates your membership for a year. The date on the label above is your LAST payment on our records. More than one year ago? Time to renew!

Small Property Owners ASSOCIATION

SPOA

P.O. Box 398115, Cambridge, MA 02139 617-354-2358

President

Lenore Schloming

20 May 1999

Vice-President

Dawna Provost-Carrette

TO: Cambridge City Council

FROM: Skip Schloming

Treasurer

Laura Bologna

RE: Council's opposition to mandatory rent escrowing

Clerk

Edward Rudnitsky

The Cambridge City Council listened to only one side of the story when it voted to oppose mandatory rent escrowing.

Board of Directors

Jesse Hsu
Linda Levine
Antiopi Perlegas
David Sullivan
David Trumbull

Isn't there something ironic that the affluent (and supposedly progressive) city of Cambridge opposes mandatory rent escrowing, while poorer cities in the Commonwealth and poorer neighborhoods in Boston and the U.S. Supreme Court all support it – ???

Newsletter Editor

Skip Schloming

Attached are pages from our newsletter over the past year showing real-life cases and why mandatory rent escrowing is necessary to stop a devastating abuse of housing and owners – and why it is a fair and reasonable way to improve cooperation between landlords and tenants.

Website

www.spoa.com

Without rent escrowing, owners are subjected to prolonged periods of no rent, while tenants are encouraged by free legal services lawyers to obstruct repairs, even damage their apartments, to prolong their rent-free stay. It is fraud and theft and vandalism.

Annual Membership

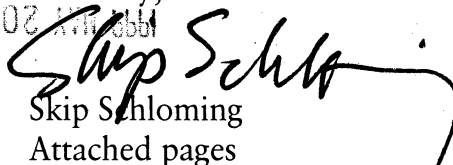
\$35 dues
Additional donations are always needed.

CASLS lawyer Ellen Schacter admitted that mandatory rent escrowing "will prevent me from representing 90 percent of the people I represent." Her statement indicates how commonly tenants report code violations when in fact they are not paying their rent and cannot set it aside. If they could set it aside, what's the problem with escrowing? And if they don't have the rent money, why are they suddenly reporting code violations?

The morality of Ellen Schacter's position is bankrupt. And as housing policy, it fails. The only other defense of rent withholding without escrowing is that it is a tool for activist groups like the Eviction Free Zone to create prolonged rent strikes and force owners to sell cheap to non-profits – as happened on Norfolk Street and is happening now on Bigelow Street. The morality of this approach is also bankrupt.

The rest of the Commonwealth is finally seeing that it is time to end the era in which the state's housing policy has been dominated by a few high-rent districts around Boston.

Sincerely,


Skip Schloming
Attached pages

Consent Communication #9

397-5

A communication was received from Skip Schloming, Small Property Owners Association, regarding the City Council's opposition to mandatory rent escrowing.

In City Council May 24, 1999

PLACED ON FILE