

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
BUSINESS LITIGATION SESSION

MICHAEL GEMELLI, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

PEABODY PROPERTIES, INC. and
LINWOOD MILL, LLC,

Defendants.

C.A. No:

14-3322



CLASS ACTION COMPLAINT

I. INTRODUCTION

1. Plaintiff, Michael Gemelli (“Plaintiff”), by and through undersigned counsel of record, on behalf of himself and all others similarly situated, submits the following Class Action Complaint against Peabody Properties, Inc. and Linwood Mill, LLC (collectively “Defendants”), and based upon personal knowledge as to his own acts and circumstances and based upon information and belief as to all other matters, alleges as follows.

2. Plaintiff brings this class action to recover amounts paid by tenants towards so-called “Tenant Bonds,” which were payments that took the form of a security deposit that were paid to secure payment of unpaid rent and/or property damage to the residential apartments rented from the Defendants.

3. These payments fail, in numerous respects, to comply with the Security Deposit Statute and constitute unfair and deceptive business practices.

II. PARTIES

4. Plaintiff Michael Gemelli is an individual who resides in Rutland, Massachusetts.

5. Defendant, Peabody Properties, Inc. is a Massachusetts corporation, with its principal place of business at 536 Granite Street, Braintree Massachusetts.

6. Defendant Linwood Mill, LLC is a Massachusetts Limited Liability Company with its principal place of business at 1167-7 Providence Road, Whitinsville, Massachusetts.

7. Defendants were the lessors of residential real property to the Plaintiff.

III. JURISDICTION AND VENUE

8. This court has jurisdiction over this action pursuant to G. L. c. 212, §§ 3 and 4.

9. Venue is proper in the Business Litigation Session (“BLS”), pursuant to Superior Court Administration Directive No. 09-1, because this case is brought as a class action which will need substantial case management.

IV. FACTS

10. On or about October 1, 2012, the Plaintiff, together with his fiancée Emily Kurjan, entered into a yearlong lease with Defendants for an apartment located at 670 Linwood Avenue, Unit 208, Whitinsville, Massachusetts (the “Premises”).

11. The term rent to be paid by the Plaintiff was \$12,408.00 or \$1,128.00 per month, with one month of free rent.

12. Prior to the inception of the tenancy, Defendants required that the Plaintiff purchase a so-called “Tenant Bond” with a company called SureDeposit.

13. In exchange for the payment of a non-refundable premium in the amount of \$175.00, this bond indemnified Plaintiff in the amount of \$1,000.00 and named “Peabody Properties” as payee in the event of a claim for “physical damage to the apartment (beyond normal wear and tear) or any [other] obligations under the lease agreement that are not paid, such as past due rent, unpaid rent, or fees.” *See* TENANT BOND ENROLLMENT & BOND

ACKNOWLEDGMENT, attached herewith as “Exhibit A.”

14. In the event of a claim, SureDeposit would pay Defendants an amount up to the Bond Coverage Amount, and then turn to the tenant – in this case the Plaintiff – to collect the amounts paid to Defendants.

15. The “Tenant Bond” took the form of a security deposit.

16. The name of the company – “SureDeposit” – indicates that this takes the form of a security deposit.

17. SureDeposit’s website touts its product as “a better alternative to security deposits.”¹

18. Although the intended purpose of the “Tenant Bond” was to provide financial security to the Defendants for unpaid rent and/or damage, it failed to comply with the Massachusetts Security Deposit Statute in numerous respects.

19. The funds paid by the Plaintiff were not held in an interest-bearing account for the benefit of the Plaintiff.

20. The funds paid by the Plaintiff were not refundable to the Plaintiff at the end of the tenancy.

21. The funds paid by the Plaintiff did not accrue interest.

22. The funds paid by the Plaintiff were not deposited into a Massachusetts bank.

23. The Plaintiff was not provided with the proper statement of conditions or the ability to contest damage or financial assessments made against his account.

24. The Plaintiff was not provided with any statement of account, receipts, or annual interest statement as required by law.

25. The funds paid by the Plaintiff were not used as first month’s rent.

¹ <https://www.suredeposit.com/Public/default.aspx>

26. The funds paid by the Plaintiff were not designated as last month's rent.
27. The funds paid by the Plaintiff were not used to purchase and install a key and lock.

V. CLASS ALLEGATIONS

28. The conduct complained of herein – namely, the purchase of a “Tenant Bond” as a condition of moving into a residential unit owned by the Defendants – affected numerous other Massachusetts consumers.

29. Accordingly, Plaintiff brings this action on behalf of a class of all other person similarly situated, pursuant to MASS. R. CIV. P. 23.

30. The Class consists of any tenant who purchased a “Tenant Bond” as a condition of moving into any residential real property owned by the Defendants (the “Class”).

31. The Class also consists of a Sub-Class of those who had claims made by Defendants filed against their “Tenant Bond” (the “Sub-Class”).

32. There are questions of law and fact common to the Class, of which common issues predominate over any issues peculiar to individual class members. The principal common questions include:

- a) whether the “Tenant Bond” required by the defendants violates the Security Deposit Statute, G. L. c. 186, § 15B;
- b) whether Defendants’ actions constitute violations of G .L. c. 93A;
- c) whether Defendants’ actions are unfair and deceptive in violation of G. L. c. 93A;
- d) the appropriate amount of damages and other relief to be granted to Plaintiff and Members of the Class and Sub-Class; and
- e) whether the Defendants’ actions were willful and knowing violations of G. L. c. 93A.

33. The only individual questions concern the identification of Class Members and the computation of relief to be afforded each Class Member, and can be determined by a ministerial examination of the relevant files.

34. Notice can be provided to the class by various means of communication.

35. Plaintiff's claims are typical of the claims of Class Members. All are based on the same legal and remedial theories.

36. Plaintiff will fairly and adequately protect the interests of all Class Members in the prosecution of this action and in the administration of all matters relating to claims stated herein. Plaintiff is similarly situated with, and has suffered similar injuries as, the Class Members he seeks to represent. Plaintiff has retained counsel experienced in handling Class Action lawsuits involving unfair business practices and the Security Deposit Statute. Neither the named Plaintiff nor his counsel has any interest that might cause them not to vigorously pursue this action.

37. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, in that:

- a) the losses suffered by the Class Members are such that prosecution of individual actions is impractical or economically unfeasible;
- b) by contrast, the illegal profits obtained by Defendants as a result of the unlawful practices are substantial;
- c) the forms of proof required are such that prosecution of individual actions is impractical or economically unfeasible;
- d) in the absence of the class action device, Plaintiff and Class Members would be left without an adequate remedy for the wrongful acts alleged as individual damages are minimal;
- e) the prosecution of separate lawsuits by individual Class Members could create the risk of inconsistent adjudications with respect to individual Class Members, which would establish incompatible standards of conduct

for Defendants, making concentration of the litigation concerning this matter in this Court desirable;

- f) the claims of the representative Plaintiff are typical of the claims of the Class; and
- g) no unusual difficulties are likely to be encountered in the management of this action as a class action.

38. The Class is so numerous as to make it impracticable to join all members of the Class as Plaintiffs. Based upon the investigation of counsel, more than one hundred persons are in the Class.

VI. CAUSES OF ACTION

COUNT ONE **VIOLATIONS OF THE MASSACHUSETTS SECURITY DEPOSIT STATUTE** **G. L. c. 186, § 15B**

39. Plaintiff adopts and realleges the previous paragraphs as if fully restated herein.

40. The payments for a “Tenant Bond” violate the express and unambiguous terms of the Massachusetts Security Deposit Statute by, among other reasons: (a) the funds were not held in an interest-bearing account for the benefit of the Plaintiff; (b) the funds were not refundable to the Plaintiff at the end of the tenancy; (c) the funds did not accrue interest; (d) the funds were not deposited into a Massachusetts bank; (e) the Plaintiff was not provided with the proper statement of conditions; (f) the Plaintiff was not given the ability to contest damage or financial assessments made against his account; (g) the Plaintiff was not provided with any statement of account, receipts, or annual interest statement; and (h) the funds were not designated as first month’s rent, last month’s rent, or used to purchase and install a key and lock.

41. By virtue of the violations stated herein, Defendants have forfeited the right to retain any portion of these funds, including those funds received by virtue of filing claims against the “Tenant Bond” of members of the Sub-Class.

42. The Plaintiff and Members of the Class and Sub-Class have incurred financial damage as a result of the violations of the Security Deposit Statute as set forth herein.

43. Accordingly, the Plaintiff and Members of the Class and Sub-Class are entitled to treble damages, attorneys' fees and costs.

COUNT TWO
VIOLATIONS OF THE MASSACHUSETTS CONSUMER PROTECTION ACT
G. L. c. 93A, §§ 1, *et seq.*

44. Plaintiff adopts and realleges the previous paragraphs as if fully restated herein.

45. The above-enumerated acts and practices, including the violations of the Security Deposit Statute set forth above, constitute per se violations of the Massachusetts Consumer Protection Act.

46. The Defendants' blatant attempt to circumvent the Security Deposit Statute is unfair and deceptive conduct prohibited by the Consumer Protection Act.

47. The Defendants misrepresented the purpose of the fees paid as a "Tenant Bond," used this as a marketing tool, and concealed that these bonds were purposefully aimed at providing security to the Defendants while circumventing the Security Deposit Statute.

48. As a result of the unfair and deceptive conduct set forth herein, Plaintiff and Members of the Class and Sub-Class have been damaged in an amount to be determined at trial.

49. Defendants performed the actions described herein willfully and knowingly within the meaning of G. L. c. 93A, § 9.

50. On September 8, 2014, the Plaintiff served a demand letter upon both Defendants in accordance with G. L. c. 93A, § 9.

51. By letter dated October 6, 2014, the Defendants responded and failed to tender a reasonable offer of settlement to the Plaintiff and the Class.

COUNT THREE
INJUNCTIVE RELIEF

52. Plaintiff adopts and realleges the previous paragraphs as if fully restated herein.

53. Plaintiff seeks injunctive relief compelling Defendants to cease and desist from its unfair and deceptive conduct in violation of the Security Deposit Statute, as alleged herein.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this honorable Court:

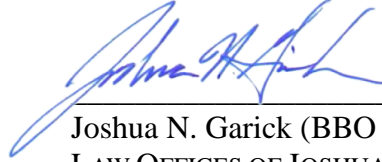
- A. an Order certifying the Class and Sub-Class as requested herein;
- B. damages, in the amount to be proven at trial;
- C. treble and other punitive damages;
- D. costs of this action;
- E. attorneys' fees and expenses;
- F. an Order enjoining Defendant from continuing to engage in the unlawful conduct alleged herein; and
- G. any other relief this Court deems just and proper.

VIII. JURY DEMAND

Plaintiff Michael Gemelli demands a trial by jury on all claims so triable.

[SIGNATURE PAGE TO FOLLOW]

Respectfully Submitted,



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Counsel for Plaintiff and the Class

Dated: October 23, 2014