



JUNE 2008 NEWSLETTER

CAPITAL AREA HOUSING ASSOCIATION

“LANDLORDS WORKING TOGETHER”

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PRESIDENT'S MESSAGE

As I write this, the sun is shining brightly, but it's a bit cool outside.

I'm sure most of you have been following the rising price of crude-oil on the news with increasing dismay. There was a sliver of good news this morning – the price was down about \$6 per barrel – nice, but it's still much too high.

As you read this, it's close to the time of the oil committee report to the membership [Tuesday, June 10, 7:00 at the Credit Union]. The oil committee has worked in an incredibly difficult environment this year. We owe them a huge debt of gratitude for their work – and thanks to all of you who took the time to fill out and return the questionnaire. It really helps the committee to know what the interests of the membership are as they evaluate the offers.

Going by past experience, I suspect that the oil 'offer' will include an option to pre-buy at a set price, as well as a New York Port price + \$ 0.???. The dilemma you will face is choosing from the various options presented. As someone who was 'locked in' for '06 – '07, when prices went down, and NYP + for '07 – '08, when prices went up [Ouch!], I'm certainly NOT the person to look to for advice on what to do. All I can say is: "Keep your fingers crossed as you make your selection."

The board will be doing all it can to provide notification to our membership of the identity of our selected supplier, as well as the details of the offer, as soon as possible after the June 10th meeting. The selected supplier will provide details of the offer[s], and we will provide a cover-letter with additional information. Those of you who have [provided] e-addresses will be able to get the information quite quickly, but those who rely on regular mail will need to be patient – it takes AT LEAST a week, and sometimes two, to get a mailing printed and delivered. Rest assured that we will do all we can to get that information to you as soon as possible, and that the 'lock in' deadline will be late enough for you to sign up after you have received the letter.

The new month, June, also marks a change in the CAHA Executive. Louise



Harold Booth
President

PRESIDENT'S MESSAGE, continued on next page

UPCOMING MEETING:

JUNE 10, 2008 ~ 7:00 P.M.
K.V. FEDERAL CREDIT UNION
REPORT OF OIL-COMMITTEE ACTIVITY
DISCUSSION OF BY-LAWS REVISIONS

NEXT MEETING:

OFF FOR THE SUMMER!
WATCH YOUR MAIL FOR
INFORMATION ABOUT CAHA'S
CHOSEN OIL SUPPLIER!

ASK THE LAWYER

- Q.** May a landlord impose a “fuel/oil surcharge” during an ongoing tenancy?
- A.** This month’s question is posed by our CAHA President and a prior Board member.

Legally, a fuel surcharge can be structured into a tenancy agreement, although it would require careful drafting, and would be difficult to administer. In many cases, there may be alternatives, such as by modifying the type and length of the tenancy agreement, or to make structural modifications to the building with the result that the tenant pays for their own heat.

Until recently, most written leases ran for a one year term, and the rent price was locked in for the duration of the tenancy. Recently I have seen a trend toward shorter leases, sometimes structured as a one month lease which then converts to a tenancy at will which carries over most conditions and covenants of the lease throughout the remainder of the tenancy at will. I have also seen short-term leases of one or two months at a time, which automatically renew for successive similarly short terms, subject to the right to terminate or increase rent with specific notice before the end of the current term.

In either event, a short-term lease or tenancy at will provides more flexibility in adjusting rents than a standard lease of one year or longer. However, a tenancy at will or short term lease can promote high turnover which also results in significant costs of time and money to the landlord in refurbishing their units, advertising and lost rent for a vacant apartment between tenancies. Furthermore, using a short-term hybrid lease which attempts to straddle the line between a lease and a tenancy at will can be problematic, for instance, in determining whether the eviction process must strictly follow the statutory procedure for tenancies at will, or whether leasehold provisions at variance with that procedure apply.

Title 14 §6015 provides that rent for residential tenancies may be increased only after providing a minimum of 45 days written notice, and a tenant may not legally waive that requirement, even in writing. Furthermore, a landlord who fails to provide at least 45 days notice of any rent increase is liable to the tenant for the return of any extra rent unlawfully obtained, with interest, along with reasonable attorney’s fees and costs if the issue is decided in favor of the tenant by the Court.

I see nothing in the law that limits application of §6015 to tenancies at will. In other words, with appropriate language, even a

lease of one year or longer can provide for increases in rent during the tenancy, so long as it becomes effective only after providing at least 45 days written notice in advance, or where rent increases are specifically scheduled or indexed in the lease at the outset.

Such a lease provision would be less attractive to a tenant who has to structure their budget around their unknown rent exposure as a foundation. However, the same holds true for the landlord that is faced with the uncertain costs of next winter’s oil bills as they enter into a new lease obligation in the warm months of spring. I

would not be surprised to see lease provisions modified to allow unscheduled rent increases during the leasehold term with at least 45 days written advance notice, although the sting of that uncertainty could be tempered by “caps” or “limits” similar to the manner in which banks administer adjustable rate loans. For example, leasehold terms could provide that the rent could not be increased by more than 5% on each occasion, and not more than twice during the course of the tenancy, up to a limit of 10% of the original rental rate.

A more exotic lease would be technically possible, but difficult to administer. One option is to float rent within stated minimum or maximum limits in accord with a known index such as the published New York Port Price on the first of the month. Rent due for the following month would increase or decrease by a stated amount; for example, each five cent per gallon change in the price of #2 heating fuel would translate to a \$1.00 per month increase or decrease within the high/low rent limits.

Another option could establish rent which is structured to be entirely separate from an additional monthly charge towards heat and hot water which is likewise indexed to float with the market price. In this structure the tenant would actually be responsible for paying the cost of their own heat, above and beyond rent, and the monthly heating charge would also float up and down according to the index. However, either approach would be enormously complex to track and would require continual notices to tenants of what their overall cost would be the following month. Furthermore, with ambiguous or poor leasehold language, the landlord could still be subject to legal argument that it is a rent increase in violation of §6015.

Regardless of the approach undertaken, there is a huge economic value to the landlord, and to society at large, to make the tenant a partner with a vested interest in contributing directly toward the cost of heat and other utilities. How many times have each of us seen tenants leave a window open to provide fresh air for the cat, refuse to close a storm door or common entry-way door



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ASK THE LAWYER, continued on next page

PRESIDENT’S MESSAGE, continued from front

Hinkley, our faithful secretary has/will retire[d] from the State and wants to take advantage of the new freedom that being retired offers. To enhance that freedom, she has also resigned from her position as CAHA secretary. Very luckily for CAHA, she was able to find a person, Barbara Eckhardt, to take her place as secretary. I want to take this opportunity to thank Louise for her excellent service to CAHA. It has been a pleasure working with her. I also want to welcome Barbara. I look

forward to working with her. CAHA is indeed fortunate to have people from our membership who are willing to provide the service necessary to maintain the organization.

Summer marks a time when we take a break from the regular [second Tuesday] meetings, but your board continues to meet regularly to take care of the business of our organization.

Take care . . .
Hal Booth

Hal Booth

**Minutes of Board Meeting
Capital Area Housing Association (CAHA)
Held at Lucky Garden Restaurant, Hallowell
April 22, 2008**

President Booth called the meeting to order at 5:40 pm, with the following present:

**Treasurer & Board member, Ratna Don
Secretary, Louise Hinkley
Board member, Ramona Venskus
Board member, Herbert Mann
Board member, Stefanie Barley**

The status of getting various bank account signatures changed was discussed. Hal has signed a new card at KVFCU, and Ratna and Ramona need to go sign the card. Ratna will check on accounts at Kennebec Savings and Gardiner Savings to see what the process is. Harold will check with Edward Jones about signatories on the bond.

Ramona has one new ad for the newsletter, and the vendor would like to pay for the website link. Ratna can get Emodesign to do this, but since we have no others with links at this point, we'll leave this on hold for now. After some discussion, Stefanie moved, Ramona seconded, to set the policy, beginning in 2009, that only one oil supplier will be included in the ads. Motion approved, with two abstentions.

The Oil Committee had not yet put together a questionnaire for members. The timing is late, but we might be able to include it with the next newsletter. There's an extra week this month before the regular meeting, but newsletter information should go to Cory this week. Stefanie is all set about proofing the newsletter.

Harold announced that he had sent an e-mail to Sid M. of SJS Properties in NY, explaining that we need to have a proxy from him, designating his representative to CAHA. He had not heard back.

Ratna asked that Board members let him know if changes need to be made to the website, and he will gather items and submit them in a batch, since Emodesign charges \$30 an hour for working on the website. Ratna provided a copy on disc of the CAHA database to Harold.

Louise announced that Barbara Eckhardt is willing to take over as Secretary. She needs to be invited to the next Board meeting, and officially appointed by the Board.

The agenda for the May meeting will be the second vote on Bylaws amendments, and updated report from the Oil Committee.

Meeting adjourned at 6:35 pm.

Respectfully submitted, Louise Hinkley, Secretary

**Minutes of Regular Meeting
Capital Area Housing Association (CAHA)
Held at KV Federal Credit Union Parking Lot
May 13, 2008**

Vice President Tim Dennett opened the meeting at 7:10 pm, in the Parking Lot at KVFCU, as the building was locked and no key available. It was established that a quorum was present. Stefanie Barley moved, Jean Guy Paquet seconded, to approve the minutes of the April 8th meeting as printed in the newsletter. Motion approved. Ratna distributed copies of the Treasurer's report, which showed income and expenses from April 8th through May 12th, indicating a total balance of \$34,412.78 (\$12,458.72 in CD). There are currently 502 CAHA members. Louise Hinkley moved, Stefanie Barley seconded, to accept the Treasurer's report as distributed. Motion passed.

Jean Guy Paquet moved, Herb Mann seconded, to approve the bylaws with proposed amendments. After brief discussion, the motion was approved.

Tim Dennett, along with members Mark Williams, Jean Guy Paquet and Barbara Eckhardt, reported on the activities of the Oil Committee. They have or will meet with representatives of the major oil dealers in the area. The questionnaire went to members, and the Committee will be reviewing responses. There was discussion about various issues, including use of NY Port price as well as lock-in, pre-buy, automatic delivery, and service packages. The Committee hopes to have a recommendation to present at the next Board meeting on May 27th, and then present for a vote to the membership at the June 10th meeting.

There was some discussion and advice concerning the eviction process, in response to a member problem.

Sign in sheet indicated 11 members attending, with 61 units, and 9 vacancies. Tim Dennett won the \$25 door prize.

Meeting adjourned at 7:45 pm.

Respectfully submitted, Louise Hinkley, Secretary

ASK THE LAWYER, *continued from front*

that serves as a buffer, or turn down the heat at nighttime or if gone during the day (for those that control their own thermostat). The imposition of heating costs directly upon the tenant, in whole or in part, gives them a direct interest and role in the effort to reduce waste and increase efficiency where the tenant has full knowledge that use of these resources will directly impact their personal budget.

In England and other relatively mild European countries, many rented "flats" or apartments are equipped with coin operated electric heaters where the tenant pays for heat as they go, one or more Euros at a time. No coins, no heat.

This is not likely to be an approach that can be transferred to our lengthier, frigid heating season, although some landlords are relying upon super insulated apartments with electric heat paid by the tenant. For the most part, electric heat still remains an unrealistic costly option, although that could change if the price of fuel oil were to double from today's already exorbitant prices.

Some landlords are installing small furnaces or heaters in each unit where

fuel costs are entirely the responsibility of the tenant. Moreover, in many cases where domestic hot water is provided from a single central furnace, landlords are installing separate water heaters for each unit, typically electric or propane, which the tenant pays for directly. For those buildings with an old "side-arm" domestic hot water heater, the primary furnace for the building can then be shut down entirely at the end of the heating season.

In conclusion, the imposition of a fuel surcharge is possible, but will require exceptionally careful drafting so as not to constitute an unlawful increase of rent in violation of §6015, and the landlord would have to constantly monitor prices and send monthly notices to each tenant. In new construction, and wherever possible in retrofitting older buildings, the best long-term solution is to shift the fuel cost directly to the tenant to make them a partner in their use and conservation of energy and to eliminate the uncertainty of fuel prices from the landlord's equation in setting their rent prices.



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