

DOUGLAS SCHAFFER, on behalf of himself and all others similarly situated, Plaintiff,	)
v.	)
GRAFTON ACQUISITIONS, LLC, GRAFTON MANAGEMENT, LLC, and GRAFTON MT, LLC	)
Defendants.	)

AMENDED CLASS ACTION COMPLAINT

Plaintiff Douglas Schaffer (“Plaintiff”), on behalf of himself and all others similarly situated, submits the following Amended Class Action Complaint against Defendants Grafton Acquisitions, LLC, Grafton Management, LLC, and Grafton MT, LLC (together, “Grafton”).

I. SUMMARY OF THE CASE

1. Plaintiff brings this action in order to stop Grafton’s unlawful practices of mishandling and failing to properly withhold and/or promptly return residential tenants’ security deposits in violation of G.L. c. 186, § 15B (the “Security Deposit Law”); of charging unlawful application and convenience fees in violation of the Security Deposit Law; of improperly billing tenants for electricity without separate meters in violation of G.L. c. 186, § 14 (the “Utilities Law”); of violating the Massachusetts State Sanitary Code (“Sanitary Code”) and G.L. c. 186, § 14 in failing to clean common bathrooms; and

of violating Massachusetts General Laws Chapter 93A (“Chapter 93A”). Grafton does not provide the required receipts and documentation showing that tenants’ security deposits are placed into escrow; either fails to return tenants’ security deposit, does so after the required thirty-day deadline imposed by the Security Deposit Law, or improperly withholds some or all of the deposits; charges a \$50 application fee and convenience fees that are not permitted under the Security Deposit Law; bills tenants estimates of their electricity usage, rather than by separate, dedicated meters as required by the Sanitary Code and the Utilities Law; and fails to clean common area bathrooms as required by the Sanitary Code and G.L. c. 186, § 14.

2. Plaintiff brings this action as a class action on behalf of himself and a class comprised of all current and former tenants at any buildings owned or managed by Grafton in Massachusetts. The class may be divided into sub-classes of those who a) paid a security deposit; b) paid an application or convenience fee; c) lived in a multi bedroom unit and paid for electricity; and d) lived in a multi bedroom unit whose common bathroom Grafton did not clean.

II. THE PARTIES

3. Plaintiff is an individual who was a tenant at Edge at Union Station (“Edge”), located at 8 Grafton Street, in Worcester, Massachusetts Edge between April 7, 2017, and June 29, 2017 and currently resides in Ohio.

4. Grafton Acquisitions, LLC (“GA”) is a Pennsylvania company with its principal place of business at 401 East Elm St., Suite 150, Conshohocken, PA 19428. GA owns Edge.

5. Grafton MT, LLC (“MT”) is the managing agent for Edge, and a Massachusetts company with its principal place of business at 8 Grafton Street, Worcester, Massachusetts, 01604.

6. Grafton Management, LLC (“GM”) is the manager of MT and a Massachusetts company with its principal place of business at 8 Grafton Street, Worcester, Massachusetts, 01604.

III. JURISDICTION AND VENUE

7. This Court has personal jurisdiction over all defendants because they transact business in Massachusetts by leasing and managing residential rental units in Massachusetts, and because the acts or conduct that are the subject matter of this action arose from Grafton’s transaction of business in Massachusetts.

8. Venue is proper in this Court because the acts or conduct that are the subject matter of this action took place in Worcester County, because Edge is located in Worcester County, and because both MT and GM are located in Worcester County.

IV. FACTUAL ALLEGATIONS

Security Deposit Law

9. Massachusetts law allows landlords to collect only 4 types of payment at the commencement of the rental term – first month’s rent, last month’s rent, lock installation and key costs, and “a security deposit ... provided that such security deposit is deposited as required by [the law], and the tenant is given the statement of condition as required by [the law].” G.L. c. 186, § 15B (1) (b).

10. Security deposits continue to be the property of the tenant and cannot be commingled with the landlord’s other assets. A landlord that accepts security deposits

must provide tenants a written statement concerning the condition of the premises upon commencement of the lease term, and must retain records that contain a detailed description of any damage done by a tenant during the lease term, including receipts for any work performed. These records must be kept for two years after termination of the tenancy. See G.L. c. 186 § 15B (2) (d).

11. The security deposits collected must be held in a separate interest-bearing account, and a receipt must be given to the tenant within 30 days showing the deposit information, including the account number of the escrow account into which the deposit was placed and the name and address of the bank in which the account is located. See G.L. c. 186 § 15B (3) (a).

12. The landlord must pay interest at 5% per year or the amount provided by the bank in which the security deposits are deposited. See G.L. c. 186 § 15B (2) (a).

13. The landlord forfeits its right to retain security deposits for any reason when it does not properly deposit the funds in a separate account or does not provide the tenant with details regarding the account into which the deposit was placed. See G.L. c. 186 § 15B (3) (a) and (6) (a).

14. In order to properly withhold a security deposit in the event a landlord has handled it in a manner consistent with the Security Deposit Law, the landlord must provide the tenant with “an itemized list of damages, sworn to by the lessor or his agent under pains and penalties of perjury, itemizing in precise detail the nature of the damage and of the repairs necessary to correct such damage, and written evidence, such as estimates, bills, invoices or receipts, indicating the actual or estimated cost thereof.” See G.L. c. 186 § 15B (4).

15. Within thirty days of the end of the tenancy, the landlord must provide the tenant with the above accounting or must return the security deposit in full with interest.

See G.L. c. 186 § 15B (4).

16. Moreover, if a landlord fails to follow the security deposit accounting procedure, the “tenant shall be awarded damages in an amount equal to three times the amount of such security deposit ... plus interest at the rate of five per cent from the date when such payment became due, together with court costs and reasonable attorney’s fees.” See G.L. c. 186, § 15B (7) (emphasis added).

Utilities Law

17. The Sanitary Code requires a landlord to separately meter any utilities for which the tenant pays, ensuring that the tenant is billed only for the utilities which he or she actually uses. See 105 CMR 410.354(A) and (C) (“The owner shall provide the electricity and gas used in each dwelling unit unless (1) Such gas or electricity is metered through a meter which serves only the dwelling unit or other area under the exclusive use of an occupant of that dwelling unit . . .”) (emphasis added).

18. Pursuant to G.L. c 111 §127k, waiver of the State Sanitary Code is “deemed to be against public policy and void.”

19. The damages for improperly billing a tenant for non-exclusively metered utilities is the greater of the total amount of improperly billed utilities paid or three months’ rent, together with court costs and reasonable attorney’s fees. G.L. c. 186 § 14.

Cleaning Law

20. The Sanitary Code requires that the “owner of any dwelling in which any toilet, wash basin, shower or bathtub is to be shared by the occupants of more than one

dwelling unit or one rooming unit shall maintain that toilet, wash basin, shower, bathtub, walls and floors in a clean and sanitary condition, which shall include the cleaning and sanitizing of said fixtures at least once every 24 hours.” 105 CMR 410.151.

21. Pursuant to G.L. c 111 §127k, waiver of the State Sanitary Code is “deemed to be against public policy and void.”

22. Grafton did not clean and sanitize the common area bathrooms once every 24 hours.

23. Additionally, the failure to clean the common are bathroom violates G.L. c. 186, § 14, which requires that a “landlord ... who is required by law ... to furnish ... janitor service ... who willfully or intentionally fails to furnish ... janitor service ... shall be liable for actual and consequential damages or three month’s rent, whichever is greater, and the costs of the action, including a reasonable attorney’s fee.”

Plaintiff’s Lease

24. Plaintiff, as well as all members of the Class, entered into a lease with Grafton.

25. Plaintiff signed a lease on April 5, 2017 (the “Lease”).

26. The Lease included charges in excess of those allowed under Massachusetts law, and failed to include the legally required information concerning security deposits.

27. Rather than leasing full apartments, Grafton leases “Exclusive Bed Space” in each unit. Grafton leases specific bedrooms to each tenant in a multi-bedroom unit. The common areas in each unit are included within the lease. Each tenant who signs a

lease is then assigned roommates, which Grafton defines as “the persons occupying the other exclusive bed spaces within the Unit and sharing the Common Areas [in the unit].”

28. In addition to monthly rent of \$1,085.00, the Lease required Plaintiff to pay, and he in fact did pay, a non-refundable application fee of \$50, a convenience fee of \$1.95 for payment by electronic check, and a refundable security deposit of \$500.

29. The Lease failed to inform Plaintiff that Grafton must hold the security deposit in a separate interest-bearing account, give Plaintiff a receipt, and pay Plaintiff interest on the security deposit.

30. The Lease failed to inform Plaintiff that Grafton must submit to Plaintiff a separate written statement of the present condition of the premises and that Plaintiff has the right to dispute that statement of conditions.

31. Additionally, the Lease incorrectly states that Grafton can charge a security deposit of up to two months’ rent.

32. Plaintiff’s security deposit of \$500 was not placed into escrow.

33. Grafton failed to provide Plaintiff the required information concerning the bank account into which his security deposit was placed.

34. Plaintiff vacated his unit on June 29, 2017. Grafton did not return Plaintiff’s security deposit until August 29, 2017. Grafton did not pay Plaintiff any interest on the deposit.

35. Grafton required Plaintiff to sign a Utility Addendum along with the Lease. Under the Utility Addendum, “[w]here individual meters do not exist for each apartment, we or a billing company of our choosing may use one of several methods of allocation or flat fee billing to calculate the costs for a given utility in accordance with all

applicable laws. You agree that using an allocation or flat fee method of determining the utility expenses is fair and reasonable.”

36. Grafton provided Plaintiff monthly electric bills, which he paid. The electrical service was not separately metered to only cover areas under the exclusive use of Plaintiff.

37. The “Utilities and Services” section of the Lease states that Grafton can terminate Plaintiff’s utilities “at any time.”

38. The Lease contains a “Community Addendum,” listing several unlawful charges, including: an “Initial Late Charge” of 5% of the monthly rent, charged on the fifth day of the month if rent is not paid by the fifth; a “complaint filing fee” of 5% of the monthly rent; a court appearance fee of 10% of the monthly rent; and a second trial fee of 12% of the monthly rent should the case require a new trial following an appeal.

39. The “Community Addendum” claims that Grafton can deem a unit abandoned if a resident is delinquent in rent, absent for ten consecutive days, or does not respond to notices. Further, Grafton claims that it can then enter a tenant’s rental unit, remove a tenant’s belongings, and then impose charges to store or dispose of the belongings.

40. The Lease contains a “Rules and Regulations Addendum” asserting that Grafton has a right to charge “floors, wings, or entire buildings of residents” for repairs when Grafton “is unable to determine the responsible party.” That addendum further asserts that Grafton “may enter and take possession” of a tenant’s unit if the utilities are “turned off by cancellation or otherwise”; and asserts that Grafton can assess a “\$100 fine” to tenants who “fail to answer the door to a law enforcement officer.”

41. The Lease contains a “Bed Bug Addendum” which claims that Grafton is not “liable for any loss of personal property to the Resident, as a result of an infestation of bedbugs” and seeks to transfer to tenants the responsibility of exterminating and treatment of their personal belongings, furniture, and clothing.

42. The Lease also allows Grafton to charge a tenant a hold-over fee of \$100 per night after the expiration of a notice to quit.

V. CLASS ACTION ALLEGATIONS

43. Plaintiff brings this action on behalf of himself and as a class action, pursuant to the provisions of Rule 23 of the Mass. Rules of Civil Procedure on behalf a class defined all current and former tenants at any buildings owned or managed by Grafton in Massachusetts. The Class is divided into subclasses of those who a) paid a security deposit; b) paid an application or convenience fee; c) lived in a multi bedroom unit and paid for electricity; and d) lived in a multi bedroom unit that Grafton did not clean.

44. Excluded from the Class is Grafton and its subsidiaries and affiliates; governmental entities; and the judge to whom this case is assigned and any immediate family members thereof. Plaintiff reserves the right to modify or amend the Class definition, as appropriate.

45. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

a. Numerosity – Mass. R. Civ. P. 23(a) (1). The members of the Class are so numerous that individual joinder of all Class members is impracticable. Plaintiff is informed and believes that there are hundreds of Class members. The precise number of Class members and their addresses are unknown to Plaintiff, but may be ascertained from Grafton's books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

b. Commonality and Predominance – Mass. R. Civ. P. 23(a) (2). This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. All Class members were subject to the same terms and conditions imposed by Grafton. All paid the application and convenience fees, the security deposit, and/or the utility bills described above, and/or their common area bathroom was not cleaned. They were all subject to the same illegal lease terms. Furthermore, common questions of law and fact, include, but are not limited to:

- i. Whether the application and/or convenience fees collected by Grafton violated the Security Deposit Law;
- ii. Whether Grafton handled the security deposits in conformity with the Security Deposit Law and the regulations promulgated thereunder;
- iii. Whether Grafton's billing of tenants for electricity complied with Massachusetts Utilities Law;
- iv. Whether Grafton's failure to clean the common area bathrooms complied with Massachusetts Cleaning Law;
- v. Whether the terms in Grafton's leases violated Massachusetts law;

vi. Whether Plaintiff and the other members of the Class are entitled to damages and if so, in what amount; and

vii. Whether Plaintiff and the other members of the Class are entitled to injunctive or declaratory relief.

c. Typicality – Mass. R. Civ. P. 23(a) (3). Plaintiff's claims are typical of the claims of the other members of the Class because, among other things, all Class members were comparably injured through the uniform misconduct described herein, and all Class members have the same claim, i.e., that Grafton's collecting of application and convenience fees and handling of security deposits violates the Security Deposit Law; that its handling of utility billing violated Massachusetts Utilities Law; that its policy of not cleaning common area bathrooms violated Massachusetts Cleaning Law; and that it violated Chapter 93A.

d. Adequacy of Representation – R. Civ. P. 23(a) (4). Plaintiff is an adequate Class representative because his interests do not conflict with the interests of the other members of the Class he seeks to represent; he has retained counsel competent and experienced in class action litigation; and Plaintiff intends to prosecute this action vigorously. The Class's interests will be fairly and adequately protected by Plaintiff and his counsel.

e. Superiority – Mass. R. Civ. P. 23(b). A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by the Plaintiff and the other members of the Class are relatively small compared to the burden and expense that would be

required to individually litigate their claims against Grafton, so it would be impracticable for Class members to individually seek redress for Grafton's wrongful conduct. Even if the Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

VI. CLAIMS FOR RELIEF

COUNT I

Violations of Security Deposit Law

46. Plaintiff realleges and incorporates all allegations in this Amended Complaint.
47. Grafton violated the Security Deposit Law by, without limitation:
- a. collecting application and convenience fees in violation of G.L. c. 186 § 15B(1)(b);
 - b. failing to hold a security deposit in a separate interest-bearing account or provide notice to the tenant of the bank and account number, in violation of G.L. c. 186 § 15B(3)(a);
 - c. failing to pay interest on the security deposits, in violation of G.L. c. 186 § 15B(2)(a); and
 - d. failing to properly withhold or return security deposits within thirty days of the end of the tenancy, in violation of G.L. c. 186 § 15B(4).

48. Therefore, under G.L. c. 186 § 15B (6) and (7), Plaintiff and the Class are entitled to treble damages, interest, court costs, and a reasonable attorney's fee.

COUNT II
Violations of the Utilities Law

49. Plaintiff realleges and incorporates all allegations in this Amended Complaint.

50. Grafton charged Plaintiff and members of the Class for electricity that was not separately metered to the areas under the exclusive use of each tenant, in violation of 105 CMR 410.354(A) and (C) and G.L. c. 186 § 14.

51. Therefore, Plaintiff and the Class are entitled to the greater of the total amount of improperly billed utilities paid or three months' rent, together with court costs and reasonable attorney's fees.

COUNT III
Violations of the Cleaning Law

52. Plaintiff realleges and incorporates all allegations in this Amended Complaint.

53. Grafton did not clean the bathrooms in the common areas in violation of Sanitary Code and G.L. c. 186, § 14.

54. Therefore, Plaintiff and the class are entitled to the greater of their actual or consequential damages or three months' rent, together with court costs and reasonable attorney's fees.

COUNT IV
Chapter 93A

55. Plaintiff realleges and incorporates all allegations in this Amended Complaint.

56. Grafton is engaged in commerce in the Commonwealth.

57. Grafton has engaged in numerous unfair and deceptive trade practices in the rental business in violation of Chapter 93A, including but not limited to the following:

- a. requiring tenants to pay up-front fees beyond those allowed under G.L. c. 186, § 15B and 940 C.M.R. 3.17(4)(a);
- b. interfering with tenants' quiet enjoyment of the Premises in violation of 940 C.M.R. 3.17(6)(f) and of G.L. c. 186, § 14;
- c. requiring tenants to pay for utility service outside of their exclusive use in violation of 105 CMR 410.354 and G.L. c. 186, § 14;
- d. failing to disclose to prospective tenants the existence of conditions that violate the law and which Grafton had knowledge of or upon reasonable inspection could have acquired such knowledge in violation of 940 C.M.R. 3.17(1)(c);
- e. including in leases illegal terms in violation of 940 C.M.R. 3.17(3)(a);
- f. including illegal provisions in leases concerning security deposits in violation of 940 C.M.R. 3.17(3)(b)(3);
- g. failing to comply with the security deposit statute requirements by failing properly give tenants notice that the security deposit is in a statutorily compliant bank account, in violation of G.L. c. 186, § 15B and 940 C.M.R. 3.17(4)(d);
- h. failing to provide tenants a written statement of conditions, in violation of G.L. c. 186, § 15B and 940 C.M.R. 3.17(4)(e);
- i. failing to return tenants' security deposit and interest within 30 days of the end of the tenancy, in violation of G.L. c. 186, § 15B and 940 C.M.R. 3.17(4)(g);

- j. imposing unlawful late fees and penalties in charges in violation of 940 C.M.R. 3.17(6)(a); and
- k. failing to provide cleaning services in violation of 105 CMR 410.151 and G.L. c. 186, § 14.

58. Plaintiff sent a demand letter pursuant to Chapter 93A, to which Grafton responded without making a reasonable settlement offer.

59. Grafton's conduct caused Plaintiff, and members of the Class, damage.

COUNT V
Declaratory Judgment

60. Plaintiff realleges and incorporates all allegations in this Amended Complaint.

61. An actual controversy has arisen regarding Grafton's compliance with Massachusetts regulations and laws.

62. Pursuant to G.L. c. 231A, § 1, Plaintiff and the Class seek a declaration that the Grafton violated the Security Deposit Law, the Sanitary Code, the Utilities Law, the Cleaning Law, and Chapter 93A.

COUNT VI
Declaratory Judgment

63. Plaintiff realleges and incorporates all allegations in this Amended Complaint.

64. Plaintiff and the Class seek injunctive relief compelling Grafton to cease and desist from performing the wrongful actions described herein.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the other members of the Class proposed in this Complaint, respectfully requests that the Court order the following relief:

- A. An Order certifying the Class as requested herein;
- B. An Order awarding damages to Plaintiff and the other members of the Class, including compensatory and multiple or exemplary damages;
- C. An Order awarding declaratory and injunctive relief as permitted by law, including: enjoining Defendants from continuing their unlawful practices as described above;
- D. An Order awarding attorneys' fees and costs to Plaintiff and the Class; and
- E. Such other and further relief as may be just and proper.

VIII. JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: January 26, 2018

Respectfully submitted,
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By his attorneys,



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