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SJC-12247

SCOTT PHILLIPS¹ vs. EQUITY RESIDENTIAL MANAGEMENT, L.L.C.

Suffolk. May 1, 2017. - October 25, 2017.

Present: Gants, C.J., Lenk, Hines, Gaziano, Lowy, Budd,
& Cypher, JJ.²

Landlord and Tenant, Security deposit, Multiple damages.
Statute, Construction.

Certification of a question of law to the Supreme Judicial Court by the United States Court of Appeals for the First Circuit.

Joshua N. Garick (David Pastor & Preston W. Leonard also present) for the plaintiff.

Craig M. White, of Illinois (Thomas H. Wintner also present) for the defendant.

The following submitted briefs for amici curiae:

Jeffrey J. Pokorak, Catherine Dowie, & John Pierce Wilton for Accelerator-to-Practice Program of Suffolk University Law School & others.

Lawrence J. Farber for Greater Boston Real Estate Board.

Alex Mitchell-Munevar & Joseph Michalakes for City Life/Vida Urbana.

¹ Individually and on behalf of all others similarly situated.

² Justice Hines participated in the deliberation on this case prior to her retirement.

BUDD, J. Where a landlord's itemized list of deductions from a tenant's security deposit does not comply with the requirements of the Security Deposit Act, G. L. c. 186, § 15B (act), the landlord forfeits the right to retain any part of that deposit. See G. L. c. 186, § 15B (6). In certain circumstances the landlord must pay the tenant treble damages, interest, costs, and attorney's fees, pursuant to § 15B (7). In a certified question, the United States Court of Appeals for the First Circuit asks whether a tenant is entitled to treble the amount of the entire security deposit under § 15B (7) where a landlord fails to provide to the tenant a statement of damages that meets the statutory requirements, see § 15B (4) (iii), second sentence, thereby forfeiting the entire security deposit, see § 15B (6) (b), and also fails to return that forfeited deposit within thirty days after the termination of the tenancy. See Phillips v. Equity Residential Mgt., L.L.C., 844 F.3d 1, 7-8 (1st Cir. 2016).

We conclude that the Legislature did not intend for the treble damages provision in § 15B (7) to apply to a landlord's violation of the requirements for an itemized list set out in § 15B (4) (iii), second sentence, or to the amount forfeited for violation of § 15B (6) (b), and accordingly answer the certified

question no.³

Background. We recite relevant facts presented by the Court of Appeals in its opinion, see Phillips, 844 F.3d at 3-4, along with other facts found by the District Court judge. See Ferri v. Powell-Ferri, 476 Mass. 651, 652 (2017).

Scott Phillips (tenant or Phillips) and a friend⁴ entered into a written lease with Equity Residential Management, L.L.C. (landlord or Equity), for an apartment in Waltham, for a term of from July 20, 2012, to May 19, 2013. Phillips paid a security deposit of \$750 before moving into the apartment. He moved out of the apartment on May 20, 2013, and requested the return of his deposit. Equity responded with a statement of deposit account (statement), which was signed but not sworn to under pains and penalties of perjury, within thirty days of termination of occupancy. The statement listed charges totaling \$968.08 and stated that Phillips owed a balance of \$218.02 after

³ We acknowledge the amicus briefs of the Accelerator-to-Practice Program of Suffolk University Law School, the Poverty Law and Practice Clinic of Northeastern University School of Law, and the Human Rights at Home Clinic and Justice Bridge Legal Center of the University of Massachusetts School of Law; the Greater Boston Real Estate Board; and City Life/Vida Urbana.

⁴ The friend later assigned his rights in the lease to a third party, who vacated the apartment early. By the end of the tenancy, Scott Phillips was the only tenant remaining in the apartment.

subtracting the security deposit and accumulated interest.⁵ On June 23, 2013, Phillips's father, a guarantor of the lease, notified Equity that the statement did not comply with several requirements of the act.

On August 6, 2013, Phillips filed a class action⁶ complaint in the Superior Court, alleging that Equity had violated the act insofar as (1) the statement and attached document were not properly signed and sworn to under the pains and penalties of perjury, (2) Equity did not provide sufficient documentation to support the charges that were deducted from the deposit, (3) Equity impermissibly deducted cleaning charges from the deposit, and (4) Equity failed to return the deposit within thirty days after the termination of the tenancy. He sought recovery under § 15B (7), which provides, *inter alia*, for treble damages for

⁵ The statement of deposit account (statement) listed the following charges: unpaid rent (\$275.42), a late payment fee (\$8.65), an apartment cleaning charge (\$74), a carpet cleaning charge (\$65), a replacement drip pan (\$15), and a carpet replacement charge (\$530.01). The statement credited Phillips's security deposit and interest (\$0.06) against the total charges.

⁶ Phillips sought to certify a class of all former tenants of Equity Residential Management, L.L.C. (landlord or Equity), who had vacated their rental units and "had any portion of their security deposit retained by [Equity] and not returned to them within [thirty] days after the termination of their occupancy or the end of their tenancy, during the period from August 6, 2009[,] through the date of judgment." Within this class were two proposed subclasses based on Equity's failure to send a properly sworn itemized list of damages, and Equity's deduction of cleaning charges from the security deposit. The District Court judge ruled against Phillips on his class certification motion; that ruling is not before us.

certain violations of the act. Equity removed the case to the United States District Court for the District of Massachusetts, see 28 U.S.C. § 1441(a), citing diversity of citizenship under the Federal Class Action Fairness Act of 2005. See 28 U.S.C. § 1332(d). Equity also filed a counterclaim against Phillips for the remaining balance listed on the statement: \$218.02.

In 2015, the District Court ruled on both parties' motions for summary judgment.⁷ The District Court found that Equity's statement did not comply with the itemized deduction provision in the act, see § 15B (4) (iii), second sentence, and therefore Equity had forfeited its right to retain any part of the deposit under § 15B (6) (b). As a result, Phillips was entitled to recover his security deposit. However, the District Court judge also ruled that Phillips was not entitled to treble damages, as she concluded that the Legislature had excluded violations of the itemized deduction provision from the types of violations that qualified for treble damages under § 15B (7). Finally, the judge ruled that Equity was entitled to no more than \$102.42 for holdover rent,⁸ because it had forfeited its right to counterclaim for damage to the premises by violating the act, see § 15B (6), and could not make deductions for a late payment

⁷ See *Phillips vs. Equity Residential Mgmt., L.L.C.*, U.S. Dist. Ct., No. 13-1292-RWZ (D. Mass. Dec. 14, 2015).

⁸ Phillips stayed one day past the end of the rental period defined in the written lease.

or earlier costs in an unrelated proceeding under § 15B (4).

Phillips appealed from the ruling, arguing that the District Court misinterpreted the act, and that he was entitled to recover treble the amount of the entire security deposit under § 15B (7). Concluding that there was no controlling precedent to decide the question, the Court of Appeals certified the following question to this court, pursuant to S.J.C. Rule 1:03, as appearing in 382 Mass. 700 (1981):

"With respect to the Massachusetts Security Deposit Law, [G. L. c.] 186, § 15B, when a lessor violates the [itemized list requirements] of [§ 15B (4) (iii)], does the lessor's corresponding violation of [§ 15B (6) (b)], which 'forfeit[s] his right to retain any portion of the security deposit for any reason,' id. [at § 15B (6)], also constitute a violation of [§ 15B (6) (e)] -- 'fail[ing] to return to the tenant the security deposit or balance thereof to which the tenant is entitled . . . within thirty days after the termination of the tenancy' -- thereby triggering the statute's treble damages provision, [§ 15B (7)]?"

Phillips, 844 F.3d at 7-8.

Discussion. The act, G. L. c. 186, § 15B, protects tenants by providing clear guidelines for landlords to follow with regard to handling security deposits. See Hampshire Village Assocs. v. District Court of Hampshire, 381 Mass. 148, 151-153, cert. denied, 449 U.S. 1062 (1980). In passing the act, the Legislature recognized that tenants have less bargaining power than landlords and are less able to vindicate their rights in court. See Mellor v. Berman, 390 Mass. 275, 282 (1983), quoting

Goes v. Feldman, 8 Mass. App. Ct. 84, 91 (1979).

The act provides, inter alia, that a landlord must take care in making deductions from a tenant's security deposit. The deductions must fall into specifically authorized categories, which the act limits to unpaid rent or water charges, certain unpaid increases in real estate taxes, and repairs for damages caused by the tenant; any remaining balance must be returned to the tenant within thirty days of termination of the tenancy. See G. L. c. 186, § 15B (4) (i), (ii), (iii), first sentence.⁹ Taking improper deductions from a tenant's security deposit leads to forfeiture of the entire security deposit, pursuant to

⁹ General Laws c. 186, § 15B (4), provides in relevant part:

"(4) The lessor shall, within thirty days after the termination [of the tenancy], return to the tenant the security deposit or any balance thereof; provided, however, that the lessor may deduct from such security deposit for the following:

"(i) any unpaid rent or water charges which have not been validly withheld or deducted pursuant to any general or special law[;]

"(ii) any unpaid increase in real estate taxes which the tenant is obligated to pay pursuant to a tax escalation clause which conforms to the requirements of [§ 15C]; and

"(iii) a reasonable amount necessary to repair any damage caused to the dwelling unit by the tenant or any person under the tenant's control or on the premises with the tenant's consent, reasonable wear and tear excluded. . . .

"No deduction may be made from the security deposit for any purpose other than those set forth in this section."

§ 15B (6) (e).¹⁰ In addition, when making deductions for damages, the landlord must provide the tenant with an itemized list, sworn to under the pains and penalties of perjury, as well as written evidence of the cost of repairs. See G. L. c. 186, § 15B (4) (iii), second sentence.¹¹ Violations of this second obligation, like violations of the first, also lead to forfeiture of the entire security deposit, pursuant to § 15B (6) (b).¹² There are some violations of the act, including the

¹⁰ General Laws c. 186, § 15B (6) (e), provides:

"(6) The lessor shall forfeit his right to retain any portion of the security deposit for any reason, or, in any action by a tenant to recover a security deposit, to counterclaim for any damage to the premises if he:

". . .

"(e) fails to return to the tenant the security deposit or balance thereof to which the tenant is entitled after deducting therefrom any sums in accordance with the provisions of this section, together with any interest thereon, within thirty days after termination of the tenancy."

¹¹ The second sentence of G. L. c. 186, § 15B (4) (iii), provides: "In the case of such damage, the lessor shall provide to the tenant within such thirty days 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."

¹² General Laws c. 186, § 15B (6) (b), provides:

"(6) The lessor shall forfeit his right to retain any portion of the security deposit for any reason, or, in any

taking of improper deductions in violation of § 15B [6] [e], that result in the tenant being entitled to treble damages, interest, court costs, and attorney's fees. See G. L. c. 186, § 15B (7).¹³

In this case, as previously recounted, the landlord made deductions for unpaid rent and damage to the property that exceeded the value of the tenant's security deposit; thus, the landlord did not return any portion of the security deposit within thirty days. The District Court judge found that although the landlord sent an itemized list of damages to Phillips within thirty days, this list was faulty because it was not sworn to under pains and penalties of perjury, was not sufficiently detailed, and was unsupported by written evidence of the costs of repairs. These failings qualify as a violation by the landlord of § 15B (6) (b), and accordingly result in the

action by a tenant to recover a security deposit, to counterclaim for any damage to the premises if he:

". . .

"(b) fails to furnish to the tenant within thirty days after the termination of the occupancy the itemized list of damages, if any, in compliance with the provisions of this section."

¹³ General Laws c. 186, § 15B (7), provides: "If the lessor or his agent fails to comply with clauses (a), (d), or (e) of subsection 6, the tenant shall be awarded damages in an amount equal to three times the amount of such security deposit or balance thereof to which the tenant is entitled 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."

forfeiture of its right to retain any portion of Phillips's security deposit under § 15B (6).¹⁴

Phillips argues that because the landlord forfeited the entire security deposit under § 15B (6) (b) by providing a faulty list, it was required to return the entire security deposit within thirty days of termination of the tenancy. The crux of the case is that Phillips further argues that the landlord's failure in this regard triggered a violation of § 15B (6) (e), which, in his view, calls for damages in the amount of three times the entire security deposit as well as other awards pursuant to § 15B (7). The landlord disagrees, arguing that the tenant's interpretation would make § 15B (6) (b) redundant and would overlook the Legislature's intent to limit the number of § 15B (6) violations that would give rise to treble damages and other penalties under § 15B (7). The question certified by the Court of Appeals asks us for the correct interpretation.

Our answer turns on an interpretation of § 15B (6) (e), and whether that provision covers a landlord's failure to return the security deposit forfeited under other clauses of § 15B (6) within thirty days of the termination of the tenancy. For the

¹⁴ To the extent that any charges by the landlord did not fall into any category of deduction authorized by § 15B (4), Phillips would also be entitled to treble damages on the amounts wrongfully withheld for those charges.

reasons we discuss below, we answer the certified question no.

1. Rules of statutory interpretation.¹⁵ As the question turns on a matter of statutory interpretation, we begin with the text of the statute. International Fid. Ins. Co. v. Wilson, 387 Mass. 841, 853 (1983). "[A] statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." Board of Educ. v. Assessor of Worcester, 368 Mass. 511, 513 (1975), quoting Industrial Fin. Corp. v. State Tax Comm'n, 367 Mass. 360, 364 (1975). Where the text of the statute is clear and unambiguous, we must apply its ordinary meaning. Bronstein v. Prudential Ins. Co. of Am., 390 Mass. 701, 704 (1984), citing Hashimi v. Kalil, 388 Mass. 607, 610 (1983). "But we look to the language of the entire statute, not just a single sentence, and attempt to interpret all of its terms 'harmoniously to effectuate the intent of the

¹⁵ Phillips focuses on the text of § 15B (6) (e) alone, arguing that we must interpret it strictly. However, we have never stated that a single clause of a statute must be construed strictly in total isolation and without regard to adjacent clauses and subsections, and certainly not where, as here, the clause itself references the rest of the act. See Commonwealth v. Hanson H., 464 Mass. 807, 810 (2013), quoting Commonwealth v. Raposo, 453 Mass. 739, 745 (2009). See also G. L. c. § 15B (6) (e) ("in accordance with the provisions of this section").

Legislature.'" Commonwealth v. Hanson H., 464 Mass. 807, 810 (2013), quoting Commonwealth v. Raposo, 453 Mass. 739, 745 (2009). Further, although "matters of punctuation are not necessarily determinative," Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 432 (1983), punctuation "may be considered as an indication of the purpose of the legislation where different readings might result in ambiguity." Taylor v. Burke, 69 Mass. App. Ct. 77, 81 (2007), citing Greenough v. Phoenix Ins. Co., 206 Mass. 247, 252 (1910) (interpreting importance of comma and grammatical construction in G. L. c. 186, § 15B [3] [a]). Finally, so long as it yields a "logical and sensible result," we do not interpret a statute so as to render any portion of it meaningless. Adamowicz v. Ipswich, 395 Mass. 757, 760 (1985), quoting Lexington v. Bedford, 378 Mass. 562, 570 (1979).

2. Interpretation of § 15B (6) (e). Section 15B (6) (e) requires a landlord to forfeit the entire security deposit if the landlord "fails to return to the tenant the security deposit or balance thereof to which the tenant is entitled after deducting therefrom any sums in accordance with the provisions of this section" (emphasis added). Phillips considers the "balance . . . to which the tenant is entitled" to be the entire forfeited security deposit rather than the security deposit less any proper deductions. He argues that the entire security

deposit amount must be trebled under § 15B (7) because the landlord violated § 15B (6) (e) by failing to return the forfeited deposit within thirty days of the end of the tenancy.

We conclude, however, that § 15B (6) (e) cannot be triggered by failing to return the amount forfeited under other subsections of § 15B (6). This means that the landlord must pay treble damages only on the amount that the landlord improperly deducted under § 15B (4) (i), (ii), and (iii), first sentence.¹⁶ Thus, the landlord is not otherwise automatically liable for treble damages on the entire security deposit. Any other interpretation of this provision would ignore the context and placement of § 15B (6) (e) within the statute. See Castenholz v. Cairra, 21 Mass. App. Ct. 758, 760-764 (1986) (analyzing differences between obligations under § 15B [3] [a] and [6] [a] to determine which acts by landlord justified treble damages under § 15B [7]). In fact, three aspects of § 15B indicate that a landlord's failure properly to document the deductions does not lead to a violation of § 15B (6) (e).¹⁷

¹⁶ The failure to include an itemized list of damages under § 15B (6) (b) does not fall within § 15B (7); therefore, although it triggers forfeiture of the right to retain any portion of the security deposit, it does not result in treble damages.

¹⁷ Phillips also appears to argue that § 15B (6) (e) covers documentation violations because it provides that a landlord must return the security deposit, "deducting therefrom any sums in accordance with the provisions of this section." As

First, § 15B (7) imposes treble damages only on violations of § 15B (6) (a), (d), and (e), rather than on all violations of § 15B (6). This implies that the Legislature intentionally omitted documentary violations from treble damages. See Castenholz, 21 Mass. App. Ct. at 761-762.¹⁸ See also Brady v. Brady, 380 Mass. 480, 484 (1980), quoting Harborview Residents' Comm., Inc. v. Quincy Hous. Auth., 368 Mass. 425, 432 (1975) ("a statutory expression of one thing is an implied exclusion of other things omitted from the statute").¹⁹

discussed above, § 15B (6) (e) covers only portions of the security deposit that were wrongfully withheld. To conclude that this language also covers documentation violations would be to ignore the context of the statute. A broad reading of § 15B (6) (e) to cover documentation violations would make § 15B (6) (b) completely redundant, as § 15B (6) (b) exists only to provide for forfeiture of the deposit for documentation violations. See Adamowicz v. Ipswich, 395 Mass. 757, 760 (1985) (we do not read statute to render provision wholly meaningless).

¹⁸ In Castenholz v. Cairra, 21 Mass. App. Ct. 758, 761-762 (1986), the Appeals Court explained that violations of § 15B (6) (a), (d), and (e) "involve a failure by the landlord to comply with his duties in handling the tenant's security deposit money," whereas § 15B (6) (b) and (c) "do not involve mishandling of the tenant's deposit money and do not expose the landlord to the possibility of treble damages but only entitle the tenant to a return of the deposit." Thus, it is fair to say that the omission of § 15B (6) (b) from treble damages was not due to oversight but was intentional, as this type of misconduct may cause less harm.

¹⁹ Phillips urges that this maxim of statutory construction, also known as "expressio unius est exclusio alterius," is rarely used and does not pertain to this case. We have previously applied this maxim with caution, as it "is not a rule of law but an aid to interpretation, and it should not be applied where to do so would frustrate the general beneficial purposes of the

Second, § 15B (6) (e) requires the landlord to return the amount to which the tenant is entitled within thirty days of the termination of the tenancy, whereas § 15B (6) (b) requires the landlord to provide the tenant with proper documentation within thirty days as well. This means that, under the tenant's interpretation, a landlord who made authorized deductions for damages but returned a deficient itemized list on the thirtieth day would automatically be liable for treble damages because there would be no time left to return the forfeited amount.

Third, Phillips's proposed interpretation of § 15B (6) (e) -- i.e., that it is triggered when a landlord fails to return the forfeited amount within thirty days of termination of the tenancy -- overlooks the placement of § 15B (6) (e) within the statute. The Legislature placed the forfeiture provision in the main clause of § 15B (6), rather than within the individual subsections. Because both § 15B (6) (b) and (e) are parallel clauses that can both trigger forfeiture of the security deposit, it does not make sense for one to trigger the other. More fundamentally, Phillips's argument would mean that

legislation . . . or if its application would lead to an illogical result" (citations omitted). Bank of Am., N.A. v. Rosa, 466 Mass. 613, 619-620 (2013). However, where absurd results do not occur, and where the maxim furthers the legislative purpose, it is still relevant and useful, particularly where it corroborates a reasonable interpretation. See, e.g., Skawski v. Greenfield Investors Prop. Dev. LLC, 473 Mass. 580, 588 (2016).

forfeiture under any provision of § 15B (6) could trigger a violation of § 15B (6) (e). Taken to its logical conclusion, this would mean that every time a landlord violated § 15B (6) (e) by improperly withholding a portion of the security deposit the landlord could simultaneously trigger a second violation of § 15B (6) (e) because he had forfeited the rest of the security deposit and failed to return the balance within thirty days. This is nonsensical, as a landlord who returned the deposit on the thirtieth day and made proper deductions for unpaid rent, but also withheld ten dollars for a cleaning charge, would be liable for treble damages not only on the cleaning charge but also automatically for the failure to return the amount that was properly deducted but forfeited within thirty days. See Castenholz, 21 Mass. App. Ct. at 762 (declining to construe § 15B as "a minefield of potential multiple penalties").

Thus, the context provided by the rest of § 15B demonstrates that it would not make sense for § 15B (6) (e) to apply to the amount forfeited by other provisions of § 15B (6).

As the concurrence notes, the act does not go as far as it might with regard to holding landlords responsible. Our job, however, is to interpret the statute as written and in accordance with our previous cases. See Mellor, 390 Mass. at 277 (trebling solely difference in damages between what landlord

charged and what was attributable to tenants); McGrath v. Mishara, 386 Mass. 74, 77, 79-80 (1982) (awarding multiple damages only on amount that "had been unlawfully withheld from the tenants' security deposit"). See also Hampshire Village Assocs., 381 Mass. at 148-149 (tenants were entitled to multiple damages where landlord failed to return any portion of security deposit or itemized list within thirty days).

It is important to note that if Phillips were to prevail on the argument that the landlord made certain deductions that were not authorized by the statute -- such as the late payment fee, costs of unrelated litigation between the parties, and any cleaning or repair charges that were not fairly due to damages attributable to Phillips -- he would get treble damages, attorney's fees, and other penalties under § 15B (7) on those amounts. See note 14, supra. However, Phillips would not be entitled to treble damages on the remainder of the forfeited security deposit.

Even apart from the remedies provided by § 15B, we note that similarly situated tenants have further recourse, as they may have rights under G. L. c. 93A, § 9, including to multiple damages where the landlord fails to return the forfeited amount or offer a settlement in response to a demand letter from the tenant. See 940 Code Mass. Regs. § 3.17(4) (1993) (interpreting c. 93A to cover landlord's misconduct under § 15B); McGrath, 386

Mass. at 86-87 (affirming award of multiple damages under c. 93A in security deposit dispute).

3. Conclusion. We conclude that a landlord violates § 15B (6) (e) only where the landlord fails to return or account for any portion of the security deposit within thirty days, or where the landlord makes a deduction that does not fall within the categories authorized by § 15B (4) (i), (ii), (iii), first sentence. A violation of § 15B (6) (e) does not apply to any portion of the security deposit that was forfeited under another provision of § 15B (6).²⁰ As a result, our answer to the certified question is no.

The Reporter of Decisions is to furnish attested copies of this opinion to the clerk of this court. The clerk in turn will transmit one copy, under the seal of this court, to the clerk of the United States Court of Appeals for the First Circuit, as the answer to the question certified, and will also transmit a copy to each party.

²⁰ We further conclude that because § 15B (6) (e) and (7) use the same language to describe the amount owed to the tenant, where § 15B (7) is triggered by a violation of § 15B (6) (e), treble damages apply only to the amount that was improperly withheld to begin with, and not automatically to the entire amount that was forfeited by the main clause of § 15B (6).

LENK, J. (concurring). While I agree with the court's conclusion, I write separately to highlight the dichotomy between the remedial legislative purpose behind G. L. c. 186, § 15B, and the outcome that the court is constrained to reach today.

In enacting G. L. c. 186, § 15B, "the Legislature manifested a concern for the welfare of tenants in residential property who, as a practical matter, are generally in inferior bargaining positions" to landlords and "find traditional avenues of redress relatively useless." See Hampshire Village Assocs. v. District Court of Hampshire, 381 Mass. 148, 152-153, cert. denied, 449 U.S. 1062 (1980), quoting Goes v. Feldman, 8 Mass. App. Ct. 84, 91 (1979). This asymmetry of power stems from the "legal expense of chasing a security deposit," which often amounts to "more than the amount of the deposit." Hampshire Village Assocs., supra at 153, quoting Goes, supra. In light of this imbalance, the Legislature enacted G. L. c. 186, § 15B, "to make resort to litigation feasible for tenants" and thereby to "establish an equitable relationship between tenants and landlords" (quotations and citations omitted). Castenholz v. Caira, 21 Mass. App. Ct. 758, 763 (1986).

There is a considerable disparity between the evident legislative purpose and the plain language of the statutory provision at issue here. One need look no further than Scott

Phillips's situation to perceive the difficulties this creates. Phillips first asked his landlord for the return of his security deposit on May 28, 2013. As the court notes, the landlord violated its obligations under G. L. c. 186, § 15B (6) (b), by providing an insufficiently detailed list of damages unsupported by written evidence or a sworn affirmation, thereby forfeiting any right to the deposit by June 20, 2013. See ante at . After four years of litigation in Federal and State court, Phillips has yet to receive a cent of it. Despite this, when all is said and done, he will likely walk away with only his \$750 deposit for his troubles. This is hardly the sort of "feasible" litigation that the Legislature contemplated when it enacted G. L. c. 186, § 15B.

If this outcome is extrapolated to encompass tenants across the Commonwealth, what is at stake becomes even more clear. Without resource to the treble damages and attorney's fees available under G. L. c. 186, § 15B (7), tenants seeking the return of their security deposits due to violations of G. L. c. 186, § 15B (6) (b), are confronted with a Hobson's choice. They either can pursue expensive litigation which may cost them more than the amount of the deposit, or they can abandon any claim to what likely amounts to at least one month's additional rent, allowing the landlord to reap the unearned windfall. Many

will of necessity choose the latter course.¹

This in turn may well embolden certain landlords to ignore their statutory obligations under G. L. c. 186, § 15B (6) (b). The Legislature established those obligations to "ha[ve] the effect of ensuring that landlords do not make spurious and unfounded deductions for damage." See McGrath v. Mishara, 386 Mass. 74, 80 (1982). Without the specter of the treble damages and attorney's fees provided by G. L. c. 186, § 15B (7), unscrupulous landlords might well evade compliance with these requirements of § 15B (6) (b) in order to ensure that tenants lack the necessary information to challenge unfounded deductions. This outcome does not resemble the "equitable" result that the Legislature intended when it enacted G. L.

¹ I am not persuaded that seeking relief for G. L. c. 186, § 15B (6) (b), violations pursuant to G. L. c. 93A, § 9, serves as a meaningful alternative to the swift remedy that might otherwise be provided by G. L. c. 186, § 15B (7). Unlike the latter, G. L. c. 93A, § 9, imposes notice and timing requirements that may well be impediments to low income tenants, who often will be unrepresented by counsel. See Jefferson, *Liberty and Justice for Some: How the Legal System Falls Short in Protecting Basic Rights*, 88 N.Y.U. L. Rev. 1953, 1960-1961 (2013) (noting high percentage of pro se litigants involved in landlord-tenant disputes). This stands in stark contrast to the sword of Damocles that G. L. c. 186, § 15B (7), hangs over landlords to ensure their compliance with the statutory requirements safeguarding tenants' security deposits. The prospect of automatic forfeiture, treble damages, and attorney's fees for noncompliance is itself a means of redressing the bargaining disparity between landlord and tenant, and assists in the speedy return of such deposits where appropriate. See Hampshire Village Assocs. v. District Court of Hampshire, 381 Mass. 148, 152-153 (1980).

c. 186, § 15B. See Castenholz, 21 Mass. App. Ct. at 763. Indeed, by leaving tenants with a right that is without a practical remedy, G. L. c. 186, § 15B (6) (b), permits precisely the sort of inequitable conduct that the penalties provided in G. L. c. 186, § 15B (7), were meant to deter.

If this is not the result the Legislature intends, I urge it to consider amending the statute to ensure that landlords who unlawfully retain a security deposit forfeited pursuant to G. L. c. 186, § 15B (6) (b), suffer the penalties provided in G. L. c. 186, § 15B (7).