Important Court Order for Property Managers

On July 23, 2018, a District Court Judge in Missoula County issue an order in a case involving a lawsuit filed by a tenant against a Missoula property management company. In that case, *Galbraith v. Professional Property Management, Inc.*, Cause No. DV-16-928, the court entered two important findings that, at least for now, may have an impact on how property managers conduct their businesses. While this is a district court case and not yet the law of Montana (since it has not been affirmed by the Montana Supreme Court) MAR members who engage in property management activities should consider revising certain aspects of their business in accordance with this decision.

First, the court held that MCA § 70-204-202(1), which states that a rental agreement may not require a party to agree to waiver or forego rights under the Montana Residential Landlord Tenant Act (the RLTA), prohibits language in a rental agreement allowing property manager to place any unpaid amounts with a collection agency before a court has determined that the money is owed. In effect, therefore, the court found that language in a rental agreement that allows a property manager to send a tenant to collections prior to suing the tenant for that debt is unenforceable and illegal under the RLTA. In light of this decision, and until changes are made to the RLTA through the legislative process or the court's decision is overturned by the Montana Supreme Court, MAR members who engage in property management are advised not to send tenant debt to a collection agency unless and until a court has entered a judgment against the tenant affirming that the debt is owed by the tenant.

Second, the court held that MCA § 70-24-422(5), which states that remedies for a tenant's violation of a rental agreement are generally limited to actual damages and injunctive relief, prohibits a landlord from assessing and collecting an administrative fee or penalty for all violations of the rental agreement. Essentially, the court held that since an administrative fee or penalty (in this case it was $50) for every violation of a lease agreement is not necessarily tied to any actual damages sustained by a landlord as a result of that violation, such fees or penalties are prohibited under the RLTA. In the *Galbraith* case, the court took issue with the $50 fee assessed by the property manager because it was assessed due to the tenant's failed to provide proof of insurance as required by the lease and because the $50 fee was "untethered to damages" sustained by the landlord or property manager, if any, as a result of the tenant's failure to provide said proof. At this time, I do not feel that late charges or NSF fees charged would be deemed unlawful under the RLTA because there is at least a colorable argument that can be made that failure to pay rent on time and an NSF check do cause the landlord to incur monetary damages. However, for the time being MAR members engaging in property management should limit any fees charged to a tenant to late payment and NSF fees.

-- Jaymie