THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

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By electronic filing
Maura A. Looney, Clerk
Supreme Judicial Court for the Commonwealth
John Adams Courthouse, Suite 1400
1 Pemberton Square
Boston, MA 02108

Re: *Peebles v. JRK Property Holdings, Inc.*, No. SJC-13702

Dear Clerk Looney:

The Attorney General respectfully submits this letter as *amicus curiae* in the above-captioned case to address the certified questions related to landlord-tenant law (specifically G. L. c. 186, §15B(4)) submitted to the Supreme Judicial Court by the U.S. District Court for the District of Massachusetts.

Given the important consumer protection concerns at stake at the conclusion of a tenancy, the Attorney General has historically played a role both in enforcing G.L. c. 186, § 15B, and in deterring violations of the statute through preventive regulation. *See, e.g.*, *McGrath v. Mishara*, 386 Mass. 74, 86-87 (1982). In particular, pursuant to her authority to promulgate regulations under the Consumer Protection Act ("the Act"), the Attorney General has interpreted violations of G.L. c. 186, §15B (4), to be unfair or deceptive practices under G.L. c. 93A. 940 C.M.R. § 3.17(4).

The Attorney General is further interested in promoting fair competition among landlords by ensuring that landlords who do not unfairly shift costs to tenants are not at a competitive disadvantage, and in ensuring that unlawful business practices do not inflate already high housing costs for Massachusetts residents. Moreover, the Attorney General wishes to ensure that contracts, particularly contracts of adhesion, do not include unlawful terms that may influence consumer behavior, even if those terms are not enforced. Accordingly, the Attorney General has a strong interest in ensuring the fair and accurate interpretation and application of the Act, § 15B and related regulations and statutes.

(1) When a tenant vacates a premises at the end of a tenancy, the cost of painting, carpet repair and similar refurbishment will not ordinarily constitute a permissible deduction for "reasonable wear and tear" under G. L. c. 186, § 15B (4).

By case law, statute, and regulation, Massachusetts has adopted the rule that a residential landlord leases to a tenant not merely a physical space but a dwelling in which to make a home. *See, e.g., Bos. Hous. Auth. v. Hemingway*, 363 Mass. 184, 189, 197 (1973) (noting shift from a rural agrarian society in which a residential leasehold was primarily the conveyance of an interest in land to modern one in which tenants contract for a "house suitable for occupation" for a period of time); G.L. c. 186, § 14 (protecting tenant against direct or indirect interference with the "quiet enjoyment" of the rented premises); *Blackett v. Olanoff*, 371 Mass. 714, 717-18 (1977) (tenant entitled to apartment free of excessive noise from neighboring nightclub renting from landlord); *Manzaro v. McCann*, 401 Mass. 880, 884 (1988) (tenant entitled to prompt silencing of ringing smoke alarm); G.L. c. 151B, § 4 (11) (making it illegal for most landlords to refuse to rent housing to families because they have children). A Massachusetts landlord is therefore not merely the conveyor of an interest in land or the owner of a rental property but the supplier of a livable space to a tenant who will live in it. The landlord must conduct maintenance and repairs at its own expense and cannot lawfully shift those costs to the tenant, even during the term of the tenancy while the tenant has exclusive possession of the premises. *See Hemingway*, 363 Mass. at 199; 105 C.M.R. § 410.003(b) (unless otherwise specified in the State Sanitary Code, "the owner is responsible for providing all maintenance, repairs, and equipment necessary" to comply with the Code).

As the "reasonable wear and tear" language of the security deposit statute highlights, and as other landlord-tenant laws reinforce, the tenant has the right to, and is indeed expected to, live fully and enjoy the premises without incurring additional costs beyond the rent. Where a tenant's use of the property is unreasonable, and where that unreasonable use causes damage beyond that which the landlord would have been required to repair as part of its normal duty to maintain the property, then the landlord may ask the tenant to bear those costs, including via deductions from a security deposit. *See* G.L. c. 186, § 15B (4). But where "damage" was caused either by the tenant's non-negligent enjoyment of the home or by the natural and unavoidable deterioration of the landlord's asset, then the damage constitutes "reasonable wear and tear," and the landlord cannot shift the cost of repair to the tenant through deductions from the security deposit or otherwise. *See* G.L. c. 186, § 15B (4) (allowing deductions "to repair any damage caused to the dwelling unit by the tenant . . . reasonable wear and tear excluded."); WEAR AND TEAR, Black's Law Dictionary (12th ed. 2024) (defining "reasonable wear and tear" as deterioration caused by the reasonable use of the premises).

While the determination of whether any given damage is "reasonable wear and tear" may sometimes require fact-specific analysis, because of the uneven bargaining power between landlords and tenants, this Court should not adopt an interpretation that either risks shifting the costs of basic property maintenance to tenants or allows landlords to finance improvement or refurbishment of their property through deductions from security deposits.

Thus, "reasonable wear and tear" cannot mean such minuscule conditions or *de minimis* evidence that people lived in the unit such that the landlord need do nothing at all to mitigate it. Rather,

"reasonable wear and tear" means the damage that occurs from *reasonable use*. Acquiring and installing furniture for sleeping or leisure, hanging art or decorations on the walls, preparing and eating food, raising children, and even just walking around are all ordinary elements of living that people engage in when they dwell in a space, and those behaviors may leave evidence in the form of wear and tear—*e.g.*, furniture may leave scuffs on walls or floors; regular use of a stove will limit its life; and carpets may reflect they have been walked on repeatedly.

Everything has a lifespan. Therefore, to suggest that painting and carpet repair are always or presumptively the result of damage beyond reasonable wear and tear invites an interpretation that could swallow the "reasonable wear and tear" exclusion. The same logic could apply even to plumbing, heating systems, or kitchen appliances—all of which eventually need to be repaired or replaced as part of maintaining a habitable dwelling, regardless of whether anyone actually "damaged" them beyond reasonable wear and tear. Such an interpretation of the tenant's obligations upon leaving the apartment would also be inconsistent with the well-established rights of tenants and their families to use, occupy, and enjoy their rented premises as homes and to have the costs of ordinary repairs and maintenance included in their rent.

The Attorney General's Office, through receiving and responding to consumer complaints, receives many reports about landlords taking deductions from security deposits beyond what the law permits. The experiences of the Attorney General in this area reinforce the concern—reflected in the detailed requirements that § 15B imposes on landlords who choose to hold and take deductions from a security deposit—that the context in which security deposit deductions are made is ripe for error or abuse. The Attorney General, in her role enforcing the Commonwealth's consumer protection laws, therefore urges the Court to clarify that reasonable wear and tear under G.L. c. 186, § 15B(4) includes damage to the apartment that results from the tenant's use of it as a dwelling, so long as the tenant's use has been reasonable under the circumstances—including the inevitable consequences of using a space as a dwelling.

Specifically, with regard to refurbishment of items like carpets and wall paint, the Attorney General urges this Court to hold that 1) charges for painting, carpet repair, filling holes where pictures have been hung on the walls, or similar refurbishment generally constitute deductions for "reasonable wear and tear" in violation of G.L. c. 186, § 15B (4), and 2) in the less common situations where a tenant's unreasonable conduct has damaged paint or carpet beyond reasonable wear and tear, it is a violation of G.L. c. 186, § 15B (4) to deduct money from a security deposit without itemizing "in precise detail the nature of the damage" in a manner sufficient to distinguish the damage from reasonable wear and tear. Clarifying this point will bring greater certainty to the parties' responsibilities at the end of a tenancy and thereby promote compliance with the Commonwealth's laws.

(2) Including a provision in a lease requiring a tenant to have the premises professionally cleaned at the end of the lease or suffer a deduction from the security deposit is unlawful, and actually deducting such a charge from a security deposit is a clear violation of § 15B (4).

A landlord may not preemptively require "professional" cleaning at the beginning of a tenancy. Such a professional cleaning requirement effectively amounts to a preemptive charge for reasonable wear and tear by threatening deductions from tenants' security deposits unless they pay for a professional cleaning service at the end of their tenancies. Appellees argue that inclusion of the professional cleaning requirement is not a charge but merely ". . . a guidepost to educate the tenant on the condition in which the unit should be left at move-out. . ." (Brief of JRK Property Holdings, Inc. at 54), and rely on their stated presumption that cleanliness standards are permissible in leases.

But the clause at issue is no mere guidepost. Paragraph 35 of the lease states that the tenant "must follow move-out cleaning instructions" and that "[i]f you don't clean adequately, you'll be liable for reasonable cleaning charges, *which shall be deemed property damage*." (Joint Appendix I.49, emphasis added). The move-out addendum (Joint Appendix I.71) then specifically requires that the apartment be "professionally cleaned." These clauses clearly create an obligation on tenants to retain a "professional" cleaner and indicate that the failure to do so will result in deductions from the security deposit for "damage," without any provision for reasonable wear and tear or the detailed itemization of the damage required by G.L. c. 186, § 15B (4). The Complaint at issue further alleges that on at least one occasion the landlord in fact deducted carpet cleaning costs from a security deposit.

Of course, a landlord in any particular instance where there has been damage beyond "reasonable wear and tear" may document that damage by "itemizing in precise detail the nature of the damage and repairs necessary to correct such damage" pursuant to § 15B (4) (iii). The landlord must also provide "written evidence, such as estimates, bills, invoices or receipts, indicating the actual or estimated cost" of repair. *Id.* But deducting any amount of money for vague and conclusory reasons like "carpet clean per lease" is not permissible under the statute because the description does not show what damage beyond "reasonable wear and tear" was repaired by cleaning the carpet. *See id.*

Furthermore, the Appellees' argument that lease terms in and of themselves can never violate § 15B (4) unless enforced is wrong. And Appellees' argument reads the question too literally to really address the issue on which the District Court seems to be seeking guidance: namely, whether this type of provision is legal. It is not: inclusion of illegal terms in a lease has been declared by regulation to be an unfair or deceptive practice and a violation of G. L. c. 93A. 940 C.M.R. § 3.17(3)(a)(1).

Therefore, the Court should answer this question by holding that inclusion of a provision in a lease requiring a tenant to have the premises professionally cleaned at the end of the lease or suffer a deduction from their security deposit is unlawful, and actually deducting such a charge from a security deposit is a clear violation of § 15B (4).

Thank you for your consideration of this filing.

Sincerely,

/s/ Jane Alexandra Sugarman
Jane Alexandra Sugarman
Assistant Attorney General
Public Protection and Advocacy Bureau
Consumer Protection Division
One Ashburton Place, 18th Floor
Boston, MA 02108
Jane.Sugarman@mass.gov
(617) 963-2866

cc: Counsel for Plaintiffs-Appellants
Via email
Keith L. Sachs, Esq., ksachs@ddsklaw.com

Counsel for Defendants-Appellees
Via email
Thomas H. Wintner, Esq. – twintner@mintz.com
Mathilda S. McGee-Tubb, Esq. – msmcgee-tubb@mintz.com
Kaitlin D. Martin, Esq. – kdmartin@mintz.com

Counsel for *Amicus Curiae* Greater Boston Real Estate Board
Via email
Jeffrey C. Turk, Esq. – jturk@turkmilonelaw.com

Counsel for *Amici Curiae* Community Action Agency of Somerville, *et al.*
Via email
Alycia M. Kennedy, Esq. – akennedy@cla-ma.org
David A. Brown – dbrown@cla-ma.org
Daniel Ordorica, Esq. – dordorica@hfmgpc.com
Richard M.W. Bauer, Esq.- dbauer@gbls.org
Lisa Marshall, Esq. – lmarshall@vlpnet.org