MELLEN INVESTMENT COMPANY, LLC

March 14, 2014

State of Alaska
House of Representatives
Committee on Judiciary
Juneau, Alaska

Attn: Chair: Representative Keller

Re: HB 282
An Act amending the Landlord-Tenant Act.

Dear Ladies and Gentlemen,

We are very concerned about some of the provisions proposed by HB 282. Since it has direct impact on our business, we wish to make our views known to the Committee and urge some changes that are extremely important to us.

Our Firm

Mellen Investment Company, LLC currently owns and manages over 110 apartment and townhouse rental units, mostly in Anchorage. We have been engaged in this business for over twenty years. The manager, Richard Block is an attorney and is an experienced professional in the business of owning real property based investments and in the responsible management of rentals.

The Rental Environment

We are grateful to say that our business is profitable, however, it is so, because we have been able to rely on the sanctity and enforceability of our contracts with tenants. Within the last few years, there has been a growing effort to impose "socially responsible" mandates or restrictions on landlords, which is changing the degree of involvement landlords have in forming the contractual relationship with their tenants. These changes, while mostly well-meaning and frequently easily absorbed by responsible owners of rental properties, take away the rights of landlords to define the use of their properties and continue to expect landlords to provide facilities to special tenants at no cost to the tenants and some cost to landlords.

Within the language of HB 282 there are several instances where the drafters have inserted these "socially responsible" mandates at some potential cost to landlords and we ask this Committee to carefully consider whether that is a desirable public policy.

HB 282

This measure seems to be a well intentioned effort to update the Landlord Tenant Act and, to the extent the changes are necessary and make good public policy concerning the relationship between a landlord and a tenant, we support that effort. Accordingly, there are several provisions in the bill that are worthy of your favorable consideration. At the same time, however, there are changes recommended that we believe either are poor public policy and ought not to be adopted or may have a valid reason for being considered but are poorly drafted and should be rewritten before being adopted.

2120 C STREET, SUITE 100 ■ ANCHORAGE, ALASKA 99503 ■ (O) 907.563.5121 ■ (F) 907.563.7515 ■ (E) MELLEN@ARCTIC.NET

We provided a full section by section analysis of HB 282 to the House Labor and Commerce Committee and trust that our written testimony has been passed to you for your consideration. Accordingly, in this letter we will only deal with the portions of the bill that we regard as in need of further modification.

Exact language of our proposed changes are attached to this letter.

Section 6.

This section makes, what could be, a significant change in the standard for the tenant's obligations to return the premises to the landlord.

Today the tenant is required to repair (or pay for the repair) of any damage beyond "use of the premises by normal, nonabusive living." The proposed substitute language would make the tenant not responsible for "normal wear and tear". The term "normal wear and tear" is elsewhere defined. See Section 9 of the bill.

AS § 34.03.090 (b) already establishes the pre-tenancy condition statement, which this bill would require be signed by both landlord and tenant, as the standard to which tenants are held.

Our concern is that adoption of section 6 provides for a possible argument that the pre-tenancy condition report is not the standard and that tenants are permitted to impair the condition of the premises by "normal wear and tear" and then, dispute what the proposed new section, AS § 34.03.070 (i) (1), see bill section 9, really means.

We believe that this provision could possibly be useful if redrafted and we have attached a proposed amendment that keeps the proposed language for tenancies where there is no rental agreement or pre-tenancy condition statement but, where there is a rental agreement and a pre-tenancy condition statement, that statement becomes the standard for the condition of the rental unit at termination.

Section 9.

This amendment deals with two issues,

a. The definition of "normal wear and tear" and we have discussed our view in connection with the changes in Section 6.

b. Making statutory provision for a separate pet deposit. We believe strongly that this provision needs further consideration.

Note, we do not deal with the issue of "service animal" but we would note that is one more example, perhaps largely out of the control of the State Legislature, where landlords are being asked to absorb the costs of socially responsible mandates.

Our concern is that this bill adds to the costs by placing limits on landlords with respect to non-service animals and without justification.

First, currently, landlords can refuse to allow pets, other than service animals. The reasons why this is important would take pages to discuss, but it should be clear that many apartment projects do not lend themselves to accommodating pets; the units are too small, there is inadequate yard space; the neighboring units become affected by the proximity of pets, and so on.

On the other hand, it may be, as in our case, landlords may make some effort to accommodate some pets, in some of our units under some circumstances.

One of our big concerns is the excessive damage that can be caused by pets and the only reliable protection for landlords is an addition to the security deposit, often called the pet security deposit and the amount may be sufficient to pay for replacement of the carpet or other major costs, often beyond an amount equal to one month rent.

It is our view that, if we cannot collect a sufficient security deposit to cover what we believe could be the damages involved, we will likely cut back on the degree to which we allow pets at all. People with pets must know that their tenancy imposes "abnormal" abuse of the premises and be willing to secure the cost of remediation of that abuse. We believe that proposed AS § 34.03.070 (h) (1) be eliminated or substantially increased.

Second, Security deposits are security deposits, they are funds held by the landlord to cover expected or contingent obligations the tenants may have to the landlord for unpaid rent obligations or costs of remediating damage. Security deposits are not item specific. Thus, the security deposit can be applied to any obligation the departed tenant may have to the landlord.

What the statute does provide is a limit on the amount of a security deposit that a landlord may demand as a condition of renting the property. We do not object to that.

This newly proposed section, however, which provides for collecting a pet deposit, says that the pet deposit may only be used to offset pet damages. We believe this is completely unreasonable.

If we collect both a security deposit (limited to one month rent) and a pet deposit (currently proposed to be limited to one month rent) and the damages exceed an amount equal to two month's rent, this provision would require us to allocate what was caused by the dog, what was caused by the tenant and what is yet owed by the tenant in back rent.

This proposal says that if the pet did little provable damage but the tenant owes two months back rent plus some damage related costs, we must at the same time, bill the tenant for what he owes in excess of the security deposit and give back the excess of the pet deposit.

With all due respect, this makes no sense. We propose that that subsection (2) be eliminated from the legislation.

Section 12.

The changes here deal with the number of occupants allowed in a unit.

As drafted, this proposal would limit a tenant to a number of occupants defined by a statute or defined by the CC & R's governing a piece of property.

What this proposal does not do is allow a limit on the number of occupants as defined in the rental agreement. The landlord must have the ability to prescribe the number of occupants using the rental unit even if there are no statutory limits or CC & R's or if those limits are higher than what the landlord regards as appropriate for the landlord's property.

We would suggest adding to proposed AS § 34.03.120 (a) (10) language which reads, "…, or in the rental agreement."

Section 14.

Here again, the bill would impose "socially responsible mandates" upon the landlord. In this case, it is totally unjustified.

This section would give a tenant the right to unilaterally terminate a tenancy upon ten day notice if they meet certain conditions relating to abuse, violence or stalking.

We certainly regard as tragic the increasing incidence of domestic violence and sexual and spousal abuse and laud the work being done by numerous social service agencies that deal with the consequences, physical and financial, suffered by those who are victims of these assaults.

On the other hand, it is completely without justification that the landlord should be made to pick up the financial consequences of these personal tragedies. When we enter into a lease agreement with a tenant, which in most cases involves as "tenant" multiple individuals and, most frequently, spouses, we do so expecting compliance with all the terms of the lease including the lease term.

Often, landlords may offer a rent concession for a long term (say one year) lease from what they may charge for a shorter lease. This proposal gives the tenant the right to terminate the lease and suffer no consequences for early termination.

Further, this is the only example, if adopted, of where a tenant can terminate a lease on less than thirty day notice.

Further, the draft is unclear as to what is meant in this proposal by "tenant". For example, Bill and Betty are married, but shortly into their lease term, Betty alleges spousal abuse and takes the necessary steps to move away from Bill. She serves notice on the landlord.

Does this mean ONLY Betty is moving out? Are we left with Bill?

Ordinarily, when one of two occupants of a unit elects to move out, we re-evaluate the credit of the remaining occupant before we will release the moving occupant. If Betty offered the qualifying credit that justified our renting to them and she moves out leaving Bill, are we stuck with Bill? See proposed AS § 34.03.215 (c) (5) in the bill.

Further, the proposal is not clear on what "terminate a rental agreement" means. For example, is Betty, the moving individual, still responsible for cleaning, damages, back rent, Bill's forward rent, etc.?

Our view is that this is both poorly drafted from a technical standpoint, but also, in general terms, a shift of financial responsibility to the landlord that makes no public policy sense. We offer a change to the bill that will allow a victimized tenant to leave the premises and be relieved of the balance of their lease but clarify that all tenants are obligated for rent or damage up to the date of early termination.

Conclusion

As a resident of Alaska who has committed substantial personal financial resources to provide housing in this community, we have a great interest in any measure that would improve or clarify the relationship between a landlord and a tenant. We welcome an opportunity to participate in any discussion that would deal with these issues, but hope that your Committee would take the time to be concerned about the issues raised in this letter before allowing this bill to leave your Committtee.

Cordially,

Richard L Block, Manager