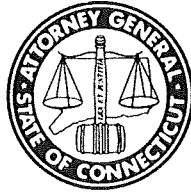


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State of Connecticut

April 1, 2013

Senator John McKinney
Senate Minority Leader
Representative Linda Orange
Deputy Speaker of the House
State of Connecticut
General Assembly
State Capitol
Hartford, CT 06106-1591

Dear Senator McKinney and Representative Orange:

This letter responds to your request for a formal legal opinion concerning the scope of the “rental charges” that a municipal fair rent commission is authorized to review. Specifically, you have asked whether a fair rent commission’s authority under Conn. Gen. Stat. § 7-148b to “make studies and investigations, conduct hearings and receive complaints relative to rental charges on housing accommodations . . . in order to control and eliminate excessive rental charges on such accommodations” includes the authority to consider not just rent, but also fees arising from the landlord-tenant relationship.

You have raised this issue after learning that a municipal fair rent commission had refused to adjudicate a complaint by mobile home park tenants concerning a monthly fee for oil spill insurance that the landlord was charging pursuant to an addendum to the tenants’ rental agreements. According to your letter, the commission’s explanation for refusing to address the complaint was its uncertainty whether its jurisdiction was limited to complaints concerning rent, or extended to fees associated with rent.

We understand that as a result of this situation, the legislature is currently considering House Bill 5970, “An Act Concerning the Power of Municipal Fair Rent Commissions,” which would define the “rental charge” that a fair housing commission could review to include any fee or charge in addition to rent that a landlord seeks to impose on a tenant. The Housing Committee held a public hearing on the issue on February 19, 2013, after which you requested this opinion to clarify the commission’s authority under existing law.

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We conclude that pursuant to Conn. Gen. Stat. § 7-148b, the “rental charges” that a municipal fair rent commission is currently authorized to review include not only charges labeled as “rent,” but also fees that the rental agreement requires the tenant to pay the landlord for the use or occupancy of the property.

Conn. Gen. Stat. § 7-148b, which authorizes municipalities to establish fair rent commissions, states, in pertinent part, that:

[A]ny town, city or borough may, through its legislative body, create a fair rent commission to make studies and investigations, conduct hearings and **receive complaints relative to rental charges** on housing accommodations, except those accommodations rented on a seasonal basis, within its jurisdiction, which term shall include mobile manufactured homes and mobile manufactured home park lots, in order to control and eliminate excessive rental charges on such accommodations, and to carry out the provisions of sections 7-148b to 7-148f, inclusive, section 47a-20 and subsection (b) of 47a-23c.

Conn. Gen. Stat. § 7-148b(a)(emphasis added).

“When construing a statute, [a court’s] fundamental objective is to ascertain and give effect to the apparent intent of the legislature.” State v. Webster, 308 Conn. 43, 51 (2013). “In seeking to determine that meaning, General Statutes § 1-2z directs [the court] first to consider the text of the statute itself and its relationship to other statutes.” Id. (ellipsis and brackets omitted). “If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.” Id. “When a statute is not plain and unambiguous, [the court] also look[s] for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.” Id. at 51-52.

The legislature has not expressly defined the term “rental charge” for purposes of § 7-148b. “In the absence of a definition, . . . [the court] may presume that the legislature intended the word to have its ordinary meaning in the English

language, as gleaned from the context of its use.” Scholastic Book Clubs, Inc. v. Commissioner of Revenue Services, 304 Conn. 204, 216, cert. denied, 133 S. Ct. 425 (2012)(ellipses and brackets omitted). “Under such circumstances, it is appropriate to look to the common understanding of the term as expressed in a dictionary.” State v. LaFleur, 307 Conn. 115, 128 (2012). The American Heritage Dictionary defines “rental” as “relating to, or available for rent.” American Heritage Dictionary (5th ed. 2011). “Charge” means “expense, cost.” Id. Thus, “rental charge” commonly means the cost or expense of rent. “Rent” is the “consideration paid, usually periodically, for the use or occupancy of property, especially real property.” Black’s Law Dictionary (9th ed. 2009); see also W.S. Quinby Co. v. Sheffield, 84 Conn. 177, 183 (1911)(“[w]hatever a tenant is required to pay as a compensation for the right to occupy land may generally be termed rent”).

In the situation that you present, in which the tenant’s lease has an addendum requiring payment of a monthly oil spill insurance fee, the fee is part of the consideration paid by the tenant for the use or occupancy of the property. Although it is not labeled “rent,” it is nonetheless a component of the consideration mandated by the lease that must be paid if the tenant is to continue to use or occupy the land. As such, it is a “rental charge” for purposes of § 7-148b. To conclude otherwise would mean that a landlord could avoid review by the fair rent commission simply by labeling the charges in his rental agreement “fees,” rather than “rent.”¹

The conclusion that the required oil spill insurance fees are a component of “rental charges” for purposes of § 7-148b follows not only from the statutory text, but also from its relationship to other statutes. “[T]he legislature is always presumed to have created a harmonious and consistent body of law.” In re Jan Carlos D., 297 Conn. 16, 21 (2010). “This tenet of statutory construction requires [courts] to read statutes together when they relate to the same subject matter.” Id. (ellipses and bracket omitted).

¹ A mobile home tenant described an example of this approach during a public hearing on an amendment to § 7-148b that brought mobile homes within the fair rent commission’s jurisdiction. The tenant testified that his landlord charged a base rent, plus \$3 for each additional person, \$3 for each car, \$3 for a washing machine, \$3 for pet control, \$10 for an untied pet, \$10 for a mobile home less than 10 feet wide, \$10 for a pick-up truck, \$10 for a boat, and \$10 for miscellaneous charges. Joint Standing Committee Hearing, Human Rights and Opportunities, 1971 Sess. 21 (Feb. 24, 1971)(remarks of James Morris). Although there was no discussion anywhere in the legislative history of § 7-148b of whether such fees fell within the scope of the term “rental charge,” the testimony demonstrates how a lease may be packed with extra charges.

Several statutes relate to the same subject matter as § 7-148b. The first are those statutes that are specifically referenced in § 7-148b. Section 7-148b states that the commission's purpose in making studies and investigations, conducting hearings, and receiving complaints relative to rental charges is not only "to control and eliminate excessive rental charges," but also "to carry out the provisions of sections 7-148b to 7-148f, inclusive, section 47a-20 and subsection (b) of section 47a-23c." Sections 7-148b to 7-148f set forth standards for determining when a rental charge is excessive, and provide various remedies. Section 47a-20 prohibits a landlord from increasing "rent," or taking other retaliatory actions against a tenant who has attempted to remedy a statutory violation, requested repairs, sought to enforce the landlord's responsibilities, or joined a tenant's union. Subsection (b) of section 47a-23c prohibits a landlord from bringing an action to evict an elderly or disabled tenant unless the tenant has refused to pay "rent" or a fair and equitable rent increase, or other specified circumstances apply. Conn. Gen. Stat. § 47a-23c(b). Other relevant statutes, although not mentioned in § 7-148b, are §§ 21-64 through 21-84b, and specifically §§ 21-70, 21-80, and 21-83, which govern rental agreements between owners and mobile home tenants.

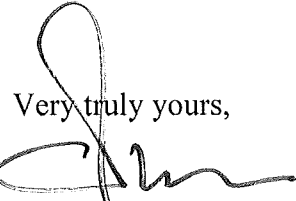
For purposes of each of these related statutes, the term "rent" is defined as "all periodic payments to be made to the landlord under the rental agreement." Conn. Gen. Stat. §§ 47a-1(h) and 21-64(11).² The "rental agreement" is defined as "all agreements, written or oral, and valid rules and regulations adopted under section 47a-9 or subsection (d) of section 21-70 embodying the terms and conditions concerning the use and occupancy of a dwelling unit or premises." Conn. Gen. Stat. §§ 47a-1(i) and 21-64(12).³ Under these definitions, the monthly oil spill insurance fees would constitute "rent" because they are "periodic payments . . . to the landlord" under a written agreement "embodying the terms and conditions concerning the use and occupancy of a dwelling unit or premises." Thus, when a fair rent commission receives a complaint from a tenant that his landlord is retaliating against him by increasing his rent in violation of § 47a-20, or trying to evict him in violation of § 47a-23c for nonpayment of unfair rent increases, or charging improper rent under a mobile home rental agreement in violation of § 21-70(b), the commission must construe "rent" to include "all periodic payments to be made to the landlord under the rental agreement." Such periodic payments would include charges such as the monthly oil spill insurance fees.

² Conn. Gen. Stat. § 21-64(11) uses the term "owner" rather than "landlord."

³ Conn. Gen. Stat. § 21-64(12) omits the reference to "section 47a-9."

Because statutes must be read together and construed so as to create a harmonious and consistent body of law, In re Jan Carlos D., 297 Conn. 16, 21 (2010), it must be presumed, in the absence of express statutory language to the contrary, that the legislature intended the definition of “rent” to be consistent among § 7-148b and these related statutes. Such a presumption makes sense, given the often overlapping nature of such claims. For example, in Dorsey v. Vernon Village, Inc., 50 Conn. Supp. 430 (2007), two tenants in a mobile home park, one of whom was elderly and disabled, brought suit to enjoin their landlord from raising their rent after their dog bit another resident.⁴ They claimed that the rent increase was retaliatory in violation of §§ 47a-23c and 21-80a, and excessive in violation of § 7-148c. The determination “whether a rent increase is excessive for tenants protected under § 47a-23c(a)(1), depends on an assessment of the criteria set forth in § 7-148c.” Dorsey, 50 Conn. Supp. at 437. Although not an issue in the case, given the interconnection of the statutes, it would be confusing and unworkable if the definition of “rent” for purposes of § 47a-23c differed from that applicable to § 7-148c.

Accordingly, we conclude, based on common usage and the relationship of § 7-148b to other statutes, that the term “rental charges” in § 7-148b should be construed to include all periodic payments to a landlord under a rental agreement for the use or occupancy of property. Applying this definition, we further conclude that a complaint concerning a lease that requires a tenant to pay the landlord a monthly oil spill insurance fee would be within the jurisdiction of a fair rent commission. Although we believe the term “rental charges” is sufficiently clear, the legislature’s enactment of clarifying legislation would of course remove any doubt.

Very truly yours,

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ATTORNEY GENERAL

⁴ The tenants brought suit in lieu of filing a fair rent commission complaint because their town lacked a fair rent commission. Dorsey, 50 Conn. Supp. at 434 n. 2.