

STATE OF MAINE  
CUMBERLAND, ss

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-

CARL DAVIS, )  
 )  
 )  
Plaintiff, on behalf of himself and )  
all others similarly situated )  
 )  
v. )  
 )  
SHW PROPERTIES, LLC, )  
STEVE FOWLER-GREAVES )  
 )  
Defendants )

CLASS ACTION COMPLAINT  
JURY DEMANDED

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**INTRODUCTION**

1. For low-income families, the unjust retention of a security deposit at the end of a tenancy can make the difference between a homeless shelter and a new apartment. Therefore the public policy of this state recognizes that the security deposit remains the property of the tenant and requires that a landlord hold the money in trust.

2. The Named Plaintiff, Carl Davis, like many veterans in Maine, has struggled to maintain adequate housing. With the help of local service organizations he was able to put down a deposit on stable housing at 61 Grant St. in Portland. But Defendant SHW Properties, LLC (“SHW”) sold that building from under him. Mr. Davis’ former landlord, Defendant Steve Fowler-Greaves, the owner of SHW Properties, LLC, failed in his duty to either return security deposits he held in trust for his tenants or to transfer the deposits to the new owner.

3. Plaintiff Carl Davis brings this action on behalf of himself and all similarly situated Maine renters (“Plaintiffs”) seeking damages for SHW Properties, LLC and its owner,

Steve Fowler-Greaves' (collectively, the "Defendants") failure to deliver all security deposits to the subsequent landlord upon termination of the Defendant's ownership interest in the rental units occupied by Plaintiffs, and the Defendants' consequent illegal retention of such security deposits.

### **PARTIES**

4. Named Plaintiff Carl Davis is a resident of Cumberland County, Maine.

5. Defendant SHW Properties, LLC is Maine business corporation that was administratively dissolved in or around August 2013. Prior to its dissolution, SHW had a business address of PO Box 11371, Portland, Maine and did business in Cumberland County, Maine.

6. Defendant Steve Fowler-Greaves is, upon information and belief, a resident of Cumberland County.

### **FACTS**

#### **Defendants Own and Manage Rental Properties.**

7. Defendants owned and managed certain residential property units in and around Portland, Maine, including the rental property formerly occupied by Mr. Davis at 61 Grant Street, Portland, Maine.

8. Upon information and belief, Defendant Fowler-Greaves personally acted in all relevant ways as the landlord for all such properties, including personally collecting security deposits and rents.

9. Defendant Fowler-Greaves, as owner and manager of Defendant SHW, accepted security deposits from tenants signing leases to live in rental units owned by him and Defendant SHW.

10. Defendant Fowler-Greaves accepted Mr. Davis' security deposit in his own name. Annexed hereto as Exh. A is a copy of the check issued to Defendant Fowler-Greaves on behalf of Mr. Davis. Upon information and belief, Defendant Fowler-Greaves accepted in his own name the security deposits of those similarly situated to Mr. Davis.

11. Pursuant to leases like those signed by Mr. Davis, Defendant Fowler-Greaves was entrusted with security deposits paid by Mr. Davis and those similarly situated.

**Defendants Accept Security Deposits from Mr. Davis and others similarly situated.**

12. In or around August 2012, Mr. Davis, a formerly homeless veteran, worked with the Veteran Housing Services Program (the "VHS") and the Portland Housing Authority (the "PHA") to obtain housing in the Defendant's property located at 52 Wilmot in Portland Maine. A true and correct copy of the lease signed by Mr. Davis (the "Wilmot Lease") is annexed hereto as Exh. B.

13. The Wilmot Lease stated that Mr. Davis was responsible for paying a security deposit to Defendants in the amount of \$760.

14. The VHS paid Mr. Davis' security deposit, agreeing with Defendants to provide a security deposit in the amount of \$1,520. A true and correct copy of the Rental Information Agreement signed by Defendants and the VHS is annexed hereto as Exh. C. A true and correct copy of the check provided to Defendants is annexed hereto as Exh. A.

15. Defendants accepted security deposits from tenants similarly situated to Mr. Davis.

16. Mr. Davis does not know why there is a discrepancy between the amount of the security deposit described in the Wilmot Lease and the amount actually paid by the VHS pursuant to the Rental Information Agreement signed by the VHS and the Defendants.

17. Mr. Davis was subsequently moved to his current apartment at the Defendant's property at 61 Grant Street in or around July 2013. Mr. Davis signed a new lease with Defendants (the "Grant Street Lease," annexed hereto as Exh. D).

18. Mr. Davis and the Defendants had an understanding that the security deposit paid for his apartment at 52 Wilmot would transfer over to his apartment at 61 Grant Street.

19. Mr. Davis never received any accounting or notice confirming that his security deposit was transferred to his new lease.

20. As per Mr. Davis' agreement with the VHS and PHA, Mr. Davis is under no obligation to repay the security deposit paid to Defendants on his behalf. Accordingly, any amount remaining from Mr. Davis' security deposit after legal deductions (if any) would, pursuant to Maine law as well as the Grant Street Lease and the Wilmot Lease, be returned to Mr. Davis personally.

**Defendants Sell the Rental Units and the security deposits disappear.**

21. In or around May 2015, Defendants sold the rental units at 61 Grant Street to AEG Holdings, Inc. ("AEG") as part of a larger deal also including other rental units (the "Grant Street Deal").

22. Pursuant to 14 M.R.S. § 6035, Defendants were obligated to transfer all security deposits in their possession to the AEG no later than the real estate closing. Further, Defendants were required to provide Mr. Davis and those similarly situated with notice of the transfer, notice of the transferee's (in this case, AEG) name and address, and a copy of the accounting of the amount of the security deposit transferred. Mr. Davis did not receive any such notice or accounting. Upon information and belief, none of the tenants at 61 Grant Street nor any other

property Defendants sold to AEG as part of the Grant Street Deal received any such notice or accounting.

23. Defendants did not transfer any security deposits it was legally required to hold in trust its tenants to AEG as part of the Grant Street Deal.

24. By letter dated March 3, 2016, Mr. Davis requested the entirety of his security back from Defendants (the “March 3 Letter”).

25. The March 3 Letter was delivered on March 5, 2016.

26. As of the filing of this complaint, Mr. Davis has not received any response to the March 3 Letter.

#### **CLASS ALLEGATIONS**

27. The named Plaintiff Carl Davis asserts his claims as a class action pursuant to Rule 23 of the Maine Rules of Civil Procedure on his own behalf and on behalf of a class (defined below) for which Plaintiff seeks certification.

28. This class action is brought on behalf of Plaintiff Carl Davis and Class Members (defined below) to recover damages for the harm caused by Defendants’ illegal retention of security deposits belonging to the Named Plaintiff and the class members and for the harm caused by Defendants’ breach of fiduciary duty.

29. Named Plaintiff Carl Davis sues on his own behalf and on behalf of a class of persons under Rule 23(a) and 23(b)(2) and (3) of the Maine Rules of Civil Procedure.

30. Throughout the Class Period (defined below) Defendants injured Class Members by illegally retaining all security deposits paid to them by Plaintiffs and the Class Members. In doing so, the Defendants affirmatively and deliberately converted all security deposits in their possession in breach of their fiduciary duties to Mr. Davis and those similarly situated.

31. Pending any modifications necessitated by discovery, the named Plaintiff preliminarily defines the following class:

**Retention Class:** ALL CURRENT AND FORMER TENANTS OF PROPERTIES OWNED AND/OR MANAGED BY DEFENDANTS WHOSE SECURITY DEPOSITS WERE ILLEGALLY RETAINED BY DEFENDANTS IN VIOLATION OF 14 M.R.S. § 6034.

32. The class is so numerous that joinder of all potential class members is impracticable. Named Plaintiff Davis does not know the exact size of the class since that information is within the control of Defendants.

33. Based on the number of tenants at the Grant Street apartments, the named Plaintiff estimates that the class is made up of potentially dozens of current and former tenants of Defendants. The exact size of the classes will be ascertainable from Defendants' records.

34. There are questions of law or fact common to the class that predominate over any individual issues that might exist. Common questions of law and fact include: (i) how Defendants retained and accounted for security deposits they received from Class Members; (ii) how, or if, Defendants properly transferred tenants' security deposits upon the transfer of ownership of their respective rental units.

35. The class claims asserted by the named Plaintiff Carl Davis are typical of the claims of all of the potential class members. This is an uncomplicated case of misappropriation, breach of fiduciary duty, conversion, and violations of Maine law concerning the illegal retention of security deposits. The amounts and treatment of such security deposits that comprises the core of this matter is ascertainable from business records and the class claims are typical of those pursued by victims of those violations.

36. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because numerous identical lawsuits alleging similar or identical causes of action would not serve the interests of judicial economy.

37. The named Plaintiff Carl Davis will fairly and adequately protect and represent the interests of the class. He was a tenant of Defendants and a victim of the same violations of law as other class members.

38. The named Plaintiff is represented by counsel experienced in class actions and Maine law.

39. The prosecution of separate actions by the individual potential class members would create a risk of inconsistent or varying adjudications with respect to individual potential class members that would establish incompatible standards of conduct for Defendants.

40. Each class member's claim is relatively small. Thus, the interest of potential class members in individually controlling the prosecution or defense of separate actions is slight. In addition, public policy supports the broad remedial purposes of class actions in general and the pertinent state laws are appropriate vehicles to vindicate the rights of those tenants with small claims as part of the larger classes.

41. The named Plaintiff is unaware of any members of the putative class who are interested in presenting their claims in a separate action.

42. The named Plaintiff is unaware of any pending litigation commenced by any putative class members concerning the instant controversy.

43. It is desirable to concentrate this litigation in one forum.

44. This class action will not be difficult to manage due to the uniformity of claims among the class members and the susceptibility of fiduciary duty and statutory claims to both class litigation and the use of representative testimony and representative documentary evidence.

45. The contours of the class will easily be defined by reference to leases and bank records Defendants were required to create and maintain. Notice will be easily distributed to all members of the putative classes as all such members are or were recently living in properties owned and/or managed by Defendants.

### **CLAIMS FOR RELIEF**

#### **COUNT I:** **BREACH OF MAINE SECURITY DEPOSIT LAW** **AS TO ALL DEFENDANTS**

46. Plaintiff incorporates all previous paragraphs.

47. Plaintiff asserts this claim on his own behalf and on behalf of the Retention Class.

48. During the Class Period, the named Plaintiff and members of the Retention Class paid to Defendants security deposits, as the term is defined in 14 M.R.S. § 6031(2).

49. In violation of 14 M.R.S. § 6034, Defendants have wrongfully retained security deposits paid to them by the named plaintiff and those similarly situated.

50. In accordance with the requirements of 14 M.R.S. § 6034(1), the named Plaintiff Carl Davis gave Defendants notice of his intention to bring a legal action by letter dated March 3, 2016, which was delivered on March 5, 2016. This legal action was initiated more than seven days after such notice was delivered to the Defendants.

51. Accordingly, Defendants have violated 14 M.R.S. § 6034.

52. Pursuant to 14 M.R.S. § 6034(2), the Plaintiff and the Retention Class are therefore entitled to recover double the amount of their security deposit that Defendants



wrongfully withheld. Further, the Plaintiff and members of the Retention Class are entitled to recover reasonable attorneys' fees and court costs.

**COUNT II:**  
**BREACH OF FIDUCIARY DUTY**  
**AS TO DEFENDANT FOWLER-GREAVES**

53. Plaintiff incorporates all previous paragraphs.

54. Plaintiff brings this claim on his behalf and on behalf of the Retention Class.

55. As landlord of the named Plaintiff Carl Davis and the Retention Class, the Defendant Fowler-Greaves was obligated by 14 M.R.S. § 6038(1) to maintain all security deposits collected in an account of a bank or other financial institution under terms that place the security deposit beyond the claim of creditors of the landlord or any other entity or person, including a foreclosing mortgagee or trustee in bankruptcy.

56. Accordingly, Defendant Fowler-Greaves owed fiduciary duties of care, loyalty and good faith to the named Plaintiff and the Retention Class as concerns the treatment and maintenance of security deposits Defendant Fowler-Greaves was legally required to hold in trust.

57. Defendant Fowler-Greaves breached his fiduciary duty of care by, among other things, failing to transfer all security deposits to AEG upon the closing of the Grant Street Deal, as was required by 14 M.R.S. § 6035.

58. Defendant Fowler-Greaves breached his duties of loyalty and good faith by, among other things, unlawfully retaining all security deposits in violation of 14 M.R.S. § 6034.

59. The named Plaintiff Carl Davis and the Retention Class have been damaged by the Defendant Fowler-Greaves' breach of his fiduciary duties.

**PRAYER FOR RELIEF**

Plaintiff respectfully request that this Court enter an order or orders:

- a. Awarding the named Plaintiff and the Retention Class double the amount of any security deposits wrongfully withheld by the Defendants pursuant to 14 M.R.S. § 6034(2);
- b. Awarding the named Plaintiff and the Retention Class costs pursuant to 14 M.R.S. § 6034(2);
- c. Awarding the named Plaintiff and the Retention Class reasonable attorneys' fees to the extent permitted by law, including but not limited to pursuant to 14 M.R.S. § 6034(2);
- d. Awarding the named Plaintiff and the Retention Class compensatory damages in an amount to be determined at trial.
- e. Granting such other relief as this Court deems just and proper.

Dated: March 14, 2016

Respectfully Submitted,



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