

# Lawsuit accuses Portland landlord of keeping security deposits

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A lawsuit filed in Portland accuses a city landlord of violating [state law](#) by keeping the security deposits of tenants in two buildings that he recently sold.

The tenants, including low-income and disabled residents, were later given eviction notices by new owners to make way for renovations, and dozens of others also may have been deprived of security deposit refunds, the lawsuit alleges.

The lawsuit against Steve Fowler was filed as a class action Monday in Cumberland County Superior Court. It seeks damages of two times the security deposit amount, as well as attorney fees and additional compensation for one specific tenant and “all similarly situated Maine renters.”

“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 lawsuit states.

Fowler, whose properties are listed under different limited liability companies, is accused of violating state law when he sold several apartment buildings on Wilmot and Grant streets. At the time of the sales, Fowler should either have transferred the deposits to the new property owners and informed his tenants of the transfer, or returned the deposits to tenants. The lawsuit alleges neither occurred.

Reached by phone Tuesday, Fowler said in a brief interview that he was unaware of the lawsuit, but maintained that the deposits were transferred. He said he would call back after looking into the claims. He didn’t call back Tuesday night.

The class-action lawsuit comes as the city is looking at ways to address a housing crunch that is driving up rents and drawing the attention of developers and investors interested in building market-rate and luxury housing. In recent weeks, low-income tenants at three properties were given at least 30 days to leave so the property owner could renovate the buildings. Tenants who don’t get their security deposits back have an even more difficult time finding a new home in a market where landlords are asking for first and last months’ rent and one-third of a month’s rent as a security deposit.

The no-cause evictions, which are legal with 30 days’ notice when a tenant does not have a lease, have put the [spotlight on potential policy changes to protect tenants](#), whether it’s increasing the notification period for no-cause evictions, forcing landlords to help pay relocation costs of low-income residents, or establishing a tenant-landlord advocate or panel at City Hall to mediate minor disputes.

## ONE SUIT FOR MULTIPLE TENANTS

Attorney Andy Schmidt said he decided to pursue a class-action lawsuit so all current and former tenants at the two properties could receive justice.

Some of the tenants in the 24-unit complex that Fowler sold on Grant Street have yet to leave their apartments. The lawsuit says that potentially dozens of current and former tenants could be affected by the alleged violation. Because all would have similar claims, a class-action lawsuit is the easiest and most efficient way to proceed, the lawsuit says.

“Many landlords retain deposits as the default, whether or not they have cause because they know only a small minority of tenants have the time or resources to pursue legal action,” Schmidt said. “They see the occasional payoff to a pesky tenant lawsuit as a small cost of doing business. The brilliance of class-action litigation is that one brave victim can stand up and seek justice for all others, and in the process send a strong message to all landlords in Maine that from now on the cost of cheating your tenants will be devastating.”

Schmidt said a notice of intent to sue was sent to Fowler’s business address on March 5.

The lawsuit lists Carl Davis, a formerly homeless veteran, as the only named plaintiff. It says Davis, like other veterans, “has struggled to maintain adequate housing.” He worked with the Veteran’s Housing Services Program and the Portland Housing Authority to go from being homeless to living at 52 Wilmot St. The veterans program paid Fowler a \$760 security deposit on Davis’ behalf and he would be entitled to receive it from the landlord upon moving out.

Davis, who was not available to be interviewed Tuesday, moved to another Fowler-owned property at 61 Grant St. in July 2013, with the understanding that his security deposit would be carried over, the lawsuit claims. Fowler sold the Grant Street property to AEG Holdings last May, but Davis didn’t receive any notice that his deposit was transferred, nor was it returned to Davis, the lawsuit states.

## **IF LAWSUIT SUCCEEDS, LANDLORDS NOTE**

John Le, who purchased 61-69 Grant St., said in an interview that Fowler never transferred the deposits to him. However, Le said the apartments are [in pretty bad shape](#), so it’s unclear whether residents would have been entitled to all or part of those security deposits, especially if the damage exceeded normal wear and tear.

Crandall Toothaker, who [purchased the Wilmot Street properties from Fowler](#), also said Fowler did not transfer the security deposits during that sale. Two buildings had already been condemned and cleared by the city, and Toothaker said he voluntarily paid out the security deposits to remaining tenants in a third building, as well as paying moving costs and forgiving their last month’s rent. Toothaker said the cost of moving the remaining tenants from Wilmot Street was probably at least \$30,000.

“Steve (Fowler) said he was going to pay and he didn’t, but that’s not the tenants’ problem,” Toothaker said. “I think it was the right thing to do,” he said of helping the remaining tenants. “It’s not right that the tenants did not get their money.”

Toothaker is renovating the Wilmot Street apartment buildings into market-rate housing, and Le is in the process of clearing the Grant Street buildings for a possible renovation or rebuild.

Deirdre Smith, director of the Cumberland County Legal Aid Clinic, which uses student attorneys to help low-income clients, said she was not aware of the class-action lawsuit. But she said it’s common for tenants to complain about not getting their security deposits returned.

“If the tenants are successful (in the lawsuit), I think other landlords would likely take note,” said Smith, who also is a law professor at the University of Maine School of Law.

Brit Vitalius, president of the Southern Maine Landlords Association, said it is rare that security deposits are not properly transferred when a building is sold, although he said it can happen when a property is foreclosed on. Vitalius hadn’t read the lawsuit, but he said state law rightly favors tenants when it comes to security deposits.

“I think it’s absolutely terrible if that’s what (Fowler) did,” Vitalius said. “Security deposits are not a landlord’s money – it’s the tenant’s – and the law is very clear about how we have to put the money in separate accounts to protect them from creditors.”

Katie McGovern, an attorney at Pine Tree Legal, said the nonprofit legal clinic for low-income people first heard about landlords not keeping security deposits in escrow a few years ago, when two large landlords declared bankruptcy. The clinic helped ensure that the deposits were returned to the tenants as part of the court proceedings, she said.

“The failure of a landlord when selling a building to transfer security deposits to the new owner or return the security deposit to the tenant has been a recurrent problem and we fully support efforts to enforce a tenant’s right to the return of their security deposit,” McGovern said.

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