

# EVICITION PROCESS



A landlord may recover possession of the property and make claims for unpaid rent by bringing an action under the eviction law.<sup>1</sup>

**A** landlord is entitled to go to court to have the tenant evicted in cases where the tenant does not vacate the premises after:

- a. the landlord has given proper notice to the tenant to vacate and the notice time has expired;
- b. the tenant has given notice to the landlord of his/her intent to vacate and the notice time has expired; or
- c. a lease has ended and the tenant has not vacated.<sup>13</sup>

While claims for damages against the tenant other than for rent are not allowed in this action,<sup>2</sup> a landlord can sue a tenant for rent even if non-payment is not the underlying reason for the eviction. A landlord (unless it is a corporation) is not required to retain an attorney to evict a tenant. In no event may a landlord evict a tenant without following the legal requirements. The order to leave property must come from a judge.

## EVICITION BY FORCE



**A landlord may not evict a tenant by force or by removing or excluding him/her from the premises without the benefit of a court order.**

This also means that the landlord may not recover possession of the property by shutting off the utilities or changing the locks while the tenant is away. Any landlord who attempts to do so will not only lose possession of the property to the tenant, but may be liable to the tenant for three months' rent or the actual damages of the tenant, whichever is greater, plus costs and attorney's fees.<sup>3</sup> The tenant may also have a claim for damages under the Consumer Protection Act.<sup>4</sup>



See Chapter 22, Consumer Protection Act

## RETALIATION



**A landlord is prohibited from evicting a tenant for discriminatory reasons<sup>5</sup> or in retaliation for protected activities in which the tenant engages.<sup>6</sup>**

Examples of such protected activities are as follows:

- tenant files an action against the landlord to enforce rights relating to housing;
- tenant reports bad housing conditions to the board of health or code department;
- tenant legally withholds rent because of bad conditions;
- tenant complains or reports bad housing conditions to the landlord or agent; or
- tenant organizes or joins a tenants' union or organization of unit owners.

If a landlord attempts to evict the tenant because of any of these protected activities, the tenant:

- a. may use the retaliation as a defense to the eviction, thereby preventing the landlord from evicting him/her;
- b. may be entitled to damages in the amount of not less than one month's rent or more than three months' rent or actual damages, whichever is greater, plus costs and attorney's fees;<sup>8</sup> and
- c. may have a claim for damages under the Consumer Protection Act.<sup>9</sup>



See Chapter 22, Consumer Protection Act

The law creates a presumption that an eviction, except for non-payment of rent, which occurs within six months after the tenant has engaged in protected activities, is retaliation against the tenant.<sup>10</sup>

This does not mean that a landlord may never evict a tenant within six months after the tenant has engaged in protected activities. In certain cases, a landlord may have an independent reason for evicting a tenant. The law allows a landlord to rebut the presumption of retaliation with clear and convincing evidence that the

landlord was not retaliating but had independent justification for the action and would have taken that action regardless of the tenant's engagement in protected activities.<sup>11</sup>

**For example:** A tenant at will joins a tenants' union or organization of unit owners. Three months later, the tenant does not pay the rent. The non-payment of rent is an exception to the rule against retaliation and is an independent reason for terminating the tenancy. Therefore, the landlord may serve a Notice to Quit for Non-Payment on the tenant and proceed with eviction. At court, if the tenant raises the defense of retaliation, the landlord may rebut that presumption with evidence that the non-payment was the reason that the tenancy was terminated, not the retaliation.

**For example:** A landlord brought a summary process action to evict the tenants of an apartment. The landlord wanted to recover possession and several months of unpaid rent. The tenants claimed that the landlord was illegally evicting them in retaliation for complaining about bad conditions to the landlord and the Board of Health within the past six months. The landlord was able to rebut the presumption of retaliation by providing evidence of a significant history of responding promptly to tenants' numerous complaints with good faith efforts to fix the problems without retaliatory actions.<sup>12</sup>

After six months, there is no presumption of retaliation, but a tenant may still defeat a later eviction if he/she proves that the notice to terminate the tenancy was in fact retaliatory.

**For example:** Seven months after the tenant reports bad housing conditions to the board of health or code department, the landlord serves the tenant with a Thirty Day Notice to Quit. The landlord has told the tenant that he/she wants the property back because a relative wants to live in the unit. The tenant believes that the landlord only wants the property back because he/she is still mad that the tenant reported the bad housing conditions to the board of health. The landlord has waited until more than six months have gone by to avoid the appearance of retaliation. At court, the tenant may raise the defense of retaliation even though the six month period has expired. In this case, there is no presumption of retaliation and the burden is on the tenant to prove the retaliation. If the tenant is able to prove retaliation, the landlord will lose his/her case for eviction.

## SUMMARY PROCESS

The process by which an eviction occurs is called Summary Process. In order to evict a tenant, a landlord must take the following steps:

1. Make sure that the Notice to Quit has been properly served on the tenant and that the landlord has a copy of the notice for the Court.



See Chapter 12, Landlord Ends the Tenancy

2. Wait until the time that the tenant has to vacate has expired.<sup>14</sup>
3. Go to court and get a Summary Process Summons and Complaint. The cost is \$1.00.



See Summary Process Summons and Complaint form at the end of this Chapter.

4. Fill in the Summons and Complaint. The reason for the eviction must be stated on the Summons and Complaint. In most cases the reason will be that the tenant was served a Notice to Quit and has failed to vacate. In cases where rent is owed, the amount should be stated.
5. Bring the Summons and Complaint to a Sheriff or Constable so it can be served on the tenant on or before the Monday before the Entry Date.<sup>15</sup>
6. After the tenant has been served with a copy, get the original Summons and Complaint from the Sheriff or Constable with the Return of Service, indicating that it has been served.
7. Bring the original Summons and Complaint and a copy of the Notice to Quit with the Return of Service, if applicable, to the court for filing on or before the Entry Date.<sup>16</sup>
8. File the Summons and Complaint with a copy of the Notice to Quit.<sup>17</sup> If the landlord does not file the Notice to Quit at this time, it is generally accepted at the time of trial.<sup>18</sup> The cost is \$135.00 in Housing Court or \$195.00 in District or Superior Court.
9. Receive the tenant's Answer to the Complaint and Discovery if filed by the tenant. Discovery is a legal request for information about the case. It could include questions for the landlord to answer, requests for documents, or requests for the landlord to admit certain facts.

10. If the tenant files Discovery, file Answer to Discovery within ten days of receiving it.<sup>19</sup> Any facts in the Requests for Admissions that the landlord does not deny in the ten day period are considered admitted. If the tenant files Discovery, the trial date will be postponed for two weeks. No Answer to the Tenant's Counterclaim is required.<sup>20</sup>
11. Appear at the court on the day of the hearing.

**The timing involved in an eviction is as follows:**

The Summons and Complaint must be served by or on a Monday (the Service Date). The Summons and Complaint must be filed by or on the following Monday (the Entry Date). Answers and Discovery must be filed by the tenant by or on the following Monday (the Answer Date). If no Discovery is filed, trial is held ten days from the Entry Date (the Trial Date or the second Thursday after the Entry Date). If Discovery is filed, a two week extension is granted

and trial is held twenty-four days from the Entry Date (the fourth Thursday after the Entry Date).

The calendar and narrative that follow illustrate the timing of a typical eviction.

It is very important to follow each step in precise order. Any mistake by the landlord may cause the judge to dismiss the case and the landlord will have to start the process over.

**In the calendar illustration:**

- The rent is due on the first of the month. While a landlord is free to serve a Notice to Quit for Non-Payment as soon as the day after the rent is due, most landlords would probably wait at least a few days before serving a notice to the tenant. On the fifth of the month, the rent has still not been paid so the landlord prepares the Notice to Quit.
- The Notice to Quit is served on the tenant on the sixth of the month. The tenant now has

MONTH 1

					1 Rent Due	2
3	4	5	6 Notice to Quit Served	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21 First Day to Serve Summons & Complaint	22	23
24	25 Last Day to Serve Summons & Complaint (Service Date)	26	27	28	29	30

MONTH 2

1	2 Last Day to File Summons & Complaint (Entry Date)	3	4	5	6	7
8	9 Tenant Answer & Discovery Due (Answer Date)	10	11	12 If No Discovery, Trial (Trial Date)	13	14
15	16	17	18	19	20	21
22	23	24	25	26 If Discovery, Trial (Rescheduled Trial Date)	27	28
29	30	31				

**TENANT'S RESPONSE TO COMPLAINT**

Once the landlord has served the Summons and Complaint on the tenant, the tenant has the right to file an Answer to the Complaint. The tenant has seven days from the Entry Date to file an Answer. The tenant must deliver or mail the Answer to the landlord or the landlord's attorney so that it is received on or before the Answer Date, which is the Monday before the trial. The Answer may include defenses, counterclaims, and the relief the tenant is seeking. Defenses are reasons why the tenant should not be evicted.

Typical defenses that a tenant might have are:

- the landlord did not serve a valid Notice to Quit;
- the tenant paid or offered to pay the rent due within the time allowed;
- the landlord accepted the rent without reservation;
- the landlord did not have the Summons and Complaint properly served;
- the landlord started the case before the Notice to Quit expired; and
- the landlord did not state facts to support the eviction.

Counterclaims are the tenant's claims for damages against the landlord. Counterclaims may also be defenses.

Typical counterclaims that a tenant might have are:

- the landlord knew about bad conditions but did not make repairs;
- the tenant was legally withholding rent because of bad conditions;
- the landlord violated the security deposit law;
- the landlord did not pay interest on last month's rent;
- the landlord cut off the tenant's utilities or did not provide and pay for utilities if required;
- the tenant has been billed for utilities that do not go to the unit;
- the tenant has been paying for utilities and the tenant has not agreed to this in a written rental agreement or lease between the parties;
- the landlord illegally evicted the tenant without a court order;

- the landlord interfered with the tenant's use of his/her home;
- the landlord is evicting the tenant in retaliation for a protected activity; and
- the landlord has engaged in an unfair or deceptive act.<sup>22</sup>

Relief the tenant is seeking is what the tenant wants the Court to do for him/her.

Typical requests that a tenant might make are:

- to allow the tenant to retain possession of the unit;
- to allow the tenant to pay the amount due to the landlord and retain possession of the unit;
- to order the landlord to make repairs;
- to allow the tenant more time to move; and
- to order the landlord to pay the tenant money on the tenant's counterclaims.

At the same time the tenant files an Answer with defenses and counterclaims, the tenant may also file Discovery. Discovery allows the tenant to ask questions and get documents from the landlord that he/she will need for trial.

Typical questions a tenant may ask in discovery are as follows:

- Was the landlord aware of any bad conditions in the unit?
- What repairs were made by the landlord?
- What damages does the landlord believe were caused by the tenant and his/her guests?
- How has the landlord handled the security deposit or the interest from the security deposit and/or last month's rent?
- Is there a written rental agreement or lease requiring the tenant to pay for utilities?
- Has the landlord ever attempted to lock out or illegally evict the tenant?
- Has the landlord acted in retaliation against the tenant?
- How many units does the landlord own?

Typical documents that a tenant may request in discovery are as follows:

- lease or written rental agreement;
- rent receipts;

time to pay the rent (ten days in the case of a tenant at will who has not been served a notice in the preceding twelve months and longer for a tenant with a lease). If the rent is received within this period, the landlord must accept the rent and cease the process (except in the case of a tenant at will who has been served a notice in the preceding twelve months and the landlord has reserved the right to proceed with eviction). If the rent is not received within the allowed period, the landlord must wait until the fourteenth day after service, in this case the twenty-first of the month, to proceed.

- The landlord obtains a Summary Process Summons and Complaint from the Court, fills it out with the required information and dates, and delivers it to the Sheriff or Constable for service on the tenant. The first Monday following the date that the Summons and Complaint is available to the Sheriff or Constable for service becomes the Service Date if the landlord so chooses. The landlord is free to choose a later date as the Service Date but this will postpone the Entry Date, Answer Date, and Trial Date by an equal period of time. It is usually in the landlord's best interest to proceed to trial as quickly as possible. The first available Service Date in this case is the twenty-fifth of the month. Therefore, the Sheriff or Constable may serve the Summons and Complaint as early as the twenty-first but no later than the twenty-fifth or the landlord will have to begin again with new dates for Service, Entry, Answer, and Trial.
- If the tenant is served by the twenty-fifth of the month, the landlord must retrieve the Summons and Complaint from the Sheriff with the Return of Service in order to file it by the Entry Date, in this case the second of the next month. If the landlord does not file the Summons and Complaint by the Entry Date, the eviction can not proceed and the landlord should notify the tenant that the trial date is cancelled. The landlord would then have to start over with a new Summary Process Summons and Complaint.
- If the tenant was properly served by the Service Date and the Summons and Complaint was properly filed by the Entry Date, the tenant will have seven days from the Entry Date to file an Answer and Discovery, in this case, until the ninth of the month. If no Discovery is filed, the trial will be held ten

days from the Entry Date, or the twelfth of the month. If Discovery is filed, the trial will be held twenty-four days from the Entry Date, in this case, the twenty-sixth of the month.

## FILING COMPLAINT IN COURT

A landlord may bring an action in the Superior Court, District Court, or Housing Court in the area where the rented property is located.<sup>21</sup> There are five divisions of the Housing Court each covering different regions of the Commonwealth as follows:

- Boston Division - Suffolk County (including Boston, Brighton, Charlestown, Dorchester, East Boston, Roxbury, South Boston, West Roxbury, but excluding the towns of Chelsea, Revere and Winthrop);
- Western Division - Berkshire County, Franklin County, Hampshire County, and Hampden County;
- Northeast Division - Essex County and the towns of Acton, Ayer, Billerica, Boxborough, Carlisle, Chelmsford, Concord, Dracut, Dunstable, Groton, Littleton, Lowell, Maynard, Pepperell, Shirley, Stow, Tewksbury, Tyngsborough, and Westford in Middlesex County;
- Southeast Division - Bristol County and Plymouth County; and
- Worcester Division - Worcester County and the towns of Ashby, Bellingham, Hudson, Marlborough, and Townsend, and the jurisdiction known as Devens.

It is up to the landlord to determine in which court he/she will file the summary process action. In areas that are covered by a Housing Court, a landlord might consider filing there for the following reasons:

- a. the filing fee is \$135.00 as opposed to \$195.00 in the other courts;
- b. the tenant has the right to transfer any case filed in District Court or Superior Court to the Housing Court, thereby causing a delay in the trial date, but not vice versa; and
- c. the Housing Court has a mediation program which may allow the landlord to settle a case prior to trial.

- any written communications between the parties or others pertaining to the tenant;
- notices to quit;
- documents relating to emergency assistance or welfare;
- code reports;
- repair records and receipts; and
- records relating to the security deposit or payment of interest on the security deposit and/or last month's rent.

If the tenant files discovery, this postpones the trial for two weeks from the original date. The landlord has ten days to answer the discovery. Landlords may also file discovery but this is unusual because it is generally not in the landlord's best interest to delay the trial for two weeks.

# SECURITY DEPOSIT AND LAST MONTH'S RENT AT THE END OF A TENANCY

**T**he state law which regulates the taking of security deposits and last month's rent is G.L. c. 186, §15B.



See Chapter 6, Security Deposit and Last Month's Rent

## SECURITY DEPOSITS

During the tenancy, it is extremely important that a landlord who takes security deposits does so in accordance with the law. In cases where the landlord has not followed the law, he/she may forfeit the right to retain any portion of the deposit for damages and forfeits the right to counterclaim for damages in any action filed by the tenant to recover the deposit.<sup>1</sup> Furthermore, it is quite possible for a tenant to recover up to three times his/her security deposit plus interest, costs, and attorney's fees in cases where the landlord has not followed the law.<sup>2</sup> The tenant may also have a claim for damages under the Consumer Protection Act.<sup>3</sup>



See Chapter 22, Consumer Protection Act

It is equally important that a landlord follow the law with respect to the tenant's right to the return of the security deposit at the end of the tenancy.

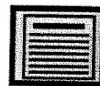


**A landlord has thirty days from the end of the tenancy to account to the tenant for the security deposit or return the security deposit and the accrued interest to the tenant.**

If a tenant with a lease stays on the premises after the lease expires against the landlord's wishes (becoming a tenant at sufferance), the landlord's obligation to return the security deposit within thirty days does not begin until the tenant relinquishes possession of the premises.<sup>4</sup> If a tenant with a lease vacates the property before the expiration of the lease, it would be wise for the landlord to return the security deposit within thirty days from the tenant's departure.<sup>5</sup>

Prior to returning the security deposit, the landlord may deduct the following amounts from the security deposit:

- a. any unpaid rent that is due to the landlord;
- b. any unpaid increase in real estate taxes if the tenant is obligated to pay it pursuant to a tax escalation clause; and
- c. a reasonable amount necessary to repair any damage to the unit caused by the tenant or his/her guests, reasonable wear and tear excluded.<sup>6</sup>

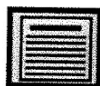


See Statement of Security Deposit at End of Tenancy form at the end of the Chapter.

If the landlord is deducting from the security deposit for damages, the landlord must provide the tenant with a list of the damages, sworn to by the landlord or agent, itemizing the damages and the repairs necessary to fix them.<sup>7</sup> The landlord should attach to this list written documentation such as estimates, invoices, or receipts for the repairs. Having an accurate Statement of Condition at the time the tenant moved in will help to avoid disputes at this time. If the landlord does not provide the tenant with the itemized list of damages within thirty days of the end of the tenancy, the landlord forfeits his/her right to keep the security deposit for damages.<sup>8</sup> The tenant may also have a claim for damages under the Consumer Protection Act.<sup>9</sup>



See Chapter 22, Consumer Protection Act.



See Itemized Statement of Damages form at the end of the Chapter.

The landlord may not charge the tenant for any damage that was listed on the Statement of Condition signed by the parties at the beginning of the tenancy unless the condition was repaired and subsequently damaged again by the tenant or his/her guests.<sup>10</sup>

The landlord may not charge the tenant for reasonable wear and tear to the property. Reasonable wear and

tear is the acceptable deterioration of property that occurs as a natural result of tenants living in a rental unit for a period of time. Landlords may only charge a tenant for costs associated with repairing conditions that are damages, not the result of reasonable wear and tear.

In the event that the security deposit plus accrued interest is not enough to cover the cost of damage to the unit caused by the tenant or his/her guests, the landlord should still send the tenant the itemized list of damages within thirty days from the end of the tenancy. The landlord should include a request for the tenant to forward to him/her the balance due for the cost of the damages that exceed the amount of the security deposit plus interest. If the tenant does not pay the amount due the landlord upon request, and the amount that the landlord is owed or will accept is \$2,000.00 or less, the landlord may file an action in small claims against the tenant without the assistance of an attorney.



See Chapter 19, Small Claims Procedure

If the amount that the landlord is seeking is over \$2,000.00, the landlord should contact an attorney for assistance.

In any event, the landlord must return to the tenant the full security deposit plus interest less deductions within thirty days from the end of the tenancy. If the landlord does not return the security deposit within thirty days from the end of the tenancy, he/she forfeits the right to keep the security deposit for damages<sup>11</sup> and the tenant may be entitled to damages of up to three times the security deposit, plus costs and attorney's fees.<sup>12</sup> The tenant may also have a claim for damages under the Consumer Protection Act.<sup>13</sup>



See Chapter 22, Consumer Protection Act

While a landlord who violates the security deposit law will have to return the deposit and possibly pay additional damages, the landlord is not prohibited from filing an independent action against the tenant after the tenant has moved out to recover for the cost of the damages caused by the tenant.<sup>14</sup>

### DAMAGE BUT NO SECURITY DEPOSIT

In the event that the landlord did not take a security deposit and there is damage to the unit caused by the tenant or his/her guests, the landlord should send the tenant an itemized list of damages at the end of the tenancy. The landlord should request that the tenant

forward to him/her the balance due for the cost of the damages. If the tenant does not pay the amount due the landlord upon request, and the amount that the landlord is owed or will accept is \$2,000.00 or less, the landlord may file an action in small claims against the tenant without the assistance of an attorney.



See Chapter 19, Small Claims Procedure

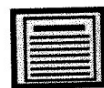
If the amount that the landlord is seeking is over \$2,000.00, the landlord should contact an attorney for assistance.

### LAST MONTH'S RENT

At the end of the tenancy, the landlord must account to the tenant for the interest on the last month's rent. Interest does not accrue for the last month for which rent was paid in advance. A landlord has thirty days from the end of the tenancy to return the interest to the tenant. If the landlord does not return the interest within thirty days from the end of the tenancy, the tenant may be entitled to damages of up to three times the interest, plus costs and attorney's fees.<sup>15</sup> The tenant may also have a claim for damages under the Consumer Protection Act.<sup>16</sup>



See Chapter 22, Consumer Protection Act



See Statement of Last Month's Rent Interest at End of Tenancy form at the end of the Chapter.



## ENDNOTES

- <sup>1</sup> G.L. c. 186, §15B (6)
- <sup>2</sup> G.L. c. 186, §15B (7)
- <sup>3</sup> G.L. c. 93A; 940 CMR 3.17
- <sup>4</sup> *Neihaus v. Maxwell*, 766 N.E.2d 556, 54 Mass.App.Ct. 558 (2002)
- <sup>5</sup> See *Rendall v. Tarvezian*, 1984 Mass.App.Div. 13 (1984) (The court determined that landlord's return of the security deposit within thirty days of the termination of the lease was timely even though the tenants vacated the premises two months prior to termination of the lease.)
- <sup>6</sup> G.L. c. 186, §15B (4)
- <sup>7</sup> *Goes v. Feldman*, 391 N.E.2d 943, 8 Mass.App.Ct. 84 (1979)
- <sup>8</sup> G.L. c. 186, §15B (6)(b)
- <sup>9</sup> G.L. c. 93A; 940 CMR 3.17
- <sup>10</sup> G.L. c. 186, §15B (4)
- <sup>11</sup> G.L. c. 186, §15B (6)(e)
- <sup>12</sup> G.L. c. 186, §15B (7); 940 CMR 3.17(4)
- <sup>13</sup> G.L. c. 93A; 940 CMR 3.17
- <sup>14</sup> *Jinwala v. Bizzaro*, 24 Mass.App.Ct. 1, 505 N.E.2d 904 (1987)
- <sup>15</sup> G.L. c. 186, §15B (2)(a); 940 CMR 3.17(4)
- <sup>16</sup> G.L. c. 93A; 940 CMR 3.17