

SECTION 8 HOUSING PROGRAM

The Section 8 Housing Choice Voucher Program is a federal housing subsidy program provided by the Department of Housing and Urban Development (HUD) and administered by the local housing authority (LHA) or other authorized HUD agent. It is the federal government's major program for assisting low income families, the elderly, and the disabled to rent decent housing in the private market.

Tenants who qualify under HUD guidelines apply for assistance through the LHA. Once approved, the tenant receives a certificate or voucher which may be used to subsidize the rent payment in privately owned housing. The LHA must approve the rent that the landlord will charge the tenant. Appropriate rates are determined by looking at comparable units in the same building or area. Tenants are required to contribute 30% of their adjusted monthly income at a minimum, but no more than 40% if it is the first time the tenant is signing a lease with a particular landlord. Changes in the family's income and number of children can result in changes in their share of the rent payment. The landlord will still receive the full rent amount, but part of the rental payment each month will be paid directly from the LHA. The tenant must pay his/her share of the rent, if any, directly to the landlord.



It is illegal for a landlord to charge or accept side payments, which is rent in excess of the amount determined by the LHA to be the tenant's share of the rent.

The LHA usually retains a listing of apartments available to Section 8 tenants. A landlord who wants to rent units specifically to Section 8 tenants can contact the LHA to be added to the list.

FAIR HOUSING

A tenant with a Section 8 certificate or voucher searches and selects housing in the same manner as any other tenant. Since tenants who receive rental assistance, as well as tenants who receive public assistance, are a protected class under state law, it is illegal to discriminate based on the fact that a prospective tenant has a Section 8 certificate or voucher.¹

The types of behavior on the part of a landlord or agent that are prohibited are:

- refusing to rent an available unit because the tenant has a Section 8 voucher;
- representing that a unit is unavailable when it is available;
- offering different terms or conditions to persons who receive rental assistance; and
- retaliating because a person exercises any right under Chapter 151(B).

There are no exemptions to this law.

If a landlord or agent discriminates in violation of the law, a judge may award damages, injunctive relief, and attorney's fees, and may suspend the license of a broker or salesperson.

The fair housing laws do not require a landlord to rent a unit to a person just because that person is in a protected class. Rather, the law provides that landlords have the right to legally refuse a prospective tenant a unit based on legitimate considerations so long as those considerations are real and are evenly applied to all applicants. Examples of legitimate considerations include income, credit, and prior housing record. A tenant's income should be adequate to support the tenant's share of the rent.

Under the Section 8 program, screening of tenants is the sole responsibility of the landlord. The fact that the tenant has been approved for the Section 8 program is not indicative of the tenant's suitability for tenancy.² In fact, HUD encourages landlords to screen tenants before offering a tenancy.



See Chapter 4, Finding a Tenant to Rent Your Property

PROGRAM REQUIREMENTS

When the tenant and landlord have agreed to a tenancy arrangement and a lease has been drafted, the approval of the LHA will be required before the parties may enter into the tenancy.

The LHA must determine that the arrangement meets all of the following program requirements:

- a. the unit is eligible;
- b. the rent to the landlord is reasonable;
- c. the lease is approvable and includes the tenancy addendum with the language required by HUD;
- d. the tenant's share of the rent does not exceed 40% of the tenant's monthly adjusted income; and
- e. the unit has passed a quality inspection.³

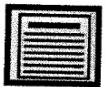
The quality inspection will insure that the unit complies with the housing quality standards required by HUD.⁴ The unit must be vacant at the time of inspection and all of the utilities turned on. In most cases, a unit that is in compliance with the State Sanitary Code will pass the quality inspection.



See Chapter 2, Preparing Your Property to Rent

During the tenancy the landlord has an obligation to maintain the unit in accordance with the housing quality standards. Life-threatening defects that occur during the tenancy must be repaired within twenty-four hours and all other defects must be repaired within thirty days of being reported. The LHA will verify the repairs. All violations of the housing quality standards that occur due to the fault of the tenant (excluding ordinary wear and tear) must be corrected by the tenant.⁵ The landlord will not be responsible for these repairs.

If the LHA finds that the arrangement meets the program requirements, the LHA and the landlord will execute a housing assistance payment (HAP) contract. A copy of the HAP contract is available on the HUD website (http://www.hudclips.org/sub_nonhud/html/pdfforms/52641.pdf).



See HAP Contract form at the end of this Chapter

This contract provides for the payment of the LHA's portion of the rent to the landlord. This contract should be signed before the beginning of the lease term, but no later than sixty days after the beginning of the lease term. The contract will automatically terminate 180 days after the last housing assistance payment to the landlord if it is not terminated by the parties before that time.⁶

HUD prohibits the LHA from approving any leasing arrangement with landlords who have records of violating certain laws or of renting units that fail to meet the minimum requirements for fitness.⁷

The initial term of the lease must be for at least one year.⁸ A landlord is allowed to collect a security deposit from the tenant.⁹ Just as with any other tenant, the security deposit cannot exceed the value of one month's rent. The LHA will not pay the security deposit, and is not responsible for any damage done by the tenant or any other claim the landlord may have against the tenant. The landlord cannot collect last month's rent at the beginning of a lease term from a Section 8 tenant.

The lease should include standard terms, such as:

- names of the landlord and tenant;
- address of the rental unit;
- term of the lease and how it will be renewed;
- monthly rent amount;
- which utilities are paid by the tenant; and
- which appliances must be provided by the tenant.

In addition, a lease for a Section 8 tenant should contain a copy of the Tenancy Addendum. Landlords should staple this form onto the back of the lease agreement. A copy of the Tenancy Addendum is available on the HUD website (http://www.hudclips.org/sub_nonhud/html/pdfforms/52641-a.pdf).



See Tenancy Addendum form at the end of this Chapter

After the end of the lease term, the landlord and tenant may agree to extend the lease or change to a tenancy at will. An increase in rent is allowed, but must be approved by the LHA. The landlord should give the tenant at least sixty days written notice of the offer of a new tenancy, with a copy to the LHA. The LHA must approve the new lease or tenancy at will agreement. If the tenant decides to move out at the end of the initial lease term, he/she must notify the landlord and the LHA.

TERMINATION OF TENANCY

In general, the procedure to terminate a tenancy or evict a tenant with a Section 8 certificate or voucher is similar to the procedure described in previous chapters relating to tenants without subsidies. However, there are the following exceptions:

- The Notice to Quit must state the reasons for termination of the tenancy. A copy of the notice must be given to the LHA administering the subsidy.¹⁰
- The reasons stated for termination must be for:
 - "good cause", including violation of the lease, or violation of the law which imposes obligations on the tenant in connection with the occupancy of the premises.
 - "other good cause", including business or economic reasons, failure of the tenant to accept the offer of a new lease, or the landlord's desire to use the property for personal or family use.¹¹ The tenancy may not be terminated for "other good cause" during the first year of the lease term.

Nonpayment of rent by the LHA is not grounds for terminating the tenancy. The tenant is not responsible for the portion of the rent covered by the LHA. The HAP contract between the landlord and the LHA governs these payments.¹²

CONSUMER PROTECTION ACT

The Consumer Protection Act (the Act) prohibits unfair or deceptive acts or practices in the conduct of any business, specifically including the rental of housing.¹



The only landlord who is not considered to be in the business of being a landlord, and therefore not subject to the Act, is an owner occupant of a two family home.²

It is arguable that other small landlords are not subject to the Act, such as the owner occupant of a three family home or an owner renting his/her single family home.

STATE SANITARY CODE

In general, it is a violation of the Act for a landlord to fail to comply with the State Sanitary Code.³



See Chapter 2, Preparing Your Property for Rent and Chapter 7, Landlord's Duty to Make Repairs During the Tenancy

With regard to the condition of a unit, it is an unfair and deceptive act for a landlord to do any of the following:

- a. rent a unit with a condition which is a violation of the Code which may endanger or impair the health, safety, or well-being of the occupant, or which is unfit for human habitation;
- b. fail to fix a violation of the Code, after notice, which may endanger or impair the health, safety, or well-being of the occupant;
- c. fail to maintain the unit in a habitable condition, provided that the condition was not caused by the tenant or his/her guest;
- d. fail to disclose to a prospective tenant the existence of a bad condition or represent that the unit meets all the requirements of the law when it does not;
- e. fail to make repairs, after receiving notice, or provide services or supplies, in accordance with a representation made to the tenant;
- f. fail to reimburse the tenant for the reasonable cost of repairs to correct violations if the landlord failed to make the repairs after proper notice; or

- g. fail to comply with the Code within a reasonable time after notice by the tenant or health authority.⁴

NOTICES AND DEMANDS

With regard to notice and demands, it is an unfair and deceptive act for a landlord to do any of the following:

- a. send the tenant a notice which purports to be an official or judicial document when the landlord knows it is not;
- b. refuse to accept a notice sent to the address where the tenant pays his/her rent or given to the person who accepts the rent; or
- c. demand payment for increased real estate taxes unless the tenant has agreed to pay such taxes in a written rental agreement or lease.⁵

With regard to rental agreements and leases, it is an unfair and deceptive act for a landlord to do any of the following:

- a. include any term which violates the law;
- b. fail to clearly state the conditions relating to any automatic increase in rent;
- c. include a penalty clause not in conformity with the law;⁶
- d. include a tax escalator clause not in conformity with the law;⁷
- e. fail to include the names, addresses, and telephone numbers of the landlord or his/her agent, who is responsible for maintenance and repair of the property, and the name, address, and telephone number of the person authorized to receive notices and accept service;
- f. fail to give the tenant a copy of the executed lease or rental agreement within thirty days of the day the tenant signs it; or
- g. fail to include the amount of the security deposit, if any, and the requirements of law that the landlord must follow under G.L. c. 186, §15B.⁸

SECURITY DEPOSITS AND LAST MONTH'S RENT

With regard to security deposits, it is an unfair and deceptive act for a landlord to fail to comply with the provisions of the law relating to security deposits.



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

With regard to rent in advance, it is an unfair and deceptive act for a landlord, at the commencement of the tenancy, to require a tenant to pay any amount in excess of first month's rent, last month's rent no greater than the first month's rent, a security deposit no greater than the first month's rent, and the cost to purchase and install a lock, or to demand rent in advance of the current month's rent at any time during the tenancy.⁹



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

TERMINATING TENANCIES AND EVICTIONS

With regard to terminating tenancies and evictions, it is an unfair and deceptive act for a landlord to do any of the following:

- a. commence a summary process action before the time has expired in the Notice to Quit; or
- b. illegally evict or deprive the tenant of full use of the unit without obtaining a court order of execution for possession.¹⁰

WRONGFUL ACTS OF THE LANDLORD

Finally, it is an unfair and deceptive act for a landlord to do any of the following:

- a. impose any interest or a penalty for late payment of rent unless the rent is more than thirty days overdue;
- b. retaliate or threaten to retaliate in any manner against a tenant for exercising his/her legal rights;
- c. retain any amount of a deposit paid with the rental application which exceeds the damages to which a landlord is entitled or which the parties have agreed to in advance;
- d. enter a unit other than to inspect the premises, make repairs, show the unit to a prospective tenant, pursuant to a court order, if the premises appear to be abandoned, or to

inspect the unit for damage within thirty days of the end of a tenancy; or

- e. willfully violate any provision of G.L. c. 186, §14, including the following:
 1. willfully or intentionally fail to furnish water, hot water, heat, light, power, gas, elevator service, telephone service, janitor service, or refrigerator service, if required by law or by a lease or rental agreement;
 2. directly or indirectly interfere with the furnishing of such services by another;
 3. transfer the responsibility for payment of any utility services to the tenant without his/her knowledge or consent;
 4. directly or indirectly interfere with the quiet enjoyment of a tenant; or
 5. attempt to regain possession of any unit by force without a court order.¹¹



See Chapter 9, Wrongful Acts of the Landlord



It is evident from the above lists that almost any violation of the laws relating to the tenant/landlord relationship may give rise to a claim under Chapter 93A.

93A PROCEDURE

A tenant may bring a separate action under Chapter 93A or may use a Chapter 93A violation as a counterclaim in an eviction proceeding.¹² In the case of a separate action, the tenant must send a written demand for relief to the landlord thirty days before he/she files the action. The demand must identify the unfair or deceptive act and the damage or injury that the tenant has suffered because of it. The landlord then has thirty days to make a written offer of settlement to the tenant. If the tenant does not accept the offer and later files an action in court, the court may find that the settlement offer was reasonable and limit the tenant's recovery to the settlement offer. While reasonable settlement offers limit the landlord's liability under the Consumer Protection Act, unreasonable or bad faith offers will not only fail to limit liability, but also expose the landlord to multiple damages.¹³

For example: A bad faith or unreasonable offer is usually one where it was reasonably clear that liability would be found and the settlement amount offered is significantly below the damages owed upon a finding

of liability. A court will consider a lack of good faith or the presence of extortionate tactics when deciding whether to award the tenant damages for a landlord's unreasonable settlement offer.¹⁴

A demand is not required in the case of a counterclaim. If no demand is required, the landlord may make a written offer of settlement to the tenant as soon as the landlord is notified of the counterclaim. If the tenant does not accept the offer, the court may still find that the settlement offer was reasonable and limit the tenant's recovery to the settlement offer.

In either case, if the court finds in favor of the tenant on his/her claims and finds that the settlement offer was not reasonable in relation to the tenant's injury, the court will award damages to the tenant. Damages shall be the tenant's actual damages or \$25.00, whichever is greater. If the court finds that the unfair or deceptive act was a willful or knowing violation or that the landlord refused in bad faith to settle with the tenant, the court shall double or triple the damage award to the tenant, plus attorney's fees and costs.¹⁵

Although not a typical violation of the Act, a tenant suffering emotional distress because of a landlord's violation of the Act can use that as a defense and a counterclaim against an eviction. The Supreme Judicial Court of Massachusetts found that severe emotional distress was a personal injury and compensable under Chapter 93A.¹⁶

SECURITY DEPOSIT AND LAST MONTH'S RENT UPON THE SALE OF RENTAL PROPERTY

SECURITY DEPOSIT

If a landlord who collected a security deposit from a tenant thereafter transfers the property to another, the landlord shall return the security deposit plus interest to the tenant or transfer the security deposit plus interest to the new owner, who must then properly notify the tenant.¹ The new owner cannot collect any money in addition to the existing security deposit.²

- If the landlord who is transferring property to another returns all security deposits plus interest to tenants at the time of the transfer, he/she will avoid any future problems with tenants of the new owner.
- If the landlord does not return the security deposit plus interest to the tenants, but transfers the security deposits plus interest to the new owner, it then becomes the responsibility of the new owner to notify the tenants that the security deposits were transferred to him/her. The new owner should do this within forty-five days of transfer. The written notice should include the new landlord's name, business address, and telephone number.³ Until the new owner properly notifies the tenant of the transfer, it is still possible for the landlord to be liable to the tenant.
- If the landlord does not return the security deposit plus interest to the tenant or transfer the security deposit plus interest to the new owner, he/she forfeits the right to keep the security deposit for damages⁴ and the tenant may be entitled to damages of up to three times the security deposit, plus costs and attorney's fees.⁵ The tenant can hold the new owner liable for the former owner's failure to transfer the security deposit. Furthermore, the tenant may be allowed to live rent free for the amount of time covered by the security deposit.⁶

In addition to the remedies available to a tenant under the security deposit law, a tenant may also have a claim for damages under the Consumer Protection Act.⁷



See Chapter 22, Consumer Protection Act

While a tenant has the right to file an action against the landlord who took the security deposit, the law also allows the tenant to file an action against the new owner, even if the former landlord did not transfer the security deposit to the new owner. The new owner could then pursue the landlord for damages.



See Chapter 1, Buying a Rental Property

LAST MONTH'S RENT

If a landlord who has collected a last month's rent from a tenant thereafter transfers the property to another, the landlord could be held liable to the tenant unless he/she gives the tenant credit for the last month's rent plus interest or credits the last month's rent plus interest to the new owner, who must then properly notify the tenant.⁸

- If the landlord who is transferring property to another credits last month's rent plus interest to the tenants at the time of the transfer, he/she will avoid any future problems with tenants of the new owner.
- If the landlord does not credit the last month's rent plus interest to the tenants, but credits the last month's rent plus interest to the new owner, it then becomes the responsibility of the new owner to notify the tenant that the last month's rent was credited to him/her. The new owner should do this within forty-five days of transfer. Until the new owner properly notifies the tenant of the transfer, it is still possible for the landlord to be liable to the tenant.
- If the landlord does not credit the last month's rent plus interest to the tenant or to the new owner, the new owner assumes liability for crediting the last month's rent and payment of all interest due to the tenant.⁹ The new landlord can discharge this liability by allowing the tenant to live rent free for the

last month. The new owner would then have a cause of action against the former landlord for damages.



See Chapter 1, Buying a Rental Property

ENDNOTES

- ¹ G.L. c. 186, §15B(5)
- ² G.L. c. 186, §15B(1)(d)
- ³ G.L. c. 186, §15B(5)
- ⁴ G.L. c. 186, §15B(6)(d)
- ⁵ G.L. c. 186, §15B(7); *Castenholz v. Caira*, 21 Mass.App.Ct. 758, 490 N.E.2d 494 (1986)
- ⁶ G.L. c. 186, §15B(5)(c)
- ⁷ G.L. c. 93A; 940 CMR 3.17(4)
- ⁸ G.L. c. 186, §15B(7)(A)
- ⁹ G.L. c. 186, §15B(7)(A)