CHAPTER 21

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

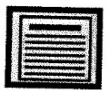
e. the unit has passed a quality inspection.[3]

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. The landlord will not be responsible for these repairs.[5]

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]

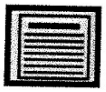
HUD prohibits the LHA from approving any leasing arrangement with landlords who have records of violating certain laws or of renting units that fail to meet the minimum requirements for fitness.[7]

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]

CHAPTER 22

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;

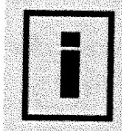
   2. directly or indirectly interfere with the furnishing of such services by another;

   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]

CHAPTER 24

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 damages[4] 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)

FREQUENTLY ASKED QUESTIONS

Why must I have a written agreement with the tenant if the tenant is responsible for the payment of utilities?

When a tenant pays for utilities based solely on an oral agreement, the tenant may later claim a breach of the State Sanitary Code (105 CMR 410.190, 410.201) and/or a violation of the Consumer Protection Act (G.L. c. 93A). If the tenant prevails based on the State Sanitary Code, he/she will receive the cost of the utilities. If he/she prevails based on the Consumer Protection Act, he/she will receive either actual damages or $25.00, whichever is greater, or up to three times but not less than two times that amount if the court finds that there was a willful or knowing violation.

There are two schools of thought regarding oral agreements that assign the payment of utilities to the tenant. Some courts cite *Young v. Patukonis* and follow the strict construction of the State Sanitary Code which requires a written agreement for the assignment of the payment of utilities, awarding tenants damages when there is no written agreement. Other courts cite *Poncz v. Loftin* and follow the concept that the tenant should pay up to the fair market value of the premises and should only be awarded damages when they show that they have actually paid beyond that amount. While it does appear that the more recent cases support the idea that when there are no actual damages and the rent plus the utilities equals the fair market value of the premises, the tenant will not recover costs or be awarded damages, it is important to execute a written agreement whenever the tenant agrees to pay for any utilities that the landlord is required to pay for by statute to avoid this potential problem.

Young v. Patukonis, 24 Mass.App.Ct. 907 (1987) - Tenant at will and landlord had an oral agreement that tenant would purchase fuel oil to heat apartment. The Court held that the landlord had violated the State Sanitary Code, which requires a writing when the obligation to pay for heat or hot water is transferred from the landlord to the tenant. The Court awarded the tenant all costs for utilities based on the plain language of the statute.

Lavallee v. Perrault, 92-SP-00392 (1992) - Tenant and landlord had an oral agreement that the tenant would pay for the utilities. The court held that the State Sanitary Code requirement of a written agreement may not be waived. The court cited *Young v. Patukonis* and the judge awarded the tenant all costs of utilities.

Poncz v. Loftin, 34 Mass.App.Ct. 909 (1993) - While the Court agreed that requiring the tenant to pay for heat and hot water without a written agreement violated the State Sanitary Code, the Court awarded the tenant only "out of pocket" expenses. The Court found that, because the cost of the rent plus utilities did not exceed the fair market value of the premises, the tenant suffered no actual damages.

Cogliano v. Lyall, 97-SP-00155 (1997) - Tenant and landlord had an oral agreement that the tenant would pay for the utilities. The Court held that this oral agreement violated the State Sanitary Code, however it cited *Hodge v. Klug*, 33 Mass.App.Ct. 746 (1992), which stated that, "concerning the utilities, the longstanding arrangement, on principles of laches, if no other, presents a limiting case to *Young v. Patukonis*". The Court held that, although the agreement did violate the State Sanitary Code, it did not breach the tenant's quiet enjoyment and is, therefore, not void and unenforceable as a matter of policy. There was no evidence that the rent plus the cost of the utilities did not equal the fair market value of the premises, and, therefore, the tenant did not suffer damages as a result of the breach of the implied warranty of habitability. The tenant received nothing.

Now that Massachusetts state law allows tenants to pay for their own water, I want to make that change in my building. What do I need to do?

A landlord can only require tenants who signed a lease on or after March 16, 2005 to pay for their own water. An existing tenant cannot be forced to accept that change to his/her current lease.

Before a new tenant can be responsible for his/her own water bill, the landlord must install separate metering systems for each individual unit. Also, water conservation devices must be installed on every faucet, toilet and shower. The landlord then needs to fill out and file with the Department of Public Health a Submetering of Water and Sewer Certification form which includes a plumber's documentation that the

work has been done in accordance with accepted plumbing standards and G.L. c. 186, §22.

The submeter can also be used to require a tenant to pay his/her own sewer charges. This also must be provided for in the lease.

What type of accommodations must I make for a tenant with a disability?

A disability is a physical or mental impairment which substantially limits a major life activity. The landlord must allow tenants with disabilities to make reasonable modifications to their unit if the modifications are needed by the tenant to make the unit livable. In rental housing consisting of less than ten units, the modifications are at the tenant's expense. In rental housing of ten units or more, the modifications are at the landlord's expense, within reasonable guidelines. The modifications might include the installation of grab bars in the bathroom or the installation of smoke alarms or door bells that light up. In most cases, the tenant is required to restore the unit to its original condition when the unit is vacated.

The landlord must also make reasonable accommodations in rules and policies relating to the building so that a disabled tenant may live in the building. This might include allowing a person to keep a guide dog even though pets are not allowed or providing a parking spot next to the front door for a mobility impaired tenant even though other tenants must park in the rear of the building. In all cases, reasonableness on the part of the landlord is required.

I am an owner-occupant of a three family dwelling. Am I exempt from the laws relating to discrimination?

No. The Massachusetts fair housing law covers all housing except, in some cases, owner-occupied two family dwellings. Owner-occupants of three family dwellings may be exempt from the requirements that they rent to families with children in cases where one of the units is occupied by an elderly or infirm person and the presence of children would be a hardship.

Who is considered handicapped under the fair housing laws?

A person is considered handicapped if they have a disability, either physical or mental, which substantially limits a major life activity. While persons with drug addiction and/or alcoholism are considered handicapped and therefore protected under the fair housing laws, those who are currently using illegal drugs are not protected. Furthermore, a landlord need not rent a unit to any person whose tenancy would be a direct threat to the health or safety of other tenants or would result in physical damage to the property of others.

What is breach of quiet enjoyment?

A tenant has the right to freedom from serious interference with their tenancy and from the landlord's acts or omissions which impair the character and value of the premises. When the tenant's rights have been violated, this is referred to as a breach of quiet enjoyment. Landlords breach the tenant's right to quiet enjoyment by failing to make repairs to property, harassing a tenant, trying to illegally evict a tenant, entering a tenant's unit illegally or without permission, failing to provide required utilities, or otherwise interfering with the tenant's use of the property. If the landlord breaches a tenant's quiet enjoyment, the tenant may sue the landlord for damages and/or prevent the landlord from succeeding in an eviction.

If a tenant has damaged the unit he/she lives in, must I repair the damage?

Yes. Although the tenant is required to exercise reasonable care in the use and care of the property, damages caused by the tenant or his/her guests may occur. In such cases, the tenant should notify the landlord. The landlord must repair the damage caused by the tenant or his/her guests within a reasonable period of time after receiving notice, but may bill the tenant for the cost of the repairs. This is because the landlord has the duty to maintain the premises in a safe and decent manner during the term of the tenancy. The landlord warrants that the property is fit for habitation at the beginning of the tenancy and will remain habitable during the term of the tenancy. This is referred to as the warranty of habitability. If the landlord breaches this obligation, the tenant is entitled to damages.

A tenant who lived in a unit for three years has just vacated. In deciding how much of the security deposit to return to the tenant, how can I determine what is damage and what is reasonable wear and tear?

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 not charge a tenant for costs associated with repairing conditions that are deemed the result of wear and tear. There are no definitive rules on the issue but a landlord must be fair and

reasonable, consider the length of the tenancy, and make a determination on a case by case basis.

If the landlord finds that there are damages, the landlord may deduct the costs of repairs from the security deposit. In doing so, 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. The landlord should attach to this list written documentation such as estimates, invoices, or receipts for the repairs. 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 right to keep the security deposit for damages and the tenant may also have a claim for damages.

A tenant has moved out of a unit and left behind a couch and a bureau. What should I do with these items?

If the tenant vacated the unit and made no arrangement with the landlord for picking up any items that he/she left behind and the landlord has no reason to believe that the tenant will be returning for the items, the landlord may consider the items abandoned. In such cases, the landlord should collect the items and hold them for the tenant for a minimum of thirty days. There is no requirement that the landlord pay for a storage facility to hold the items. If the landlord chooses to place the items in a storage facility, the tenant would be responsible for payment of the storage charges. While the landlord has no duty to locate the tenant to reunite him/her with their belongings, the landlord could send a letter to the tenant at his/her new address if known, or to the former address hoping that it gets forwarded to the tenant. At all times, the landlord should act in a reasonable manner with respect to the tenant's property. Finally, the landlord has no right to keep the tenant's property and the landlord must turn it over to the tenant at the tenant's request, even if the landlord is owed rent by the tenant.

Do I need a lawyer to terminate a tenancy, raise a tenant's rent, or evict a tenant?

No. There is no law that requires a landlord to retain an attorney except in cases of an eviction where the landlord is a corporation. In all other cases, a landlord may proceed on his/her own, provided he/she understands the requirements of the law. The fact that a landlord is not required to retain an attorney should not be interpreted to mean that a landlord might not benefit from such legal assistance. In fact, legal advice should be considered a legitimate and expected cost of doing business.

I need to have my rental property deleaded but do not have the money to do it. What should I do?

Massachusetts has many financing programs available to help property owners pay for deleading their homes, including low interest loans, loan subsidies, and tax credit assistance. Private banks may also have deleading programs. To obtain further current information, contact the Massachusetts Childhood Lead Poisoning Prevention Program at (800) 532-9571.

I have deleaded my rental property. Is there a tax deduction available to me?

The Commonwealth of Massachusetts provides a tax credit to landlords who delead their property. The credit is $1,500.00 per housing unit. A credit is different that a tax deduction. A tax deduction reduces the amount of taxable income that a taxpayer will base their tax on while a tax credit directly reduces the amount of tax that a taxpayer pays. Therefore, a tax credit saves the taxpayer the full amount of the credit. If the taxpayer owes less than the tax credit in any one year, the credit may be carried over into future years.

My tenant has just informed me that he/she is adopting a child who is three years old. The property has lead paint. What should I do?

The State Sanitary Code requires landlords to remove lead paint in any property where a child six years or under resides. This includes the unit in which the child lives, the common areas, and the outside of the property.

It is discriminatory and a violation of the law to evict a family because they have children and the unit has lead paint. The landlord is liable for all damages caused by the failure to delead.

There are two ways to comply with the lead paint laws:

1. Have all lead hazards removed or covered. Landlords must first hire a licensed lead inspector who will test the residence for lead and record all lead hazards. The landlord should then hire a licensed deleader to perform the work. After the work is approved, the owner will receive a Letter of Full Compliance.

2. Have only urgent lead hazards corrected, while controlling remaining hazards. This temporary method, known as interim control, requires that a licensed risk assessor show the landlord what work must be done for interim control. The landlord should

then hire a licensed deleader to perform the work. After the work is approved, the owner will receive a Letter of Interim Control. Owners then have up to two years to remove or cover the remaining lead hazards and receive a Letter of Full Compliance.

Tenants will have to be relocated while certain deleading work is taking place inside the home. They will be able to return to the property only after the licensed lead inspector or risk assessor determines that it is safe. The landlord has the right to move the tenant to a substitute unit upon reasonable notice, provided that the owner pays the reasonable moving expenses and cost of the substitute unit which exceeds the rent of the unit being deleaded. If the tenant does not accept the substitute unit offered by the landlord, the landlord will not be responsible for any expenses other than the moving expenses and cost of the substitute unit offered by the landlord which exceeds the rent of the unit being deleaded.

My tenant gave me a notice on the first of the month telling me that he/she is moving out at the end of the month and to use his/her security deposit for the last month's rent. Is this legal?

While the security deposit law would not prohibit this arrangement, it is not in the best interests of the landlord to do so. The security deposit was required so that the landlord would have money to pay for damages to the unit after the tenant moved out. While the security deposit may be used to cover any unpaid rent after the tenant has moved out, it is in the best interest of the landlord to attempt to collect the rent due from the tenant while the tenant is living on the premises so that there will be money available to pay for damages. If the landlord uses the deposit as last month's rent, the landlord will have to bill the tenant for the amount of damages to the unit, if any. If the tenant does not voluntarily pay the bill, the landlord would have to go to court to recover the amount due.

I took a security deposit three months ago before I understood the requirement that a security deposit must be placed in an escrow account in the bank. What should I do?

The landlord must deposit a security deposit in an interest bearing account in a Massachusetts bank within thirty days from the date the landlord receives it. This account must be beyond the claims of the landlord's creditors, meaning it may not be in the landlord's name nor mingled with the landlord's money.

Since you have not followed the law, you have two choices. The best choice is to give the tenant back the security deposit even though he/she may be unaware that you have failed to place it in an account within thirty days of receiving it. In addition to being the ethically preferable choice, legally, the tenant may discover the mistake and use the security deposit violation to defeat the landlord's attempt to regain possession in a later eviction action. This is because a tenant who is successful in proving that the landlord owes him/her money damages, even if that amount is less than he/she owes the landlord for rent, will not lose possession to the landlord. Any failure to comply with the law, even a security deposit violation, may give rise to a counterclaim for money damages which may prevent the landlord from getting their property back in an eviction proceeding, even if the tenant has not paid rent.

The less desirable choice if the tenant has not demanded that you return the deposit, is to deposit the money in a proper account immediately with the understanding that at any time during the tenancy, the tenant has the right to demand the return of the security deposit because you failed to deposit it in an appropriate bank account within the required time. If the tenant makes the demand, you should return the deposit immediately without making the tenant file in court. If the tenant does go to court to get his/her security deposit back, the Court may award the tenant up to three times the amount of the security deposit, plus interest, costs, and attorney's fees.

My tenant has informed me that there are bad conditions in his/her unit. Shouldn't the tenant have to notify me in writing?

There is no requirement that the tenant notify the landlord in writing. If the landlord does not repair damages or bad conditions of which they have actual notice from the tenant, whether oral or written, or of which they have constructive notice (the landlord should have known about the damage or bad condition), the tenant may decide to withhold rent, may be able to defeat a later eviction, or may bring an action for damages.

I have a small one bedroom apartment and want to limit occupancy to one person only. Is this legal?

The State Sanitary Code states that there is a minimum square footage requirement for residential properties. Landlords may limit the number of occupants that are allowed to live in an apartment based on that formula. In order to comply, the landlord must measure the square footage of the entire apartment and of the bedroom. The apartment

must have at least 150 square feet (s.f.) of floor space for the first occupant and at least 100 s.f. for each additional occupant. The bedroom must contain at least 70 s.f. of floor space if the bedroom is to be occupied by one person. If more than one person is occupying a bedroom, there must be at least 50 s.f. for each occupant. Children under the age of one are not counted as occupants. Therefore in this case, if the apartment contains at least 150 s.f. but less than 250 s.f., or the one bedroom contains at least 70 s.f. but less 100 s.f., the unit may be rented to only one person. But, if the unit contains 250 s.f. or more and the bedroom contains 100 s.f. or more, and the landlord limits occupancy to only one person, it is possible that this may be discriminatory. Landlords are permitted to limit occupancy for legitimate business reasons but not when this results in discrimination, especially against families with children.

I own a large apartment building and want to convert the building into condominium units, but I have existing tenants. What do I do?

If the building contains more than four units, it becomes subject to the Condo Conversion Law. Each municipality has the right to pass its own version, and you should contact your local town or city for that information. However, if the municipality has not adopted its own provision, the state law is applied, which has a number of requirements:

1. Give the tenant one year notice or until his/her lease expires, whichever is greater. The notice must be in writing and state that the building is being converted into condos, how long the tenant has until he/she needs to move out, and that the tenant has the right to first refusal. The notice should be hand delivered or sent by certified mail.

2. Give the tenant the right of first refusal to buy the condo unit. If the tenant does not agree to purchase the unit after ninety days, you may offer the unit to the public.

3. Reimburse the tenant for moving expenses of up to $750.00.

An elderly, handicapped, or low or moderate income tenant is entitled to two years notice, up to $1,000.00 for moving expenses, and the landlord's assistance in finding a new suitable apartment.

poisonous gas that results from incomplete burning of fuels such as natural gas, propane, oil, wood, coal, and gasoline. Each year many people die from accidental CO poisoning and thousands more are injured. This law was passed to protect all of us from the dangers of carbon monoxide poisoning.

How Can I Tell if a CO Alarm Is Approved?

CO alarms are approved by an independent testing company such as Underwriters' Laboratories (UL), Underwriter's Laboratory of Canada (ULC), or International Approval Service/Canadian Standards Association (IAS/CSA). Be sure to look for the approval label when buying CO alarms. Most of the CO alarms currently sold in the Commonwealth meet these standards but it is a good idea to check and make sure they meet the standard before you purchase the alarms.

How Do I Meet the Requirements of the Law?

If you install CO alarms on every habitable level by March 31, 2006 and keep them in good working order you don't have to do anything else to be in compliance with the law. When you sell your home, you must have an inspection and certificate from the local fire department before the sale is final. Contact your local fire department directly – they will know what to do to assist you.

They include:

- Headache
- Fatigue
- Shortness of breath
- Nausea
- Dizziness

If you think you have symptoms of carbon monoxide poisoning or your CO alarm is sounding, contact your fire department and leave the building immediately.

For more information about the requirements of the law contact your local fire department or visit the Massachusetts Department of Fire Services website at www.mass.gov/dfs.

Consumer's Guide

to Massachusetts Requirements for

Carbon Monoxide Alarms

PRESENTED BY:

Department of Fire Services
P.O. Box 1025, Stow, MA 01775
P.O. Box 389, Northampton, MA 01060

www.mass.gov/dfs

Consumer's Guide to Massachusetts Requirements for Carbon Monoxide Alarms

In November 2005, Governor Mitt Romney signed "Nicole's Law" which places certain requirements on owners of all residential properties to install and maintain carbon monoxide (CO) alarms. The Board of Fire Prevention Regulations has developed the regulations (527 CMR 31.00) establishing the specific requirements of the law including the type, location, maintenance and inspection requirements for the alarms.

Who Is Impacted by this Law?

Generally speaking anyone who owns residential property regardless of size (i.e., 1- & 2-family homes, multi-family buildings, apartments, condominiums and townhouses, etc.) ***that contains fossil burning fuel equipment*** (i.e., oil, gas, wood, coal, etc.) **OR** ***contains enclosed parking*** (i.e., attached or enclosed garage) in Massachusetts, ***is required to install CO alarms by March 31, 2006. In certain limited instances (see below)***, the installation requirements are deferred until ***January 1, 2007***.

What Do I Have to Do?

Install CO alarms on every level of your home except for basements and attics that do not have habitable living spaces (i.e., family rooms, dens, etc.) by March 31, 2006.

What Kinds of CO Alarms Are Allowed?

There are several types of alarms that are allowed; they include:

- Battery powered with battery monitoring;
- Plug-in (AC powered) units with battery backup;
- AC primary power (hard-wired – usually involves hiring an electrician) with battery backup;
- Low-voltage or wireless alarms; and
- Qualified combination smoke detectors and CO alarms.

What Are *Qualified* Combination Detectors and Alarms?

Acceptable combination smoke detectors and carbon monoxide alarms must have simulated voice and tone alarms that clearly distinguish between the two types of emergencies. If you have questions about various types of smoke detectors, contact your local fire department.

What Am I Required to Do if I'm a Landlord?

Landlords must install CO alarms in each dwelling unit. Landlords also must inspect, test and maintain the CO alarms at least once a year or at the beginning of any rental period (such as lease renewal). Batteries are required to be replaced once a year. **Tenants** should report any problems with alarms to the landlord immediately and learn to recognize the difference between the smoke detector and the carbon monoxide alarm.

What Are Alternative Compliance Options?

The regulation allows for alternative compliance options that may be more practical for larger buildings with multiple dwelling units that contain minimal or no sources of CO inside the individual units. The option allows owners to target the CO alarm protection in only those areas (i.e., rooms that contain boilers, hot water heaters, central laundry areas and all adjacent spaces, in addition to enclosed parking areas) that could be potential sources of the CO. This CO protection option requires hard-wiring or low-voltage wiring, monitoring (i.e., by an alarm company) and certain signal transmission requirements.

What Are the Limited Instances Where I Don't Have to Install CO Alarms until January 1, 2007?

Owners of residential buildings that notify the local fire department and choose the alternative compliance option and buildings owned by the Commonwealth of Massachusetts (i.e., public housing units) will not be required to install CO alarms until January 1, 2007.

Where Do I Have To Put These CO Alarms?

In most residences, carbon monoxide alarms are required to be located on every level of a home or dwelling unit including habitable portions of basements and attics. On levels with sleeping areas the alarms must be placed within ten feet of the bedroom doors.

CO alarms do not go inside garages, but in the adjacent living areas.

When Do I Have to Install CO Alarms?

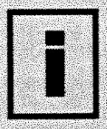
Most residences are required to install CO alarms by March 31, 2006. After that date anyone who sells their property will be required to have an inspection by the fire department prior to the sale or transfer of their property.

CHAPTER 3

LEAD PAINT

INTRODUCTION

Lead poisoning is a disease caused by swallowing or inhaling lead that may be present in paint and the dust from paint in older homes. Lead dust enters children's bodies when they put their contaminated hands or toys in their mouths. Lead poisoning may damage the brain, kidneys, and nervous system of young children. Low levels may cause learning and behavioral problems, while high levels may cause retardation, convulsions, and coma. Lead paint was used in most homes built in Massachusetts before 1978.

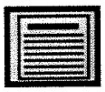


Comprehensive and up to date information relating to lead paint can be obtained from the Massachusetts Childhood Lead Poisoning Prevention Program (CLPPP) at http://www.mass.gov/dph/clppp/clppp.htm or (800) 532-9571.

The law requires that landlords remove lead paint in any property where a child under six years old resides.[1]

This includes the unit in which the child lives, the common areas, and the outside of the property. Not all surfaces have to be deleaded. If the lead paint is intact, the surface above five feet does not have to be treated. However, surfaces below five feet, including but not limited to wall corners, doors, stairs, railings, windows, baseboards, and chair railings have to be treated regardless of whether the paint is intact or not. The landlord is responsible for complying with the lead law and paying the cost to delead.

Prior to entering into a rental agreement or lease, the landlord and tenant must sign two copies of the Tenant Lead Law Notification form and Tenant Certification form. Each party gets a copy to keep. These forms give the tenant information about lead paint and require the landlord to disclose the presence of lead paint if applicable. They also require the landlord to provide the tenant with copies of available documents relating to lead paint including any Lead Inspection Report, Risk Assessment Report, Letter of Interim Control, or Letter of Compliance. Both forms, as well as other lead paint materials, are available from CLPPP in several languages including Cambodian/Khmer, Haitian Creole, Portuguese, Spanish, and Vietnamese from CLPPP.



See Tenant Lead Law Notification form and Tenant Certification form at the end of this Chapter.

Tenant notification applies to all tenants, whether or not they have a child under six living with them. Landlords may include the Tenant Lead Law Notification/Tenant Certification form in the lease, as opposed to using a separate form. Landlords who fail to perform their tenant notification obligations are liable for all damages resulting from their failure to do so, and also may be fined up to $1,000.00.

It is discriminatory and a violation of the law to refuse to rent to a family with children because the unit has lead paint, to refuse to renew a lease with a family with children because the unit has lead paint, or to evict a family because they have children when the unit has lead paint.[2]

Violations of the lead law are also violations of the State Sanitary Code and tenants may employ any and all remedies available to them under the Code.[3]

See Chapter 8, Tenant Remedies

Tenants may also have a claim for damages under the Consumer Protection Act.[4]

See Chapter 22, Consumer Protection Act

Ultimately, the landlord is liable for all damages caused by the failure to comply with the lead laws whether the landlord knew of the presence of lead or not.[5]

TWO WAYS TO COMPLY WITH THE LEAD PAINT LAWS:

1. **Have all lead hazards removed or covered.**

   Landlords must first hire a licensed lead inspector to test the residence for lead and record all lead

hazards. The landlord should then hire a licensed deleader to perform the necessary high risk work. Moderate and low risk work can be done by the licensed deleader, the landlord, or an agent of the landlord. The landlord or agent must complete special training before they may perform deleading tasks.[6] The training consists of a one day CLPPP course that covers safety procedures, cleanup, and what is necessary to meet the Lead Law and Regulations requirements. The landlord or agent must pass a CLPPP exam and then will receive a certificate to prove that they are authorized to do this work. Training providers generally charge $150.00-$200.00 for an eight hour course. To find providers in your area and their training schedules, check the CLPPP website at http://www.mass.gov/dph/clppp/trainpro.htm.

Low risk deleading work includes removing and replacing doors and shutters, applying vinyl siding to the exterior of the building, capping baseboards, and applying encapsulates to appropriate surfaces.[7] Low risk deleading may be performed by the owner or agent after the home has been inspected by a licensed lead inspector or risk assessor, the owner has reviewed the Owner/Agent Deleading Packet, and the at home test included in the packet has been taken and returned to the Massachusetts Childhood Lead Poisoning Prevention Program (CLPPP).

Moderate risk deleading work includes removing windows and woodwork, and making intact deteriorated lead paint in an area no more than 2 square feet per interior room and no more than 10 square feet total on exterior surfaces.[8] More dangerous work, such as making large amounts of loose paint intact and using chemical paint strippers, is considered high risk deleading and can only be done by a licensed deleader.

After all the repairs have been made, the licensed lead inspector should return to inspect the home. A Letter of Full Compliance will be given to the landlord once the work is approved.

2. Have only urgent lead hazards corrected, while controlling remaining hazards.

This temporary method, known as interim control, protects residents from lead poisoning until the home is fully deleaded. This option gives landlords up to two years to fully delead and come into compliance with the law. Landlords must first hire a licensed risk assessor who will do a lead inspection and determine what work, if any, needs to be done in order to obtain a Letter of Interim Control. The risk assessor will locate the most serious lead hazards, usually peeling and chipping lead paint and lead dust, and a licensed deleader must be brought in to remove these hazards and do all other high risk work. Moderate and low risk deleading can be done by the licensed deleader, the properly trained landlord, or a trained agent of the landlord.[9]

After the urgent lead hazards are removed, the landlord will be given a Letter of Interim Control, which is good for one year. The property will need to be re-inspected before the end of that year and recertified for another year.[10] By the end of the second year, the property must be fully deleaded and the landlord must obtain a Letter of Full Compliance. During the two year period of interim control, the landlord is free from strict liability under the Massachusetts Lead Law, but is still liable for all damages due to the landlord's breach of reasonable care.[11]

To obtain a list of licensed lead inspectors, deleaders, and risk assessors, contact the CLPPP. A list of licensed deleaders can also be obtained from the state Department of Labor and Workforce Development.

WHEN TO DELEAD

If the property with lead is vacant and new tenants have a child under the age of six, the property must be deleaded or brought under interim control prior to the time the tenants move in. The landlord may delay the start of the tenancy for up to thirty days to obtain the Letter of Interim Control or Letter of Full Compliance. During this delay, the landlord is not responsible for the tenant's living expenses.[12]

If tenants are already residing in a unit when the presence of lead is discovered, and a child under six is already living there or will be living there, deleading or correcting and controlling of hazards should occur as soon as possible thereafter. Tenants will have to be relocated while certain deleading work is taking place inside the home. They will be able to return to the property only after the licensed lead inspector or risk assessor determines that it is safe. The landlord has the right to move the tenant to a substitute unit upon reasonable notice, provided that the owner pays the reasonable moving expenses and cost of the substitute unit which exceeds the rent of the unit being deleaded. If the tenant does not accept the substitute unit offered by the landlord, the landlord will not be responsible for any expenses other than the moving expenses and cost of the substitute unit offered by the landlord which exceeds the rent of the unit being deleaded.[13]

FINANCIAL ASSISTANCE

Massachusetts has many financing programs available to help property owners pay for deleading their homes, including grants, low interest loans, loan subsidies, and tax credit assistance. There is a state income tax credit of $1,500.00 per unit or the cost of deleading each dwelling unit, and a credit for interim control deleading measures of $500.00, or half the cost of the work, whichever is less.[14] The credit for interim control measures is applied towards the $1,500.00 total. Another option is the Lead Abatement Loan Program, which provides loans for deleading work to owners of buildings in which low to moderate income families reside.[15] Funds are available through the U.S. Department of Housing and Urban Development, the Massachusetts Department of Housing and Community Development, MassHousing, and local community development planning departments. To obtain further current information, contact these organizations or the CLPPP.

See Chapter 23, Rehabilitation Programs for Rental Properties

LANDLORD LIABILITY

The landlord is liable for all damages caused by the failure to comply with the lead laws.[16]

The lead law is a strict liability statute which means that the injured party need not prove that the landlord knew of the lead or was negligent in any way. In most cases, the fact that lead was present on the property and that poisoning occurred due to lead is enough to create liability. Homeowner's insurance will not cover damages incurred from lead poisoning.

The only time that strict liability does not apply is in cases where the landlord has obtained a Letter of Full Compliance from a licensed lead inspector or a Letter of Interim Control which is in effect and the landlord is exercising reasonable care.[17]

An owner may not avoid liability by asking tenants to sign an agreement that they will accept the presence of lead paint. Under the law, the child injured by lead paint that has not been properly removed or covered by the landlord may sue the landlord for damages until the child reaches twenty years of age. Monetary damages awarded against an owner in violation of the lead law are high because lead poisoning can cause severe life-long damages to the child.

An owner may not avoid liability by refusing to rent a unit to a family with children under the age of six.[18] This is a form of discrimination, which carries serious consequences.

See Chapter 4, Finding a Tenant to Rent Your Property

The presence of lead paint endangers the health or safety of the child, and thus may violate the warranty of habitability.[19] Damages for breaching the warranty of habitability take the form of a rent abatement and are measured by the difference between the fair market value of the premises as warranted and the fair market value of the premises with the lead paint.

See Chapter 8, Tenant Remedies for Bad Conditions

The landlord may be subject to severe damages for failing to remove lead paint after being ordered to do so.[20] Punitive damages, which may be as much as three times the amount of the actual damages, are awarded against owners who willfully fail to correct a condition. Failure to comply with the Lead Law is also an emergency public health matter and can carry criminal penalties. Please note that damages in lead paint liability cases may be extremely high and it is financially, legally, and morally responsible to delead all units and areas where children will reside.[21]

LANDLORD EXEMPTIONS

The Massachusetts lead paint law does not apply to houses built after 1978. Any apartment unit that has less than 250 square feet of living space is also exempt, as long as there is no child under the age of six living there. Vacation rentals for 31 days or less are also exempt. However, renters must be given a Short-Term Vacation Rental Notification form, and if there is chipping or peeling lead paint, the exemption no longer applies.[22]

ENDNOTES

[1] G.L. c. 111, §197; 105 CMR 460.100
[2] G.L. c. 151B
[3] G.L. c. 111, §198
[4] G.L. c. 93A; 105 CMR 3.17(1)
[5] G.L. c. 111, §199; 105 CMR 460.180
[6] 105 CMR 460.175(D)
[7] 105 CMR 460.175(A)(1)
[8] 105 CMR 460.175(B)(1)
[9] 105 CMR 460.175(D)
[10] G.L. c. 111, §197(b)
[11] G.L. c. 111, §197(c)(5)
[12] G.L. c. 111, §197(h)
[13] G.L. c. 111, §197(h)
[14] G.L. c. 62, §6(e)
[15] G.L. c. 111, §197E; 760 CMR 14.000
[16] G.L. c. 111, §199; 105 CMR 460.180
[17] G.L. c. 197C
[18] G.L. c. 111, §199A; *McFadden v. Moll*, 16 Mass.L.Rptr. 266 (2003)
[19] *Elliott v. Chaouche*, 2000 WL 121785 (Mass.App.Div. 2000)
[20] G.L. c. 111, §199; 105 CMR 460.190
[21] See *Viere v. Privitera*, 11 Mass. Lawyer's Weekly 392 (1982), where a tenant was awarded more than $2,000,000.
[22] G.L. c. 111, §199B

Tenant Lead Law Notification

What lead paint forms must owners of rental homes give to new tenants?

Before renting a home built before 1978, the property owner and the new tenant must sign two copies of this **Tenant Lead Law Notification** and **Tenant Certification Form**, and the property owner must give the tenant one of the signed copies to keep. If any of the following forms exist for the unit, tenants must also be given a copy of them: lead inspection or risk assessment report, Letter of Compliance, or Letter of Interim Control. **This form is for compliance with both Massachusetts and federal lead notification requirements.**

What is lead poisoning and who is at risk of becoming lead poisoned?

Lead poisoning is a serious environmental hazard. It is most dangerous for children under six years old. It can cause permanent harm to young children's brain, kidneys, nervous system and red blood cells. Even at low levels, lead in children's bodies can slow growth and cause learning and behavior problems. Young children are more easily and more seriously poisoned than others, but older children and adults can become lead poisoned too. Lead in the body of a pregnant woman can hurt her baby before birth and cause problems with the pregnancy. Adults who become lead poisoned can have problems having children, and can have high blood pressure, stomach problems, nerve problems, memory problems and muscle and joint pain.

How do children and adults become lead poisoned?

Lead is often found in paint on the inside and outside of homes built before 1978. The lead paint in these homes causes almost all lead poisoning in young children. The main way children get lead poisoning is from swallowing lead paint dust and chips. Lead is so harmful that even a small amount can poison a child. Lead paint under layers of nonleaded paint can still poison children, especially when it is disturbed, such as through normal wear and tear and home repair work.

Lead paint dust and chips in the home most often come from peeling or chipping lead painted surfaces; lead paint on moving parts of windows or on window parts that are rubbed by moving parts; lead paint on surfaces that get bumped or walked on, such as floors, porches, stairs, and woodwork; and lead paint on surfaces that stick out which a child may be able to mouth such as window sills.

Most lead poisoning is caused by children's normal behavior of putting their hands or other things in their mouths. If their hands or these objects have touched lead dust, this may add lead to their bodies. A child can also get lead from other sources, such as soil and water, but these rarely cause lead poisoning by themselves. Lead can be found in soil near old, lead-painted homes. If children play in bare, leaded soil, or eat vegetables or fruits grown in such soil, or if leaded soil is tracked into the home from outside and gets on children's hands or toys, lead may enter their bodies. Most adult lead poisoning is caused by adults breathing in or swallowing lead dust at work, or, if they live in older homes with lead paint, through home repairs.

How can you find out if someone is lead poisoned?

Most people who are lead poisoned do not have any special symptoms. The only way to find out if a child or adult is lead poisoned is to have his or her blood tested. Children in Massachusetts must be tested at least once a year from the time they are between nine months and one year old until they are four years old. Your doctor, other health care provider or Board of Health can do this. A lead poisoned child will need medical care. A home with lead paint must be deleaded for a lead poisoned child to get well.

What kind of homes are more likely to have lead paint?

In 1978, the United States government banned lead from house paint. Lead paint can be found in all types of homes built before 1978: single-family and multi-family; homes in cities, suburbs or the countryside; private housing or state or federal public housing. The older the home, the more likely it is to have lead paint. The older the paint, the higher its lead content is likely to be.

Can regular home repairs cause lead poisoning?

There is a danger of lead poisoning any time painted surfaces inside or outside the home are scraped for repainting, or woodwork is stripped or removed, or windows or walls are removed. This is because lead paint is found in almost all Massachusetts homes built before 1978, and so many of Massachusetts' homes are old. Special care must be taken whenever home repair work is done. No one should use power sanders, open flame torches, or heat guns to remove lead paint, since these methods create a lot of lead dust and fumes. Ask the owner of your home if a lead inspection has been done. The inspection report will tell you which surfaces have lead paint and need extra care in setting up for repair work, doing the repairs, and cleaning up afterwards. Temporarily move your family (especially children and pregnant women) out of the home while home repair work is being done and cleaned up. If this is not possible, tape up plastic sheets to completely seal off the area where the work is going on. No one should do repair work in older homes without learning about safe ways to do the work to reduce the danger of lead dust. Hundreds of cases of childhood and adult lead poisoning happen each year from home repair work.

What can you do to prevent lead poisoning?

- Talk to your child's doctor about lead.
- Have your child tested for lead at least once a year until he/she is four years old.
- Ask the owner if your home has been deleaded or call the state Childhood Lead Poisoning Prevention Program (CLPPP) at 1-800-532-9571, or your local Board of Health.
- Tell the owner if you have a new baby, or if a new child under six years old lives with you.
- If your home was deleaded, but has peeling paint, tell and write the owner. If he/she does not respond, call CLPPP or your local Board of Health.
- Make sure only safe methods are used to paint or make repairs to your home, and to clean up afterwards.
- If your home has not been deleaded, you can do some things to temporarily reduce the chances of your child becoming lead poisoned. You can clean your home regularly with paper towels and any household detergent and warm water to wipe up dust and loose paint chips. Rub hard to get rid of more lead. When you are done, put the dirty paper towels in a plastic bag and throw them out. The areas to clean most often are window wells, sills, and floors. Wash your child's hands often (especially before eating or sleeping) and wash your child's toys, bottles and pacifiers often. Make sure your child eats foods with lots of calcium and iron, and avoid foods and snacks that are high in fat. If you think your soil may have lead in it, have it tested. Use a door mat to help prevent dirt from getting into your home. Cover bare leaded dirt by planting grass or bushes, and use mats, bark mulch or other ground covers under swings and slides. Plant gardens away from old homes, or in pots using new soil. Remember, the only way to permanently lower the risk of your child getting lead poisoned is to have your home deleaded if it contains lead paint.

How do you find out where lead paint hazards may be in a home?

The only way to know for sure is to have a lead inspection or risk assessment done. The lead inspector will test the surfaces of your home and give the landlord and you a written report that tells you where there is lead in amounts that are a hazard by state law. For interim control, a temporary way to have your home made safe from lead hazards, a risk assessor does a lead inspection plus a risk assessment. During a risk assessment, the home is checked for the most serious lead hazards, which must be fixed right away. The risk assessor would give the landlord and you a written report of the areas with too much lead and the serious lead hazards. Lead inspectors and risk assessors have been trained, licensed by the Department of Public Health, and have experience using the state-approved methods for testing for lead paint. These methods are use of a sodium sulfide solution, a portable x-ray fluorescence machine or lab tests of paint samples. You can get a list of licensed lead inspectors and risk assessors from CLPPP.

In Massachusetts, what must the owner of a home built before 1978 do if a child under six years old lives there?

An owner of a home in Massachusetts built before 1978 must have the home inspected for lead if a child under six years old lives there. If lead hazards are found, the home must be deleaded or brought under interim control. Only a licensed deleader may do high-risk deleading work, such as removing lead paint or repairing chipping and peeling lead paint. You can get a list of licensed deleaders from the state Department of Labor and Workforce Development. Deleaders are trained to use safe

methods to prepare to work, do the deleading, and clean up. Either a deleader, the owner or someone who works for the owner who is not a licensed deleader can do certain other deleading and interim control work. Owners and workers must have special training to perform the deleading tasks they may do. After the work is done, the lead inspector or risk assessor checks the home. He or she may take dust samples to test for lead, to make sure the home has been properly cleaned up. If everything is fine, he or she gives the owner a Letter of Compliance or Letter of Interim Control. After getting one of these letters, the owner must take care of the home and make sure there is no peeling paint.

What is a Letter of Compliance?

It is a legal letter under state law that says either that there are no lead paint hazards or that the home has been deleaded. The letter is signed and dated by a licensed lead inspector.

What is a Letter of Interim Control?

It is a legal letter under state law that says work necessary to make the home temporarily safe from serious lead hazards has been done. The letter is signed and dated by a licensed risk assessor. It is good for one year, but can be renewed for another year. The owner must fully delead the home and get a Letter of Compliance before the end of the second year.

Where can I learn more about lead poisoning?

Massachusetts Department of Public Health
Childhood Lead Poisoning Prevention Program (CLPPP)
(For more copies of this form, as well as a full range of information on lead poisoning prevention, tenants' rights and responsibilities under the MA Lead Law, how to clean lead dust and chips, healthy foods to protect your children, financial help for owners, safe deleading and renovation work, and soil testing.)
1-800-532-9571

Massachusetts Department of Labor and
Workforce Development
(List of licensed deleaders)
617-969-7177, 1-800-425-0004

Your local lead poisoning prevention program
or your local Board of Health

U.S. Consumer Product Safety Commission
(Information about lead in consumer products)
1-800-638-2772

U.S. Environmental Protection Agency, Region I
(Information about federal laws on lead)
617-918-1524

National Lead Information Center
(General lead poisoning information)
1-800-424-5323

reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant. A landlord may condition permission for a modification on the tenant providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workperson-like manner and that any required building permits will be obtained.

In rental housing of ten units or more, landlords must make and pay for reasonable modifications to existing units, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises. Modifications will not be considered reasonable if the cost or construction would impose an undue hardship upon the landlord.[14]

Landlords must also make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.[15]

For example: *What constitutes a reasonable accommodation is considered on a case by case basis. A Massachusetts court found that removing a rear porch, affixing a wheelchair ramp to a rear door, widening the door frame, and converting a window into a door with a wheelchair ramp are all reasonable accommodations, as long as the tenant pays for them and restores the property to the original condition upon vacating the premises.[16] Another court found an elderly tenant's request to move to a vacant first floor unit, in the same building in which she currently lived, to be an appropriate accommodation for her medical condition that made climbing the stairs to her fourth flour unit next to impossible.[17]*

SELECTING A TENANT WITHOUT VIOLATING THE FAIR HOUSING LAWS

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 criteria include income, credit, and prior housing record. Furthermore, a landlord has the right to exclude a person based on factors that do not relate to inclusion in a protected class.

For example: *A landlord may legally refuse to rent a unit to a tenant who smokes or a tenant with pets (except pets required by disabled persons) because the law does not protect persons in these categories. A recent housing court decision allowed the landlord to evict two tenants because of the nuisance that their heavy smoking presented to the other tenants.[18]*

Before placing an advertisement to rent a unit or otherwise offering a unit for rent, and before showing the unit, the landlord should determine the criteria by which a qualified tenant will be chosen. The following are legal criteria which can lawfully be used by landlords to screen tenants:

- Does the tenant have sufficient income to afford the unit?
- Does the tenant have a good credit history?
- Does the tenant have a good history of paying rent in past housing?
- Has the tenant ever been evicted from housing? If so, why?
- Has the tenant ever intentionally damaged a unit he/she was renting?

Although religion is a protected class, the protection is only for tenants. A landlord cannot refuse to rent to someone in a protected class if the applicant's behavior offends the landlord's religion.[19]

For example: *An unmarried or a homosexual couple cannot be denied an apartment on the basis that their actions are against the landlord's religion.*

While there are no required tenant selection criteria for private landlords, public housing landlords must comply with specific criteria in selecting tenants.[20] It is safe to assume that these criteria would provide a private landlord with legitimate, objective criteria upon which to base his/her tenant selection process.

Program regulations provide that an applicant may be disqualified from public housing for the following reasons:

1. The applicant or a household member has disturbed a neighbor or neighbors in a prior residence by behavior, which if repeated, would substantially interfere with the rights of other tenants to peaceful enjoyment of their units.
2. The applicant or a household member has caused damage or destruction of property at a prior residence, which if repeated, would have a material adverse effect on the housing development or any unit in such development.

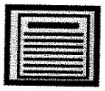
3. The applicant or a household member has displayed living habits or poor housekeeping at a prior residence, which if repeated, would pose a substantial threat to the health or safety of the tenant or other tenants or would adversely affect the decent, safe, and sanitary condition of all or part of the housing.
4. The applicant or a household member has a history of failure to meet material lease terms, which if repeated, would be detrimental to the health, safety, security, or peaceful enjoyment of other tenants.
5. The applicant or a household member in the past has engaged in criminal activity, which if repeated, would interfere with or threaten the rights of other tenants to be secure in their persons or in their property or with the rights of other tenants to the peaceful enjoyment of their units and the common areas of the housing development.
6. The applicant or a household member who will be assuming part of the rent obligation has a history of non-payment of rent.
7. The applicant or a household member has failed to provide information reasonably necessary for the Local Housing Authority (LHA) to process the applicant's application.
8. The applicant or a household member has misrepresented or falsified any information required to be submitted as part of the applicant's application, and the applicant fails to establish that the misrepresentation or falsification was unintentional.
9. The applicant or a household member is a current illegal user of one or more controlled substances.[21] A person's illegal use of a controlled substance within the preceding twelve months shall create a presumption that such person is a current illegal user of a controlled substance, but the presumption may be overcome by a convincing showing that the person has permanently ceased all illegal use of controlled substances.

MINOR TENANTS

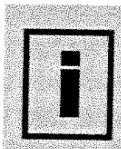
When considering renting to a minor, the landlord must weigh the possibilities that the minor may rescind the rental agreement and be exempt from liability (See Chapter 5) or that the landlord may be accused of illegal discrimination if the tenant is denied rental because of age. Although the Massachusetts Fair Housing Act does not protect minors, federal age discrimination laws may offer some degree of protection.[22] Emancipated minors, legally independent because their guardians cannot supply them with necessaries, may be protected under the federal discrimination laws and public housing regulations, especially if they are seeking public housing.

PAST TENANT HISTORY

Past tenant history is one of the most important factors a landlord should consider in screening potential tenants. The landlord should request past tenant history from former and/or present landlords with a written request for information. Unfortunately, the landlord has no way of knowing the truthfulness of the respondent.



See Landlord Verification form at the end of this Chapter.



The landlord should keep in mind the possibility that a present landlord may want to get rid of a tenant and may therefore give a favorable review of the tenant's past history. Former landlords are generally a better source of information in that the tenant has already vacated their property and therefore, should have no reason to mislead anyone.

PAST EVICTION RECORDS

Landlords who want information regarding the past eviction record of an applicant have access to court records. Since the court records are public information, the landlord need not obtain the applicant's authorization to proceed. The difficulty in obtaining this information relates to the lack of a centralized database which would allow a landlord to easily access the information. Therefore, the landlord would have to search the court records in both District Court and Housing Court, as both have jurisdiction in eviction cases. Furthermore, there are five Housing Courts and several District Courts across the Commonwealth in which a tenant may have been a party to an eviction action. Needless to say, obtaining this information may prove too time consuming if the tenant has lived in different areas in several units over time. There are tenant screening companies which will provide this information to landlords for a fee.

CREDIT REPORTS

Landlords seeking information regarding the credit record of an applicant have access to credit reporting agencies which will provide this information to landlords for a fee. The written authorization of the applicant is required.

CRIMINAL OFFENDER RECORD INFORMATION (CORI)

The fair housing laws do not preclude a landlord from refusing to rent to a tenant because of a criminal history. Landlords who want information regarding the criminal record of an applicant can obtain such information through the Criminal History Systems Board.[23] Since the criminal conviction records are public information, the landlord need not obtain the applicant's authorization to proceed. A landlord must make a written request by mail to the Board including the tenant's name, date of birth, social security number if known, and any additional data that may be required to positively identify the individual. The request must be accompanied by a fee of $30.00 for each name. The response will be returned by mail to the landlord.

The response will inform the landlord of whether the person has been convicted of any crime and sentenced to any term of incarceration, or whether the person has been convicted of a crime punishable by a term of five years or more, regardless of the sentence imposed, as long as:

- the person is currently incarcerated, or sentenced to and actively on probation supervision; or
- the person is currently under parole supervision; or
- having been convicted of a misdemeanor, the person has been released from all custody and/or supervision for not more than one year; or
- having been convicted of a felony, the person has been released from all custody and/or supervision for not more than two years; or
- having been sentenced to the custody of the Department of Correction, the person has finally been discharged, either having been denied a release on parole or having been returned to custody as a parole violator, for not more than three years.[24]

A landlord only has access to a publicly accessible CORI, which does not contain an individual's full criminal history. The publicly accessible version contains only recent information. The individual involved, the courts, and legal officials have access to an individual's full criminal record report. However, an applicant cannot be asked by a landlord to request a full CORI in order to share it with the landlord.

CORI laws are going through a great deal of reform. The Massachusetts Legislature currently has a number of pending bills dealing with CORI laws. Therefore, a landlord should check his/her rights regarding the use of CORI information when finding a tenant.

To save the expense of a CORI check on each applicant for housing, a landlord may consider using this screening criteria only after a tenant has been selected for tenancy based on all the other criteria.

SEXUAL OFFENDERS REGISTRY

Landlords who want information regarding an applicant's sexual offender record can obtain such information free of charge through the Sexual Offenders Registry.[25] Under this system, each offender is assigned a risk level between one and three. Level 1 indicates a low risk, level 2 indicates a moderate risk, and level 3 indicates a high risk. Information about a sex offender is available to the public only if he/she has a duty to register and he/she has been finally classified by the Board as a level 2 or a level 3 offender.

To make an inquiry, the landlord must make a written request to the Sex Offender Registry Board or appear in person at the local police department and request a report which indicates whether an individual identified by name, date of birth, or sufficient personal identifying characteristics, is a sex offender, including a listing of the offenses for which he/she was convicted or adjudicated and the dates of such convictions or adjudications. A landlord can also search level 3 sex offenders on the Sex Offender Registry Board's website. (See http://www.mass.gov/sorb/community.htm) Name, current address, physical description, and arrest history of high risk offenders is among the information now available to the public through the internet.[26]

The Sex Offender Act provides that the landlord must indicate that the information obtained through the search is either for his/her own personal protection, for the protection of a child under the age of eighteen, or another person for whom the inquirer has

responsibility, care, or custody.[27] The landlord need not obtain the applicant's authorization to proceed.

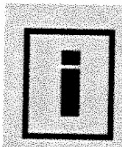
While the information obtained may not be used to engage in illegal discrimination or harassment of an offender, it is arguable that it can be used as a screening tool for housing. Although the courts have not yet resolved the issue, some states have made their regulations more clear than those in Massachusetts. We can look to these states to get an idea of how the courts will likely treat these issues in Massachusetts.

For example: *In California, rental property owners must make certain disclosures to tenants regarding the existence of the registered sex offender's database. The fact that an individual is listed in the database does not necessarily give the owner the right to deny housing to or evict him/her based on that alone. However, the California legislature did provide some exceptions. The Penal Code allows discrimination by a person who is acting to protect a person at risk. An owner may deny a prospective tenant's application or evict a tenant who is a registered sex offender and who poses a direct threat to the health and safety of other residents.*

In Massachusetts as well, it is clear that a landlord has the duty to protect tenants from other tenants whose behavior would interfere with or threaten the rights of other tenants to be secure in their persons or in their property or with the rights of other tenants to the peaceful enjoyment of their units and the common areas. The federal Fair Housing Act states that a landlord is not required to rent to an applicant who would jeopardize the safety of other tenants so long as the landlord assesses the potential danger based on credible and substantiated references.[28] Therefore, a landlord can ask whether the applicant is a registered level 2 or 3 sex offender on the rental application, and can verify the conviction through the internet or the local police station. Landlords who find themselves faced with the dilemma of needing to protect other tenants, while preventing an allegation of discrimination brought by a registered sex offender, should consult legal counsel.

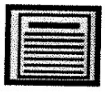
EQUAL APPLICATION OF SCREENING CRITERIA

While it is legal to inquire into a prospective tenant's past as it relates to housing, it is illegal to inquire only of a person in a protected class. This is discriminatory because the person in the protected class is being treated differently than those who are not in a protected class.



Once the criteria for selecting a tenant has been determined, it is very important that the criteria be applied evenly to each and every applicant for the unit.

In order to guarantee that all applicants are being treated equally, it is wise to use an application form for each applicant for a unit.



See Rental Application form at the end of this Chapter.

The application will guarantee that all applicants are being asked for the same information from which a landlord will choose a qualified tenant. The application also has a consent form authorizing the landlord to check into the tenant's income, employment, credit, and past tenant history.

Remember, it is illegal to ask an applicant or record information concerning protected class status except in cases of children and public assistance/rental assistance.[29] With regard to asking for information relating to children, a landlord needs to know whether children under six will be residing on the property for lead paint compliance reasons. With regard to public assistance and rental assistance, a landlord has a legitimate need to know that a tenant has adequate income or other resources to afford the rent. The fact that a landlord can inquire about children and public assistance/rental assistance does not change the landlord's duty to treat persons in those protected classes fairly and non-discriminatorily.

The landlord should base any decision only on the legal criteria which he/she has set for tenancy. In the event that a tenant suspects that he/she has been denied a unit for discriminatory reasons, the completed application will create a written record from which the landlord may demonstrate the legitimate, non-discriminatory reasons that the tenant was not offered a particular unit.

Keep any applications and other documents gathered to determine tenancy for at least four years, because this is the time a potential plaintiff has to file a claim against a landlord for discrimination. If the landlord is notified of a claim, the landlord should notify an attorney at once. Housing discrimination is a serious matter with grave consequences for landlords who violate the laws.

SUMMARY OF FEDERAL AND STATE FAIR HOUSING LAWS

LAW	PROTECTED CLASSES	PROHIBITED PRACTICES	MAJOR EXEMPTIONS	ENFORCEMENT MECHANISMS/ REMEDIES
Civil Rights Act of 1866 42 U.S.C. §1982	Race	All discriminatory practices prohibited.	There are no exemptions; all properties are covered, including commercial properties.	File civil action in U.S. District Court; statute of limitations is that which is most closely analogous to state law, may be as much as three (3) years. The Court may award compensatory damages, punitive damages, equitable relief, and attorneys' fees and costs.
Federal Fair Housing Act Title VIII of theCivil Rights Act of 1968, as amended 42 U.S.C. §3601	Race Color National Origin Sex Religion Handicap Familial Status	Refusal to sell or rent; discrimination in terms, conditions, or privileges of sale or rental; false representation of availability; discriminatory advertising; blockbusting; steering; unequal treatment; failure to show all available properties; discrimination in brokerage services; discrimination in mortgage lending; and interfering with, coercing, threatening, or intimidating in the exercise of rights under the Act. Regarding handicap: Also, refusal to permit, at the handicapped person's expense, reasonable modification of existing premises; and failure to design and construct certain multi-family dwellings intended for first occupancy after 3/13/91 so as to be handicapped-accessible.	Single-family houses sold or rented by owner only if without use of broker and without discriminatory advertising, provided owner owns no more than three (3) houses. Rooms/units in owner-occupied dwellings of four (4) units or less. Additional exemptions that apply to familial status discrimination only: • State or federally-aided elderly developments. • Housing intended for and solely occupied by persons 62 years or older. • Housing intended and operated for occupancy by at least one person 55 years or older per unit. Additional exemptions that apply to handicap discrimination only: • Persons whose tenancy would constitute a direct threat to the health or safety of others. • Persons whose tenancy would result in substantial physical damage to the property.	File complaint with U.S. Department of Housing & Urban Development (HUD) within one (1) year, which can result in either a hearing before an Administrative Law Judge (ALJ), or a civil action in U.S. District Court. Or, file civil action directly in U.S. District or State Court. The ALJ may award actual damages, injunctive relief, and attorneys' fees and costs, in addition to ordering civil penalties of up to $10,000 for the first violation; $25,000 for the second, within five (5) years; and $50,000 for the third, within seven (7) years. Actual damages, punitive damages (no cap), injunctive relief, and attorneys' fees and costs are available in a civil action.
Massachusetts Fair Housing Act G.L. c.151B, §1 *(Cont'd on next page)*	Race Color National Origin Ancestry Sex Religious Creed Children	Refusal to sell or rent; discrimination in terms, conditions, or privileges of sale or rental; false representation of availability; discriminatory advertising; blockbusting; sexual harassment of tenants; retaliation because a person exercises a protected right; and except in cases of children or public assistance recipiency, inquiring about or recording protected class status. Regarding children: Also, refusal to rent to families with children because of the presence of lead paint in the unit (G.L. c.111, §199A).	Two-family owner-occupied dwellings, except public assistance/rental assistance, without the use of a broker and without discriminatory advertising. Additional exemptions that apply to age discrimination only:· • State or federally-aided developments; • Elderly retirement communities of 10 acres or more with a minimum age of 55 years.	File complaint with Massachusetts Commission Against Discrimination (MCAD) within six (6) months of act. If probable cause is found, parties may elect to remove case to Superior Court. The Commission may award actual damages, injunctive relief, and attorneys' fees and costs, in addition to ordering civil penalties of up to $10,000 for the first violation; $25,000 for the second, within five (5) years; *(Cont'd on next page)*

LAW	PROTECTED CLASSES	PROHIBITED PRACTICES	MAJOR EXEMPTIONS	ENFORCEMENT MECHANISMS/ REMEDIES
ıssachusetts ir Housing Act .. c.151B, §1 *ont'd from evious page)*	Age (excluding minors) Marital Status Veteran Status/ Armed Services Status Public Assistance/ Rental Assistance Sexual Orientation Handicap (mental or physical) Genetic Information	Regarding handicap: Also, refusal to permit, at the handicapped person's expense, reasonable modification of existing premises; however, in the case of publicly assisted housing of ten units or more and contiguously located housing of ten units or more, reasonable modification shall be at the expense of the owner; and failure to design and construct certain multi-family dwellings intended for first occupancy after 3/13/91 so as to be handicapped accessible. Regarding rental assistance: Also, refusal to rent because of requirements of assistance program.	Additional exemptions that apply to children discrimination only: • Dwellings of 3 units or less, one of which is occupied by an elderly or infirm person for whom children would be a hardship. • Temporary renting of one's principal residence for one year or less. These exemptions do not apply to persons whose business includes engaging in residential real estate-related transactions.	and $50,000 for the third, within seven (7) years. Actual damages, punitive damages (no cap), injunctive relief, and attorneys' fees and costs are available in a civil action. For licensed real estate brokers and salespersons, a final determination of discrimination results in a sixty (60) day license suspension for the first determination; a second such determination within a two (2) year period results in a ninety (90) day license suspension (G.L. c.112, §87AAA).
lassachusetts qual Rights Act .L. c.93, §102	Sex Race Color Creed National Origin Handicap Age	All discriminatory practices prohibited. Effective for acts or practices occurring after August 1, 1989.	There may be an exemption for two-family owner-occupied dwellings; all other properties are covered, including commercial properties.	File civil action in Superior Court, statute of limitations may be as much as three (3) years. Damages include injunctive relief, actual damages, punitive damages, attorneys' fees and costs.
Massachusetts Civil Rights Act G.L. c.12 §11H	All Persons	Interference or attempted interference with the rights secured by State and Federal Constitutions or laws by threats, intimidation, or coercion.	There are no exemptions.	Civil action filed by aggrieved party or attorney general in Superior Court. The court may award injunctive relief and other equitable relief, compensatory damages, and attorneys' fees and costs.
Massachusetts Rights for Elderly and Handicapped Persons Act G.L. c.93, §103	Handicap Age	All discriminatory practices prohibited. Effective for acts or practices occurring after November 1, 1990.	There are no exemptions.	Civil action filed by aggrieved party or attorney general in Superior Court. The court may award injunctive relief and other equitable relief, compensatory damages, and attorneys' fees and costs.

CHAPTER 4

FINDING A TENANT TO RENT YOUR PROPERTY

Finding a good tenant is one of the most important steps in the process of becoming a successful landlord. Good tenants generally pay their rent, maintain the property in good repair, and move out when they are supposed to without court intervention. Finding a good tenant is hard work. The landlord must take several steps before beginning the process:

1. The landlord should review the State Sanitary Code to ensure that the property is ready for rental.


See Chapter 2, Preparing Your Property for Rent, and Appendix

2. The landlord should determine the maximum number of people who may occupy the unit and each bedroom according to the square footage of the unit and each bedroom.


See Chapter 2, Preparing Your Property for Rent

3. The landlord should determine the amount of money he/she will charge for the unit based on the current market rate for similar units in the area as well as the expenses to maintain the property. The U.S. Department of Housing and Urban Development releases annual data pertaining to the fair market rents in each area of Massachusetts. This information can be found at www.huduser.org/datasets/fmr.html.

4. The landlord should determine the rules that will apply to anyone who might live in the apartment, such as whether smoking or pets will be allowed, whether a security deposit and/or last month's rent will be collected, whether the tenant or the landlord will be responsible for utilities, and whether the landlord wants a tenant at will or a lessee.

Once the landlord has completed these steps, he/she is ready to find a tenant.

HIRING A PROFESSIONAL VERSUS DOING IT YOURSELF

A knowledgeable landlord can find a good tenant without the assistance of a professional real estate agent. Tenant screening companies can provide landlords with information on tenants including criminal history, prior evictions, and credit reports to assist the landlord in finding a qualified tenant. The landlord must, however, understand the laws relating to fair housing.

If a landlord does not have the time or energy to educate himself/herself on the laws, he/she should not hesitate to contact an agent to provide the service. Agents have varying fee arrangements. While some may charge the landlord for locating a tenant, others may charge the tenant for locating an apartment or split their fee between the landlord and tenant. In any case, the landlord should be clear on the agent's fee arrangement in advance and agree to it in writing.

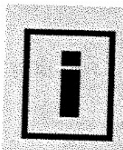
In Massachusetts, real estate agents who rent property on behalf of a landlord for a fee are required to be licensed by the Commonwealth.[1] In order to be licensed, the agent must pass an exam to become a licensed salesperson and then may take a further exam to become a licensed broker.[2] Salespersons and brokers are required to complete twelve hours of continuing education requirements every two years in order to keep their licenses.

Of the approximately 74,000 licensed salespersons and brokers in Massachusetts, only about 21,000 are Realtors. A Realtor is a member of a professional trade association called the National Association of Realtors. In order to become a member, the person must be a licensed salesperson or broker and must subscribe to a Code of Professional Ethics. This Code of Ethics requires the Realtor to ascribe to a high level of professionalism in his/her dealings with clients. Therefore, it is probably preferable to deal with a Realtor, who is likely to be better informed and more professional than a non-Realtor. Furthermore, if one chooses to hire an agent to rent his/her property, the agent's credentials and professional affiliations should be checked to ensure that he/she has the appropriate knowledge and experience to do the job competently.

It is possible for the landlord to be responsible to a potential tenant if the agent acts outside of the law.[3]

FAIR HOUSING LAWS

The fair housing laws were enacted to guarantee fair housing for all people. The laws protect people from discrimination based on their inclusion in a particular class. The federal law is Title VIII of the Civil Rights Act of 1968.[4] It is known as The Fair Housing Act. The Fair Housing Act was amended by the Fair Housing Amendments Act of 1988.



Under federal law, persons in the following classes are protected against discrimination in housing:

- race
- color
- national origin
- sex
- religion
- handicap
- familial status

This means that discrimination in housing is prohibited when it is based on a person's inclusion in one of these protected classes.

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

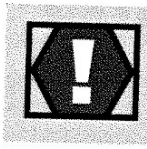
- refusing to rent an available unit;
- representing that a unit is unavailable when it is available;
- using discriminatory advertising; and
- offering different terms or conditions to persons in protected classes.

There are exemptions from this law including:

- renting a single family house without an agent and without discriminatory advertising;
- renting units in owner occupied buildings of four families or less; and
- renting units in certain housing for the elderly may be exempt from familial discrimination.

Certain exemptions exist relating to handicap discrimination, including the following:

- persons whose tenancy would constitute a direct threat to the health and safety of others; and
- persons whose tenancy would result in substantial physical damage to the property.

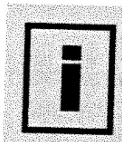


There are no exemptions from the law relating to discrimination based on race.

There are also other federal laws which prohibit discrimination in housing and may apply in various cases.[5]

If a landlord or agent discriminates in violation of the law, a judge may award the tenant damages, injunctive relief, civil penalties, and attorney's fees.

The state law which prohibits discrimination in housing is known as Massachusetts General Law, Chapter 151B.[6] This law is similar to the federal fair housing law but includes more protected classes and has narrower exemptions.



Under state law, persons in the following classes are protected against discrimination in housing:

- race
- color
- national origin
- ancestry
- sex
- religion
- children
- handicap
- sexual preference
- age
- marital status
- veteran history
- genetic information
- public assistance/ rental assistance

This means that discrimination in housing is prohibited when it is based on a person's inclusion in one of these protected classes.

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

- refusing to rent an available unit;
- representing that a unit is unavailable when it is available;
- using discriminatory advertising;
- offering different terms or conditions to persons in protected classes;
- sexually harassing tenants;
- refusing to reasonably accommodate the needs of the physically or mentally disabled;

- asking or recording information concerning protected class status except in cases of children and public assistance/rental assistance;
- refusing to rent to families with children; and
- retaliating because a person exercises any right under Chapter 151B.

There are exemptions to this law including:

- renting units in owner occupied two family buildings except on the basis of public assistance or rental assistance;
- renting units in certain housing for the elderly with a minimum age requirement of 55 years may be exempt from age discrimination;
- renting units in buildings containing three units or less where an elderly or infirm person lives, thereby constituting a hardship, are exempt from discrimination against families with children; and
- renting one's own principal residence temporarily is exempt from discrimination against families with children.

There are no exemptions from the law relating to discrimination based on race.

If the landlord allows current residents to select new tenants to fill vacancies in a unit, the landlord has a responsibility to ensure that non-discriminatory means of selection are being used.[7] Likewise, if the landlord allows a family member or neighbor to screen and select tenants for a property, the landlord bears the same responsibility.[8] In such situations, the tenant, family member, or neighbor is acting as an agent of the landlord and the landlord will be liable to any potential tenant that has been discriminated against in violation of the Fair Housing Laws.[9]

For example: *In 2001, a rejected tenant brought suit against a landlord under the Federal Fair Housing Act, Civil Rights Act, and Massachusetts Fair Housing Act, alleging that the landlord was liable for discrimination by an existing tenant who rejected her application. The landlord owned a six bedroom residential property which was rented to six unrelated individuals who each occupied a bedroom and shared the common areas. The tenants would publicize vacancies when they arose and select new tenants to fill those vacancies, subject to the approval of the landlord. When one of the tenants rejected plaintiff's application due to her race, the landlord was sued and the court found that it was possible to hold the landlord liable due to the agency relationship that was created between the landlord and current tenants when the tenants acted to fill the vacancy on the landlord's behalf.*[10]

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.

There are other state laws which prohibit discrimination in housing and may apply in various cases.[11] There may also be local laws which prohibit discrimination in housing.[12]

The chart at the end of this chapter identifies the various laws that relate to housing discrimination. Printed with the permission of the Massachusetts Association of Realtors.

REASONABLE MODIFICATION AND REASONABLE ACCOMMODATION

It is discriminatory for a landlord to refuse to reasonably accommodate the needs of a physically or mentally handicapped tenant.

A handicap is described as a physical or mental impairment which substantially limits one or more major life activities; having a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance.

In rental housing of less than ten units, landlords must allow tenants, at their own expense, to make reasonable modifications to existing units, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises.[13] The landlord may, where it is reasonable to do so, condition permission for a modification on the tenant agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a

CHAPTER 6

SECURITY DEPOSITS AND LAST MONTH'S RENT

A security deposit is money paid by the tenant to protect the landlord in case the tenant or his/her guests damage the apartment. The security deposit does not become the property of the landlord and the landlord must separate the money from his/her own in a bank account.[1] The security deposit may not be greater than the amount of one month's rent.[2] Last month's rent is money paid by the tenant to protect the landlord in case the tenant does not pay the last month's rent. This money is the landlord's property when it is paid and does not have to be separated from the landlord's money.[3] The last month's rent may not be greater than the amount of one month's rent.[4]

This chapter deals with the requirements of the Security Deposit Law governing security deposits and last month's rent which the landlord must follow at the beginning and during the tenancy. Chapter 18 deals with the requirements the landlord must follow at the end of the tenancy, Chapter 1 deals with the requirements the landlord must follow upon purchasing a property, and Chapter 24 deals with the requirements of the Security Deposit Law governing security deposits and last month's rent which the landlord must follow upon sale of the property.

A landlord needs to decide what he/she will charge a tenant before the tenant will move into an apartment. The most a landlord may charge under the law is:

- first month's rent;
- last month's rent at a rate no greater than the first month's rent;
- a security deposit no greater than the first month's rent;
- half of the pre-rental inspection fee (City of Boston);[5] and
- a fee to purchase and install a lock.[6]

It is illegal to charge a tenant any other amounts such as a pet fee, holding deposit, or cleaning fee.[7] It is legal for a licensed real estate agent to charge a finder's fee to the tenant to locate an apartment for him/her.[8] A landlord who is also a licensed real estate agent can charge a prospective tenant a finder's fee as long as it is made clear to the tenant that the landlord is acting in the capacity of a real estate agent. If the landlord is not a licensed real estate agent, it is illegal to charge a tenant a finder's fee to locate an apartment.

SECURITY DEPOSITS

The landlord has many responsibilities under the law with respect to security deposits. A checklist is provided at the end of this Chapter which itemizes in short form the requirements of the law.

See Security Deposit Checklist at the end of this Chapter.

The state law which regulates the taking of security deposits and last month's rent is G.L. c. 186, §15B. It is extremely important that a landlord who takes security deposits does so in accordance with the law.

If the landlord is not willing to learn the law and follow its requirements, then the landlord should refrain from taking a security deposit from the tenant.

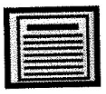
If the landlord has not followed the law, a tenant may be entitled to the return of his/her security deposit and up to three times the security deposit plus interest, costs, and attorney's fees.[9] The tenant will not have to prove the landlord's fault or intent to violate the security deposit regulations.[10]

The following is an outline of the steps a landlord should take to satisfy the law with respect to security deposits:

1. When the landlord receives the security deposit from the tenant, the landlord must give the tenant a receipt with the following information on it:
   a. the amount of the security deposit;
   b. the name of the person receiving it and if the person receiving it is not the landlord, then also the name of the landlord;
   c. the date on which the security deposit is received;

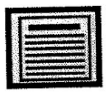
d. a description (address) of the premises being rented; and

e. the signature of the person receiving the security deposit.[11]



See Security Deposit and/or Last Month's Rent Receipt form at the end of this Chapter.

2. Upon receipt of the security deposit, or within ten days from the commencement of the tenancy, whichever is later, the landlord must give the tenant a separate written statement of condition.[12] This statement will list any damage that presently exists on the premises being rented. The landlord should be sure that there is no damage or bad condition that rises to the level of a code violation on the premises or that any damage or bad condition is repaired prior to the tenant move in date. The landlord has the duty to deliver the property to the tenant in habitable condition and therefore, no code violations should exist. The statement must be signed by the landlord or his agent. Since specific wording must be included on this statement, the landlord should use the Statement of Condition form provided.



See Statement of Condition form at the end of this Chapter.

After the landlord gives the tenant the statement, the tenant has the right to submit to the landlord his/her own list of damages. If the tenant does this, the landlord must return a copy of the tenant's list within fifteen days of receipt with either the landlord's consent or disagreement that the conditions exist as stated in the tenant's list.[13] If the tenant has identified any damage or bad condition that exists and the condition is a code violation, the landlord must make the repairs.

While the security deposit law does not require the landlord to give the tenant back his/her security deposit for failing to provide a statement of condition, this document provides protection for the landlord. At the end of the tenancy, a landlord may want to charge the tenant for damages which were caused by the tenant. If a landlord has no documentation that the apartment was in good condition at the beginning of the tenancy, it becomes difficult to prove that any damages were caused by the tenant and did not exist at the beginning of the tenancy. It may also provide protection to the landlord during the tenancy or in an eviction proceeding in the event that the tenant alleges to the health authority or the Court that he/she has been living with bad conditions not caused by him/her. The statement of condition would be evidence of the condition of the property at the beginning of the tenancy.

See Chapter 7, Duration of the Tenancy

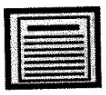
3. Within thirty days from the date the landlord receives the security deposit, the landlord must deposit it in an interest bearing account in a Massachusetts bank.[14] It is important that the funds are deposited in-state, regardless of whether or not the tenants consent to a deposit in an out-of-state bank.[15] This account must be beyond the claims of the landlord's creditors, meaning it may not be in the landlord's name nor mingled with the landlord's money. While it is common to open separate accounts under the tenant's name with the tenant's social security number, the landlord is not required to open separate accounts for each tenant. As long as each deposit can be distinguished from other funds and is kept unattachable by the landlord's creditors, the account may hold different types of payments from multiple tenants.[16] Opening an account using the tenant's name and social security number does not entitle the tenant to access the account but places the account beyond the claims of the landlord's creditors. In any event, make sure that the bank understands that the account is a tenant security deposit account under G.L. c. 186, §15B.

4. Within thirty days from the date the landlord receives the security deposit, the landlord must give the tenant a receipt with the following information on it:

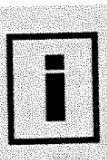
a. the name and address of the bank in which the security deposit is deposited;

b. the amount of the security deposit; and

c. the account number of the security deposit.[17]



See Receipt for Bank Deposit of Security Deposit form at the end of this Chapter.



To ensure that the landlord has followed the law with respect to security deposits, use the Security Deposit Checklist at the end of this Chapter.

The law requires that the landlord keep records of all security deposits received for a period of two years from the date the tenancy ends.[18] These records should contain information relating to damages and any repairs done along with copies of all receipts and

statements of condition. The records must be available for the tenant to inspect upon request, both during and following a tenancy. If the landlord does not allow the tenant to inspect requested records, the tenant is entitled to immediate return of the security deposit.

Remember that security deposits must be in interest bearing accounts. The law requires that the landlord give the tenant the interest during the term of the tenancy if the landlord has held the security deposit for one year or longer. At the end of each year of tenancy, the landlord must give the tenant a statement with the following information on it:

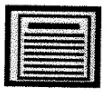
a. the name and the address of the bank in which the security deposit is deposited;

b. the amount of the security deposit;

c. the account number of the security deposit; and

d. the amount of interest payable to the tenant.[19]

This statement and a check for the interest must be given to the tenant. If the landlord only sends the statement to the tenant without a check for the interest, the landlord should include a notification to the tenant that the tenant may deduct the amount of the interest from the next month's rent. If the landlord has not given the tenant the statement or a check for the interest within thirty days from the end of each year of tenancy, the tenant may deduct the interest due from the next rent payment.[20]



See Security Deposit Yearly Interest form at the end of this Chapter.

If the tenant has lived at the premises for less than one year when the tenancy is terminated, the interest shall be handled in the same manner as it would be handled at the end of a tenancy. That is, the landlord has thirty days from the termination of tenancy to return to the tenant the security deposit plus accumulated interest, less deductions.[21]

See Chapter 18, Security Deposit and Last Month's Rent at the End of the Tenancy

The landlord forfeits his right to retain any portion of the security deposit if he/she fails to return the portion of the deposit the tenant is entitled to within the thirty day period.[22] However, if the written lease has expired but the tenant remains on the property as a tenant at sufferance, the landlord's obligation to return the security deposit does not arise until the tenant relinquishes possession of the premises.[23]

If the landlord has followed the law with respect to the taking of security deposits, the landlord will be able to use the money in the security deposit account at the end of the tenancy to make repairs and pay unpaid rent. If the landlord has not followed the law, it is possible that the landlord will have to give the security deposit back to the tenant prior to the end of the tenancy, leaving the landlord with no security against damages and unpaid rent.

At any time during the tenancy, the tenant has the right to demand the return of his/her security deposit if the landlord has failed to deposit the security deposit in an appropriate bank account.[24] If the tenant goes to court, the Court may award the tenant up to three times the amount of the security deposit, plus interest, costs, and attorney's fees.[25] If the landlord knows he/she has violated the law, it is generally best to return the security deposit upon the tenant's demand in order to avoid the treble damages.[26] While the Security Deposit Law does not give the tenant a legal remedy in every case where the landlord has not complied with all the provisions of the law, the Consumer Protection Act does.[27]

See Chapter 22, Consumer Protection Act

For example: *The security deposit law requires the landlord to give receipts to the tenant when the landlord takes a security deposit or a last month's rent, but does not require the landlord to forfeit the deposit or rent if he/she does not comply. The Consumer Protection Act states that it is a violation for the landlord to fail to comply with any provision of the Security Deposit Law. Therefore, if the landlord is subject to the Consumer Protection Act, the tenant may bring an action pursuant to that law for failing to give the required receipts.*

It is also possible for the tenant to be entitled to return of the security deposit and up to three times the amount of the security deposit, plus interest, costs, and attorney's fees, if the landlord does not follow the law with respect to the security deposit at the end of the tenancy.[28]

See Chapter 18, Security Deposit and Last Month's Rent at the End of the Tenancy

LAST MONTH'S RENT

Last month's rent is not the same as a security deposit. It does not remain the property of the tenant and therefore, does not need to be deposited in a

bank account. Although a last month's rent is the landlord's money, there are still legal requirements that must be understood.

When the landlord receives the last month's rent, the landlord must give the tenant a receipt with the following information on it:

a. the amount of the last month's rent;

b. the date that it was received;

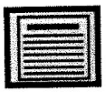
c. the fact that it is a last month's rent;

d. the name of the person receiving it and if the person receiving it is not the landlord, also the name of the landlord;

e. a description of the premises (address);

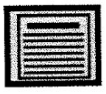
f. a statement that the tenant is entitled to 5% interest if the last month's rent is not deposited in the bank or lesser interest payable by the bank if the last month's rent is deposited in a bank account; and

g. a statement that the tenant should give the landlord a forwarding address at the end of the tenancy so that the interest may be sent to the tenant.[29]



See Receipt for Security Deposit and/or Last Month's Rent form at the end of this Chapter.

A landlord must pay interest on the last month's rent. Interest does not accrue for the last month for which rent was paid in advance. If the landlord does not deposit the last month's rent in the bank, which is allowable under the law, then the tenant is entitled to interest of 5%. If the landlord does deposit the last month's rent in the bank, then the tenant is entitled to whatever lesser interest is payable by the bank. In either case, a statement indicating the amount of interest due to the tenant should be given to the tenant each year. This statement and a check for the interest must be given to the tenant. If the landlord only sends the statement to the tenant without a check for the interest, the landlord should include a notification to the tenant that the tenant may deduct the amount of the interest from the next month's rent. If the landlord has not given the tenant the statement or a check for the interest within thirty days from the end of each year of tenancy, the tenant may deduct the interest due from the next rent payment.[30]



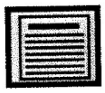
See Last Month's Rent Yearly Interest form at the end of this Chapter.

If the tenant has lived at the premises for less than one year when the tenancy is terminated, the interest shall be handled in the same manner that it would be handled at the end of a tenancy. That is, the landlord has thirty days from the termination of tenancy to return the accumulated interest.[31] Interest does not accrue for the last month for which rent was paid in advance.

See Chapter 18, Security Deposit and Last Month's Rent at the End of the Tenancy

INCREASING THE SECURITY DEPOSIT AND/OR LAST MONTH'S RENT DURING THE TENANCY

If during the tenancy the landlord and tenant agree to an increase in rent, the landlord has the right to increase the security deposit and the last month's rent by the same amount. The increase should be received by the landlord at the same time that the increase in rent occurs. If the landlord does not require the tenant to increase his/her security deposit or last month's rent at the time of the rent increase, the landlord gives up the right to later demand an increase retroactively.



See Increase in Security Deposit and/or Last Month's Rent form at the end of this Chapter.

ENDNOTES

[1] G.L. c. 186, §15B(1)(e)
[2] G.L. c. 186, §15B(1)(b)(iii)
[3] G.L. c. 186, §15B(2)(a)
[4] G.L. c. 186, §15B(1)(b)
[5] CBC 9-1.3 (While the City of Boston requires a pre-inspection and allows the landlord to charge the tenant half of the fee in equal payments over twelve months, many other municipalities do not require it and might not allow a landlord who voluntarily requests an inspection to charge the tenant for any part of the fee.)
[6] G.L. c. 186, §15B(1)(b)
[7] G.L. c. 186, §15B(1)(b)
[8] G.L. c. 112, §87DDD1/2
[9] G.L. c. 186, §15B(7); 940 CMR 3.17(4); *Young v. Patukonis*, 24 Mass. App. Ct. 907, 506 N.E.2d 1164 (1987)
[10] *In re Bologna*, 206 B.R. 628 (Bkrtcy.D.Mass. 1997)
[11] G.L. c. 186, §15B(2)(b)
[12] G.L. c. 186, §15B(2)(c)
[13] G.L. c. 186, §15B(2)(c)
[14] G.L. c. 186, §15B(3)(a)
[15] *Ciociola v. Clark*, 1983 Mass. App. Div. 185 (1983)
[16] *Neihaus v. Maxwell*, 54 Mass. App. Ct. 558, 766 N.E.2d 556 (2002) (Housing Court determined that tenants' security deposit was not illegally co-mingled with landlord's funds, even though the account contained both security deposits and last month's rents for several different tenants, because the accounting system distinguished the deposit from other funds and the deposit could not be attached by landlord's creditors.)
[17] G.L. c. 186, §15B(3)(a)
[18] G.L. c. 186, §15B(2)(d)
[19] G.L. c. 186, §15B(3)(b)
[20] G.L. c. 186, §15B(3)(b)
[21] G.L. c. 186, §15B(3)(b)
[22] *Friedman v. Costello*, 10 Mass. App. Ct. 931, 412 N.E.2d 1285 (1980)
[23] *Neihaus v. Maxwell*, 54 Mass. App. Ct. 558, 776 N.E.2d 556 (2002)
[24] G.L. c. 186, §15B(3)(a)
[25] G.L. c. 186, §15B(7); 940 CMR 3.17(4)
[26] *Castenholz v. Caira*, 21 Mass. App. Ct 758, 490 N.E.2d 494 (1986) (Appeals Court ruled that treble damages may be avoided by returning the security deposit on demand.)
[27] G.L. c. 93A; 940 CMR 3.17(4)
[28] G.L. c. 186, §15B(7); 940 CMR 3.17(4)
[29] G.L. c. 186, §15B(2)(a)
[30] G.L. c. 186, §15B(2)(a)
[31] G.L. c. 186, §15B(2)(a)

SECURITY DEPOSIT CHECKLIST

A landlord who purchases rental property with existing tenants with security deposits should take the following steps:

_____ Within thirty days of receiving security deposit from former owner, deposit funds into escrow account in Massachusetts bank.

_____ Within forty-five days of receiving security deposit from former owner, give tenant Security Deposit Transfer Receipt.

_____ If former owner has not provided copy of Statement of Condition, give tenant new Statement of Condition.

_____ Within fifteen days of giving tenant Statement of Condition, collect signed Statement of Condition from tenant.

_____ If tenant has submitted a list of damages with the Statement of Condition to landlord within fifteen days of receiving Statement of Condition, return a copy with consent or disagreement.

_____ If damages exist, repair immediately.

_____ On yearly anniversary of date security deposit was placed in escrow account, give tenant Yearly Security Deposit Interest Statement with a check for accumulated interest.

_____ Any time an increase in rent occurs, give tenant a Demand for Increase of Security Deposit.

A landlord who receives a security deposit from a tenant should take the following steps:

_____ Immediately give tenant Receipt for Security Deposit.

_____ Within ten days of receiving security deposit, give tenant Statement of Condition.

_____ Within fifteen days of giving tenant Statement of Condition, collect signed Statement of Condition from tenant.

_____ If tenant has submitted a list of damages with the Statement of Condition to landlord within fifteen days of receiving Statement of Condition, return a copy with consent or disagreement.

_____ If damages exist, repair immediately.

_____ Within thirty days of receiving security deposit, deposit funds into escrow account in Massachusetts bank.

_____ Within thirty days of receiving security deposit, give tenant Receipt for Bank Deposit of Security Deposit.

_____ On yearly anniversary of the beginning of tenancy, give tenant Yearly Security Deposit Interest Statement with a check for accumulated interest.

_____ Any time an increase in rent occurs, give tenant a Demand for Increase of Security Deposit.

At the end of the tenancy, a landlord who received a security deposit from a tenant should take the following steps:

_____ Calculate unpaid rent due and security deposit accumulated interest.

_____ Immediately after unit is vacant, inspect unit for damages.

_____ Within thirty days of the end of tenancy, repair damages or obtain estimates for cost of repairs, keeping receipts.

_____ Within thirty days of the end of tenancy, give tenant Statement of Security Deposit at End of Tenancy and Itemized Statement of Damages, if any, with balance due tenant or demand for balance due landlord.

Keep all security deposit records and make them available to tenant upon request.

RECEIPT FOR SECURITY DEPOSIT AND/OR LAST MONTH'S RENT

Date: _____

To: _____

From: _____

This is a receipt for funds paid to the landlord by the tenant to be applied as follows:

Purpose	Amount Paid
First Month's Rent	_____
Last Month's Rent	_____
Security Deposit	_____
Purchase or Installation of Lock and Key	_____
Total Paid	_____

NOTICE TO TENANT REGARDING SECURITY DEPOSIT

The landlord must hold the security deposit in a separate, interest-bearing account and give to the tenant a receipt and notice of the bank and account number; the owner must pay interest, at the end of each year of the tenancy, if the security deposit is held for one year or longer from the commencement of the tenancy; the owner must submit to the tenant a separate written statement of the present condition of the premises, as required by law, and, if the tenant disagrees with the owner's statement of condition, he/she must attach a separate list of any damage existing in the premises and return the statement to the owner; the owner must, within thirty days after the end of the tenancy, return to the tenant the security deposit, with interest, less lawful deductions as provided in G.L. c. 186, §15B; if the owner deducts for damage to the premises, the owner shall provide to the tenant an itemized list of such damage and written evidence indicating the actual or estimated cost of repairs necessary to correct such damage; no amount shall be deducted from the security deposit for any damage that was listed in the separate written statement of present condition or any damage listed in any separate list submitted by the tenant and signed by the owner or his agent; if the owner transfers the tenant's dwelling unit, the owner shall transfer the security deposit, with any accrued interest, to the owner's successor in interest for the benefit of the tenant.

NOTICE TO TENANT REGARDING LAST MONTH'S RENT

The tenant is entitled to interest on the last month's rent payment at the rate of five percent per year or other such lesser amount of interest as has been received from the bank where the deposit has been held payable in accordance with the provisions of G.L.c. 186, §15B. The tenant should provide the lessor with a forwarding address at the termination of the tenancy indicating where such interest may be given or sent.

Name of Landlord: _____

Name of Person Receiving Deposit: _____

Property Address: _____

Date Received: _____

Date Receipt Given to Tenant: _____

Signature of Landlord or Person Receiving Deposit: _____

STATEMENT OF CONDITION

This is a statement of the condition of the premises you have leased or rented. You should read it carefully in order to see if it is correct. If it is correct, you must sign it. This will show that you agree that the list is correct and complete. If it is not correct, you must attach a separate signed list of any damage which you believe exists in the premises. This statement must be returned to the lessor or his/her agent within fifteen (15) days after you receive this list or within fifteen (15) days after you move in, whichever is later. If you do not return this list within the specified time period, a court may later view your failure to return the list as your agreement that the list is complete and correct in any suit which you may bring to recover the security deposit.

Tenant: _____

Property Address: _____

_____

The present condition of the above property is as follows:

_____

_____

_____

Name of Landlord: _____

Date: _____

Signature of Landlord or Agent: _____

The above statement of condition is accurate and I agree to it.

Signature of Tenant: _____

Date: _____

RECEIPT FOR BANK DEPOSIT OF SECURITY DEPOSIT

Date: _____

To: _____

From: _____

This is a receipt for a security deposit paid to the landlord by the tenant in the amount of $ _____ indicating that the security deposit has been deposited in an escrow account as required by law.

Name of Landlord or Person Receiving Deposit: _____

Property Address: _____

Date Received: _____

Name of Bank Where Security Deposit is Deposited: _____

Address of Bank Where Security Deposit is Deposited: _____

Account Number of Security Deposit: _____

Signature of Landlord or Person Receiving Deposit: _____

SECURITY DEPOSIT YEARLY INTEREST STATEMENT

Date: _____

To: _____

From: _____

This is a statement indicating that your security deposit has accumulated interest in the amount of $ _____.

Name of Landlord or Person Receiving Rent: _____

Property Address: _____

Amount of Security Deposit: _____

Name of Bank Holding Security Deposit: _____

Address of Bank Holding Security Deposit: _____

Account Number of Security Deposit: _____

Signature of Landlord or Person Receiving Security Deposit: _____

NOTIFICATION TO THE TENANT

_____ A check for the Security Deposit Interest is enclosed.

_____ The tenant may deduct the amount of the Security Deposit Interest from the next month's rent.

LAST MONTH'S RENT YEARLY INTEREST STATEMENT

Date: _____

To: _____

From: _____

This is a statement indicating that your last month's rent has accumulated interest in the amount of $ _____.

Name of Landlord or Person Receiving Rent: _____

Property Address: _____

Amount of Last Month's Rent: _____

Signature of Landlord or Person Receiving Rent: _____

NOTIFICATION TO THE TENANT

_____ A check for the Last Month's Rent Interest is enclosed.

_____ The tenant may deduct the amount of the Last Month's Rent Interest from the next month's rent.

DEMAND FOR INCREASE OF SECURITY DEPOSIT AND/OR LAST MONTH'S RENT

Date: _____

To: _____

From: _____

This is a demand for an increase in the amount of your security deposit and/or last month's rent based on an increase in rent as follows:

Current Rent	_____	
New Rent	_____	
Amount of Increase	_____	
Current Security Deposit	_____	
Amount of Increase Due		_____
Current Last Month's Rent	_____	
Amount of Increase Due		_____
Total Due		_____

Property Address: _____

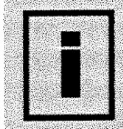
Name of Landlord: _____

Signature of Landlord or Agent: _____

CHAPTER 7

LANDLORD'S DUTY TO MAKE REPAIRS DURING THE TENANCY

WARRANTY OF HABITABILITY



Once the tenant has moved in, the landlord has the duty to maintain the premises in a safe and decent manner during the term of the tenancy. The landlord warrants that the property is fit for habitation at the beginning of the tenancy and will remain habitable during the term of the tenancy. This is referred to as the "warranty of habitability".[1]

While isolated defects or minor code violations might not breach the landlord's warranty of habitability, it is clear that a landlord is responsible to maintain the premises in a safe, habitable condition at all times.[2] Common areas must also be maintained in a safe condition. If the landlord breaches this obligation, the tenant is entitled to damages. Damages take the form of a rent abatement and are measured by the difference between the fair market value of the premises as warranted (in compliance with the State Sanitary Code and State Building Code) and the fair market value of the premises in the defective condition.

During the tenancy, the landlord is responsible for maintenance of all systems, structural elements, and landlord installed appliances in the building. Major violations of the State Sanitary Code and State Building Code are usually violations of the warranty of habitability. In addition, there may be instances where conditions not covered by the codes make the property uninhabitable.[3]

The landlord must maintain the land and the common areas of the building free from garbage and rubbish.[4] The tenant must maintain his/her own unit free from garbage and rubbish.[5] The landlord must provide the tenant with trash barrels and is responsible for the collection and disposal of garbage and rubbish in dwellings containing three or more units. The tenant is responsible for providing his/her own trash barrels and for the collection and disposal of garbage and rubbish in single family houses and two family dwellings.[6]

During the tenancy, the landlord is responsible for extermination of insects and rodents in buildings containing two or more units and in rooming houses. If pesticides must be used inside the dwelling, the landlord must notify the tenant at least 48 hours in advance.[7] Upon reasonable notice, the tenant must give the landlord access to the property for exterminating. The tenant is responsible for extermination in single family houses.[8]

A violation of the warranty of habitability only exists when there is a material breach by the landlord. It is within a judge's discretion to decide whether the condition rises to the level of a material breach.[9] Factors to be considered include the seriousness of the defect, the length of time the defect has existed, and whether the defect affects the habitability of the property.

For example: *In a recent Massachusetts case, a judge found that defective ventilation and an ant infestation that had gone untreated for over a year were both a material breach.[10] In a different case, the court found that a landlord did not violate the warranty of habitability when he failed to include window stops in a unit where a child fell from the window.[11] The court reasoned that a window stop was not essential to the habitability of the apartment and therefore not covered under the warranty of habitability.*

The warranty of habitability applies only to defects in vital physical facilities. There have been no appellate cases in Massachusetts where a landlord has been found to have breached the warranty as a result of a non-physical defect.[12] Other states, such as New Jersey, include security measures in the warranty of habitability. The Supreme Judicial Court of Massachusetts chose not to adopt this standard, determining that the warranty does not require the landlord to provide security guards or other security services because these services do not relate to the maintenance of physical facilities.[13] However, when a landlord voluntarily provides such security measures, the landlord has a duty of due care to maintain the security.[14] Therefore, if the landlord elects to employ a security guard at the beginning of a tenancy, the tenant will rely on that level of security when he/she signs the lease and the landlord cannot take away this security measure in the middle of the tenancy.[15]

Even though a Massachusetts landlord is not held accountable for non-physical defects under the warranty of habitability, liability may be imposed

under other theories. The State Sanitary Code requires that a residence be "capable of being reasonably secured against unlawful entry." [16] Every entry door of the building and of each unit and every openable exterior window must be fitted with a lock. For buildings with more than three units, the main entry door must be able to close and lock automatically.[17] If the landlord is not careful to secure the property and a tenant is injured or gets property stolen by an intruder, the landlord may be held liable for negligence for breach of a duty to provide protection. The landlord may also be subject to liability under the "quiet enjoyment" statute.[18]

At all times during the tenancy, the tenant is required to exercise reasonable care in the use and care of the property.[19] If damage is caused to the property, or a bad condition has arisen, the tenant should notify the landlord. The landlord must then make the appropriate repairs to the property within a reasonable period of time. A reasonable period of time depends on the nature and circumstances of each case but a landlord should understand that damages accrue to the tenant from the time the landlord first has notice of the damage or bad condition and therefore, remedies are available to the tenant during the landlord's time to repair.[20]

Only in cases where the damages or bad conditions are so extensive that they would require the tenant to vacate the premises to make repairs may the landlord choose to terminate the tenancy in order to accomplish repairs, provided he/she does so in good faith. In such cases, the tenant may not use the remedies that would normally be available to him/her, including rent withholding, and may not use the damages or bad conditions to defeat a later eviction.[21]

Once bad conditions or damages to the property have occurred, problems may arise under the following circumstances:

1. The landlord is notified of damage not caused by the tenant or his/her guests but does not make repairs.

If the landlord does not repair damage not caused by the tenant or his/her guests within a reasonable period of time after receiving notice, the tenant may report the conditions to the health authority. The health authority will inspect the property and order the landlord to make required repairs. If the landlord does not make repairs of which he/she has notice, does not comply with the order of the health authority, or does not repair bad conditions that have been identified by the Court, the tenant may choose one or more of the following options:

a. Repair the condition and deduct the expense from the next month's rent, up to a maximum of four month's rent.[22] The tenant may exercise this option if the landlord has been notified in writing of the violation and has failed to contract with someone to do the repairs within five days of receiving notice, or has failed to substantially complete the repairs within fourteen days of receiving notice.[23] Only if the amount deducted exceeds four months' rent or the repairs were unreasonable will the landlord be allowed to recover the amount spent. Repair and deduct is not allowed where the tenant or his/her guest caused the bad condition or the tenant has refused to allow the landlord to make repairs.

b. Withhold rent from the landlord.[24] Rent withholding is not allowed where the tenant or his/her guest caused the bad condition or damage, the tenant has refused to allow the landlord to make repairs, or the damages or bad conditions are so extensive that the tenant must vacate the premises in order for the landlord to make repairs.

c. Treat the lease or rental agreement as terminated and move out without giving proper notice to the landlord.[25]

d. Go directly to court for relief. The law provides that tenants may file a tenant's petition to ask that the judge order the landlord to make repairs.[26] The petition must state that the bad condition was not caused by the tenant or his/her guest. The tenant may also decide to file an action for money damages against the landlord for breaching the warranty of habitability or the tenant's right to quiet enjoyment of his/her home.[27] If successful, a tenant may recover up to $2,000.00 in a small claims action or more in regular civil action, and, in certain cases, may ask the Court to triple the recovery plus costs and attorney's fees. The tenant may also have a claim for damages under the Consumer Protection Act.[28]

See Chapter 22, Consumer Protection Act

e. File criminal charges against the landlord who fails to comply with the State Sanitary Code.

See Chapter 8, Tenant Remedies and Chapter 9, Wrongful Acts of the Landlord

While not every condition that results in physical injury automatically falls within the warranty of habitability,[29] the landlord may still be held liable for the damages caused by the injuries. If a tenant or any other person is injured on a rental property, except owner occupied two and three family properties, due to the landlord's failure to correct unsafe conditions not caused by the tenant or his/her guests, within a reasonable time after being notified by the tenant or the health authority, that person would be able to file an action in tort against the landlord for injuries.[30] In general, while a landlord is not the guarantor of safety of persons in the building, he/she may not ignore foreseeable risks of harm to tenants or others.[31]

In any event, a tenant may use the landlord's refusal to make repairs as both a defense and a counterclaim in a later eviction.

See Chapter 13, Eviction Process

The landlord's breach of the warranty also constitutes a total or partial defense to the landlord's claim for rent owed during the period of the breach.[32]

2. The landlord is notified of damage caused by the tenant or his/her guests.

The landlord must repair the damage caused by the tenant or his/her guests within a reasonable period of time after receiving notice but may bill the tenant for the cost of the repairs. If damage is caused by the tenant or his/her guests, the tenant may not use the remedies that would normally be available to him/her including repair and deduct,[33] withholding rent,[34] and, using the bad conditions as a defense or counterclaim in an eviction action.[35]

3. The tenant knows of damage but does not notify the landlord.

The landlord is only required to make repairs of which he/she has "actual" or "constructive" notice. Actual notice occurs when the tenant has notified the landlord orally or in writing of the damage or bad condition or the landlord has received a report from the health authority. Constructive notice occurs when the landlord should have known about the damage or bad condition, perhaps because it is in a common area or was present at the start of the tenancy. In constructive notice cases, the landlord will be charged with notice of the damage or bad condition even if he/she did not know of the bad condition or damage.[36]

If the landlord has no notice of bad conditions, actual or constructive, the landlord is under no duty to make repairs and the tenant may not use the remedies that would normally be available to him/her including repair and deduct,[37] withholding rent,[38] and using the bad conditions as a defense or counterclaim in an eviction action.[39]

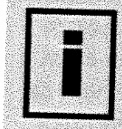
4. The landlord wants to repair damage but the tenant will not allow the landlord access to make repairs.

Leases may contain terms that allow a landlord to enter a unit to inspect the premises, to make repairs, or to show the unit to prospective tenants or purchasers. Otherwise, the law provides that a landlord may enter the tenant's unit only under the following conditions:

a. in accordance with a court order,

b. if the premises appear to be abandoned, or

c. to inspect the unit for damage within thirty days of the end of a tenancy.[40]



In all cases other than those involving a court order, abandonment, or an emergency, a landlord should not enter the tenant's unit without the permission of the tenant.

This includes cases where the landlord wants to make repairs to the property. If the landlord has been put on notice of any damage or bad condition by the tenant or by the health authority, the landlord must get the tenant's permission to enter the unit to make required repairs. The tenant has the duty to allow the landlord or his/her agent access to his/her unit, with proper notice, for the purpose of making repairs to bring the property into compliance with the Code.[41] Proper notice varies according to the circumstances, but generally a twenty-four hour written notice is appropriate. If the tenant is unwilling to give the landlord permission to enter to make repairs, the landlord may go to court and apply for a Temporary Restraining Order. The application would state that the tenant is not willing to let the landlord make repairs and request that the Court order the tenant to comply.

A tenant who refuses to allow the landlord to make repairs may not repair the damage and deduct the cost of the repair from the rent,[42] and probably may not use the bad condition as a defense or counterclaim in a later eviction.

CODE INSPECTIONS

In the event that a tenant or other person contacts the health authority to complain of damage or bad conditions, the health authority will inspect the property to determine whether there are any violations of the Code. A violation is a condition which does not meet the requirements of the Code.[43] If violations are found, the landlord and the tenant will receive a notice describing the violations and ordering the landlord to make repairs. The notice of violations of the Code creates a presumption that the conditions exist.[44] That is, the violations noted in the notice will be assumed to exist unless the landlord proves otherwise.

The notice containing the orders to the landlord must be served upon the landlord in one of the following ways:

a. in person,

b. leaving it at the landlord's residence, or

c. sending it by registered or certified mail.[45]

If the landlord's address is unknown or the landlord resides outside of Massachusetts, the notice must be posted on the property and advertised in the local newspaper. Proof of written notice to the landlord or his/her agent creates a presumption of proper notice.[46]

The notice will tell the landlord the period of time that he/she has to make the required repairs.[47] Even though the landlord is given time to make repairs before fines are assessed by the health authority, damages accrue to the tenant from the time the landlord first had actual or constructive notice of the damage or bad condition and therefore, remedies are available to the tenant during the landlord's time to repair.[48]

The landlord will be given twenty-four hours to repair the following violations:

- failure to maintain a supply of water;
- failure to provide heat or heating facilities;
- failure to provide light in hallways and stairways;
- failure to maintain a sanitary drainage system;
- failure to maintain facility fixtures and systems;
- termination, or failure to restore, water, hot water, heat, electricity, or gas;
- failure to maintain unobstructed exits;
- failure to maintain locks and doors;
- failure to prevent leaks;
- failure to maintain porch, balcony, roof, or stairway; and
- failure to prevent infestation.

The landlord will be given seven days to repair the following violations:

- failure to maintain owner installed appliances;
- failure to prevent build up of rubbish and garbage;
- defects in asbestos material;
- failure to provide a smoke detector;
- lack of a proper kitchen sink or stove and oven;
- failure to provide a washbasin and tub or shower; and
- failure to maintain a safe handrail.

The landlord will be given up to thirty days to repair all other violations.

In order to comply with the Code, all repairs must be performed in a workperson-like fashion, and, where licenses and permits are required, the appropriate official must certify that the work is done according to the law.[49]

If a landlord does not comply with an order to make repairs, he/she may face civil sanctions, or criminal sanctions in cases where the violations are willful, intentional, reckless, or repeated, including fines of not less than ten dollars and not more than five hundred dollars per day. Each day that the landlord does not comply is considered a separate violation of the order.[50] While repairs may be extensive and therefore, expensive, lack of funds to repair is not a valid defense for non-compliance with an order.[51]

See Chapter 23, Rehabilitation Programs for Rental Properties

In cases where the failure to make repairs results in the endangering of the health or well-being of the tenant or the public, the health authority may cause the repairs to be done and bill the landlord for the cost of the repairs.[52]

A landlord who has been served with an order to make repairs may request a hearing with the health authority within seven days of the date of service, if he/she believes that the order should be withdrawn or modified.[53] If the landlord is aggrieved by this final decision of the health authority, he/she may file an action in court.[54]

The health authority may vary the application of the Code in any particular case where enforcement would do injustice as long as the variation does not conflict with the spirit of the Code.[55] In extreme cases where an emergency exists, the health authority may take such action as it deems necessary to meet the emergency.[56]

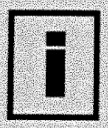
ENDNOTES

[1] *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 293 N.E.2d 831 (1973)
[2] *Butts v. Boudreau*, 1986 Mass.App.Div. 167 (1986); *Young v. Patukonis*, 24 Mass.App.Ct. 954, 506 N.E.2d 1164 (1987)
[3] 33 Mass.Prac. Landlord and Tenant Law §11.10 (3d ed., 2003)
[4] 105 CMR 410.602
[5] 105 CMR 410.602
[6] 105 CMR 410.600; 105 CMR 410.601
[7] 333 CMR 13.00; 105 CMR 410.550
[8] 105 CMR 410.550
[9] *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 293 N.E.2d 831 (1973)
[10] *Jablonski v. Clemons*, 60 Mass.App.Ct. 473, 803 N.E.2d 730 (2004)
[11] *Lynch v. James*, 44 Mass.App.Ct. 448, 692 N.E.2d 81 (1998)
[12] 33 Mass.Prac. Landlord and Tenant Law §11.10 (3d ed., 2003)
[13] *Doe v. New Bedford Housing Authority*, 417 Mass. 273, 630 N.E.2d 248 (1994)
[14] *Mullins v. Pine Manor College*, 389 Mass. 47, 51, 449 N.E.2d 331, 335 (1983)
[15] See *Kline v. 1500 Mass. Ave. Apartment Corp.*, 141 U.S. App. D.C. 370, 439 F.2d 477 (D.C.Cir. 1970)
[16] 105 CMR 410.480(B)
[17] 105 CMR 410.480(C)
[18] G.L. c. 186, §14
[19] 105 CMR 410.351; 105 CMR 410.352; 105 CMR 410.505
[20] *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196 N.E.2d 981 (1979)
[21] G.L. c. 239 §8A; *Knott v. Laythe*, 42 Mass.App.Ct. 908, 674 N.E.2d 660 (1997)
[22] G.L. c. 111 §127L
[23] G.L. c. 111 §127L
[24] G.L. c. 239 §8A
[25] G.L. c. 111 §127L
[26] G.L. c. 111 §127C
[27] G.L. c. 218 §21
[28] G.L. c. 93A; 940 CMR 3.17(1)
[29] 33 Mass. Prac. Landlord and Tenant Law §11.10 (3d ed., 2003); *Lynch v. James*, 44 Mass.App.Ct. 448, 692 N.E.2d 81 (1998) (Court denied violation of the warranty of habitability for failure to provide window guards after a three year old child fell out of the window of her third floor apartment.)
[30] G.L. c. 186 §19
[31] *Whittaker v. Saraceno*, 418 Mass. 196, 635 N.E.2d 1185 (1994)
[32] G.L. c. 239 §8A; *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 186 -187 293 N.E.2d 831 (1973)
[33] G.L. c. 111 §127L
[34] G.L. c. 239 §8A
[35] G.L. c. 239 §8A
[36] *Montanez v. Bagg*, 24 Mass.App.Ct 954, 510 N.E.2d 298 (1987); *McKenna v. Begin*, 3 Mass.App.Ct. 168, 325 N.E.2d 587 (1975)
[37] G.L. c. 111 §127L
[38] G.L. c. 239 §8A
[39] G.L. c. 239 §8A
[40] G.L. c. 186 §15B
[41] 105 CMR 410.810
[42] G.L. c. 111 §127L
[43] 105 CMR 410.044
[44] G.L. c. 239 §8A; G.L. c. 185C §21
[45] 105 CMR 400.400
[46] G.L. c. 239 §8A
[47] 105 CMR 410.830
[48] *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196, 396 N.E.2d 981 (1979)
[49] 105 CMR 410.021
[50] 105 CMR 400.700; 105 CMR 410.910
[51] *City of Worcester v. Sigel*, 37 Mass.App.Ct. 764, 644 N.E.2d 238 (1994); *Lowery v. Robinson*, 13 Mass.App.Ct. 982, 432 N.E.2d 543 (1982)
[52] 105 CMR 410.960
[53] 105 CMR 400.500
[54] 105 CMR 400.600
[55] 105 CMR 400.800
[56] 105 CMR 400.200(B)

CHAPTER 8

TENANT REMEDIES FOR BAD CONDITIONS

A tenant has many remedies in cases where the landlord does not repair damages or bad conditions of which he/she has actual notice from the health authority or from the tenant, or of which he/she has constructive notice (the landlord should have known about the damage or bad condition), and the conditions endanger or materially impair the health or safety of the tenant.



The tenant may withhold rent, repair the unit and deduct the amount of repairs from his/her rent, file a tenant's petition, sue for damages, rescind the tenancy agreement, or file criminal charges against the landlord for failure to comply with the State Sanitary Code.

The Code specifically states that the following conditions endanger or materially impair the health or safety of the tenant:

a. failure to provide a supply of water in quantity, pressure, and temperature, both hot and cold, to meet the ordinary needs of the tenant;

b. failure to provide heat or heating facilities, or improper venting or use of a space heater or water heater;

c. shutoff and/or failure to restore electricity or gas;

d. failure to provide electrical facilities and lighting in common areas;

e. failure to provide a safe supply of water;

f. failure to provide a toilet and maintain a sewage disposal system in operable condition;

g. failure to provide adequate exits or the obstruction of any exit, passageway of common area, caused by any object including trash;

h. failure to maintain locks and doors;

i. failure to prevent build up of rubbish and garbage which may lead to infestation;

j. allowing the presence of lead paint in violation of the law;

k. failure to maintain roof, foundation, or allowing structural defects which impair health or safety;

l. failure to install electrical, plumbing, heating, and gasburning facilities in accordance with accepted standards which impair health or safety;

m. allowing a defect in asbestos in violation of the law;

n. failure to provide a smoke detector; and

o. any of the following conditions which remain uncorrected for five or more days after notice to or knowledge of the landlord:

   1. lack of a proper kitchen sink or stove and oven;

   2. failure to provide a washbasin and tub or shower;

   3. failure to install electrical, plumbing, heating, and gasburning facilities in accordance with accepted standards which do not create an immediate hazard;

   4. failure to maintain a safe handrail;

   5. failure to exterminate infestation; and

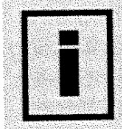
   6. any other violations which remain uncorrected within the time so ordered by the health authority.[1]

While these conditions are deemed to always have the potential to endanger or materially impair the health or safety of the tenant, any other violation of the Code may be deemed by the Court or health authority to endanger or materially impair the health or safety of the tenant in any particular case, and therefore, may provide the basis for the tenant to legally withhold rent, repair and deduct, or file a tenant's petition.

RENT WITHHOLDING

The law provides tenants with a complete defense to eviction where there has been a breach of the warranty of habitability (the duty of the landlord to keep the property in a condition fit for habitation), a breach of any material provision of the rental

agreement or lease, or a violation of any other law relating to the tenancy where the eviction is based on non-payment of rent or no fault of the tenant.[2] This defense is not available in cases of eviction for fault. Eviction for fault occurs when the tenant has violated an obligation or duty or violated the rental agreement or lease, other than non-payment of rent.



If a landlord does not make repairs after being notified or does not make repairs of which he/she has constructive notice, the tenant may decide to stop paying rent and the landlord will not be able to evict the tenant for non-payment of rent.

In cases where the damages or bad conditions are so extensive that to repair them would require that the tenant vacate the premises, the landlord may choose to terminate the tenancy in order to accomplish repairs, provided he/she does so in good faith. In such cases, the tenant may not use the remedies that would normally be available to him/her, including rent withholding, and may not use the damages or bad conditions to defeat a later eviction.[3]

Rent withholding is only legal under the following circumstances:

a. conditions exist that may endanger the health, safety, or well-being of the tenant;

b. the landlord or his agent knew of the condition before the tenant was behind in paying rent, either because the tenant notified the landlord, the landlord received a report from the health authority, or the landlord had constructive notice;

c. the landlord cannot prove that the tenant or his/her guests caused the conditions, except for areas under complete control of the tenant because there the tenant has the burden of proving he/she or his/her guests did not cause the damage; and

d. the landlord cannot prove that the repairs require the tenant to vacate the premises.[4]

Thus, if the landlord had no notice of the bad condition, actual or constructive; or the tenant caused the bad condition; or the tenant was behind in paying rent before the landlord knew of the bad condition; or the repairs require the tenant to vacate the premises; the tenant will not be able to use rent withholding and will not be able to use the bad conditions as a defense or counterclaim against the landlord in an eviction action.

While the tenant may be willing to continue paying rent in cases where the landlord is in the process of making repairs, the tenant has the right to withhold rent without regard to whether the landlord is at fault or is taking reasonable steps to repair.[5] Similarly, in cases where the health authority allows the landlord a specific period of time to make repairs, the tenant has the right to withhold rent during this period of time without regard to whether the landlord is within this time frame. Damages accrue to the tenant from the time the landlord first has notice of the damage or bad condition, and therefore, remedies are available to the tenant during the landlord's time to repair.[6]

While proposed legislation could require tenants to put withheld rent in escrow in the future, the law currently does not require the tenant to put the withheld rent in escrow or meet any requirements other than notifying the landlord of the bad condition and not causing the bad condition. The law also does not state the amount of rent that the tenant may legally withhold nor does it state how long the tenant may withhold the rent. While the law is unclear on these issues, the Court has made it very clear that a tenant is legally justified in withholding rent in cases where the condition endangers or materially impairs the health or safety of the tenant.[7]

A question arises in cases where the tenant has withheld a large sum of rent and refuses to pay the landlord a fair portion of it once the repairs are completed. In deciding the amount of withheld rent a tenant should pay the landlord for the period of time that the premises were defective, the Court has made a determination of value by considering the nature, duration, and seriousness of the defects, and the extent to which they may endanger or impair the health, safety, or well-being of the tenants.[8]

The landlord should attempt to negotiate with the tenant for a resolution that compensates the tenant for the period of time that the defective condition existed while compensating the landlord for the value of the defective premises. If the tenant refuses to pay a reasonable sum after repairs are completed, the landlord should be cautious in attempts to recoup any part of the withheld rent through an eviction proceeding because there is a presumption that an eviction which is commenced within six months of a legal rent withholding is retaliatory.[9] If the amount that the landlord is owed or will accept is $2,000.00 or less, the landlord might consider an action in small claims against the tenant.

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.

Regardless of the resolution of the rent issue for the period of time that the tenant lived in the defective premises, once the landlord has corrected the bad condition, the tenant should resume paying rent for the current period. If the tenant refuses to commence paying the full current rent after repairs are completed, the landlord may then begin an eviction for non-payment of rent.

While it is illegal for a landlord to evict a tenant because he/she has legally withheld rent, it is legal to evict a tenant because he/she has refused to commence paying current rent once the repairs are completed.

REPAIR AND DEDUCT

If a landlord does not make repairs after the health authority has certified that bad conditions may endanger the health, safety, or well-being of the tenant and after being notified in writing, the tenant may decide to repair the conditions and deduct that amount from the rent. Only if the amount deducted exceeds four months' rent, or the repairs were unreasonable, will the landlord be allowed to recover the amount spent.

Repair and deduct is only legal under the following circumstances:

a. the health authority has certified that the conditions may endanger the health, safety, or well-being of the tenant;

b. the landlord has been notified in writing of the violations;

c. the landlord has not begun the necessary repairs within five days of the notice or has not completed the necessary repairs within fourteen days of the notice, or shorter time period if ordered by the Court or the health authority;

d. the tenant or his/her guests have not caused the conditions; and

e. the tenant has given the landlord reasonable access to make the repairs.[10]

Notice that the requirements to repair and deduct are different than the requirements to withhold rent. Rent withholding does not require a certification from the health authority that the conditions may endanger the tenant and does not require that the landlord receive written notice of the bad conditions, thereby allowing a tenant to begin withholding rent prior to any inspection by the health authority. Also, a tenant who is behind in rent when the bad condition arises may not withhold rent but may still legally repair and deduct.

TENANT'S PETITION

The law provides that a tenant or a health authority may file a tenant's petition to ask that the judge order the landlord to make repairs; determine the fair market value of the unit in its defective condition and allow the tenant to pay the fair market value in lieu of rent to the clerk of the court to be used for repairs; and appoint a receiver. The petition must state that:

a. the premises have been inspected by the health authority;

b. that violations have been found;

c. that the violations may endanger the health, safety, or well-being of the tenant; and

d. that the condition was not caused by the tenant or his/her guest.

The petition may be filed without the inspection in cases where an inspection was requested at least twenty-four hours before the filing, no inspection has been conducted, the tenant can show the condition is likely to be a violation which may endanger the health, safety, or well-being of the tenant, and that the condition was not caused by the tenant or his/her guest.[11]

Notice that the requirements to file a tenant's petition are different than the requirements to withhold rent and repair and deduct. A tenant may file a tenant's petition with or without certification from the health authority that the conditions exist and may endanger the tenant and without proof that the landlord received written notice of the bad conditions. Also, a tenant may be behind in rent and still be able to file a tenant's petition. The requirements that the condition may endanger the health, safety, or well-being of the tenant and that the tenant or his/her guest did not cause the condition are common to all cases involving rent withholding, repair and deduct, and tenant's petition.

ACTION FOR DAMAGES

The tenant may decide to file an action for money damages against the landlord for breaching the warranty of habitability or the tenant's right to quiet enjoyment of his/her home. Damages for breaching the warranty of habitability take the form of a rent abatement, which the judge measures by assessing the major code violations and determining the percentage by which the tenant's use and enjoyment of the property was diminished by the violations. The rent is then reduced by this amount.[12] Damages for breaching the tenant's right to quiet enjoyment of his/her home include a fine of up to $300.00 or imprisonment of up to six months. The landlord may also be liable for actual damages (including emotional distress) or three months' rent, whichever is greater, plus costs and attorney's fees.[13] The tenant may choose which remedy to seek but may not recover under both theories for the same offense.[14] If successful, a tenant may recover up to $2,000.00 in a small claims action or more in regular civil action. The tenant may also have a claim for damages under the Consumer Protection Act.[15]

See Chapter 22, Consumer Protection Act

In addition, if the tenant is injured on a rental property, except owner occupied two and three family properties, due to the landlord's failure to correct unsafe conditions not caused by the tenant or his/her guests, within a reasonable time after being notified by the tenant or the health authority, the tenant would be able to file an action in tort against the landlord for injuries.[16] In general, while a landlord is not the guarantor of safety of persons in the building, he/she may not ignore foreseeable risks of harm to tenants or others.[17]

RESCIND THE TENANCY AGREEMENT

The tenany may rescind the tenancy agreement before it has expired, stop paying rent, and vacate the premises.

CRIMINAL CHARGES

The tenant, in addition to employing the remedies listed above, at the same time may file criminal charges against the landlord for failure to comply with an order issued pursuant to the Code or any other violation of the Code. Criminal sanctions are appropriate in cases where the violations are willful, intentional, reckless, or repeated. If convicted, the landlord will face fines of not less than ten dollars and not more than five hundred dollars per day. Each day that the landlord does not comply is considered a separate violation of the order.[18]

ENDNOTES

[1] 105 CMR 410.750
[2] G.L. c. 239, §8A
[3] G.L. c. 239, §8A; *Knott v. Laythe*, 42 Mass.App.Ct. 908, 674 N.E.2d 660 (1997)
[4] G.L. c. 239, §8A
[5] *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196, 396 N.E.2d 981 (1979)
[6] *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196, 396 N.E.2d 981 (1979)
[7] *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 293 N.E.2d 831 (1973); *McKenna v. Begin*, 3 Mass.App.Ct. 168, 325 N.E.2d 587 (1975)
[8] *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 293 N.E.2d 831 (1973); *McKenna v. Begin*, 3 Mass.App.Ct. 168, 325 N.E.2d 587 (1975)
[9] G.L. c. 186, §18; G.L. c. 239, §2A
[10] G.L. c. 111, §127L
[11] G.L. c. 111, §127C
[12] *McKenna v. Begin*, 5 Mass.App.Ct. 304, 362 N.E.2d 548 (1977)
[13] G.L. c. 186, §14
[14] *Wolfberg v. Hunter*, 385 Mass. 390, 432 N.E.2d 467 (1981)
[15] G.L. c. 93A; 940 CMR 3.17(1)
[16] G.L. c. 186 §19
[17] *Whittaker v. Saraceno*, 418 Mass. 196, 635 N.E.2d 1185 (1994)
[18] 105 CMR 400.700; 410.910

CHAPTER 13

EVICTION PROCESS

A landlord may recover possession of the property and make claims for unpaid rent by bringing an action under the eviction law.[1]

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.[13]

While claims for damages against the tenant other than for rent are not allowed in this action,[2] 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.

EVICTION 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.[3] The tenant may also have a claim for damages under the Consumer Protection Act.[4]

See Chapter 22, Consumer Protection Act

RETALIATION

A landlord is prohibited from evicting a tenant for discriminatory reasons[5] or in retaliation for protected activities in which the tenant engages.[6]

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;[7]

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;[8] and

c. may have a claim for damages under the Consumer Protection Act.[9]

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.[10]

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.[11]

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.*[12]

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.*

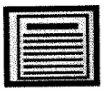
SUMMARY PROCESS

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.[14]
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.[15]
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.[16]
8. File the Summons and Complaint with a copy of the Notice to Quit.[17] If the landlord does not file the Notice to Quit at this time, it is generally accepted at the time of trial.[18] 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.[19] 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.[20]
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.[22]

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 that 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.[21] 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.

CHAPTER 18

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

The 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.[1] 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.[2] The tenant may also have a claim for damages under the Consumer Protection Act.[3]

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.[4] 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.[5]

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.[6]

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.[7] 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.[8] The tenant may also have a claim for damages under the Consumer Protection Act.[9]

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.[10]

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[11] and the tenant may be entitled to damages of up to three times the security deposit, plus costs and attorney's fees.[12] The tenant may also have a claim for damages under the Consumer Protection Act.[13]


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.[14]

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.

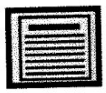

See Chapter 19, Small Claims Procedure

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.[15] The tenant may also have a claim for damages under the Consumer Protection Act.[16]


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

1 G.L. c. 186, §15B (6)
2 G.L. c. 186, §15B (7)
3 G.L. c. 93A; 940 CMR 3.17
4 *Neihaus v. Maxwell*, 766 N.E.2d 556, 54 Mass.App.Ct. 558 (2002)
5 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.)
6 G.L. c. 186, §15B (4)
7 *Goes v. Feldman*, 391 N.E.2d 943, 8 Mass.App.Ct. 84 (1979)
8 G.L. c. 186, §15B (6)(b)
9 G.L. c. 93A; 940 CMR 3.17
10 G.L. c. 186, §15B (4)
11 G.L. c. 186, §15B (6)(e)
12 G.L. c. 186, §15B (7); 940 CMR 3.17(4)
13 G.L. c. 93A; 940 CMR 3.17
14 *Jinwala v. Bizzaro*, 24 Mass.App.Ct. 1, 505 N.E.2d 904 (1987)
15 G.L. c. 186, §15B (2)(a); 940 CMR 3.17(4)
16 G.L. c. 93A; 940 CMR 3.17

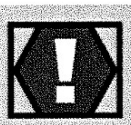
CHAPTER 19

SMALL CLAIMS PROCEDURE

Small claims procedure was created to secure the just, speedy, and inexpensive determination of claims which involve relatively small amounts of money damages.[1] The right to a jury trial is waived by proceeding in a Small Claims Court, and the plaintiff often has no right to appeal a judge's decision. The defendant does retain the right to appeal. The pleadings and hearings are informal and it is not necessary for the landlord or tenant to be represented by an attorney. In fact, since so many parties to a small claims action are unrepresented, the trial judge may and should participate more actively in the conduct of the hearing.[2]

Small claims actions relating to housing are heard in both the District Court and the Housing Court. The action may be brought in the district where the landlord or tenant lives, or in the district where the rental property is located.[3] It is up to the party bringing the action to determine in which court and in which district the action will be brought. The money damages sought may not exceed $2,000.00.

LANDLORD v. TENANT



Landlords who are owed money by tenants may file a small claims action in Housing Court or District Court against the tenant. Small claims may not be used in cases where the landlord is seeking to evict a tenant for possession. It is only for money that the landlord is seeking from the tenant.

Provided that the landlord is seeking no more than $2,000.00, small claims is relatively easy, inexpensive, and quick. If the landlord is seeking more than $2,000.00 in damages, the landlord should contact an attorney for assistance.

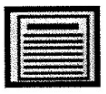
Typical situations in which a landlord might consider filing a small claims action against a tenant are as follows:

- The tenant has damaged the unit that he/she is presently living in. The tenant notifies the landlord who makes the appropriate repairs. The landlord bills the tenant for the amount due to make the repairs. The tenant does not pay.
- The tenant legally withholds rent because the landlord does not make repairs of damage not caused by the tenant. The landlord makes the repairs and then requests that the tenant pay a portion of the withheld rent to the landlord which compensates the tenant for the period of time that the defective condition existed while compensating the landlord for the value of the defective premises. The tenant refuses to pay any of the withheld rent.
- After the tenant vacates the unit, the landlord inspects the property and finds that there are damages. The tenant has paid a security deposit to the landlord but the cost to repair the damage exceeds the amount of the security deposit. The landlord sends the tenant a statement of the security deposit and the repairs made with a bill for the damage which exceed the security deposit. The tenant does not pay.
- The tenant was evicted by use of an execution. The landlord paid to hire the Sheriff and the mover, and paid the cost of storage for the tenant's belongings. The landlord sends a bill to the tenant for these costs. The tenant does not pay.

In each of these cases, the landlord is seeking money damages from the tenant relating to housing, and therefore, may file in either the District Court or the Housing Court. The plaintiff has the option of filing in the district in which either he/she or the defendant lives or works, or the district in which the property is located.

In order to file a small claim, the landlord must obtain a Statement of Claim and Notice form from the Court.[4] The form must be filled out by the landlord explaining the claim in concise, yet non-technical, language. The form is then filed at the appropriate court with the required filing fee of $30.00, if the landlord is seeking up to $500.00, or $40.00, if the landlord is seeking $500.01 to $2,000.00.[5] Filing may be by mail or in person. If filed by mail, the action will not be considered commenced until it has been received by the court. The court will serve the tenant with the claim by mail. The landlord and tenant will be notified of the date and time of the trial. The tenant may file an Answer any time prior to trial, but this is not

required.[6] The tenant may also file a Counterclaim against the landlord at this time. Discovery is not allowed except by the Court upon a showing of good cause.[7] Continuances are generally not allowed unless both parties agree or for other good cause.[8]



See Statement of Claim and Notice form with instructions at the end of this Chapter.

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It is also possible for a tenant to file a small claims action against the landlord for monetary damages. In the case of an action seeking damages due to a violation of the Consumer Protection Act or a security deposit violation, only the base amount (prior to doubling or trebling by the court) must not exceed $2,000.00.[9]

Upon receipt of the small claim, the landlord should file an Answer with the court in the form of a signed letter, with a copy to the tenant. This letter should state the reasons why the tenant should not prevail and specifically deny those parts of the tenant's claim that are not true. While the landlord is not required to file an Answer, it is helpful to state one in writing for the Court.

Furthermore, if the landlord has any claims against the tenant, he/she may also include them in the Answer or in a separate letter to the court with a copy to the tenant. There is no filing fee for the defendant's counterclaim.[10] If the landlord has any counterclaims and has notified the tenant in writing at least ten days before the trial, the counterclaims will be heard at the trial. Counterclaims in small claims actions may not exceed $2,000.00.[11]

TRIAL PROCEDURE

The trial will be scheduled four to eight weeks from the filing of the initial claim.[12] Whether the landlord is the plaintiff or defendant in the action, it is very important for him/her to be in court for the trial. If the plaintiff appears at the trial but the defendant does not, the Court will issue a judgment for the plaintiff. If the defendant appears but the plaintiff does not, the claim will be dismissed. If neither party appears for the trial, the claim will be dismissed.[13]

At the trial, which may be heard by a judge or a clerk, the plaintiff states the facts and/or presents the evidence upon which the claim is based. The defendant will then be able to assert defenses and present counterclaims. While attorneys are not required, and sometimes not allowed, the Court usually allows the parties to have help from non-attorney advocates, if needed.[14] If needed, either party also has the option of bringing in witnesses to provide further evidence for his/her case. However, this is rarely done.

Once the trial has begun, the parties may continue to discuss a settlement outside of court. If an agreement is made, then it must be put in writing and provided to the Court.[15] A copy should be signed by both parties and filed with the Court in order for it to become a binding judgment.

THE DECISION

The Court will likely announce the decision at the end of the trial. If the Court needs to take the matter under advisement or conduct further research, it will tell the parties when to expect notification of the decision by mail. If the decision is not made at the end of trial, it is usually made within five court days of trial.[16] Once a decision is made, a Notice of Judgment and Order form is sent to each party by mail, directing that the prevailing party be paid the amount awarded and the costs of judgment.[17] The Court usually requires the judgment to be paid within thirty days.

If the tenant is the prevailing party, the landlord should pay the amount of the judgment within the time given by the Court.

If the landlord is the prevailing party, the Court will automatically schedule a payment hearing to determine if the tenant is financially able to pay the amount of the judgment.[18] This hearing is scheduled for the thirtieth day following judgment or shortly thereafter. The tenant will have three options during the thirty day period following judgment:

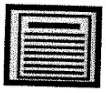
1. Tenant may pay the landlord and satisfy the judgment.
2. Tenant may appeal within ten days of receipt of the Notice of Judgment. In this case, the payment hearing is cancelled.
3. Tenant may appear at the hearing, with the burden on him/her to show why full payment should not be made. The tenant will have to fill out a financial disclosure form and send a copy to the landlord. Additional financial information may be required by the judge.

If the tenant does not pay the landlord or appeal within the thirty day period, the payment hearing will be held. Landlords must keep in mind that the Court will only order a tenant to pay if the tenant is financially able. Generally, any tenant who collects public assistance or social security, or has a low income,

will not be ordered to pay until he/she is financially able. In such cases, the landlord will have a judgment against the tenant which will be enforceable for twenty years. While it is possible that the landlord will never be able to collect, it is in the landlord's best interest to obtain the judgment. If at any time within those twenty years the tenant's income increases or financial situation improves, the landlord may be able to collect upon the judgment. Furthermore, a landlord may report the judgment to a credit bureau. If at any time within those twenty years the tenant attempts to get financing for a house, car, or incur any other debt, the judgment will show up on the tenant's credit report. Lenders may require that the tenant pay off outstanding debts in order to qualify for financing.

APPEAL

By filing a small claims action, the plaintiff is giving up the right to a trial by jury and any right to appeal a dismissal or decision in favor of the defendant.[19] The plaintiff does have the right to appeal a decision based on the defendant's counterclaim against the plaintiff. Plaintiff does not give up the right to a jury trial in regards to a counterclaim filed by the defendant.[20] On the other hand, the defendant who is dissatisfied with the Court's decision has the right to claim a trial by jury within ten days from receipt of the decision.[21] In order to appeal, defendant has to file an affidavit and pay a filing fee and surety bond.[22] Although the surety bond is usually $100.00, if the dispute relates to the payment of a security deposit, the bond can be more.



See Appealing a Small Claims Decision in the Housing Court form at the end of this Chapter.

ENDNOTES

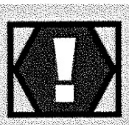
[1] U.S.C.R. 1
[2] *McLaughlin v. Municipal Court of Roxbury District of City of Boston*, 308 Mass. 397, 32 N.E.2d 266 (1941)
[3] G.L. c. 218, §21
[4] U.S.C.R. 2
[5] G.L. c. 218, §22
[6] U.S.C.R. 3
[7] U.S.C.R. 5
[8] U.S.C.R. 7(a)
[9] *Hampshire Village v. District Court*, 381 Mass. 148, 408 N.E.2d 830 (1980)
[10] U.S.C.R. 3
[11] *Boat Maintenance & Repair Co. v. Lawson*, 50 Mass.App.Ct. 329, 737 N.E.2d 494 (2000)
[12] 3:04 Small Claims Standards, 2002
[13] U.S.C.R. 7(c)
[14] U.S.C.R. 7(c)
[15] G.L. c. 218, §22
[16] 7:01 Small Claims Standards, 2002
[17] U.S.C.R. 7(d)
[18] U.S.C.R. 7(g)
[19] *Trust Ins. Co. v. Bruce at Park Chiropractic Clinic*, 430 Mass. 607, 722 N.E.2d 438 (2000)
[20] *Bischof v. Kern*, 33 Mass.App.Ct. 45, 595 N.E.2d 802 (1992)
[21] G.L. c. 218, §21
[22] G.L. c. 218, §23

CHAPTER 20

ROOMING HOUSES

A lodging house, also known as a rooming or boarding house, is a house where single rooms are rented to four or more unrelated persons. The kitchen and bathroom may be shared by all tenants, and rent is usually paid daily or weekly. Fraternity houses and school dormitories are lodging houses while nursing homes, group residences, and dormitories of charitable institutions are not.[1] Landlords must obtain a license to operate a rooming house, the fee for which cannot be more than fifty dollars.[2] The penalty for not obtaining such a license can range from $100.00 to $500.00 and/or three months in jail.[3] If the landlord does not obtain the required license, the relationship between the landlord and the lodger may change and the landlord may not rely on the following information for terminating tenancies.

STATE SANITARY CODE



Rooming houses are covered under the State Sanitary Code. This means that the landlord must make sure that the room he/she intends to rent and any common areas comply with the minimum standards of fitness as set out in the Code.

A landlord is also encouraged to check the local health ordinances because a local government can create regulations that go beyond what the State Sanitary Code requires. Furthermore, a landlord must keep the property up to Code throughout the term of the tenancy. This is referred to as the "warranty of habitability".[4]

The following is an overview of the requirements of the Code relating only to rooming houses. In addition to these requirements, landlords must comply with the general requirements applicable to all properties.

See Chapter 2, Preparing Your Property for Rent

KITCHENS

Every rooming house where common cooking facilities are provided shall contain space to store, prepare, and serve foods in a sanitary manner. The landlord must provide a kitchen sink. The landlord must provide a stove and oven unless there is a written rental agreement or lease which specifically requires the tenant to provide the stove. The landlord may not require the tenant to provide the stove if the stove is a source of heat for the unit (i.e. gas on gas stove).[5] The landlord must provide the space and proper facilities for the installation of a refrigerator, but need not provide the refrigerator.[6] If a landlord does provide the stove and/or refrigerator, or for that matter any other optional appliance such as a dishwasher, washer, dryer, air conditioner, or garbage disposal, the landlord is solely responsible for the maintenance of the appliance.[7] The tenant is responsible for keeping the appliances clean and in sanitary condition.[8]

For lodging houses with six to nineteen renters, cooking facilities must be in a room of at least 150 square feet. In a single room, the facilities should include a gas or electric plate, a refrigerator, and hot and cold running water. In a unit consisting of two adjoining rooms, the facilities should include a sink with hot and cold running water, a refrigerator, and storage area for food.[9]

BATHROOMS

In rooming houses with up to eight occupants, one toilet with a toilet seat, a wash basin in the same room, and one shower or bathtub is required in a room which provides privacy to a person.[10] In any dwelling where occupants of more than one dwelling share bathroom facilities, the landlord is responsible for cleaning and sanitizing the toilet, wash basin, and shower/bathtub at least once every twenty four hours.[11]

MINIMUM SQUARE FOOTAGE

In rooming houses, each bedroom shall contain at least 80 square feet (s.f.) if it is to be occupied by one person and at least 60 s.f. for each occupant if it is to be occupied by more than one person.[12] Children under the age of one are not counted as occupants.[13]

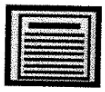
For example: *If two people intend to occupy a bedroom, there must be 60 s.f. for the first person and 60 s.f. for the second person for a total of 120 s.f. (60 + 60 = 120). Therefore, a bedroom must contain at least 120 s.f. for two people to legally sleep there.*

TERMINATING TENANCY AND EVICTION

A landlord does not have the right to lock out a lodger or to claim possession of the lodger's property for non-payment of rent. If the landlord wants a lodger to move out, he/she must serve a notice to quit and then go to court to start the eviction procedure. The proper procedure for removing a lodger from a rooming house is determined by how long he/she has lived there.

Lodgers who have lived in a rooming house for more than three consecutive months are tenants at will.[14] They have basically the same rights and responsibilities as tenants at will who are residing in apartments. The only difference relates to lodgers who pay rent daily or weekly and are creating damage, committing a nuisance, or interfering with the safety and enjoyment of the landlord or other occupants of the rooming house. In such cases, the landlord need only give seven days written notice to the lodger specifying the nuisance or interference to terminate the tenancy. If the lodger does not vacate within the seven days, the landlord may proceed to terminate the tenancy by eviction. This means that the landlord must wait until the seven day period of the notice is over, and then may file a Summary Process Complaint to evict the tenant.


See Chapter 13, Eviction Process

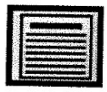

See Seven Day Notice to Quit For Cause - Tenant at Will Lodger form at the end of this Chapter.

In all other cases, a landlord may terminate the tenancy of a lodger who has lived in a rooming house for more than three consecutive months in the same way one would terminate the tenancy of a tenant at will. Although this type of tenancy only requires a notice period of one rental period, in regard to rooming houses, if the rental period is anything less than one month, the landlord is required to give a minimum of thirty days notice.


See Chapter 12, Landlord Ends the Tenancy

Lodgers who have lived in a rooming house for more than thirty consecutive days but less than three consecutive months, and those in a fraternity or school dormitory, are not considered tenants at will.[15]

The landlord need only give seven days written notice to the lodger to terminate the tenancy for any reason, other than discriminatory and retaliatory reasons. Lodgers in this category have most of the same rights as tenants at will except that they do not have the right to withhold rent, are only entitled to a seven day notice to terminate the tenancy, and may not get a Stay of Judgment and Execution in an eviction proceeding.


See Seven Day Notice to Quit - Tenant at Will Lodger form at the end of this Chapter.

Lodgers who have lived in a rooming house for thirty days or less are not considered tenants at will. The landlord need not give any written notice to terminate the tenancy. This means that the landlord may file a Summary Process Complaint to evict the tenant without any prior written notice.


See Chapter 13, Eviction Process

Lodgers in this category have most of the same rights as tenants at will except that they do not have the right to withhold rent, have no right to a written notice to terminate the tenancy, and may not get a Stay of Judgment and Execution in an eviction proceeding.