

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.

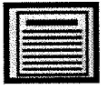
Typical situations in which a landlord might consider filing a small claims action against a tenant are as follows:

- 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.

TENANT v. LANDLORD

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:

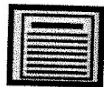
1. Tenant may pay the landlord and satisfy the judgment.
2. Tenant may appeal within ten days of receipt of the Notice of Judgment. In this case, the payment hearing is cancelled.
3. Tenant may appear at the hearing, with the burden on him/her to show why full payment should not be made. The tenant will 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

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.

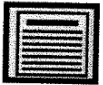
TERMINATING TENANCY AND EVICTION

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.

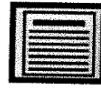


See Chapter 12, Landlord Ends the Tenancy

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.