

**Action for  
Boston  
Community  
Development**

# ***HOUSEMAN:***

**A Handbook of Tenant/  
Landlord Rights and  
Responsibilities**



**Massachusetts**

## **HOUSEMAN -- Action for Boston Community Development's Handbook of Tenant/Landlord Rights and Responsibilities**

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## INTRODUCTION

This book was put together to inform tenants of their rights and responsibilities while living in the Commonwealth of Massachusetts.

Tenants in this state have a number of rights when renting. However, if the proper legal procedure is not followed, a tenant may lose these rights. Understanding these rights ahead of time will not only help you to recognize potential problems, but also put you in a better position to protect yourself.

Keep in mind that there are various ways to achieve your goal of safe, affordable housing. When deciding on your approach to the problem, remember that you cannot always rely on the courts to rule a judgment in your favor. Many tenants avoid court altogether by successfully negotiating solutions with the property owner. This method of "getting the job done" not only saves time and money for both you and the Landlord, but typically aids in maintaining relationships between Tenants and Landlords.

### A Word of Caution

This brochure is a summary of Tenant/Landlord law for the Commonwealth of Massachusetts. Because the legal system is not permanent and laws and programs change, it is important that you check with a lawyer or housing advocate before you follow any legal procedures. Also keep in mind that laws differ from state to state, so if you are planning to move out of state or if you currently live outside Massachusetts and need housing assistance, please contact your local housing agency.

### Get Everything in Writing

***The best way to prove an agreement between you and your landlord, and prove that you have had communication with her is to have it in writing.*** Have all written agreements signed by you and the landlord. ***(Also make sure everything is dated.)*** If it is not possible for you to get agreements in writing, have a witness (anyone) with you when talking to your landlord.

### Keep a Record of Everything

Get signed and dated receipts for any money given to your landlord, and make sure the receipts state the purposes for which payment were made. Save all receipts and letters from your landlord and keep copies of any letters you send your landlord. Remember to date everything, and keep a written log of any oral conversations you have with the landlord (and who was with you) during times of trouble.

## LOOKING FOR AN APARTMENT

### Inspection

Never let the Landlord or rental agent rush you when you are looking at apartments. Carefully inspect the apartment. Don't be scared to ask questions. (After all, this could be your new home!) It is also helpful to speak with others that may live in the building or neighborhood. This will help to give you an idea of what the landlord and area are like. Make sure that you

read over any and all agreements **before** you sign it. If there are repairs that need to be made, make a list of the problems and get the landlord to agree to them in writing.

### **Discrimination**

A landlord or rental agent may not refuse to show or rent any apartment to you because of your race, color, religion, sex, age, ancestry, disability (mental or physical), marital status, or because you receive welfare, are a veteran, or are in the armed forces. Discrimination against families with children is also illegal. NOTE: Landlords in 2 family owner occupied buildings are exempt from most of these laws. Many landlords believe that if the apartment has lead paint they can refuse to rent to families with children under the age of six. This is not so. The landlord must remove the lead paint. If you feel that you have been discriminated against, you should file a complaint with the Massachusetts Commission Against Discrimination as soon as possible. If the apartment is still available, MCAD may be able to help you get in. It is also illegal for a landlord to refuse to accept Section 8 or MRVP tenants. **MGL ch. 151B; MGL CH.111 sec.197.**

## **MOVING IN**

### **Reading the Lease**

If there is a lease, read it carefully before you sign it. If there are any clauses that you don't like, have the landlord cross them out. You and the landlord should initial every change that is made. Any additions that you agree upon prior to signing the lease must be written in and initialed by you and the landlord. (For example, if there is a "no pet clause" in the lease but the landlord agrees to let you have your cat in the apartment, cross out the clause on the lease and have the landlord initial it.) Oral agreements between you and the landlord that are not written in and signed will not be enforced by the court.

In addition to standard leases, some landlords may write in their own clauses. Some of these clauses may be illegal. For example, clauses stating that you must pay for electricity or gas (in addition to your rental amount) when the service or bill is in the landlord's name are illegal. (The law requires that a landlord must pay electricity or gas unless there is a meter which separately calculates the tenant's utility use.) If there is an illegal clause but you feel that you will lose the apartment if you do not sign the lease, go ahead and sign it and move in. Your lease will still be valid except for the illegal parts.

## **WHAT THE LANDLORD CAN REQUIRE YOU TO PAY**

A landlord can only require you to pay the following things upon moving in:

- first month's rent,
- last month's rent,
- a security deposit of up to one month's rent, and
- the cost of buying and installing a new lock.

If the landlord requires you to give her a deposit to hold the apartment for you, then that money should be put towards the total amount required. ***Make sure that you get a signed and dated receipt for ANY money that you give the landlord.***

### **Statement of Condition**

If you pay a security deposit, the landlord must give you a written statement of condition within 10 days of receiving the money. This statement must list all damages that exist in the apartment and in all common areas prior to your moving in. Once you receive this statement, you have 15 days to either agree with the conditions, or write up your own list of damages and return it to your landlord with your signature on it. Take this seriously. Check over the apartment carefully and document everything. If you fail to return the statement within 15 days, then you are agreeing with the landlord's statement and could be held responsible for damages that occurred before you moved in. If the landlord does not give you a statement of condition, then you should write one out yourself, sign and date it and give a copy to your landlord. This process will help in protecting you later in getting your security deposit back.

## **HANDLING YOUR SECURITY DEPOSIT**

There are strict rules as to how a landlord must handle your security deposit.

A landlord cannot require you to pay more than the amount of one month's rent for a security deposit. (For tenants using a Section 8, the landlord can now require that ***you*** pay a security deposit equal to the full contract rent for the unit, not your portion of the rent. In turn, you are now covered under these laws.)

Once you give the landlord the deposit, she is required to do the following:

- give you a statement of condition on the unit;
- deposit your money in a separate interest bearing account;
- give you a signed receipt;

The landlord then has 30 days to give you a written statement of the name and location of the bank and the account number where she has placed your money. If the landlord fails to do these things within 30 days of receiving your deposit, you are entitled to get your security deposit back immediately. The landlord would also lose any right to sue you for damage to the apartment. ***MGL ch. 186 sec. 15B(2), (3).***

### **Interest**

At the end of each year of your tenancy, the landlord should send you a notice restating where your security deposit is and how much interest she owes you. You can either have this amount credited to your next rental payment or the landlord can pay it to you directly. ***MGL ch.186 sec. 15B (3)(b).*** In Massachusetts you are entitled to 5% interest a year unless the landlord's bank pays less. (You are only entitled to the amount earned on your money.) The landlord must notify you at the end of each year and within 30 days after you move out.

### **Last Month's Rent**

If a landlord requires you to pay last month's rent prior to moving in, then you are entitled to earn interest on this money as well. Like interest accrued on your security deposit, you are

entitled to 5% interest yearly, unless the landlord's bank has a lower interest rate. Unlike security deposit, there is no requirement that last month's rent be deposited in a separate account.

If, 30 days after the anniversary date of your tenancy, your landlord has not sent you this interest or told you that you can subtract it from your next rent check, you may legally subtract it from your next rent check. **MGL ch. 186 sec. 15B (2)(a).**

### **Transfer of Security Deposit and Last Month's Rent**

When ownership of a building is transferred, the security deposits and last month's rents must also be transferred. Under the law, you cannot be made to pay a new or additional security deposit or last month's rent because someone else has taken over the building. **MGL ch. 186 sec 15B (1)(d).** The old landlord or manager is required to transfer all last month's rents and security deposits, with their interest, to the new owner. The new owner now becomes responsible for the deposits and must notify you within 45 days that she has them. If you do not receive this written notice within 45 days of transfer, you should immediately demand that the old landlord refund your money. **MGL ch.186 sec.15B (6)(d).** Meanwhile, the new landlord is still responsible for the amount of your deposit, even if she never actually received it from the landlord. She may choose to allow you to live there rent free for the amount of time that was covered by the deposits. **MGL ch. 186 sec. 15B (5).** However you are not covered under these rights if your building is foreclosed by a bank or government agency for back taxes.

## **TYPES OF TENANCY**

Many landlords will have some type of written lease ready for the tenant to sign upon moving in. However, the type of tenancy may vary. It is important that you understand exactly what type of tenancy you have and the rights that follow.

### **Tenants with a Lease**

Most leases are good for one year. A lease is only valid if it is signed and dated by both the tenant and landlord, and states the date on which the lease ends. When you sign a lease you are agreeing that the conditions within the lease cannot be changed until the date on which it expires. As stated above, it is very important that this is a mutual agreement between you and the landlord. Keep in mind, the time to make changes on a lease is **before** you sign.

Some leases are self-extending. This means that you or the landlord must give written notice when either one of you desire to terminate the tenancy. (This is instead of your tenancy terminating automatically on a specific date.) If you stay under a self-extending lease, the original conditions of the lease stay intact. If you want to leave, make sure that you give the appropriate amount of notice to the landlord. The landlord may only terminate a lease term if the lease provides for it, such as where it is claimed the tenant owes rent or has engaged in misconduct.

### **Tenants at Will**

If you are living in an apartment without a written lease, and have the permission of the landlord, or if you have lived in a rooming house for more than three consecutive months, you are a *Tenant at Will*. This type of tenancy is also known as a month-to-month lease because you

are still required to pay rent every month. Before you move in, you and the landlord will agree upon how much rent you will pay and which utilities you will be responsible for paying. As with a written yearly lease, you have the right to "lawful and exclusive possession" of your apartment. This means that the landlord cannot enter your apartment without your permission. (See landlord access.) Unlike tenants with leases, a landlord can terminate your tenancy with proper notice. Notice from either party needs to be given on or before the first day of the last month of the rental period. In other words, if you are planning to move out on September 1st, you must give notice to the landlord before or on July 31st. Even if the landlord gives you written notice in the middle of the month (say July 5th), you still have one full rental period before the tenancy terminates (August 31st). If you rent by the week, notice must be received 30 days in advance. The only real advantage to a Tenancy at Will is that you can decide to leave your apartment with proper notice, without having to wait until the end of a lease.

### **Tenancy at Sufferance**

When your lease expires or the landlord ends your tenancy but you stay in the apartment, you are a *Tenant at Sufferance*. Technically, under the law you do not have a tenancy. However, the law does not consider you to be trespassing because at some point in time the landlord agreed to rent you the apartment. Landlords who receive rent from tenants in this situation must mark checks and receipts with the words "for use and occupancy only" - if this is not done the acceptance of rent creates a new tenancy at will.

### **Termination is Not the Same Thing as Eviction**

Termination is the ending of a lease or a rental agreement and either the landlord or a tenant can terminate a tenancy. An eviction is the forced removal of a tenant from an apartment after termination, and can only be ordered by a judge. The landlord cannot evict a tenant without going through legal procedures. All efforts should be made to resolve disputes before resorting to such serious actions.

### **Rent Increases**

The amount of rent you pay for your apartment is a term of your tenancy. If you have a lease, the rental amount stated cannot be changed until the expiration of the contract. If you are a Tenant at Will, your landlord can raise your rent, but must end your tenancy and offer you a new tenancy at the new rent. This increase must be in writing and received by you at least 30 days in advance. You do not have to accept the new rent, as long as you continue to pay the old rent. The landlord can still take you to court on this issue, but not for non-payment. If you want to stay in your apartment, you should try to negotiate with your landlord. Your landlord may be more willing to come to a mutual agreement with you on the rental amount, or to make needed repairs before she takes you to court. If you are able to come to an agreement with your landlord prior to court, make sure you get everything in writing.

### **Late Payments**

If you pay your rent after the required date, some landlords may try to charge a late fee or penalty. If you have a lease, it is vital that you read through it to see if there is a "late payment penalty" clause. This is only legal if it is written in your lease and requires you to pay extra after your rent is past 30 days late. If your lease does not have a penalty clause or your rent is less than 30 days late, then it is illegal to require you to pay. Some landlords try to disguise the late payment clause by writing in a "discount" clause. This is when a landlord leases you an apartment at a higher price, but when rent is paid within the first few days of the rental

period, a “discount” is issued and a lesser amount is charged. This practice is illegal, and you should not pay the extra money. ***MGL ch. 186 sec. 15B (1)(c).***

## **WHILE YOU'RE THERE**

### **Your Landlord's Right to Enter Your Apartment**

As a tenant you have the right to lawful and exclusive possession of your apartment. Many landlords believe that since they own the property they can enter your apartment whenever they want. **THIS IS NOT TRUE.** If there is a clause in your lease saying otherwise, then it is an illegal clause. Your landlord must give you reasonable notice before entering your apartment. Generally, this means 24 hours' notice to determine a mutually convenient time. A landlord that unreasonably enters your apartment may be guilty of criminal trespassing.

Under the law, you are required to provide a landlord with reasonable access to your apartment for the following reasons:

- to inspect the apartment;
- to make repairs as required by law;
- to show the apartment to prospective purchasers or tenants;
- if she has a court order allowing her to enter; or
- if the premises appear to have been abandoned by you.

The law also does not require you to give the landlord a key to your apartment.

The same conditions apply to those who have established tenancy without a written lease. If you have paid a security deposit, the landlord may enter to inspect the apartment for damages during the last thirty days of the tenancy. These rights to enter apply even if they are not written in the lease. ***MGL ch. 186 sec. 15B(1)(a).***

## **UNFAIR OR DECEPTIVE ACTS**

The Consumer Protection Act prohibits landlords from engaging in unfair or deceptive acts or practices that violate existing laws that protect your health, safety, or welfare. If your landlord has engaged in such acts you should send her a 30-day Demand Letter. If the landlord fails to make a good faith response within 30 days, you can sue her for three times your actual damages plus attorney's fees and court costs.

Unfair or deceptive acts include:

- Violations of the local building and housing codes, and state sanitary code,
- Retaliation against the tenant for exercising their legal rights,
- Charging illegal fees or penalties,
- Refusing to or failing to make repairs after the landlord has been notified,
- Violating your right to quiet enjoyment,
- Failing to provide services required by the tenancy agreement,

- Misusing your security deposit,
- Sending you documents that look like court papers, but are not,
- Refusing to accept court papers from you,
- Using illegal terms in your lease,
- Evicting the tenant without a court order,
- Taking the name, address, or phone number of the landlord or building manager for your building off your lease,
- Failure to provide you with a copy of your lease within 30 days after you have signed it.  
**MGL ch. 93A; 940 CMR 3.17.**

### Habitability Rights

Every tenant in Massachusetts is entitled to a safe living environment. Public safety and well-being is protected under the State Sanitary Code, which is enforced by local Boards of Health and, in Boston, by Inspectional Services Department. You have the right to insist that the landlord lives up to this obligation. To help to determine whether your apartment has health code violations, we have included a "HOUSING CODE CHECKLIST" on page 24.

Once you have determined the violations, you should notify the landlord in writing so that they may be repaired. The State determines the amount of time that a landlord has to correct the problem. This determination is based on the severity of the problem. If, however, you have given your landlord a chance to make repairs and she refuses, you should call the Board of Health or Inspectional Services, and schedule an inspection. If the violation is serious, the inspector must come out within 24 hours. You will need to set up a time for someone to be at the apartment and point out all the violations. The inspector will then write down all the violations and mail the landlord a written order to repair the conditions. The inspector must also hand you (or whoever you authorized to be there) a copy of the report. Ask for it if they fail to give it to you. Read it over and make sure that all the problems have been documented. They should then mail you a copy of the final report that the landlord receives within seven days. If you do not receive one, call and insist on getting a copy.

If the landlord fails to make the repairs within the allowed amount of time, you then have a few options:

### Withhold Rent

If repairs are not made within a timely manner after your landlord has been notified of conditions, you then have the right to withhold your rent. You must be able to prove both that the conditions exist, and that you have given the landlord notification of the problems. **Note: these rights do not apply to people living in motels or anyone who has lived in a rooming house for less than three consecutive months. These rights also do not apply to damages and conditions that were caused by the tenants currently living in the unit.** Tenants that chose to withhold rent should notify the landlord in writing that they are doing so and the reason why. (See "Sample Rent Withholding Letter" on page 13)

The right to withhold rent does not mean that you have the right to live in the apartment rent-free. You should keep all of the rent withheld in a separate bank account. This way if the landlord tries to evict you, you can prove to the court that you had the money to pay rent and did not simply stop paying rent because you did not have the money. Also, if you do go to court

over this issue, the judge may eventually order you to pay back some or all of the money that you withheld, and you will have this money available. If you don't, the judge may evict you.

Of course, withholding rent does not guarantee that the repairs will be made. Since there is strength in numbers, organizing other tenants within the building that are experiencing the same problems may be a good way to get the landlord to act. If you do organize the other tenants, have the inspector inspect all of the apartments. You then may choose to follow the rent withholding procedure. This may have a much stronger impact on the landlord.

Note: you should not withhold rent if you currently owe the landlord any back rent. You should wait until your debt is paid up until you begin withholding.

You should send both the letter stating the violations and rent withholding to your landlord by certified mail, return receipt requested. Make and keep a copy of all the letters for your records.

### **Repair and Deduct**

When conditions exist that “materially endanger the health and safety” of the tenants they can engage in repair and deduct. An inspection by either the Board of Health or Inspectional Services Department **must** cite that the conditions exist. If repairs are not started within five days of the landlord being notified or substantially completed within 14 days (or less, if required by the code enforcement agency) the tenants can make the repairs themselves and then deduct the costs from the rent. (See “Sample Repair and Deduct Letter” on page 14) Each and every tenant can then deduct up to four months' rent for their share of the repairs in any twelve month period. If you decide to repair and deduct, remember to keep all the bills and receipts. *It is illegal for a landlord to raise the rent after she has made repairs that are required by law or repairs that you have made under the repair and deduct statute. MGL ch.111 sec.127L*

### **Rent Abatement**

If the landlord allows serious violations of Sanitary Code to remain after she has been notified, then you are entitled to money damages equal to the difference between the value of the apartment as it should be and the rental value of the apartment as it is with the violations. Try to get the landlord to allow you to take some money off your rent. This is called rent abatement. If your landlord does not agree the lower amount, then deduct what you feel is reasonable depending on how serious the violations are. If the landlord takes you to court, the judge will then determine what the value of the apartment was while it had violations. You can also continue to pay the full rental amount and then sue the landlord to get some money back.

### **Retaliation**

As a tenant, you have the right to inform the landlord in writing of violations of the State Sanitary Code, report your landlord to the health inspector or officials for violations of law, withhold your rent because of bad conditions, deduct money from your rent for repairs that you have made, organize or join a tenant's organization, and take legal action against your landlord to enforce your rights.

If a landlord tries to evict you or sends you an eviction notice or rent increase within six months of your engaging in any of the above, it is considered retaliation. If a court decides that the landlord was retaliating, you cannot be evicted.

## Sample Rent Withholding Letter

Your Name

Your Address

Date

Dear Landlord,

I am writing to inform you of the following conditions in violation of the State Sanitary Code which exist in my apartment:

(List and Number the Violations)

I believe these conditions may endanger or materially impair me and my family's health, safety or well-being. I will withhold my rent until all the illegal conditions in my apartment are repaired.

Very truly yours,

Your Name

## Sample Repair and Deduct Letter

Your Name

Your Address ( Apt # )

Date

Dear Landlord,

On ( Date ) , my apartment and building was inspected by the Board of Health. The inspector certified on his report as potentially dangerous the following health code violations:

(List and Number the Violations )

You did not begin repairs within five days nor substantially complete the repairs within 14 days of notification of the violations.

We have therefore spent, pursuant to Massachusetts General Laws , Chapter 111, sec. 127L, the following amounts in repairing the above conditions, which are being deducted from our rent payments:

Materials: \$

Labor: \$

Copies of the bills for these repairs are enclosed.

Very truly yours,

Your Name

## EVICTIONS

### Only A Judge Can Evict You

Always remember, the only person who can evict you from your apartment is a judge.

No matter what a landlord or their lawyer says, **all** landlords must go to court and obtain permission from a judge in order to evict you. Don't let your landlord intimidate you into leaving until you have had your day in court.

Eviction is a long and expensive process. If there is a chance that mediation can solve the problem before it has to go to court, then you should strongly consider that option. Contact ABCD (if you live in Boston), or your local housing agency to put you in touch with someone that can help.

If you receive an eviction notice and you want to stay in your apartment, or you need more time, you must follow the proper procedures and complete **all** the required paperwork within the time allowed.

## GROUNDS FOR EVICTION

### Tenants with a Lease

If you have a lease you cannot be evicted unless:

- your lease has expired,
- you are not paying your rent,
- you are in violation of your lease, and the lease states that such violations may be cause for eviction.
- you use the apartment for certain illegal purposes.

If you are being evicted for non-payment, the complaint will also give a date when your answer is due in court. In order to stop the eviction and “cure”, you must pay all the rent owed, plus interest on the amount owed and your landlord's costs of filing an eviction case, on or before the answer date. If you cure within this time, make sure that you get a dated, written receipt from your landlord, along with an agreement that she will dismiss the case. If you pay by mail make sure that you send it certified, with return receipt requested, and **never** mail cash. You still need to go to court on the scheduled date, and bring the receipt or agreement to dismiss, so that the court can write up a judgment.

### Tenants at Will

If you are a tenant at will, the landlord does not need any reason to evict you. However, the landlord must send you a proper notice to quit.

If you are being evicted for non-payment of rent, you have ten days from the day you receive the notice to “cure” or pay up. If the landlord notice does not inform you about the ten day cure period, then you have the right to pay up on or before the answer date. You only have the opportunity to “cure” if this is the first time you have received a notice to quit within the last twelve months. If this is not your first time in the past twelve months, then you do not have a right to revive your tenancy.

## THE EVICTION PROCESS

### Notice

Before your landlord can evict you, she must properly notify you that she is ending or terminating your tenancy. This notice must be in writing and the time period begins from the date you receive the notice.

### 14-Day Notice to Quit

This type of notice is used if the landlord claims that you owe back rent. It can be given to you any day of the month. The landlord must wait 14 days from the date you receive the notice before she can go to court to start eviction.

### 30-Day Notice to Quit

If you are a Tenant-at-Will and your landlord tries to evict you for any reason other than non-payment of rent, or for no reason at all, she must give you a 30-day notice to quit. You must receive the notice at least 30 days or one full "rental period" in advance, whichever is longer. ***MGL ch. 186 sec. 12.*** (See "Types of Tenancy" for full explanation)

### 7-Day Notice to Quit

Some leases state that you can get a 7-day notice to quit if it is claimed that you have violated the terms of the lease. In addition if you are a tenant in a licensed rooming house and it is claimed that you have disturbed other tenants or caused a nuisance, a 7-day notice to quit may be issued. Except for these circumstances, a 30-day notice to quit is more common.

### The Summons and Complaint

After the date on the notice to quit expires, the landlord can now begin an eviction proceeding called a "summary process action". The landlord will file a complaint with the court and a copy of the complaint will be served to you. A summons must be served to you by a sheriff or a constable who is authorized by law to serve court papers. The complaint will state the reason for the eviction and how much, if any, rent your landlord claims you owe. It will also list the date, time and location of the court house where you must appear at. This document will also give you the date by which your answer must be filed at the courthouse.

### The Answer

The answer is your chance to tell your side of the story. It is very important that you file your answer at the court and send a copy to your landlord or her attorney by the date listed on the summons. If you don't do this, the judge may default you and give the landlord permission to move you out. It is possible to get that default removed, but it is better to get your answer in on time. This is also the time for the tenant to make any counterclaims that she has against the landlord. You should cite things such as health code violations, retaliatory actions, security deposit violations, and any other circumstances that apply. The forms that you need can be picked up at local district courts. As always, make sure you keep a copy of your answer for your records.

## Discovery

As a tenant facing eviction, you have the right to request information and documents from your landlord in order to prepare your case. If you request discovery, the court will postpone your court date for two weeks to give the landlord time to gather requested documents and send you the information. You must file your discovery papers with the court and deliver a copy to your landlord or her attorney **on or before the answer date**. If you do not file a discovery, then you must appear in court on the date stated on the summons.

## Preparing for the Hearing

Before you go to court, you need to make sure that you are prepared to give your side of the story in detail. Some things that you can do to prepare:

- Take pictures of any damages or code violations in the apartment, making sure you mark the date that the photos were taken.
- Collect any documents that you need to prove your case. Try to bring the originals.
- Get copies of any inspection reports, making sure that they are stamped and signed by the person who performed the inspection.
- If you have any witnesses, make arrangements for them to come with you.
- Prepare a brief written statement that summarizes for the court how the landlord violated the law and why you should not be evicted.
- Write out a list of any questions you may have for the landlord.

## Transfers

If your hearing is scheduled in District Court, you can have it transferred to Housing Court. The same legal proceedings apply to Housing Court, but the judges and staff are generally more familiar with housing laws than judges in district or superior courts. Housing Courts also have the staff and knowledge to assist tenants who do not have a lawyer to complete the legal process. If you transfer your case to Housing Court you lose your right to appeal the case in Superior court. You may still appeal the case to Appellate Court but this is more difficult to do. Even if you decide to transfer your case, you must file your answer and discovery forms by the date given on the original summons.

## The Hearing

Make sure that you are on time and in the room when the clerk calls your name. If you do not answer, you will be defaulted and you will lose the case. If your landlord does not appear, the case should be dismissed. Make sure to ask the clerk for a copy of the order of dismissal if this happens.

The court will give you the option to go into mediation. Mediators are trained court staff that will try to assist you and the landlord to make an agreement before you go to the judge. If you go into mediation, make sure that you do not agree to any conditions that you will not be able to keep. For example, if you are going in for non-payment of rent, and the landlord and mediator are deciding on a payback plan, make sure that it is an amount that you can afford. If you and the landlord cannot come to an agreement in mediation, then you will still be able to have a hearing before the judge. Everything that is said during mediation is confidential and should not be discussed in court if there is a hearing later.

## The Judgment

The judgment is the final decision of the court. A judge will either rule on a case while you are in the courtroom or they will “take it under advisement,” which means that the judge will send you a written decision in the mail. If the Judge rules in your favor, you will be able to stay in your apartment. If the judgment is against you, you will have to move or appeal the decision. If you appeal, you must file a “Notice of Appeal” and a “Motion to Waive Appeal Bond” within ten days of the hearing. ***MGL ch 239 sec. 3***

## The Execution

If your landlord wins the eviction case, she then gets a piece of paper called an execution. This gives the landlord permission to have a sheriff or constable remove you and your possessions from the apartment. A landlord must use this execution within three months of its being issued. ***Only a constable or sheriff can deliver the execution and move you out.*** A constable must give you 48 hours written notice that you are going to be evicted. This notice will give you the date and time a constable will move you out. A sheriff or constable can only move you out Monday - Friday, 9am-5pm, and not on legal holidays or weekends. The constable is responsible for seeing that your belongings get put in storage. If you do not want them there you must tell the constable, and they will move your belongings out to the street. The landlord is responsible for the costs of moving and storing your belongings for up to three months. Recently, storage companies have also been charging a docking fee when you remove your belongings from storage. The landlord is not responsible for payment of this fee.

## Stay of Execution

If you lose the eviction and need more time in the apartment, you can ask the judge for a “stay of execution”. To do this you should ask the judge for a stay at the time of the judgment and you must complete the form that you can request at the courthouse. The judge has the power to freeze an execution for up to six months, and up to twelve months if you are handicapped or 60 years or older (A stay cannot be granted if you are being evicted for non-payment of rent, or for some other reason that was your fault.). You should also bring with you a list of apartments that you have looked at and good reason why you need more time. If you are granted a stay of execution, you are still responsible for paying rent on the apartment while you are there. ***MGL ch. 239 sees. 9-11.***

## Tenants with Subsidies

If you are being evicted from subsidized housing or if you hold a subsidy certificate, your case will be more complicated. Make sure that you contact ABCD or the Legal Services in your area for assistance.

## MOVING OUT

### Tenants with a Lease

If you have a lease, read through it to make sure it is not self-extending. If it is then you will need to give the landlord proper notice that you intend to vacate the apartment, otherwise you could be bound to a lease agreement for another year. If your lease is not self-extending, then your tenancy will end on the date stated on the lease. Even if you plan to move at the end of your lease, it is a good idea to notify your landlord 30 days in advance.

If you want to leave before your lease is up, you need to come to some sort of agreement with the landlord. You should give the landlord written notice of your intention of leaving and then try to get a written acceptance. A written agreement will bind the landlord and enable you to leave legally. One option in negotiating leaving is to find someone else to move in. Some landlords allow subletting. Talk to your landlord about this possibility.

### **Tenants at Will**

As a tenant at will, there are two ways to terminate your tenancy. You can end your tenancy by agreement with the landlord in writing. If you can't get a written agreement, then make sure that you have a witness present when your landlord verbally agrees. The other way is to give your landlord written notice at least one full rental period before you want to move. If you want to move on September 1st, you must give notice before July 31st. If you wait until August 1st, the landlord could hold you responsible for August and September rent.

The notice must be in writing and the time period runs from the time that the landlord receives notice. Send the notice by certified mail, return receipt requested, and keep a copy for yourself.

### **Getting your Security Deposit Back**

Any security deposit must be returned to you within 30 days of your leaving the apartment. If the landlord claims that there are damages, above and beyond "reasonable wear and tear" to the unit, then she has 30 days from the day that you move out to send you a sworn list of the exact damages, plus copies of itemized bills or estimates for the cost of the repair. A landlord cannot deduct any money from your security deposit for "reasonable wear and tear." In addition, a landlord may keep any and all of your security deposit if you owe back rent, unless you withheld for poor conditions. If the landlord fails to notify you within 30 days of your move, she then gives up her right to keep any of the security deposit.

To protect yourself from further aggravation, you should try to get the landlord to inspect the property before you move out. Make sure to have a copy of your "statement of condition" on hand to challenge any damages that she may say you caused. You cannot be charged for any conditions that were present before you moved in. If you can get the landlord to do this inspection, make sure that you have a witness present for it.

If you cannot get the landlord to inspect, and you believe that the landlord may challenge you later on, take photographs of the apartment and write a detailed description of what they are with the date the picture was taken. This will help you to prove your side later on.

If your landlord does not return your deposit, or if she fails to send you a proper list of damages, you can sue in Small Claims Court for triple the amount of your deposit. For more information on this call ABCD Housing or your local courthouse. **MGL ch. 186 sec. 15B(4), (6-7).**

## IN A NUT SHELL

Presently there is a shortage of safe affordable housing in this state. It takes people months to find a place that is right for them. Unfortunately, we can't offer you the right apartment. But we do hope that we can assist you with the right tools to make your living conditions what they should be. Knowing your rights and what to expect is half of the battle. Most landlords want good tenants, and happy tenants tend to make good tenants. For landlords and tenants that need a little help with that, there are agencies across the state that are here to help. If you don't know who to call, start with your town or city hall; they usually have an idea of where to send you. Good Luck, and remember... knowledge is power!

## RESOURCES

### **ABCD, Inc.**

Action for Boston Community Development, Inc.  
178 Tremont Street  
Boston MA 02111  
(617) 357-6000

### **Fuel Assistance** - (617) 357-6012

Fuel subsidy payments for eligible low income tenants

### **Weatherization** - (617) 357-000 X 419

Provides house inspection and weatherization services.

### **ABCD Housing Department**

105 Chauncy Street  
Boston 02111  
357-6000 X 347

Provides information on tenant /landlord rights and responsibilities. Mediation and referral. Housing search, placement and stabilization for low income families and individuals who are homeless or at-risk of homelessness. Includes subsidy and market rate search.

### **Attorney General's Office**

One Ashburton Place  
Boston MA 02108  
(617) 727-2200

For complaints about unfair Realtor practices.

### **Boston Fair Housing Commission**

City Hall, Room 966  
Boston MA 02201  
(617) 635-4408

Investigates and can file charges in cases of discrimination because of race, gender, marital status, or because a potential tenant has children.

### **Boston Housing Authority (BHA)**

52 Chauncy St.  
Boston MA 02111  
(617) 988-4000

Administers and manages public housing, section 8 certificates and MRVP rental subsidy programs.

### **Childhood Lead Poisoning Prevention Program**

470 Atlantic Avenue  
Boston MA 02210  
(617) 753-8400

Performs screening tests for lead poisoning, inspection services and information and referral about tenant's rights and low interest funds for lead abatement.

**Department of Neighborhood Development (DND) (Formerly PFD)**

26 Court Street  
Boston MA 02108

Offers financial and technical assistance to low and moderate income landlords and developers of multi-unit dwellings. Offers subsidies to eligible tenants in some situations.

**Division of Housing and Community Development (DHCD)**

100 Cambridge Street  
Boston MA 02108  
(617) 717-7765

Administers non-profit Regional Housing Authorities throughout the state.

*Division of Consumer Affairs* provides information and referral about tenant and landlord rights.

**Greater Boston Legal Services (GBLS)**

197 Friend Street  
Boston MA 02114  
(617) 371-1270

Provides legal assistance and referral to low income eligible clients in landlord/tenant disputes and evictions. Call to check for geographic income and guidelines.

**Housing and Urban Development (HUD)**

10 Causeway Street  
Boston MA 02222  
(617) 565-5126

Provides federal subsidies for rental housing. Will send out a list of all HUD subsidized units throughout the state.

**Inspectional Services Department (ISD)**

1010 Mass. Ave.  
Boston MA 02118  
(617) 635-5322

Will make home inspections for suspected violations of the State Sanitary Code, including no heat. Can write up violations, and summon landlord to court.

**Massachusetts Coalition for the Homeless**

288 A Street  
Boston MA 02210  
(617) 737-3508

Provides information and referral on resources for homeless people. Also provides furniture (by referral) for formerly homeless people moving into housing.

**Massachusetts Commission Against Discrimination (MCAD)**

One Ashburton Place Room 601  
 Boston MA 02108  
 (617) 727-3990

Deals with discrimination cases for Massachusetts residents. (Boston residents should call the Boston Fair Housing Commission).

**Massachusetts Housing and Finance Agency (MHFA)**

One Beacon Street, 29th Floor  
 Boston MA 02108  
 854-1000

A state agency that provides funding for multi-family housing, low-interest mortgage loans for qualified buyers. The MHFA Housing List is a free 78 page listing of all privately owned state-subsidized housing throughout the state.

**Massachusetts Law Reform Institute**

99 Chauncy Street  
 Boston MA 02111  
 (617) 357-0700

Provides information and referrals regarding pro-bono lawyers for low-income tenants.

**Mayor's Hotline for 24 Hour Constituent Services**

Boston City Hall  
 Boston MA 02201  
 (617) 635-4500

Information, referral and advocacy for tenants who have no heat as a result of landlord negligence.

**Rental Housing Resource Center**

City Hall Room 709  
 Boston MA 02108  
 635-4700

Information, mediation and advocacy for tenants, especially those who were formerly housed in rent controlled apartments.

**Volunteer Lawyers Project of the Boston Bar Association**

29 Temple Place  
 Boston MA 02111  
 423-0648

Assists low income, elderly, disabled residents of the Boston area with civil legal matters.

## HOUSING CODE CHECKLIST

Date landlord knew about violation	Check if viola- tions exist	Sanitary Code Sec- tion (There are also a few references to Mass General Laws and one to a federal Post Office regulation)
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### Conditions that may endanger or materially impair your health or safety

Under the state sanitary code, the following violations are considered conditions that may “materially endanger” the health of you and your family. If you or the local board of health has notified your landlord of these violations, you may legally withhold all or a portion of your rent.

_____	<input type="checkbox"/>	No heat.	410.200
_____	<input type="checkbox"/>	No electricity or gas.	410.620
_____	<input type="checkbox"/>	No or inadequate electrical facilities or lighting in common areas.	410.250, 53A,B,254
_____	<input type="checkbox"/>	No safe water supply.	410.18
_____	<input type="checkbox"/>	No working toilet or sewage disposal system.	410.0450,30 0
_____	<input type="checkbox"/>	Inadequate exits, including the obstruction of any exit, passageway, or common area through which you exit in emergencies.	410.450,452
_____	<input type="checkbox"/>	No or inadequate locks for entry doors.	410.480D
_____	<input type="checkbox"/>	Accumulation of garbage or filth that may provide food or shelter for rodents, insects or other pests; or that may contribute accidents or disease.	410.600,601
_____	<input type="checkbox"/>	Presence of lead paint accessible to a child under age six.	G.L. c.111 190-199
_____	<input type="checkbox"/>	Roof, foundation, or other structural defects that may expose the occupant to fire, burns, shock, accident or others.	410.500
_____	<input type="checkbox"/>	Improperly installed or maintained electrical, plumbing, heating or gas-burning facilities that expose the occupant to fire, burns, shock, accident or other dangers. 4	10.351,352
_____	<input type="checkbox"/>	No or insufficient hot or cold water (including quantity, pressure, and temperature) for a period of 24 hours or longer.	410.180,190

_____	<input type="checkbox"/>	No smoke detector.	410.482
_____	<input type="checkbox"/>	Any defect in asbestos that may result in the release of dust.	410.353
_____	<input type="checkbox"/>	Any other violation of the sanitary code that the inspector finds to be a danger to health and safety.	410.750(P)

### Conditions That Must Be Fixed Within 5 Days

If any of the following violations exist in your apartment, they must be fixed within 5 days after the landlord is notified of them. If your landlord does not fix them, they become conditions that “materially endanger” your health and safety and you may withhold all or a portion of your rent.

_____	<input type="checkbox"/>	Kitchen sink, oven, or stove not in good working conditions.	410.100
_____	<input type="checkbox"/>	Sink, tub, or shower in the bathroom not in good working conditions.	410.150
_____	<input type="checkbox"/>	No or unsafe handrails or protective railings on porches, roofs, stairwells, or other similar places.	410.503
_____	<input type="checkbox"/>	Any defect in electrical, plumbing or heating system that violates “generally accepted standards” but does not create an immediate hazard.	410.75(o)(3)
_____	<input type="checkbox"/>	Cockroach, insect, or rodent infestation.	410.550
_____	<input type="checkbox"/>	Improper venting of space or water heater.	410.202

### Conditions That Must Be Fixed Within 30 Days

Your landlord must repair or provide the items and services listed below within 30 days of being notified that there is problem. If these problems are not fixed, they become conditions that “materially endanger” the health and safety of you and your family and you may withhold all or a portion of your rent.

#### Kitchen

_____	<input type="checkbox"/>	Sink must be large enough to wash dishes, get hot and cold water, and have proper drainage.	410.100, 410.350
_____	<input type="checkbox"/>	A stove and oven must be provided in good working condition (unless written agreement requires tenant to provide these).	410.100
_____	<input type="checkbox"/>	All sinks, owner-installed refrigerators and stoves, and gas and oil burning equipment must be kept in good working conditions.	410.351
_____	<input type="checkbox"/>	At least one working light fixture and one wall outlet must be provided.	410.251
_____	<input type="checkbox"/>	Floors must be smooth, non-corrosive, and waterproof.	410.504

#### Bathroom

_____	<input type="checkbox"/>	One toilet, free from defects, must be provided.	410.150(A) (1)
_____	<input type="checkbox"/>	One wash basin, free from defects, must be provided.	410.150(A) (2)
_____	<input type="checkbox"/>	One shower or bathtub, free from defects, must be provided.	410.150(A) (3)
_____	<input type="checkbox"/>	One electric light fixture, in good repair, must be provided.	410.252
_____	<input type="checkbox"/>	Adequate ventilation (see section below) must be provided.	410.280
_____	<input type="checkbox"/>	Floor and walls, to the height of four feet, must be constructed of nonabsorbent, easily cleanable material.	410.504

### Water

_____	<input type="checkbox"/>	There must be enough water, with adequate pressure, to meet your ordinary needs.	410.180
_____	<input type="checkbox"/>	There must be enough hot water at 120 degrees, with adequate pressure, for your ordinary use, unless a written lease requires you to provide it.	410.190
_____	<input type="checkbox"/>	The water heater must be vented to a chimney or duct leading outdoors (unless the heater is electrical). Old-fashioned open-flame water heaters are illegal.	410.202
_____	<input type="checkbox"/>	The toilet, wash basin, kitchen sink, shower, and/or bathtub must be properly connected to drain line.	410.350

### Heat

From September 16 to June 14, the landlord must provide facilities to heat every room (including bathrooms) to at least

_____	<input type="checkbox"/>	68 degrees Fahrenheit between 7a.m. and 11 p.m.	410.200-200
_____	<input type="checkbox"/>	64 degrees Fahrenheit between 11p.m. and 7 a.m.	410.200-201
_____	<input type="checkbox"/>	Heating equipment must be maintained in good working order.	410.351
_____	<input type="checkbox"/>	Space heaters must be vented to a chimney or duct leading outdoors (unless the heater is electrical).	410.202
_____	<input type="checkbox"/>	Landlord must provide and pay for heat unless there is a written agreement requiring tenants to pay for heat.	410.201

### Ventilation and Light

_____	<input type="checkbox"/>	Every room must have either windows, skylights, floors, or transom in the exterior wall or roof that can easily be opened to measure a minimum area of 4% of the floor area of that room; OR adequate mechanical ventilation systems.	410.280
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- \_\_\_\_\_  Each room (except a kitchen smaller than 70 square feet, or a bathroom) must have transparent or translucent glass that admits light from the outdoors. Glass obstructed by an outside structure less than 3 feet away does not count toward meeting this requirement. 410.250(A)  
410.257
- \_\_\_\_\_  In larger building (10 or more units) there must be an emergency lighting system in the halls and at exits. 410.483

### **Electricity, Wiring, and Gas**

- \_\_\_\_\_  The landlord must provide and pay for electricity and gas unless the tenant's apartment is individually metered and there is a written rental agreement requiring the tenant to pay. 410.354  
410.250  
Electrical service must provide sufficient amperage to meet the reasonable needs of the occupant. 410.255  
For each room other than the kitchen and bathroom, either two separate electrical outlets or one electric light fixture and one wall outlet must be provided.

### **Electric light fixtures must be located so that light will be available for the safe and reasonable use of:**

- \_\_\_\_\_  Laundry rooms. 410.253(A)
- \_\_\_\_\_  Pantry. 410.253(A)
- \_\_\_\_\_  Hallways, stairways, foyer, or community corridor. 410.253 (A)
- \_\_\_\_\_  Closet or storage space. 410.253 (A)
- \_\_\_\_\_  Cellar. 410.253 (A)
- \_\_\_\_\_  Porch. 410.253 (A)
- \_\_\_\_\_  Exterior stairway. 410.253 (A)

### **Sufficient lighting must be provided in all parts of the house, including:**

- \_\_\_\_\_  Interior passageways. 410.254
- \_\_\_\_\_  Hallways. 410.254
- \_\_\_\_\_  Stairways. 410.254
- \_\_\_\_\_  Wiring must not pass under rugs or through doorways. 410.256
- \_\_\_\_\_  Temporary wiring may not be used (but extension cords to portable appliances are OK). 410.256

- \_\_\_\_\_  Buildings with ten or more units must have an auxiliary emergency lighting system independent of the conventional system. G.L. c. 143 21D

### Safety

- \_\_\_\_\_  There must be at least two exits from each apartment, more if necessary for "safe passage of all people." 410.450
- \_\_\_\_\_  Exits for more than one unit must be kept free from obstruction. 410.451
- \_\_\_\_\_  All exits shall be safe, operable and kept free of ice and snow. 410.452
- \_\_\_\_\_  Fire extinguishers must be properly located as required by the local fire chief. 527.CMR 10.02
- \_\_\_\_\_  There must be locks on all exterior windows and entry doors. 410.480 D, E

### Buildings with more than three apartments must have:

- \_\_\_\_\_  A main front door that closes and locks automatically. 410.480C
- \_\_\_\_\_  Locks on all other entry doors in common areas. 410.480B
- \_\_\_\_\_  Buildings over 70 feet high must have an automatic sprinkler system (Building Code). G.L.c.143 c.148.26  
Landlords must maintain all pipes, oil and gas burning equipment so that it is free from leaks, obstructions, and other defects. 410.351
- \_\_\_\_\_  Buildings with 10 or more units must have lighted signs indicating both primary and secondary means of exit by diagram. G.L. c.143 21D
- \_\_\_\_\_  Most buildings must be equipped with smoke detectors in good working order. 410.482

### Maintenance: Structural

- \_\_\_\_\_  The landlord must maintain the property "in good repair, in every way fit for the use intended." 410.500
- \_\_\_\_\_  Foundations must be weather tight, insect proof and rodent proof. 410.500
- \_\_\_\_\_  Floors must be free of holes, cracks, loose mortar or other defects. 410.500
- \_\_\_\_\_  Interior walls must be free of holes, cracks, loose plaster, and must be cleanable and weather tight. 410.500
- \_\_\_\_\_  Interior walls must be free of holes, cracks, warping, loose or rotting boards or other hazardous conditions. 410.500

_____	<input type="checkbox"/>	Ceilings must be free of holes, cracks, and loose plaster and must be cleanable and weather tight.	410.500
_____	<input type="checkbox"/>	Doors and windows must be weather tight.	410.501
_____	<input type="checkbox"/>	Roof must be free from holes and cracks and must be weather tight.	410.500
_____	<input type="checkbox"/>	Chimneys and other structural elements must be in good repair.	410.500
_____	<input type="checkbox"/>	Staircases must be stable with a handrail or banister if the stairs rise 30 inches or higher.	510.500,503
_____	<input type="checkbox"/>	Handrails must be at least three feet high and are required on every porch, balcony or roof over 30 inches above the ground and used by tenants.	510.503

### General Maintenance

_____	<input type="checkbox"/>	Apartment must be kept weather tight and in good repair.	410.500,501
_____	<input type="checkbox"/>	An absentee landlord must (unless a manager/agent lives in the building) keep a sign inside the building giving the name, address and phone number of the landlord or his/her agent. 410.481 Landlords may not turn off or interfere with a tenant's water, hot water, heat, lights, power, gas or telephone service.	410.620
_____	<input type="checkbox"/>	In buildings with three or more units, there must be one mail box per apartment, and it must be kept locked and maintained in good repair.	Fed.Postal RegsA(1)a, E(1,2,4)
_____	<input type="checkbox"/>	Screens are required on all doors and windows that open to the outside.	410.551
_____	<input type="checkbox"/>	Exterior stairways must be kept free of snow and ice.	410.452

### The following appliances must be maintained so that they are free of leaks, obstructions and other defects:

_____	<input type="checkbox"/>	Water heating facilities, gas pipes, gas-burning equipment, and water pipes.	410.452
_____	<input type="checkbox"/>	Landlord installed dishwashers and clothes washing machines.	410.351
_____	<input type="checkbox"/>	Catch basins, vents and all other similar fixtures supplied by the landlord.	410.351
_____	<input type="checkbox"/>	There must be working connections to the water, sewer and gas lines, and to the subsurface sewage disposal system if any.	410.300

**Rats and Roaches**

- \_\_\_\_\_  No rats or roaches or other insects are allowed into the building. The landlord must exterminate them when they are found in common areas or in any individual apartment. 410.550

**Garbage**

- \_\_\_\_\_  In buildings with three or more units, the landlord must provide enough watertight garbage cans with tightly fitting covers "to contain the accumulation before collection." 410.600

**Lead Paint**

- \_\_\_\_\_  No lead paint may be used inside of apartments. 410.502
- \_\_\_\_\_  Existing lead paint must be removed or covered by the landlord if you have a child under the age of six. This must be done up to a height of five feet from the floor level. Repainting with a non-lead paint is not good enough. 460.000  
G.L. c. 111  
197