

TYPES OF TENANCY

Your legal rights may vary depending on what type of tenancy you have.

A *Tenant with a Lease* is one who signs a lease to rent a particular apartment for a specified period of time. Under this tenancy, the landlord cannot increase your rent until the end of the lease, and cannot attempt to evict you before the end of your lease, unless you violate the lease agreement. You are legally obligated to pay your rent until the end of the lease. However, if you need to move out before the end of the lease, in most circumstances the landlord has a duty to help reduce your damages by looking for another tenant to replace you.

A *Tenant at Will* is one who occupies a rented apartment without a lease, but pays rent periodically (typically monthly). The agreement for the Tenancy at Will may be either written or verbal. Either the landlord or you may terminate this arrangement at any time by giving written notice 30 days or one full rental period in advance, whichever is longer. No reason is required to terminate. If your landlord wants to raise your rent, he or she must send you a proper legal notice terminating your tenancy, and then make you an offer to remain in the apartment for the increased rent.

PAYING THE RENT

As a tenant, you have a legal responsibility to pay your landlord rent for the use of a place that is in decent condition. Massachusetts law also provides you with rights that protect the payments you make to the landlord. (M.G.L. c. 186 §15B)

Prepayments: It is an unfair or deceptive practice for a landlord to demand that you pre-pay rent in excess of that allowed by law. (See Finding an Apartment.)

Late Payment Penalty: A landlord cannot charge interest or a penalty on late rent until 30 days after the due date. However, the landlord can begin the eviction process immediately, even if the rent is only one day overdue. The landlord also cannot use a reverse penalty clause to encourage you to pay early. For example, it is illegal for a landlord to reduce the rent by 10% if the rent is paid within the first five days of the month.

Rent Increases: A rental increase may be any amount the landlord wishes to charge. Rent for a tenant with a lease can be increased only when the lease term expires. Tenants at will may face a rent increase any time, as long as notice is received at least one full rental period, but not less than 30 days, before it becomes effective.

Security Deposits and Last Month's Rent: Last month's rent is the pre-payment to the landlord for the last month of tenancy. A security deposit is a deposit of money to the landlord to ensure that rent will be paid and other responsibilities of the agreement will be performed. Neither may be greater than the amount of one month's rent. If the landlord later raises the rent, he or she can require you to increase the amounts of both pre-payments to equal the new rent. Neither the landlord nor you can transfer one for the use of the other without the other party's consent.

Receipts: Upon receiving the last month's rent and/or a security deposit, the landlord must give you a receipt for each pre-payment. If the landlord collects the last month's rent, he or she must give you a statement indicating that you are entitled to interest on this rent and that you should provide the landlord with a forwarding address at the termination of tenancy where interest can be sent.

Interest: The landlord must pay interest on both the security deposit and the last month's rent. The payment of interest on security deposits and last month's rent has been required by law since January 1, 1972, and April 1, 1984, respectively.

Security deposit: you are entitled to either 5% interest or whatever lesser amount received from the bank where the deposit has been held, if you live in the apartment for at least one year. The law requires the

landlord to hold a security deposit in a separate, interest bearing account in a Massachusetts bank. Within 30 days of receiving your deposit, the landlord must give you a receipt identifying the bank's name and address, the account number, and the amount of the deposit.

Last month's rent: you are entitled to either 5% interest or whatever lesser amount received from the bank where the rent was held. You do not have to live in your apartment for one year to be eligible for the interest.

Payment of Interest: Interest is payable to you each year on the anniversary date of your tenancy. The landlord must send you a statement of the interest owed, and must either include the interest, or allow you to deduct the amount from the next rental payment. If you do not receive the interest within 30 days of the anniversary, then you may deduct the interest from the next month's rent. Once you terminate your tenancy, any interest owed to you must be paid within 30 days of termination.

Statement of Condition: If a landlord or agent takes a security deposit, he or she must give you a signed, separate statement of the present condition of your apartment including a comprehensive list of any existing damage. The landlord/agent must provide you with this statement upon receipt of the deposit or within 10 days after the tenancy begins, whichever is later. If you do not agree with the contents of the statement, you must return a corrected copy to the landlord within 15 days after you receive the list or 15 days after you move in, whichever is later. If you fail to return the list and later sue to recover your security deposit, a court may view your failure to do so as your agreement that the list is complete and correct. If you submit a separate list of damages, the landlord must return it within 15 days of receipt with a clear written response of agreement or disagreement.

The signed statement and the original condition statement are the basis upon which future deductions for damage will be made. If the landlord does not give you a Statement of Condition, you should write your own and send a copy to the landlord or agent.

Damage Deduction for Security Deposits: The landlord must return your security deposit or balance within 30 days after the termination of tenancy. The landlord can only deduct for the following:

- any unpaid rent which has not been withheld validly or deducted in accordance with the law;
- any unpaid increase in real estate taxes if you were obligated to pay it under a valid tax escalator clause in your lease; and
- a reasonable amount necessary to repair any damage caused by you, any person under your control, or any person on the premises with your consent. Pet damage can also be deducted. You do not have to pay for reasonable wear and tear associated with normal use.

If the premises are damaged, the landlord must provide you with a detailed list of damages and their necessary repairs within 30 days after the tenancy ends. The landlord or agent must swear to this list under the pains and penalties of perjury. In addition, the landlord or agent must provide you with written evidence indicating the actual or estimated cost of these repairs, such as estimates, bills, invoices, or receipts.

Transfers of Pre-payments to New Landlords: Upon sale or transfer of the building, the landlord must credit the last month's rent and security deposit with any accrued interest to the new landlord. The new landlord must give written notice of the transfer within 45 days of receiving your money. If the former landlord fails to transfer the pre-payments to the new landlord, she or he is still liable, but the new landlord shall also be obligated to you for the amount of the pre-payments. The new landlord can satisfy this obligation by granting you free rent for a time equivalent to the payments made.

You are entitled to the immediate return of your security deposit if the landlord...

- fails to make the security deposit records available for inspection during office hours; or
- fails to provide you, within 30 days of receipt of the security deposit, a receipt with the name and location of the bank and the amount and account number of the deposit;
- makes deductions for damages and fails to furnish you with an itemized list of damages within 30 days after termination of tenancy; or
- uses a lease which contains provisions conflicting with the security deposit law and attempts to enforce these provisions or attempts to get you to sign a waiver of rights.

Under the above-mentioned circumstances, the landlord cannot keep your security deposit for any reason, including making deductions for damages.

And if the landlord fails...

- to deposit the security deposit into a bank account;
- to return the security deposit (or balance after lawful deductions) with interest within 30 days after termination of tenancy; or
- to transfer the security deposit or last month's rent to the new landlord;

you are entitled to the immediate return of your security deposit *and* triple damages, plus court costs, and reasonable attorney's fees. You also are entitled to triple damages, court costs, and reasonable attorney's fees if the landlord fails to pay interest on the last month's rent within 30 days after termination of tenancy.

TENANTS' RIGHTS

Rights Against Unlawful Entry: Your landlord, or an agent for your landlord, may only enter your apartment for the following reasons:

- to inspect the premises;
- to make repairs;
- to show the apartment to a prospective tenant, purchaser, mortgagee or its agents;
- in accordance with a court order;
- if the premises appear to be abandoned, or
- to inspect the premises within the last 30 days of tenancy in order to determine the amount of damage to be deducted from the security deposit.

The landlord should be reasonable and attempt to arrange a mutually convenient time to visit the apartment. If the landlord insists on entering your apartment in an unreasonable fashion, you may file for a temporary restraining order at your local district court. (M.G.L. c. 186 §15B)

Rights Against Retaliation: Although the landlord of a tenant at will can terminate the tenancy or raise the rent without reason, he or she cannot do so in response to your exercising your legal rights. If the landlord tries to raise the rent, terminate or otherwise change your tenancy within six months of when you contact the Board of Health, join a tenants' organization, or exercise other legal rights, the landlord's action will be considered retaliation against you, unless the landlord can prove otherwise. The landlord will have the burden to prove that your tenancy was changed for reasons other than your having exercised your rights. (M.G.L. c. 186 §18)

Habitability Rights: You are entitled to a safe and habitable living environment. The State Sanitary Code protects the health, safety and well-being of tenants and the general public. The local Boards of Health enforce the code. (Note: In Boston, it is the Housing Inspection Department.) Copies of the Code may be purchased from the State House Bookstore, State House, Room 116, Boston, MA 02133 (617) 727-2834.

The following is a sampling of provisions outlined in the Code:

Water: The landlord must provide you with enough water, with adequate pressure, to meet your ordinary needs. You cannot be charged for water. If your lease requires you to pay for water and sewer costs, that provision in your lease is void and unenforceable. The landlord also must provide the facilities to heat the water at a temperature between 110°F and 130°F, however your written lease may require you to pay for and provide the fuel to heat the water.

Heat: The landlord must provide a heating system in good working order. The landlord must pay for the heat, unless your lease requires you to pay for it. From September 16 to June 14, every room must be heated to a least 68°F between 7:00 AM and 11:00 PM, and at least 64°F at all other hours. During the heating season, the maximum heat allowable in the apartment is 78°F.

Kitchens: The landlord must provide within the kitchen: a sink of sufficient size and capacity for washing dishes and kitchen utensils, a stove and oven in good repair (unless your written lease requires you to provide your own), and space and proper facilities for the installation of a refrigerator. The landlord does not have to provide a refrigerator. If a refrigerator is provided, however, the landlord must keep it in working order.

Cockroaches and rodents: The landlord must maintain the unit free from rodents, cockroaches, and insect infestation, if there are two or more apartments in the building.

Structural Elements: Every landlord must maintain the foundation, floors, walls, doors, windows, ceilings, roof, staircases, porches, chimneys, and other structural elements of the dwelling so that it excludes wind, rain, and snow; is rodent-proof, weathertight, watertight, and free from chronic dampness; in good repair, and in every way fit for its intended use.

Snow Removal: Every exit used or intended for use by occupants of more than one dwelling unit or rooming unit shall be maintained free from obstruction.

TENANTS' REMEDIES

Rent Withholding: The Massachusetts Supreme Judicial Court ruled that when a landlord fails to maintain a dwelling in a habitable condition, a tenant may properly withhold a portion of the rent from the date the landlord has notice of this breach of the warranty of habitability (M.G.L. c. 239, §8A). You may withhold rent if:

- You have appealed to your landlord in writing to make the necessary repairs;
- Your local board of health has inspected your apartment and found health code violations; and
- You are current in your rent up until the time of the problem, you are not the cause of the problem and the unsanitary conditions do not require the apartment to be vacated.

Withholding your rent can be a useful tool to force repairs, but it is a serious step and should be dealt with carefully. You first should notify your landlord that you will be withholding rent and specify the reasons why. Although not required by law, you should deposit any rent you withhold into an escrow account to show good faith.

Repair and Deduct: A tenant may make emergency repairs in an apartment or common living area and deduct up to four months future rent to pay for them, if three conditions are met:

- The local Board of Health or other code enforcement agency has certified that the present conditions endanger the health or safety of the tenants;
- The landlord receives written notice of the existing violations from the inspecting agency; and
- The landlord is given 5 days from the date of notice to begin

repairs or to contract for outside services and 14 days to substantially complete all necessary repairs.

(Note: If ordered by the court or the local code enforcement agency to make repairs in less than 14 days, then the landlord must comply with the shorter time frame.)

If you meet the requirements for "repair and deduct," the lease or rental agreement is void. You now have the right to move if you choose not to make repairs. However, you must pay the fair value for the period you occupied the apartment and vacate the apartment within a reasonable period of time (M.G.L. c. 111, §127L).

SOURCES OF HELP

Housing Discrimination:

Massachusetts Commission Against Discrimination
(617) 727-3990

Complaints Against Real Estate Agents / Salespersons:

Division of Registration Investigative Unit
(617) 727-7406

Lead Paint Removal:

Department of Public Health
Childhood Lead Poisoning Prevention Program
(617) 522-3700 or Toll Free: (800) 532-9571

Face-to-Face Mediation:

For the program in your area call
Attorney General's Consumer Hotline
(617) 727-8400

Housing Services Program:

Provides mediation for low-income tenants and landlords
Executive Office of Communities and Development
(617) 727-7127

General Questions:

Office of Consumer Affairs and Business Regulation
(617) 727-7780 or Toll Free: (888) 283-3757

Endnotes

1. Tenant.net, http://tenant.net/Other_Areas/Massachusetts/ROSS/tenant.html, section 12.
2. Tenant.net, http://tenant.net/Other_Areas/Massachusetts/ROSS/tenant.html, section 2.

This brochure has been prepared using information on the official Web page of the Commonwealth of Massachusetts. Some notes have been taken from Tenants.Net, a web site providing information for tenants. It is provided for information, and does not represent any type of legal consultation. If you feel that you have a valid dispute with a landlord, please consider consulting an attorney.

For more information, look at the Web site at this URL:

<http://www.state.ma.us/consumer/pubs/tenant.htm>

If you cannot afford an attorney, you can call the New Center for Legal Advocacy at (508) 586-8393 and they may be able to provide you with legal aid.

A Massachusetts Consumer Guide: Tenants' Rights And Responsibilities

FINDING AN APARTMENT

Finder's Fee: Only a licensed real estate broker or salesperson can charge you a fee for the purpose of finding an apartment. The amount, due date, and the purpose of the fee must be disclosed to you prior to any transaction. There is no set amount to the fee, as it is a contractual arrangement between the licensed broker or salesperson and you. (M.G.L. c. 112 §87DDD-1/2)

Pre-payments: Before you move in, the landlord can only collect the first and last month's rent, one month's security deposit, and the purchase and installation cost for a lock and key (*This does not mean a key deposit. The law does not allow a key deposit, and such deposits are illegal!*). (M.G.L. c. 186 §15B) This may imply that a landlord cannot collect a finder's fee for his or her own apartment.

Right Against Unlawful Discrimination: Massachusetts law prohibits discrimination in housing on the basis of race, religion, national origin, age, ancestry, military background or service, sex, sexual preference, marital status, blindness, deafness, or the need of a guide dog, except in owner-occupied two family dwellings. (M.G.L. c. 151B §4) No landlord can refuse to rent you an apartment because you receive a rental subsidy, because the apartment contains lead, or, with some exceptions, because you have children.

Before Agreeing to Tenancy (or Signing a Lease):

- Do not put money down unless you are sure you want the apartment. Although you may be legally entitled to your money up until the landlord formally accepts you as a tenant, that money may be difficult to recover.
- Calculate the anticipated costs of utilities (i.e., heat, electricity) when determining which apartments you can afford.
- Know what is expected of you in terms of pre-payments or a finder's fee.
- Check the apartment to ensure that it is in acceptable condition. Put all agreements for repairs in writing.
- Evaluate the ease of the contract and the response record of non-resident superintendent to "after hours" emergencies.
- Talk with prospective neighbors about the competency and reputation of the landlord and/or management company.

Rental Agreements: According to state consumer protection regulations, a landlord must include the following in a written rental agreement:

- The names, addresses and telephone numbers of the owners and other persons who are responsible for the care, maintenance and repair of the property;
- The name, address and telephone number of the person authorized to receive notices of violations of law and to accept notice of lawsuit on behalf of the owner;
- The amount of the security deposit and disclosure of rights under the Security Deposit Law.

The landlord also must give you an executed copy of this agreement within 30 days of your signing it. (940 CMR 3.17 (3)) You and the landlord may agree verbally to the terms of your tenancy. It is safer, however, to get all terms in writing.

(NOTE: It surprises many people, but there is no law entitling the landlord to a key to the apartment without a provision to that effect in a rental agreement.)