RENTING
(An Apartment or House)

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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 costs for a lock and key (M.G.L. c. 186, § 15B).

Rights 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 or, with some exceptions, because you have children.

Before Agreeing to a 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 the return of 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 proposed tenancy agreement and the response record of a non-resident superintendent to "after hours" emergencies.
- Talk with perspective 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:

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- 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 a lawsuit on behalf of the owner; and,
- The amount of the security deposit and disclosure of the rights under the Security Deposit Law.

If the landlord uses a lease that contains any provision that conflicts with the Security Deposit Law and attempts to enforce that provision or attempts to obtain from you or a prospective tenant a waiver of any provision of the Security Deposit Law, the landlord cannot keep your security deposit for any reason including making deductions for damages.

You may want to meet the landlord of a small owner occupied building before you sign the agreement. This tends to foster a good and congenial relationship from the start.
The landlord also must give you an executed copy of the rental 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.

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 or choose to move out before the end of the lease, in most circumstances the landlord has a duty to mitigate his/her loss 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 of 30 days or one full rental period in advance, whichever is longer. No reason is required to terminate a Tenancy at Will. If your landlord wants to raise your rent, he 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.
If your tenancy is subsidized, you may have different rights and responsibilities than those summarized in this information.

Paying the rent
As a tenant, you have a legal responsibility to pay your landlord 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).

Pre-payments – 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 section on Finding an Apartment.)

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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 at 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 & 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 the first month's rent. If the landlord later raises the rent, she can require you to increase the amount of last's month's rent 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 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 the security deposit 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 is 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 is received from the bank where your rent was held. If the last month's rent is not held in a bank account, the landlord must pay 5% interest per year. 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

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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 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 send you a Statement of Condition, you should write your own and send a copy to the landlord or agent and keep a copy for your records.

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;
- 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.

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.

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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, §§ 14 and 15B).

Rights Against Retaliation

Although the landlord of a Tenant at Will or under lease can terminate the tenancy or raise the rent without reason, s/he 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 throughout your entire tenancy. The State Sanitary Code protects the health, safety and well-being of tenants and the general public (105 CMR 410). 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.

Rent Withholding

The Massachusetts Supreme Judicial Court ruled that when a landlord fails to maintain a dwelling in habitable condition, a tenant may properly withhold a portion of the rent from the date the landlord has notice of this breach of warrant of habit-ability. Rent withholding can be a useful tool to force repairs, but it is a serious step and should be dealt with carefully. You may want to get legal advice before withholding your rent since the landlord may try to evict you for non-payment of rent.

You may withhold a portion of your rent if:

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

Deciding how much to withhold is based on each situation. You need only pay the fair rent for your unit given its defective condition. **Once the landlord has repaired all defects, the tenant must pay all withheld rent** (M.G.L. c. 239, § 8A).

Repair and Deduct

You 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 your health or safety; and
- The landlord receives written notice of the existing violations from the inspecting agency; and

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- The landlord is given five days from the date of notice to begin repairs or to contract for outside services and 14 days to substantially complete all necessary repairs. (The inspecting agency or court may shorten this time frame.)

Remember: If you contract to make repairs and then deduct the cost from the rent, you must retain a receipt. Further, if the costs are deemed to be unreasonable, you will only be able to deduct that portion which is reasonable.

If you qualify under the requirements of "repair and deduct," you may treat your lease as void. You then have the right to move out if you choose not to make repairs. **However, you must pay the fair rental value for the period you occupied the apartment, and you must vacate within a reasonable period of time** (M.G.L. c. 111, § 127L).

Terminating and Reviving your Tenancy

Tenants with a Lease: Your landlord may attempt to evict you if you have not been paying your rent, or if you or people under your control have caused excessive damage to your apartment or you have violated the terms of your lease. Your landlord must first send you a "Notice to Quit" your tenancy. If the landlord is terminating your tenancy for non-payment of rent, he must send you a "14-Day Notice to Quit" (M.G.L.c.186, §§ 11 and 12). Your lease will specify the notice requirement for other terminations; it is typically **seven** days.

If you are being evicted for non-payment of rent, you may avoid the eviction if you pay all rent owed, plus interest, and the landlord's cost of filing an eviction case on or before the date your Answer is due.

Tenants at Will: Your landlord must send you a "14-Day Notice to Quit" if terminating your tenancy for non-payment of rent (M.G.L. c. 186, § 12). If it is being terminated for any other reason, you must be given written notice 30 days, or one full rental period in advance, whichever is longer.

If you are being evicted for non-payment of rent, you may avoid the eviction by paying the rent due within 10 days of receiving this notice, as long as this is the **first** notice you have received within the last 12 months. If there is no statement of your right to revive the tenancy in the Notice, you have until the date your Answer is due.

Landlords of tenants with rent subsidies must follow the eviction procedures in their rent subsidy contract and lease agreement.

For more information see:
http://www.mass.gov/?pageID=ocaterminal&L=4&L0=Home&L1=Consumer&L2=Housing+Information&L3=Tenant+%26+Landlord&sid=Eoca&b=terminalcontent&f=tenants_rights_and_responsibilities&csid=Eoca

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