LANDLORD TENANT OVERVIEW

Terms of tenancy

Your rights and responsibilities as either a landlord or a tenant depend on whether the tenancy is based on a lease or is an at-will tenancy.

Tenancy based on a lease

When a tenant signs a lease with a landlord, the tenant agrees that the tenancy will last for a certain amount of time, often one year. During that time, the monthly rent must stay the same and the landlord cannot end the tenancy (evict the tenant) unless the tenant fails to satisfy the conditions in the lease. The tenant is committed to paying rent for the term of the lease and may only end the tenancy before the close of the lease term if the landlord agrees to an early termination of the lease.

A lease is a good option for tenants and landlords seeking stability in a tenancy. The written agreement between the tenant and the landlord should contain all of the rules that will apply to the tenancy.

Tenancy-at-will

In a tenancy-at-will the agreement lasts for as long as both parties want to do business with each other. Sometimes there is no written agreement at all in a tenancy-at-will, but often the tenant is asked to sign a form that says “Rental Agreement” or “Tenancy-at-Will” at the top. This form should include the amount of the monthly rent and basic rules.

A tenancy-at-will does not last for any set amount of time and does not end on a certain date, the way a lease does. In a tenancy-at-will the tenant pays the agreed-upon rent each month for an indefinite period of time. Either the landlord or the tenant can decide to end the tenancy by giving the other party notice either 30 days or one month before the due date of the next rent payment, whichever is longer. In this type of agreement, the rent can change within the same 30 days or one month before the tenancy ends.

Obligations of the landlord and the tenant

Whether a lease or a tenancy-at-will, the tenant must pay rent, follow the rules agreed upon with the landlord, and accept responsibility for any damage to the apartment that is more than just "normal wear and tear." The landlord must provide an apartment that is safe, clean, and in compliance with the **Massachusetts Sanitary Code**, and must keep any promises in the lease or rental agreement.

Regardless of the tenancy type, the tenant has a right to occupy the apartment and the landlord may only enter under certain circumstances. The landlord must arrange with the tenant in advance to enter the apartment to make repairs, to inspect the condition of the apartment, or to show the apartment to prospective tenants, buyers, or real estate agents. However, the landlord may enter an apartment without a tenant's approval if there is a mechanical/repair emergency that has the potential to damage the whole building, or if it appears that the tenant has abandoned the apartment.

Negotiations

Although not required by laws or regulations, it is important for both a landlord and a tenant to know that they can negotiate with each other over the terms of a lease. In general, the landlord should not rush a tenant to make a decision, and both parties should be very clear about the terms and conditions before either signs the lease. Any changes should be written down into the lease in pen. Any sections that the landlord and tenant agree to change should be crossed out in the lease.

KEY ORGANIZATIONS

Attorney General's Consumer Advocacy & Response Division

Phone

Consumer Hotline **(617) 727-8400**
Monday-Friday, 8 a.m. - 4 p.m.

more contact info

Terms of a rental agreement

Every rental agreement must have certain terms, and is **prohibited from containing certain other terms**.

The lease must include the name, address, and phone number of the owner, the person responsible for maintenance, and the person to whom the tenant can give copies of formal notices, complaints, or court papers.

If the landlord receives a security deposit, the lease or rental agreement must show the amount paid, and must explain the tenant's rights to that security deposit money.

The landlord must make sure that the tenant is given a legible copy of the lease or rental agreement. The lease **must not include** illegal terms such as:

- The tenant must pay for the cost of repairing ordinary wear and tear to the apartment
- The tenant must pay for repairs to parts of the building beyond the tenant's apartment
- The tenant may not sue the landlord or report violations of the Sanitary Code
- The tenant may not join a tenants' union
- The tenant must pay a late fee if a rent payment is even one day late. (A lease or rental agreement may permit the landlord to charge a late fee if a rent payment is 30 or more days late.)

The lease must include the name, address, and phone number of the owner, the person responsible for maintenance, and the person to whom the tenant can give copies of formal notice.

Payments at the start of tenancy

A landlord may only ask for the following payments up front:

- The first month's rent
- A security deposit (which can not be more than one month's rent) to cover the cost of any damage to the apartment beyond normal wear and tear
- The last month's rent (the month that will turn out to be the tenant's last one in the apartment, not necessarily the last month on the lease)
- The cost of a new lock and key for the apartment

The landlord should provide a signed receipt for any payment that is made with cash or a money order. The receipt must include the amount paid and the date the payment was made, and a description of what the payment was for. The receipt should also include the landlord's name, the tenant's name, and the name of the person to whom the payment was given.

Security deposits

All security deposits must be deposited in a Massachusetts bank, in an account that collects interest, and within the first month of the tenancy. The landlord must provide the tenant with the name and address of the bank holding the security deposit, plus the account number. Each year, the landlord must either pay the tenant the interest on the security deposit or let the tenant deduct that amount from a rent payment.

The landlord should give the tenant a "statement of condition" within 10 days of the beginning of the tenancy or upon receipt of the security deposit (whichever is later), which describes the condition of the apartment and any damage that exists at that time. The tenant has 15 days to add to the "statement of condition" or make changes to it. Both parties should keep copies of the final "statement of condition."

When the tenancy ends, the landlord must return the security deposit, plus interest, within 30 days. However, the landlord may keep any unpaid rent or the amount of money needed to repair damage done to the apartment (beyond normal wear and tear). If the lease provides for it, the landlord may also deduct the tenant's share of any increase in the landlord's property taxes.

If the landlord decides to keep all or a part of the security deposit for damages, then the landlord must give the tenant a written description of the damage and an estimate of the repair cost within 30 days of the tenant moving out.

Last month's rent

If the tenant provides the landlord with the last month's rent at the beginning of the tenancy, then the landlord must give the tenant a signed receipt. Like all receipts in the tenancy process, the receipt must include the amount paid, the date the payment was made, a description of what the payment was for, the landlord's name, the tenant's name, and the name of the person to whom the payment was given. At the end of each year and when the tenancy ends, the tenant is entitled to any interest earned on the last month's rent.

All security deposits must be deposited in a Massachusetts bank, in an account that collects interest, and within the first month of the tenancy.

State Sanitary Code

The **State Sanitary Code** governs what it means to provide a habitable place in which to live. In general, "habitable" means a place that is comfortable and clean enough for a person to live safely.

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If a landlord does not respond to a tenant's complaints about a Sanitary Code violation, the tenant may request that a code enforcement officer or the local board of health inspect the apartment. An inspector can then come to the apartment, review the conditions, and order the

landlord to fix the problem if necessary. In the event that the landlord still fails to fix the problem, a tenant may be able to withhold a portion of the rent or move out, even if there is a lease or rental agreement in place. However, before either withholding rent or moving out, tenants considering these options should contact a private lawyer or legal services for more

information and advice.

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If the rental property was built before 1978, the landlord and tenant must sign and retain a copy of the Tenant Lead Law Notification and Tenant Certification. These forms are to inform the tenant of known risks and causes of lead poisoning and disclose if it is known that lead-based paint is present in the rental unit. A landlord must also disclose documents related to any lead inspection or risk assessment done on the rental unit, and a Letter of Interim Control or Letter of Compliance issued by the local board of health. If a child under six will be living in the rental property, the landlord is obligated to de-lead or bring the lead hazards under interim control.

For more information about the State Sanitary Code, you can call the Secretary of the Commonwealth's **Citizen Information Service hotline** at **(617) 727-7030** or **1 (800) 392-6090**(in MA only).

If a landlord does not respond to a tenant's complaints about a Sanitary Code violation, the tenant may request that a code enforcement officer or the local board of health inspect the apartment.

Eviction

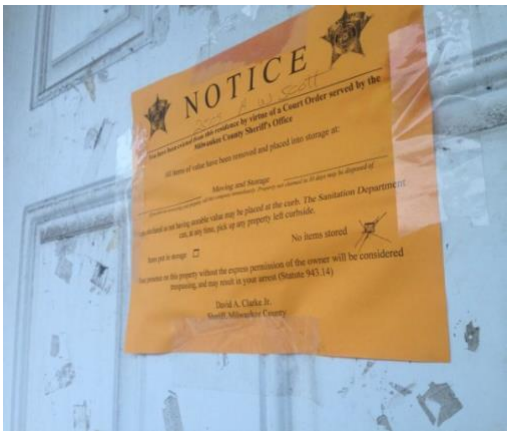
Generally, a landlord cannot take possession of the rental property, physically remove the tenant or their personal property, or change the locks without going through a court. Depending on the reason for eviction, a landlord must provide the tenant either a 14-Day or 30-day Notice to Quit. A landlord must then file a civil action (summary process) in court, and get a judgment from the court that specifies the date that the tenant must leave the rental property with their belongings. If the tenant does not voluntarily leave on the date specified by the court, a landlord must arrange for a sheriff or constable to serve an executed judgment on the tenant ordering them to leave and, if necessary, relocate any personal property belonging to the tenant to a licensed public

warehouse. In this situation, the landlord is obligated to pay moving fees, but is entitled to reimbursement from the tenant. The tenant is allowed a one-time opportunity to claim items of personal or sentimental value from the storage facility, and can claim all personal property from the storage facility after paying any fees charged by the storage facility.

Find help and resolve a dispute

If the landlord and the tenant agree, they may take advantage of services offered through the Attorney General's Office to resolve a dispute that might otherwise result in an eviction. In addition, the **Massachusetts Communities and Development Housing Services Program** or the local housing court can help resolve a dispute between a landlord and a tenant.

If you need help, please contact the Attorney General's **Consumer Hotline** at **(617) 727-8400**.



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The eviction process

The formal eviction process is called Summary Process and starts when the landlord files a complaint in court. During the eviction process the tenant will have the right to raise defenses to the eviction itself and present counterclaims for monetary damages.

Some common defenses to eviction include:

- Failure to properly terminate the tenancy
- The landlord failed to correct known conditions
- The landlord is evicting you in retaliation for activities protected by law
- Discrimination, including that the landlord failed to make a reasonable accommodation to allow a disabled person to remain in the home despite his or her disability

RESOURCES:

The Attorney General's Guide to Landlord and Tenant Rights, https://www.mass.gov/guides/the-attorney-generals-guide-to-landlord-and-tenant-rights#-terms-of-tenancy-

BOSTON LEGAL SERVICES: https://www.gbls.org/contact_us
PHONE NUMBER: 617-371-1234

- Hours: 9-5, M-F excluding state and federal holidays at both our main office and Cambridge office.

MA Legal Help: https://www.masslegalhelp.org/housing-apartments-shelter/tenants-rights

Also for tactics see: https://www.masslegalhelp.org/housing-apartments-shelter/tenants-rights/legal-tactics

Tenants' guide to eviction: https://www.mass.gov/info-details/tenants-guide-to-eviction

Housing discrimination: Massachusetts Commission Against Discrimination - https://www.mass.gov/info-details/overview-of-housing-discrimination

Town of Brookline Office of Diversity, Inclusion Community Relations: https://www.brooklinema.gov/2330/Complaints-Discrimination