

The Tenant's Helper: A Handbook for Renters

[Seventh edition, print version 2018]



**EQUAL HOUSING
OPPORTUNITY**

Office of Strategic Planning & Community Development

50 Evergreen Avenue
Somerville, MA 02145
(617) 625-6600

Joseph A. Curtatone, Mayor

Acknowledgments & Introduction

This booklet is a self-help guide for people with questions about their rights and responsibilities as tenants. It is based on the work found in NO PLACE LIKE HOME: A Self-Help Guide to Tenants' Rights and Responsibilities, published more than a decade ago by the Somerville Community Corporation and the Mayor's Office of Human Services.

This book, since its inception, has been a collaborative effort by the staff of the Mayor's Office of Human Services, the Office of Strategic Planning and Community Development and Cambridge and Somerville Legal Services (CASLS). Judith Hyatt was the Fair Housing Coordinator for the City of Somerville in July 1991 and the principal writer of the first edition of THE TENANT'S HELPER: A Handbook for Renters. Ellen Taylor, Donna Giuliana, and Karen Baratta contributed specialized information on disability issues and the Americans with Disabilities Act of 1990. Phyllis Chambers, Irene Miscavage and Ann Pike commented on the text based on their daily work with people with housing problems.

This seventh edition was edited in 2018 as a project of the Somerville Fair Housing Commission. It was specifically created as a print version for those without easy access to online information.

None of us create a work such as this out of nothing. The City is grateful to the writers of the other guides and handbooks published by agencies and groups concerned with housing for the people of Somerville. We hope that you will find this handbook helpful. We have tried to answer questions that callers have asked many times as clearly as possible in these few pages. However:

This Handbook is intended for information only, should not be considered legal advice and should not be used as a substitute for an attorney!

If you have other questions, call the:
Housing Division within the Office of Strategic Planning & Community (OSPCD) 617-625-6600
Somerville Fair Housing Commission (617) 625-6600 ext. 2578

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I. Moving into Somerville

Finding a place:

- Personal networking works well. Tell everyone you know that you are looking. They may know someone who is moving out.
- Use on-line services such as Craig's list <https://boston.craigslist.org/search/gbs> Wicked Local. <http://realestate.wickedlocal.com/rentals-search/> Some of these apartments are shown by the landlord.

Before you sign a lease or agree to take an apartment:

Know what you will pay:

- Expect to pay first month's and last month's rent at signing. Some landlords will want a security deposit in addition.
- Real estate agents often charge a full month's rent to find a place for you.
- Your rent may not include heat, hot water, and electricity. Ask the landlord what is included. If you are paying gas or electricity, you can call Eversource or National Grid to find out what the bills were like for the previous tenant. For Eversource, call 800-592-2000, and go to the billing department.

What you will do:

- Be prepared to fill out an application. Bring rental, credit, and personal references. Bring income information and provide the name, phone number, and address of *your* employer.
- To hold the apartment, you will need to write a check for a deposit. Get a receipt. If you get the apartment, that deposit becomes part of the first or last month's rent or the security deposit.
- Ask how the landlord will contact you to tell you if you are getting the apartment. Ask when to expect to be told.
- If a security deposit is requested, make sure that you and your landlord make a written record of what the condition of the apartment was when you moved in. Ask the landlord when they intend to make any needed repairs. Obtain a written statement saying what repairs need to be made and when they will be completed. Keep this statement in a safe place even after the repairs have been made.

Helpful records of your move-in:

This checklist includes the information you may need and steps you should take before moving into your apartment.

- All records of your communication with your landlord – save letters and/or emails, receipts, signed agreements.
- Get a written statement of the home's condition (due from your landlord within 10 days of receiving the security deposit)
- If you find any serious repairs needed, discuss this with your new landlord. Keep track of those requests and when the repairs are done, or not.
- Inventory valuable items – whether or not you are purchasing renter's insurance.

Photograph a record of your property.

New resident dos and don'ts:

You can learn almost anything about city services by calling 311 during business hours.

Parking:

Permit parking: Somerville expects all cars parked on residential streets to have a local permit (showing that it is owned by a resident or using a guest pass for up to two days.) You will need to transfer your registration to your Somerville address, and then apply for a resident pass. Until you have done this, you may park on major roads (such as Broadway) where there is no permit requirement.

Street cleaning and snow removal:

During most of the year, you are required to move your car twice a month to allow street cleaning equipment to do their job. You get a \$50 ticket if your car is in the way. Signs are posted; pay attention. You can sign up for email or text reminders of when street cleaning occurs on your street. (Call 311 for more information.)

During snow emergencies, you are required to move your car to one side of the street for the duration of the storm. Your car is subject to towing, if you don't move it.

For further information, contact the parking department:

Traffic and Parking Department
133 Holland St.
Somerville, MA 02144

(617) 666-3311

II. Discrimination -- Fair Housing Laws

You can be turned down for housing. But, you should not be turned down for housing you can afford because of who you are. It is illegal for a landlord, or their agent to ask you either orally or in writing on an application for any information regarding your protected status.

State, federal and local laws ban discrimination in housing. Certain categories of people have legal protection and recourse, if you face discrimination.

If you think you have lost an apartment in Somerville because of discrimination, contact the Program Specialist for Fair Housing at 617-625-6600 ext.2578. The program specialist will advise you about filing a complaint with Massachusetts Commission Against Discrimination (MCAD)

State Fair Housing Law

In general, under state law (M.G.L. c.151B) it is illegal for any realtor, landlord, owner, lessee, sublessee, assignee or agent of such person to deny you housing on the basis of:

Race

Color

Religion

National Origin-What country you or your parents may originally be from.

Ancestry

Veteran or member of the armed forces (Military Status)

Sex (gender)

Age (21-65)

Children (presence or absence in the family.)

Source of income -Section 8 voucher for rent, Medicaid, or SSI, or SSDI, or TANF for income are all counted the same was employment income is counted.

Sexual Orientation

Marital Status

Gender identity

Genetic Information

Disability (mental and physical) This includes hearing impaired, blind, mobility impaired people, as well as people with mental illness.

The Massachusetts Commission Against Discrimination (MCAD) is the state agency that investigates discrimination. MCAD is empowered to investigate your report. If someone is found to have violated the fair housing laws, they may be required to pay you monetary damages. You may be reimbursed for the expense of finding another apartment, storage costs and moving costs and damage for emotional distress.

In addition to awarding damages, the MCAD can issue a fine or penalty against the person or entity found to have engaged in a discriminatory practice.

- For the first discriminatory housing practice: the penalty cannot exceed \$10,000.
- For the second discriminatory housing practice: the penalty cannot exceed \$25,000
- For the third discriminatory housing practice: the penalty cannot exceed \$50,000.

The following types of housing are *exempted* from the law (you *cannot* file a discrimination complaint) *in some circumstances**:

- a unit in an owner-occupied two-family house (unless they used a real estate broker or discriminatory advertising); or,
- a state-aided or federally-aided elderly development (for the purposes of age discrimination only); or,
- an elderly retirement community of 5 acres or more with a minimum age requirement of 55 years (for purposes of age discrimination only); or,
- temporary rental of the landlord's principle home for one year or less.

Federal Fair Housing Law

Federal law (Title VIII Of The Federal 1968 Civil Rights Act) also bans the following types of housing discrimination. You can file a housing discrimination complaint with the U.S. Department of Housing and Urban Development (HUD), *as well as with* MCAD in cases involving these types of discrimination.

Race

Color

Religious creed

National origin

Sex

Handicap

Family status [married, children]

Exemptions under federal law There are several situations that are exempted from Title VIII:

- A single-family house sold or rented by the owner but only if done without the use of a real estate broker and without discriminatory advertising (oral or written) and only if certain other conditions are met.
- Rental of rooms or units in owner-occupied dwellings of four units or less.
- Exemptions for familial status include:
 - state and federally owned elderly developments; or,
 - housing intended for and solely occupied by persons 62 years of age or older; or,
 - housing intended for occupancy by at least one person 55 years old or older per unit.
- Exemptions for disabilities include:
 - persons whose tenancy would constitute a direct threat to the health and safety of others; and,
 - persons whose tenancy would result in substantial physical damage to the property of others.

Federal Remedies:

- Injunctive relief (i.e. prevent the apartment from being rented to someone else.)
- Monetary damages (includes: money for pain and suffering and humiliation.)
- Punitive damages (maximum penalties are \$10,000 for the first violation, \$25,000 for the second violation within 5 years and \$50,000 for the third violation within 7 years).

Local Fair Housing Law

Local law exempts any housing structures exempted under the state and federal laws and are also exempted under the Somerville Fair Housing ordinance. In addition, the following are not violations of the Somerville ordinance:

- For a religious organization or institution to restrict any of its housing accommodations that are operated as a direct part of religious activities to persons of the denomination involved.
- For the owner of a housing facility devoted entirely to the housing of individuals of one sex, to restrict occupancy and use on the basis of sex.
- The operation or establishment of housing facilities designed for the exclusive use of the handicapped or the establishment of programs designed to meet the needs or circumstances of handicapped persons.
- The operation or establishment of state-aided or federally-aided housing developments for the elderly or self-contained retirement communities constructed expressly for the use by the elderly which are at least 20 acres in size and have a minimum age requirement for residency of at least 55 years.

Unlawful Housing Practices

Fair housing laws forbid owners, agents, brokers and bankers from discriminating against members of protected classes. A landlord or their agent cannot:

- Ask you either orally or in writing on an application for any information regarding your protected status.
- Refuse to rent, lease or sell housing.
- Discriminate in the terms, conditions, and/or privileges of housing.
- Make any inquiry or record of the person seeking to rent, lease or buy housing pertaining to that person being a member of any of the above protected classes.
- Falsely deny that housing is available. (Say that the place is rented because they are discriminating against you, but later rent to someone else.)
- Blockbusting--encourage person(s) to sell or rent by telling them that members of a minority group are moving into the area.
- Discriminate in financing housing (bank, savings and loan, or other business).
- Deny membership or participation in brokerage, multiple listing or other real estate services.

- Interfere, coerce, threaten or intimidate to keep a person from obtaining the full benefits of the Federal Fair Housing Law and/or filing a complaint.
- Discriminate in advertising (both oral statements and written material).

Sometimes the discriminatory action may not seem obvious, but in other cases it is clear. For example, a landlord may tell a family with children under the age of six that they cannot rent to them because there is lead paint. This is discrimination based on the fact that there is lead paint in the apartment. Every landlord has the duty and responsibility to see that their apartment is free from lead paint if there is a child under the age of six living in the unit.

For more information, or to file a complaint:

Somerville Fair Housing Commission

50 Evergreen Avenue
Somerville, MA 02145
617-625-6600 ext.2578

Massachusetts Commission Against Discrimination

(MCAD)

One Ashburton Place
Suite 601
Boston, MA 02108
(617) 994-6000
TTY: 617-994-6196

HUD

Fair Housing and Equal Opportunity
(FHEO)
10 Causeway Street
Boston, MA 02222-1092
Toll Free Fair Housing Complaint
Hotline: (800) 669-9777

Housing Rights for Persons with Disabilities

There are two laws, one federal and one state, that specifically address housing discrimination protection for persons with disabilities.

Federal Fair Housing Amendments Act of 1988

Types of Housing Covered: The federal law applies to all types of housing, except owner-occupied housing with 4 or fewer units and certain single-family homes.

Persons Protected Against Discrimination

Federal law protects persons with mental and physical disabilities who:

- are substantially limited in a major life activity, such as caring for one's self, walking, seeing, hearing, speaking, breathing, learning, and working; or,
- have had a disability in the past but are no longer impaired; or,
- are treated as having an impairment even though in reality the person may have no disability; or, have AIDS.

The federal law does not protect:

- a) persons whose only disability is current illegal use of or addiction to a controlled substance;
- b) persons whose tenancy would result in substantial physical damage to the property of others; or
- c) persons who would be a direct threat to the health or safety of others. In order to establish a "direct threat", there must be objective evidence that is sufficiently recent to be credible. Also, there must be no reasonable accommodation that could eliminate or reduce the risk to health or safety.

Reasonable Accommodation

A major part of the federal law is the requirement that the landlord provide reasonable accommodations in rules, policies, practices, and services to enable a person with a disability equal opportunity to use and enjoy the housing. For example, a "no pets" policy would have to be modified to accommodate an individual who uses a service animal.

Modifications to Existing Housing Under the federal Fair Housing Law, it is unlawful to refuse a tenant with a disability permission to make reasonable modifications to the premises (e.g. ramps, grab bars) at the tenant's own expense. Prior to granting permission, the landlord may require, where reasonable, that the tenant restore the interior of the premises to the condition that existed before the modification.

Financing of Modifications: In federally funded housing, the reasonable accommodations, including physical modifications, would have to be provided at the landlord's expense. However, for private housing, the tenant must pay for modifications. While there are several avenues available to the landlord to finance modifications, at this time there are few options to assist tenants in paying for the costs of modifications. ***In Somerville, some funding assistance is available for access modifications through the Housing Rehab Department.***

In some cases, it may be possible for a landlord and tenant to work out an agreement where costs may be shared. The tenant might agree to a longer than typical lease, thus giving the landlord the assurance that the property will not be vacant for a longer time. The landlord could also benefit from a federal tax credit for making the property accessible, as well as having greater control over the quality of the work.

Adaptability Requirements for New Construction for Multi-Family Units

All apartments in newly constructed buildings with four or more units, built for first time occupancy after March 13, 1991, must be "adaptable" if there is an elevator, but, if

there is no elevator, only ground floor units must be "adaptable". "Adaptable" means that the apartment doorways, cabinets and interior spaces are designed so that the apartment can be made accessible at a later time without structural change. For example, reinforcements in bathroom walls would be in place, in the event that someone needs grab bars in the future.

Inquiries: No inquiry may be made as to whether an applicant has a disability or as to the nature or severity of the person's disability. Exceptions include

- a) an inquiry made to determine ability to meet the requirements of ownership or tenancy. For example, since some apartment developments are only available to persons with disabilities, verification of disability would be required. *However, the landlord may not require diagnostic information.*
- b) Inquiries can be made to determine whether the applicant is a current illegal substance abuser or addict of a controlled substance or to determine whether the applicant has been convicted of illegal manufacture or distribution of a controlled substance, but any questions regarding such matters must, if asked at all, be asked of all applicants.

State Law – the Massachusetts Housing Bill of Rights (Chapter 722)

On January 13, 1990, the Massachusetts Housing Bill of Rights for People with Disabilities was signed into law protecting disabled persons from housing discrimination. Highlights of the law include:

- The right to be free from discrimination in public and private housing, except for owner-occupied, two-family units.
- The right to reasonable accommodations necessary to allow a disabled person full enjoyment of the premises
- Prohibitions against anyone seeking to exclude disabled persons from living in a community.
- Enforcement by the Massachusetts Commission Against Discrimination (MCAD) of these rights, with the option to have the state Attorney General go to court for the complainant, if MCAD finds probable cause.
- A central registry (MassAccess) maintained by the Massachusetts Rehabilitation Commission to match available accessible and adaptable housing with persons who need them.
- Under the state law, where there are 10 or more units or in publicly assisted housing, the landlord may be required to pay for reasonable modifications of the premises.

Contacts for further information:

ADA Coordinator – City of Somerville

City Hall, Somerville, MA
02143 (617) 625-6600
ext.2323
(617) 666-0001 TDD
(617) 625-2519 FAX

Disability Law Center

11 Beacon St – Suite 925, Boston, MA 02108
(617) 723-8455 voice
(617) 227-9464 TTY
(800) 872-9992 Voice
(800) 381-0577 TTY

Mass ACCESS Housing Registry (*to locate or list accessible rental housing*)

Housing Registry information is available from several agencies including:

- Citizens Housing & Planning Association (617) 742-0820
voice/TTY
<http://www.massaccesshousingregistry.org/registry/registrymax.nsf/webpages/home?open>
- Boston Center for Independent Living <https://bostoncil.org/>
(617)338-6665 voice
(617) 338-6662 TTY
- Mass. Rehabilitation Commission
<https://www.mass.gov/orgs/massachusetts-rehabilitation-commission>

Massachusetts Office on Disability

<https://www.mass.gov/orgs/massachusetts-office-on-disability>

One Ashburton Place,
Room 1305
Boston, MA 02108
(617) 727-7440 voice
(800) 322-2020 toll-free voice/TTY

Housing rights. Focus: LGBT

Massachusetts' law bans housing discrimination based on sexual orientation, sexual identity, gender expression, and gender identity. In 2011-2012, the United States Department of Housing and Urban Development (HUD) also established national fair housing protections for LGBT community. Violations experienced by LGBT people are similar to those faced by other protected classes:

1. A landlord won't rent to you
 2. Your landlord tries to evict you or terminate your tenancy agreement - If you paid your rent and haven't broken a lease clause or committed an illegal act, your landlord can't terminate your lease before the lease term ends.
 3. You are charged higher fees or monthly rents than heterosexual tenants
 4. You are subjected to offensive comments and biases from your landlord
 5. You are denied access to a homeless shelter
- Unsafe conditions in shelters because of threats or assault

III. Leases, rights, responsibilities, termination and eviction

A: Leases, rights and responsibilities:

Types of Tenancy Agreements

State consumer protection regulations [940 CMR 3.17 (3)(b)] require that a landlord must include the following in a written rental agreement:

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

Types of Leases:

- **Standard fixed-term lease:** usually runs for twelve (12) months and may or may not be renewed when it expires.
- **Self-extending lease:** this lease automatically renews itself if neither the tenant nor the landlord gives formal notice that it will be terminated at a date specified in the lease.

Keep in mind that the lease agreement should describe all rental terms, conditions and charges expected for the rental agreement. The landlord cannot add a charge for facilities during the rental period that were at no cost when the lease was signed. Check the lease, before signing it, to make sure all blanks are filled in and that the exact amount of the rent is stated. Write into the lease all verbal/oral promises, additional clauses or clarifications made by either the tenant or the landlord. Each change in the lease must be initialed by both the landlord and the tenant. Any agreements regarding parking arrangements, use of basement (for storage), pets (number and type), and the number or names of occupants (including children) should be included in the lease.

Tenancy under a lease

A lease can be terminated only when:

- the lease date expires; or,
- a lease provision is violated (i.e., non-payment of rent); or,
- by mutual agreement.

Tenancy At Will

A tenant-at-will occupies an apartment without a lease signed by the landlord. (M.G.L. c. 183, § 3) and pays rent periodically, usually monthly. A tenant at will may have a written tenancy agreement but might not.

Either party, landlord or tenant may terminate their tenancy with a written Notice of Termination received 30 days or one rental period in advance, whichever is longer, except where the landlord intends to sell the rental unit as a condominium.

Roommate Situations

There are several different types of roommate situations. Your rights as a tenant are different, depending on the legal relationship between the roommate and the landlord.

Types of tenancies created: Roommate situations generally fall into one of three categories:

- 1) a group of co-tenants with one landlord;
- 2) a rooming house or quasi-rooming house where tenants each have separate tenancies at will or separate leases; or
- 3) a primary tenant and one or more sub-tenants .

The following factors are generally looked at in determining the status of roommates:

A. Does each roommate pay his or her rent directly to the owner or to one tenant who then pays the owner the full amount of the rent? Are rent checks made payable to the owner or to a primary tenant?

If rent is paid to one tenant who then pays the owner and checks are not made out directly to the owner, then a sub-tenancy is generally created. If each person pays rent to the owner directly, then the situation is usually a co-tenancy or rooming house situation.

B. Did the owner/landlord or other tenants choose the persons to occupy the unit?

If the owner/landlord chooses the unit occupants it is more likely that separate tenancies are created and a rooming house or quasi-rooming house situation exists. If one or more of the existing tenants choose other tenants the situation is more likely to be considered a co-tenancy or sub-let situation.

C. Are bedrooms each separately locked or are they accessible by all household members?

If bedrooms are individually locked it is more likely that a rooming house situation exists. If all

household members have access to all rooms (even if by mutual agreement they don't enter other bedrooms without permission) it is more likely to be considered a co-tenancy.

D. Are communications from the owner/landlord sent to all tenants or to one primary tenant?

If an owner/ landlord sends all communications to one particular tenant this could be a factor tending to establish one primary tenancy and other sub-tenancies. Direct communications between housemates and an owner/landlord would tend to establish either co-tenancies or a rooming house situation.

E. To whom do the tenants complain if conditions are in need of repair?

Again, if all complaints are made to one primary tenant this would tend to show a sub- tenancy relationship whereas direct communication with the owner would tend to establish a co-tenancy or rooming house situation.

Co-tenants/Tenants in Common: In general, co-tenants have equal rights vis-à- vis the property owner.

Rent: Co-tenants are generally "jointly and severally liable" for the full amount of the rent for an apartment or house. This means that each person is responsible for the entire rent and if one tenant doesn't pay his or her share, the remaining tenants will be liable. Thus, if a group of tenants are co-tenants and one tenant leaves, it will be the remaining tenants' responsibility to find a new tenant or otherwise pay the rent.

Conditions and other landlord/tenant laws: All co-tenants have the right to enforce the sanitary code and other laws designed to protect residential tenants against the owner. (Note this is not always true with sub-tenancies).

Eviction of co-tenants: In general a landlord cannot evict one co-tenant without evicting all the tenants. This is because in order to evict pursuant to M.G.L. c. 239, §1 a landlord must have a "superior right of possession" to the premises. Since each co-tenant has the right to possession of the full apartment, the landlord would still not have a right to superior possession of the unit were one tenant to be evicted. If a landlord wants to evict one of several co-tenants (sometimes at the request of remaining tenants) he or she would need to terminate the tenancy of the entire household and then bring a summary process action against all the tenants. The landlord could then offer a new tenancy to the remaining tenants.

Separate tenancies at will: The basis of a tenancy at will is either an express or an implied agreement between a landlord and a tenant to rent a room (sometimes with common area access) and/or an apartment which is terminable "at the will" of either party (i.e. neither party is tied into a lease for a fixed period). The agreement can be either oral or written as long as there is no definite time period or length of tenancy established (for then it would be a lease). A tenancy at will is generally implied where a tenant lives in a room or apartment, is paying rent to the landlord and

the landlord accepts the rent. This is true whether or not there was any prior agreement between the parties regarding the rental.

Whether several adults who are living together have separate tenancies at will or are co-tenants again is a question of fact. Tenants would most likely be separate tenants at will where

- each pays rent directly to the owner/landlord,
- the owner/landlord recruited and rented to different household members;
- individual tenancies began at different times and
- where rent is paid "per room" as opposed to one price for a whole apartment.

Rent: The advantage of establishing separate tenancies at will is that tenants will not be "jointly and severally liable" for rent. If one tenant doesn't pay the rent, it will be up to the landlord to collect the funds due. In addition, if one tenant leaves it will be the landlord's responsibility to find a replacement tenant (this obviously has pros and cons as remaining tenants may be sharing common space with any new tenants). In addition, if there is only one electric or gas meter or oil burner servicing the entire apartment and rooms are rented separately tenants have a reasonably good argument that the landlord must pay for all utilities at the premises. 105 CMR 410.354 and 410.355.

Conditions and other landlord/tenant laws: All tenants at will have the right to enforce the Sanitary Code and other laws designed to protect tenants against their landlord.

Eviction: A landlord would have a right to evict one tenant at will (who is not a co-tenant) in a summary process action as the landlord would have the superior right of possession as to that tenant's room. If a landlord sought to evict all tenants in a unit he or she would likely need to serve each tenant with a separate notice to quit and bring separate court actions against each tenant. One tenant at will cannot evict another tenant at will with a separate tenancy as neither tenant has the superior right of possession as to the other.

Sub-tenancies: If a tenant has a written tenancy agreement, that document often has a provision prohibiting the tenant from subletting without the permission of the landlord. Courts have held that a landlord can be unreasonable in refusing to allow a sublet (i.e. the landlord need not have a good business reason and she can just say "no"). For that reason, if you know that you will need to sublet and you are entering into a lease (or a written tenancy at will agreement) you should make sure the lease is modified to give you permission to sublet. A sublet (as opposed to an assignment) occurs when a tenant grants a "lesser tenancy" to a sub-tenant (for example, where a tenant lets to another person the entire apartment for three months out of a twelve-month lease or one bedroom out of an entire apartment for some or all twelve months). If a tenant tries to transfer an entire "contract" or rental agreement to another (the entire property for the entire term of a lease), that is considered an assignment.

A tenant at will generally will not be prohibited from subletting unless restricted from doing so in a written tenancy at will agreement; however, they cannot "assign" their rental responsibilities to another person.

You are more likely to be seen as a subtenant:

- the "subtenant" pays rent only to the primary tenant
- the owner does not know the subtenant resides in the apartment
- the owner has little or no contact with the subtenant
- communications regarding rent, conditions and other matters go between the owner and the primary tenant
- the landlord has not expressly or impliedly agreed to a tenancy with this person (i.e. has never accepted rent)

When a sub-tenancy exists, there is no landlord/tenant relationship created between the owner and a subtenant. The primary tenant in essence acts as landlord to the subtenant.

Rent: When a tenant subleases a portion of his or her apartment to another tenant, the original tenant will still be liable to the owner for the full amount of the rent. If the subtenant does not pay the primary tenant, the primary tenant would need to collect the funds due from the subtenant either in a small claims action or in a summary process action.

Conditions and other claims: In general a subtenant would need to sue a primary tenant and not the property owner for bad conditions, violations of the security deposit law, etc. as the subtenant has no legal relationship with the property owner. It may be argued, however, that for the State Sanitary Code and for M.G.L. c. 186, §14, (which prevents lock outs and breaches of quiet enjoyment), that a tenant could sue the property owner directly. The basis of this argument is that the statutes authorizing these claims refer to landlords and occupants. It could be argued that a subtenant is an occupant (although not a tenant vis-à-vis the landlord) and that a landlord should not be shielded from his or her responsibilities simply because someone happens to be a sub-tenant.

Evictions: In general, a primary tenant and not the owner would need to initiate a summary process action against a subtenant. If the owner wants to evict a subtenant he or she would need to evict the primary tenant. The owner could add the subtenant's name to any summons and complaint (i.e. primary tenant and Mr. Jones holding under him) but probably is not required to do so. The subtenant has no rights greater than the primary tenant. Therefore, once a primary tenant is evicted, a subtenant will have no further right to occupancy at the premises.

Rooming or Boarding House Tenant

If a rooming *or* boarding house tenant has lived in the house for three or more consecutive months, they are considered a *tenant at will* and have all the rights of a tenant at will. Termination notices for this type of tenancy vary depending *on* the length of tenancy:

<u>Length</u>	<u>Notice Required</u>
30 days <i>or</i> less	None
more than 30 days but less than 3 months	7 days
3 months or more	30 days (14 days if for non-payment of rent)

But, regardless of the length of the tenancy, the landlord is only required to give *7 days notice if:*

- the tenant or guests are disorderly or bothersome to other tenants; and
- the tenant pays rent daily or weekly.

B. Termination and Eviction

- Termination is the ending of your tenancy agreement. A landlord can choose not to renew your lease or change the terms of the lease.
- Eviction is the forced removal of the tenant after termination and only a judge can order the eviction of a tenant.

If you do not pay the rent or violate provisions of your lease while a tenant under lease, your landlord can to evict you. The landlord must give you a 14-day notice of termination. **If you have been served with a notice of termination, we advise you to seek help at one of these non-profit organizations, who can provide advice. Do not delay!**

Cambridge and Somerville Legal Services
60 Gore st, suite 203
Cambridge, MA
617-603-2700

Community Action Agency of Somerville
66-77 Union Square
Somerville, MA 02143
617-623-7370

Eviction and the type of lease agreement:

Tenancy at Will: The tenancy must terminate on a rent day. The landlord is currently not required to give a reason for termination. Nor is the tenant. For your own protection, send notices by certified mail return receipt requested and keep a copy.

If the landlord wants to evict a tenant at will for non-payment of rent, they must serve the tenant with a 14-day notice to quit. The tenant has a right to cure (and not be evicted) if he or she pays all rent due within ten days of receipt of the notice to quit so long as the tenant has not received a similar notice to quit within the previous 12 months.

Leases: If the landlord wishes to increase the rent, they must provide you with written notice received 30 days or one rental period in advance. Landlords cannot demand retroactive increases. There is no legal limit on the amount of increase except where the landlord intends to sell the rental unit as a condominium.

If you receive a rental increase that you feel is unacceptable and cannot reach an agreement with the landlord, the landlord does have the right to give you a termination notice. Continue to pay your usual rent to prevent eviction for non-payment of rent and protect your credit standing. Payment of the increase by the tenant means acceptance of the increase.

If you have had a signed lease for a year and the year ends and there is no new lease, and if you pay and your landlord continues to accept rent for the premises, you will then be considered a tenant at will.

Rights Against Retaliation

A landlord can terminate a tenancy or raise the rent without reason for the tenant at will, however, this cannot be done in retaliation for the tenant exercising their legal rights. If the landlord tries to raise your rent, terminate your tenancy or make any substantial changes in your tenancy within six months of when you:

- contact the Board of Health
- complain of suspected health code violations in writing to the landlord,
- join a tenants' organization, or
- exercise certain other legal rights,

If your lease is terminated by the landlord in this time period, the law presumes this retaliation for your exercise of your rights as a tenant. The landlord would have to prove otherwise.

Tenancy at Sufferance

This occurs when someone who legally had the right to be in the apartment, no longer does but continues to remain in the apartment. The tenant is still responsible for the payment of rent (called use and occupancy) while they remains in the apartment and has the right under M.G.L. c. 111, § 127C and other laws to maintain an action against the landlord for any violations of the state and local health codes.

A landlord cannot lock you out or throw you out of your apartment without a court order.

C. Financial Rights of Tenants

1. Pre-payments

M.G.L. c. 186, § 15B states that a landlord is permitted to ask for the following in advance of your moving in:

- First month's rent.
- Last month's rent.
- Security deposit (not to exceed first month's rent).
- Purchase and installation cost for a lock and key.

A. Security Deposits

The reason for a security deposit is to give the landlord some protection against damage done to the apartment. A security deposit can also be used to pay rent or water bill you left unpaid. The landlord cannot charge you for damage from natural wear and tear. A tenant cannot make any alterations (including painting) to an apartment without a landlord's prior approval. If you make these changes without permission, the landlord can charge you for damages.

If the landlord requires a security deposit, they must:

Provide you with a statement of condition of the apartment: Review a written list of condition, including

any damages as well as repairs needed. Be sure to include any sanitary code or building code violations. This statement should be given to you within 10 days after you move in or when the landlord/agent receives the deposit, whichever is later.

Read this statement carefully. If you do not agree with any of the contents of the statement, send a corrected copy to the landlord within 15 days after you receive the list or 15 days after you move in, whichever is later. A court could view this failure to return the list to mean that it was correct and complete in any lawsuit that you bring to recover your security deposit.

If you do submit a corrected list of damages, the landlord must return it within 15 days of receipt with a clear written response of agreement or disagreement. This 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.

You are entitled to a receipt for the security deposit. This receipt must state the following:

- the amount of the deposit,
- the date the money is received by the landlord,
- the address of the apartment,
- signature of the person receiving the money,
- the name of the person receiving the money and, in the case of an agent, the name of the lessor for whom the agent is receiving the money, and the intended use for the money, i.e., say "security deposit" on it.
- If the landlord does not give you a receipt then ask for it!

The landlord must keep the security deposit in a separate interest-bearing bank account that is specially protected against the landlord's creditors (The landlord does not have to maintain separate accounts for each security deposit.) Within 30 days of receiving the security account the landlord must give you a receipt which states the following:

- the name of the bank where the account is located,
- the address of the bank,
- the amount of the deposit, and
- the bank account number.

If the landlord does not comply with the rules above, you are entitled to an immediate return of your security deposit.

They must pay you interest on the security deposit each year on the anniversary date of the tenancy (the day you agreed to start your tenancy). On each anniversary-date, the landlord must give you a statement indicating the amount of interest owed you for your security deposit and/or last month's rent. At the same time the landlord must give you the interest due or notice that you can deduct the interest from the next rental payment.

If within 30 days of the anniversary date you do not receive the interest or the notice to deduct, you may deduct the interest from your next rental payment. If your tenancy ends before the anniversary date, you are still entitled to the interest accrued on the last month's rent. This is different for the security deposit. If you leave before the anniversary date, you are not entitled to the interest since it must be held a year for the interest to accrue.

Interest on both security deposits and last month's rent must be paid within 30 days of termination of the tenancy. Effective 7/1/92, the interest rate is 5% or the interest rate the landlord receives from the bank,

whichever is less.

If the building is sold or transferred, the landlord must transfer the security deposit to the new owner of the building at the time of the closing.

The new landlord has 45 days from the transfer to notify the tenant(s) in writing that the security deposit has been transferred. In addition, the notice must include the landlord's (or agent's) name, business address and telephone number.

If the former landlord fails to transfer the pre-payments to the new landlord, the former owner is still liable, but the new landlord shall also assume responsibility. If the tenant is still living in the apartment, the new landlord can satisfy their obligation by granting the tenant free rent for a period equivalent to the prepayments made-- usually one month's rent.

The records of the security deposit have to be available for inspection during the normal business hours. The security deposit must be returned to you within 30 days of the termination of your tenancy (although certain deductions are permitted).

The landlord may deduct only the following from the security deposit (M.G.L. c. 186, § 15B):

- any unpaid rent which has not been withheld or deducted legally; or,
- any unpaid increase in real estate taxes which the tenant must pay; or,
- a reasonable amount necessary to repair any damage caused to the dwelling unit by the tenant or any person under the tenant's control or on the premises with the tenant's consent, reasonable wear and tear excluded. If the landlord deducts for damages they must provide the tenant, within thirty days, an itemized list of damages (sworn under the pains and penalties of perjury). This list must itemize the damages and the repairs necessary to correct them. The landlord must give the tenant written estimates, bills, invoices or receipts indicating the actual cost of repair.
- Unpaid water charges in certain circumstances on or after March 16, 2005.

The landlord cannot deduct for repairs to the property that were listed in the Statement of Conditions or in the amendment, unless the landlord can prove that the original conditions were repaired and the new damage was caused by the tenant.

If the landlord fails to comply with the above, they forfeits their right to retain any portion of the security deposit for any reason or in any action by a tenant to recover a security deposit to counterclaim for any damage to the premises.

If the landlord or their agent fails to:

- deposit the security deposit into the required type of bank account
- transfer such security deposit to their successor in interest or
- return to the tenant the security deposit or balance the tenant is entitled to (less the amount for damages) thirty days after termination of the tenancy,

then, generally the tenant will shall be awarded damages in an amount equal to three times the amount of the security deposit or balance thereof to which the tenant is entitled plus interest, together with court costs and reasonable attorney's fees. (M.G.L, c. 186, § 15B)

If the landlord:

- fails to furnish you with an itemized list of damages within 30 days after termination of tenancy if deductions are made for damages; or, fails to make the security deposit records available for inspection

- during office hours; or,
- fails to provide, within 30 days of receipt of the deposit, another receipt with name and location of bank and amount and account number of the deposit; or,
- uses a lease which has provisions that conflict with security deposit law, and attempts to enforce these provisions or attempts to get you to sign a waiver

then you are entitled to the immediate return of your security deposit. The landlord cannot keep your security deposit for any reason, including making deductions for damage.

B. Last Month's Rent

The last month's rent is not the same as the security deposit. If the landlord asks for the last month's rent, they must give you a receipt that states:

- the amount of money,
- date of receipt,
- the words "last month's rent"
- the name of person receiving it,
- the name of landlord or agent involved,
- the address of the apartment
- the tenant's right to interest, and
- the tenant's obligation to give the landlord a forwarding address at the end of the tenancy.

Ask the landlord for a receipt if one is not provided.

Interest is paid on the last month's rent at the anniversary date. Unlike the security deposit, if you move out before the anniversary date, you are entitled to all the interest that has accrued. Provide the landlord with your forwarding address, so that interest may be sent at the termination of your tenancy. Interest does not accrue for the month for which the last month's rent is used.

On your anniversary date the landlord is responsible for sending you a statement indicating the amount of interest owed. At this same time, the landlord must send you the interest or a notice to deduct it from the next rent payment. If they fail to do this within 30 days, you may calculate the amount and deduct the interest from your next rental payment. The interest rate is 5% or the rate the landlord receives from the bank, whichever is less.

3. Rent and Rent Increases

Rent: The tenant has the responsibility to pay the rent on time. The landlord cannot charge you any interest or a penalty until 30 days after the rent is late. (M.G.L. c. 186, §15B). But you should be aware that the landlord can begin the eviction process if your rent is only one day late. If you must pay your rent late, contact your landlord ahead of time to explain the situation and ask for an exception.

Rent Increases:

- If the apartment is publicly subsidized, the landlord generally cannot increase the rent without receiving prior approval from the proper housing authority.
- For a tenant with a lease, rent can only be increased when the lease term expires. There is an exception for a lease that has a tax escalator clause. A tax escalator clause states that a landlord can raise your

rent to cover the cost of an increase in property taxes.

- Rent for a tenant-at-will can be raised at any time providing the landlord gives you proper legal written notice 30 days or one rental period in advance. The notice terminates the existing tenancy and offers you a new tenancy at an increased rent.
- Landlords cannot demand retroactive increases. Payment of the increase by the tenant means acceptance of the increase.

The tenant need not accept a rent increase if she or he does not agree to pay it or is unable to pay it. However, the tenant must be prepared for the possibility that the landlord might initiate an eviction action. In such an eviction action, while a landlord might be able to get possession of the apartment, the landlord should not win money damages for the tenant's failure to pay the higher requested rent if the tenant never agreed to pay it. Please note that once the higher rent is paid, it is deemed to have been accepted by the tenant.

If you receive a rental increase that you feel is unacceptable, try and negotiate with the landlord. If you do not reach an agreement, the landlord does have the right to give you a termination notice or act on the termination notice if previously given with the rent increase. The landlord can also evict you from the apartment. However, the landlord must follow the procedures for eviction.

2. Utilities

A landlord may require a tenant to pay for gas and electricity if the utilities are separately metered for each apartment. A landlord may require a tenant to pay for oil (for heat and/or hot water) only if the oil is provided through a separate oil tank serving only that apartment. If you pay for these utilities you should make sure the bills are put in your name and sent to you directly.

Although you may pay the utility service directly, the landlord is responsible for the maintenance of the systems (making sure the burner, wiring system and hot water system are working properly). Improper utility systems are a violation of the State Sanitary Code.

As of March 16, 2005, your landlord may require you to pay for water if the property meets the Massachusetts State Water Submetering Law. In order to charge a tenant for water, a landlord must:

- install a water submeter for your apartment;
- install low flow fixtures;
- have a signed written rental agreement that spells out who pays water charges;
- file proper certification of compliance with the Somerville Board of Health; and
- comply with other rules

If you moved into your apartment before March 16, 2005, you should not be charged for water. For more information on the law and its requirements, call the Housing Division at 617-625-6600 or check www.masslegalhelp.org.

Tenants are not responsible for lights or heat in common areas (hallways, stairs etc.). Except in two and three family houses where the hall lights serve your apartment level.

IV- Rights regarding the property.

A. Habitable Conditions

All tenants are entitled to a safe and habitable living environment. The sanitary code protects the safety and well-being of tenants and the general public. Local boards of health are the agencies designated to enforce the sanitary code.

The Code contains the following provisions:

Heating Facilities: The landlord shall provide and maintain in good operating condition the facilities for heating every habitable room and every room containing a toilet, shower or bathtub every day other than during the period from June 15th to September 15th. The heating season is September 15th through June 15th.

Exception: Although the landlord must maintain the heating facilities: he or she need not actually pay for the fuel providing the heat if the tenant is required to supply the fuel under a written tenancy agreement.

Hot Water: The landlord shall provide and maintain in good operating condition the facilities capable of heating water. The owner shall also supply the hot water for use at a temperature of not less than 110 degrees F. and in a quantity and pressure sufficient to satisfy the ordinary use of all plumbing fixtures which normally need hot water for their proper use and function.

Exception: Although the landlord must maintain the facilities for heating water, he or she need not actually pay for the fuel providing the heat if the tenant is required to supply fuel for the operation of the facilities under a written tenancy agreement.

Lighting and Electrical Facilities: The landlord shall provide for each habitable room other than the kitchen: Transparent or translucent glass which admits light from the outdoors which is equal in area to no less than 8 percent of the entire floor area of that room.

Two separate wall-type convenience outlets or one such outlet and one electric light fixture. The outlets shall be placed in practical locations and shall insofar as practicable, be on different walls and at least 10 feet apart.

Light in the kitchen:

The landlord shall provide:

- one electric light fixture;
- two wall-type convenience outlets located in convenient locations; and
- for each kitchen over 70 square feet, transparent or translucent glass which admits light from the outdoors and which is equal in area to no less than 8 percent of the entire floor area of that kitchen.

Light in Passageways, Hallways and Stairways:

The landlord shall provide at all times and pay for light in every part of interior passageways, hallways and stairways used or intended for use by the occupants of more than one apartment so that illumination alone or in conjunction with natural lighting shall be at least 3 foot candles, measured at floor level.

Exception: In an apartment building containing only 3 or fewer apartments, the light fixtures used to illuminate a common hallway may be wired to the electric service serving one apartment on the same floor provided that if the tenant of such apartment is responsible for paying for the electric service to such apartment then:

The rental agreement shall state that the occupant is responsible for paying for light in the common hallway; and,

The landlord shall so notify the occupants of the other apartment(s).

Kitchens

The landlord shall provide suitable space to store, prepare and serve food in a sanitary manner. The landlord

shall provide within this space:

- a sink of sufficient size and capacity for washing dishes and kitchen utensils; and,
- a stove and oven in good repair. Exception: where the tenant is required to provide a stove under a written lease agreement; and,
- space and proper facilities for the installation of a refrigerator. A refrigerator does not have to be provided by the landlord, just the space for it to be placed in the kitchen. However if one is provided by the landlord, the landlord must maintain it free of defects.

Utility Shut-Offs: The landlord cannot shut off utilities (heat, light, water) unless there are repairs being made or during an emergency. The landlord who interferes with the furnishing of these services or transfers the responsibility to the tenant without their knowledge or consent will be subject to a fine of not more than \$300 or imprisonment for not more than six months. (M.G.L. c.186, § 14). In addition, the landlord could be liable to the tenant for actual or consequential damages or three months rent (whichever is greater), the cost of the action and reasonable attorney fees.

In cases where the landlord's account is about to be shut off for non-payment, state law (M.G.L. c. 164, §124D) and state Department of Telecommunications and Energy regulations require utility companies to notify each affected tenant in writing at least 30 days prior to the scheduled termination. Tenants may also be asked to pay part of the overdue bill to the utility and deduct that payment from their rent.

Extermination of Insects, Rodents and Skunks:

The tenant of a dwelling containing one apartment shall maintain the unit free from all rodents, skunks, cockroaches and insect infestation and shall be responsible for exterminating them, provided, however, that the landlord shall maintain any screen, fence or other structural element necessary to keep rodents and skunks from entering the dwelling.

The landlord of an apartment building containing two or more apartments and/or the owner of a rooming house shall maintain it and its premises free from all rodents, skunks, cockroaches and insect infestation and shall be responsible for exterminating them.

Structural elements:

Every landlord must maintain the foundation, floors, walls, doors, windows, ceilings, roof, staircases, porches, chimneys, and other structural elements of the apartment so that it excludes wind, rain, and snow; is rodent-proof, watertight, and free from chronic dampness, weather tight, in good repair, and in every way fit for use intended. Further, they shall maintain every structural element free from holes, cracks, loose plaster, and other defects where such holes, cracks, loose plaster or defect renders the area difficult to keep clean or constitutes an accident hazard or an insect or rodent harborage.

Garbage and Rubbish Storage and Disposal:

The owner of any dwelling that contains three or more dwelling units, the owner of a rooming house, and the occupant of any other dwelling place shall be responsible for providing as many receptacles for the storage of garbage and rubbish as are sufficient to contain the accumulation before final collection or ultimate disposal and shall so locate them to be convenient to the tenant and so that no objectionable odors enter any apartment.

Safe Condition (includes snow removal):

The Owner shall maintain all means of egress at all times in a safe, operable condition. All exterior stairways, fire escapes, egress balconies and bridges shall be kept free from snow and ice.

Lead Paint:

The presence of lead paint in an apartment or a house presents a serious health concern for all occupants. The law has recognized that children (especially under the age of 6) are particularly at risk. The State Sanitary Code, the Lead Poisoning Prevention & Control Regulations and the Massachusetts General Laws each detail the responsibilities and liabilities of a landlord/owner in regard to removal of lead paint once detected.

The landlord/owner of the apartment is required by law to remove or cover any paint, plaster or other accessible structural material containing dangerous levels of lead or replace the fixture on which the lead is located whenever:

- a child under six years of age lives there, whether or not the premises have been inspected; or,
- the owner receives an order to delead because a child under the age of six resides in the apartment; or a child under the age of six who is lead poisoned has resided in the apartment within the past 12 months.
- If the apartment is found to contain lead paint and the landlord/owner fails to remove the paint, they can be civilly liable. This means that the landlord will be responsible for all damages. There have been cases where landlords have been ordered to pay damages for health injuries to children.
- A landlord/owner who has knowledge of the presence of lead paint must arrange to have it removed from the premises. A family may have to temporarily relocate while the deleading is being conducted. The landlord is responsible for paying reasonable moving expenses and, if the tenant does not have access to free alternative accommodations, he or she must offer and pay the charges of a substitute dwelling unit (e.g., hotel costs) which exceed the rent for the unit the tenant must temporarily vacate for the deleading. A landlord/owner who does not satisfactorily remove or correct the situation, once they has been notified, can be liable for treble damages-- that is three times the amount of the actual damages found.

Deleading is often costly in terms of landlord time and money since it generally can only be done by certified deleaders. (In limited "low-risk" situations, persons who are not certified deleaders can be authorized to perform limited de-leading work.) State income tax credits are available to cover a small portion of the cost and some owners may be eligible for city and state loan programs.

Some landlords try to avoid deleading by trying not to rent to families with children under the age of six. This is discrimination under the Fair Housing laws. The landlord may sound sincere about not wanting to injure your child, but by not deleading the landlord is discriminating against children. If you encounter this type of situation, the landlord is violating Fair Housing laws.

Article II of the state sanitary code (105 CMR 410) contains the rules for minimum physical requirements of rental property in the Commonwealth. Copies of the state sanitary code may be purchased from the State House Bookstore, State House, Room 116, Boston MA 02133 (617) 727-2834. The code is also available online at www.gov/eohhs2/docs/dph/regs/105cmr410.pdf

Call 617-625-6600 and ask about the City's Lead paint program or visit www.somervillema.gov/lead

What to do if you find a possible code violation

- Tell the landlord about the situation. You should write a request that they repair it and keep a copy of the request for your records. You may call, but it is best to put it in writing so that there is a record of your concern. If this does not elicit a satisfactory response from the landlord, there are additional steps you may take.
- Ask the local board of health for an inspection. It is against the law for the landlord to retaliate by raising the rent or evicting you for reporting the code violation for at least six months after you inform

the authorities. If the landlord tries to evict you within six months after you informed the authorities, the landlord is presumed to be evicting you for a retaliatory reason.

- Make a list for the inspector of all the (possible) code violations you want investigated.
- See that the inspector writes down all the code violations that they is able to identify.
- Any minor or major violation can be determined to be a "Code One" (a violation that endangers a person's health and well-being). The inspector must supply the tenant with a copy of the report and must specify a time period for the landlord to correct the violations. If the landlord fails to begin the repairs or make arrangements for the repairs in the amount of time specified, they could be subject to fines or imprisonment. **Actions that may be taken by the Tenant if the Violations Persist:**

1. Rent Withholding

This is a very serious step and should not be done lightly. If you determine that this may be the appropriate action to take, it is in your best interest to obtain legal advice before you actually withhold the rent. The landlord could try to evict you for non-payment of rent.

The Massachusetts Supreme Judicial Court has 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 the breach of the warranty of habitability . (M.G.L. c. 239, § 8A).

You must first notify the landlord or their agent of the violation of the sanitary code.

Then, in order to be able to withhold rent:

- you must be up to date on your rental payments; and,
- the conditions were not caused by you or anyone you control; and,
- the property in question is not a hotel, motel, lodging house or rooming house where you have lived for less than three (3) consecutive months; and,
- the unsanitary conditions should be such that do not require you to vacate the premises. However you can bring an action for a sanitary code violation that may require you to temporarily vacate the premises for the purpose of removal or covering of paint, plaster, soil or other accessible materials containing dangerous levels of lead paint pursuant to the lead paint statute. (M.G.L. c. 111, § 197).

If the violations persist you should inform the landlord - preferably in writing - that you are withholding the rent. Specify your reasoning for doing so. Deciding how much rent to withhold is individual to the specific concern of the tenant (i.e. whether you have no heat, lead paint, etc.). You need only to pay the fair amount of the rent given the property's defective condition.

Once the code violations have been repaired you will be required to pay rent again, so do not spend it. If the violations have been corrected and the landlord disagrees with the reduced amount of rent you paid for the period of defective conditions, then the landlord may seek to evict you for non-payment of rent. In that event, the court will determine how much rent, if any, is due. Therefore, it is very important that you save the withheld rent or at least have immediate access to this sum. Although not legally required, it is advisable for tenants to deposit the withheld rent in a separate bank account.

2. Repair and Deduct

This allows a tenant to make repairs in the apartment and deduct up to 4 months future rent in a 12-month period to pay for it. (M.G.L. c. 111, § 127L) This option is available to the tenant only if certain conditions are met:

- The local board of health has certified that the code violation is a Code One violation - it may endanger

- or materially impair the health, safety, or well being of the tenant.
- The landlord receives written notice of the existing violations from the inspecting agency.
- The landlord fails, within five days, to begin repairs him/herself or to contract for outside services and fails within 14 days to substantially complete all necessary repairs. (A landlord may have less than 14 days to complete the repairs if ordered by the court or the local board of health).
- The tenant, household member or guest did not cause the condition.
- The tenant did not unreasonably deny the owner access to the apartment.
- The deduction was not unreasonable under all the circumstances.

If the tenant qualifies under "repair and deduct", the tenant may treat this as the rental agreement being broken and may move as opposed to making the repairs. Please note that if you decide to move you must:

- Pay for the fair value for the period you occupied the apartment.
- Must leave the apartment within a reasonable period of time.
- Although not required, a tenant who intends to break their lease pursuant to the repair and deduct statute should notify the landlord of his or her intent in writing.

B. Privacy, Entry Doors, and Lockouts

Right against unlawful entry: (M.G.L. c. 186, § 15B) A landlord may enter a tenant's apartment under a right of entry clause in a written agreement only for the following reasons:

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

The landlord should be "reasonable" and try to arrange a mutually convenient time to enter your apartment. If the landlord enters your apartment in an unreasonable fashion, (i.e. without your knowledge or at unreasonable times), you should first complain about this practice to your landlord in writing. If this does not prevent continued problems, you can obtain a temporary restraining order at the Somerville District Court (617- 666-8000).

Entry Doors: In a building with 4 or more units, the main entry door must close and lock automatically with a lock, including a lock with an electrically operated striker mechanism, a self- closing door and associated equipment. Each tenant must use a key to enter.

- Every door of the main common entryway and every exterior door into the building, other than the main door mentioned above, shall be equipped with an operating lock.
- Every entry door of the apartment shall be capable of being reasonably secured from unlawful entry (break-ins) and shall be fitted with an operating locking device.
- Every operable exterior window of a building shall be capable of being reasonably secured and shall be properly fitted with an operating locking device.

Lockouts/Removal of Possessions: A landlord cannot lock tenants out of their apartments or threaten to do so. In order to remove a tenant's possessions, a court proceeding must take place. If you are involved in an

eviction, contact your attorney immediately.

If you have been illegally locked out, you may go to Somerville District Court and obtain a restraining order, or, you may try and re-enter without a breach of the peace. Forms are available at the Civil Clerk's Office at the Somerville District Court (617- 666-8000).

C. Insurance

Landlords who own buildings with two or more units are required to carry fire insurance coverage to pay up to \$750.00 toward the actual relocation costs of tenants who are forced to leave their apartments because of fire or fire damage. Relocation costs include hotel room rental, security deposit and last month's rent for a new rental unit (in some cases), clothing replacement, furniture replacement, and other reasonable costs and living expenses as a result of being displaced or damaged by fire.

A landlord's insurance will not cover the contents of your apartment. However you have the option of obtaining renter's insurance on your own. If you purchase renter's insurance you will be responsible for the payments on the premium.

V. Evictions

If you have a lease the landlord may attempt to evict you if:

- you have not been paying your rent (Non-payment Eviction); or,
- you or people under your control have violated terms of your lease, e.g., having pets or subletting without permission (Other Cause Eviction).

If you receive a written Notice to Quit, you need to consult an attorney for help. Do not delay! Contact one of these non-profits, if you do not know where to turn:

It is always better to have an attorney, if possible, in an eviction case.

If you are unable to obtain a lawyer, however, in addition to the advice in this guide, you may want to consult Legal Tactics: Self-Defense for Tenants in Massachusetts which is available for purchase at Massachusetts Continuing Legal Education (MCLE) at 10 Winter Place in Boston, Massachusetts and at some libraries (including the reference desk at Somerville's main public library). Help is also available at these local non-profits:

Cambridge and Somerville Legal Services
60 Gore st, suite 203
Cambridge, MA
617-603-2700

Community Action Agency of Somerville
66-77 Union Square
Somerville, MA 02143
617-623-7370

Steps in Eviction:

Notice to Quit: A written notice informing you that begins an eviction.

If you are being evicted for non-payment of rent, you must receive a 14-day notice by law. You may stop the eviction by paying back rent, and the landlord's costs for the eviction process by the date the deadline on the Notice. (M.G.L. c. 186, § 11).

For other-cause eviction, notice as specified in the lease, which is typically a 7-day notice except for subsidized tenancies where a 30-day notice is often required.

Tenants at Will: Your landlord does not have to give you an explanation for terminating your tenancy. In order to evict you for non- payment of rent, the landlord must give you a 14-day notice to quit (M.G.L. c. 186, §12).

You do not have to move out of your apartment after a 7, 14 or 30-day notice. You can only be evicted from the apartment when a judge orders you evicted.

The other phases of this process of eviction are:

The Summons and Complaint

This is an official document and will inform the tenant that court action has begun. You should read this very carefully for it will state the date the case has been scheduled for court for the eviction and the date on which an answer must be filed.

The Answer

This is the written response by the tenant why they should not be evicted. This is your opportunity to present your side of the situation.

A printed answer form is available at Somerville District Court. A more complete answer form may be obtained from Cambridge and Somerville Legal Services or the Community Action Agency of Somerville or on line at www.masslegalhelp.org

The completed answer form must be received by both the court and the landlord (or their attorney, if any) by the Monday before the court date.

Make a copy of the answer that you give to both the landlord and the court, then keep it in a safe place.

Discovery Requests

All tenants have a right to request "discovery" from their landlords if they have been served with a summary process summons and complaint. This means that you get an opportunity to ask your landlord questions which your landlord must answer under oath. In addition, you have the right to a request for production of documents, which means the landlord has to give you relevant information.

Ways that eviction proceedings are resolved:

Right to a Jury Trial

You have the right to decide whether you want your case to go before a judge (known as a "bench trial") or a jury. In a bench trial, a single judge hears your case and decides it. In a jury trial, a group of your peers - people in the community - listen to your case and decide it together. The judge tells the jury what the law is, and then the jury decides the case based on the facts that have been presented.

If you want your case to go before a jury, you must request a jury trial on or before the answer date. This is usually done by adding a request for a jury trial to your answer. This can be as simple as writing "I hereby request a trial by jury" at the end of your answer form and signing the form.

Eviction Bench Trial

You may want to settle the case out of court. You need to think carefully about what you want and what you think the court will give you. If you successfully settle the case, make sure the landlord dismisses the lawsuit in writing, or files with the Court Clerk in charge of summary process a formal agreement of settlement.

Mediation: One alternative that can be helpful is mediation. Mediation is an alternative to court that allows the parties of a dispute to resolve their conflict with the aid of a third party. Both the landlord and tenant have an opportunity to work together to come to an agreement and avoid an eviction. In Somerville, you may contact the Mediation Program at the Somerville Community Corporation, CAAS or Just A Start Corporation. Sometimes mediators are available in Somerville District Court on your trial date.

If you are unable to attend the trial, try and negotiate with your landlord to get the court date changed. It can be scary to go to court, especially if this is your first time. It may make you feel more relaxed to have a friend to accompany you for moral support.

Judgement

In many circumstances, the judge will give you their decision after the trial. In some cases, the judge may say that they will take the matter "under advisement." In this case, a written decision will be mailed to you. The judgement is usually entered with the Clerk of the Court on the Friday after trial.

In some types of cases, if the damages (amount of money granted from the counterclaims) are less than what the tenant owes in back rent, the tenant has 7 days to pay to the landlord the balance, with interest and court costs. In this case, the eviction can be avoided. (M.G.L. c. 239, § 8A.)

Appeal

If you lose the case, you have the right to file an appeal. By doing this, you are asking the Appellate Division of the District Court to review what the judge did in your case to see if it was done correctly. You must file a "Notice of Appeal" within 10 days after the judgement is entered.

Execution

If you lose the case and do not appeal, the court will issue an Execution for Possession and an Execution for rent (if it is found to be due) ten days after the judgement is entered.

You cannot be evicted without the Execution for Possession from the court. This execution can be sent to you either by a Constable or a Sheriff. You must be given at least 48 hours written notice of the date and time when you and your possessions will be physically moved out. This 48- hour period does not include weekends or legal holidays. The execution for possession is valid for three months. This means that if your landlord allows you to stay after you receive it, they can use it for up to 3 months to forcibly remove you and your possessions from the apartment. If the eviction was for nonpayment of rent; and you pay and the landlord accepts payment of the amount the landlord won in the summary process proceeding; and you have paid and the landlord accepted your rent up to date, then the landlord cannot use this execution and must return it to the court. The execution for rent (money damages) is valid for twenty (20) years.

Stay of Execution

If you lose the case and you do not appeal, you may apply to the Judge for a stay of execution. This means that if the eviction was not your fault and you have no other place to live, the judge may grant this stay of execution and allow you to remain in the apartment for up to six months. If you are elderly or handicapped, you may be able to stay for up to one year. (M.G.L.c. 239, § 9) If your eviction was because you did not pay the rent, then legally you may not be entitled to a stay of execution - but the court sometimes grants the stay anyway. You should be prepared to pay the rent during any stay and tell the judge that you are prepared to do so. If you owe money, bring it to court if possible if you are requesting a stay.

Eviction

You must move out by the date in the Constable's or Sheriff's notice of levy ("48 hour notice"). If you do not move out on your own, the Constable or Sheriff can forcibly remove you and your belongings and then change the locks.

Your property cannot be put out on the street without your consent. However, it will be put into storage. The Massachusetts Eviction Storage Law, among other protections:

- Requires that you be told who is storing your property
- Requires that your property be inventoried before being put into storage
- Gives you the right to choose where your property is stored if you notify the constable or sheriff in writing at or before the time your property is removed.
- Gives you one-time access to remove items of personal value free of charge
- Requires that all fees charged in an eviction storage levy be filed with the Department of Public Safety
- Generally, most storage companies require a landlord to pay three months storage in advance. However, the landlord is entitled to sue you to recover the cost of the eviction (the constable fee, cost of storage and any moving fees).
- Remember, that if your belongings are left in storage for more than six months and you have not paid the storage fees, the person storing them has the right to sell the items. You are not responsible for paying any rent owed to your landlord in order to reclaim your possessions from storage.

For more information on the Eviction Storage Law, go to www.MassLegalHelp.org/EvictionStorage or call the Housing Division at 617-625-6600.

VI. Changes when the property is sold:

The Effect of a Sale on Tenancy

In general, a tenant's rights do not change significantly after a building is sold to a new owner. Any lease you have remains in place until it expires. Any last month's rent or security deposit transfers to the new owner at the time of the sale. See M.G.L. c.186, §13. This means that the tenant is required to pay the same rent he or she paid prior to the sale and the new owner is required to comply with all terms of the tenancy and to comply with state and other laws regulating residential tenancies (e.g. the State Sanitary Code).

Claims by and against a new owner

A new owner is not responsible for conditions that occurred before their ownership. Tenants are not responsible to the new owner for rent owed to the old owner, unless there is a written agreement changing this.

A new owner will, however, be liable for some violations of M.G.L. c. 186, §15B (the "security deposit statute"), including failure to return a security deposit or credit last month's rent whether or not he or she actually received the deposit or last month's rent from the previous owner. Note that a foreclosing bank is not liable for violations of the security deposit statute but any subsequent owner purchasing property from the foreclosing bank will be liable for return of the security deposit or credit of a last month's rent whether or not it was actually received. A tenant may choose whether he wants to collect his security deposit from the old or new owner.

Eviction – Termination of tenancy after sale (without foreclosure)

If your landlord was evicting you for cause, and is selling, that eviction process does not continue with the new owner. The new owner has to begin their own eviction.

If the eviction is no fault – you were asked to leave at the end of a lease or with notice on a tenancy at will – the new owner can continue the eviction that the old owner started.

See Eviction (section V above). We advise you to seek immediate legal help if you get a Notice to Quit.

Rights after Foreclosure

However, where a house is foreclosed on by a bank and subsequently purchased by a third party, the rules are somewhat different and may depend on:

- whether the tenant is under a lease or a tenant at will;
- whether the tenancy has a government subsidy; and
- whether the tenancy was created before or after the mortgage was given to the owner.

Foreclosure - Tenants under private unsubsidized lease: There are factors that change whether your lease will continue after foreclosure. It depends on when the lease began, in relation to the foreclosed mortgage loan. You may not be able to determine your rights. Seek legal advice.

Foreclosure - Subsidized Leases: The rules are different with tenants under a Section 8 lease. This is because Section 8 is governed by federal law, which should be deemed to "preempt" (or be more important than) state law. Where a tenancy is subsidized with a Section 8 voucher, the new owner, even after foreclosure, takes subject to the lease and cannot evict the tenant without "good cause" set forth in the notice to quit and proven at trial. During the first year of a tenant's occupancy of a unit, the owner (new or old) may not cite his own business reason (e.g. wants more rent) as good cause for eviction.

Foreclosure - effect on tenants at will: In some cases, tenants at will have retained the same tenancy rights before and after foreclosure (e.g. right to a thirty day termination notice prior to eviction) while in other cases they may be considered tenants at sufferance with a right to reasonable notice but not necessarily a full rental

period notice. You may not be able to determine your rights. Seek legal advice.

Condominium Conversions

Somerville's Condominium Conversion Ordinance (No. 1980-14 & 1985-9) regulates the removal of any rental unit from the market for conversion to condominiums or cooperatives. **A landlord cannot remove a unit from the market without first receiving a removal permit from the Condominium Review Board.** Any owner wishing to convert their units to a condominium must follow certain procedures. These procedures are designed to provide tenants with certain protections and rights.

This is the procedure your landlord must follow, if they are converting your rental into a condo:

Notice Requirements: A landlord must give the Condominium Review Board and each tenant written notice of their intention to convert **at least one year** before they file a master deed. (A master deed is the new deed allowing it to be sold as a condo.)

Owners are required to give elderly, handicapped, and low-income tenants **at least two years notice** of their intent to convert and recover possession of the unit.

Evictions:

No tenant can be evicted during the notice period except for:

- non-payment of rent; or
- conduct that disturbs other tenants' peaceful
- enjoyment of the premises and/or
- other substantial violations of the terms of the tenancy.

A landlord cannot alter the terms of the tenancy during the notice period.

Moving Expenses: An owner must pay a tenant's actual moving expenses (up to a maximum of \$300 or one month's rent, whichever is higher) as long as the tenant's total household income for the previous year is equal to or less than the qualifying income for Section 8 rental assistance (80% of area median income).

Tenant Right to Purchase: Within 30 days after the removal permit has been granted, the owner must give the tenant a written offer to sell the tenant the unit they rent. Tenants have 30 days to respond to the offer.

Note that it is possible that tenants may be entitled to some greater protections under State law. Please consult an attorney regarding this m

LOCAL RESOURCES

For Help With:	Types of Assistance	Telephone:
CITY REGULATIONS AND INSPECTIONS		
Health Division -1 Franey Rd, Somerville 02144	<ul style="list-style-type: none"> Housing code inspections 	617-625-6600 ext. 4331
Inspectional Services - 1 Franey Rd, Somerville 02144	<ul style="list-style-type: none"> Building code inspections, permits 	617-625-6600 ext. 5617
HOUSING LAW AND EVICTION PREVENTION		
Eastern Housing Court (Boston Housing Court) 24 New Chardon st, Boston, MA 02114	<ul style="list-style-type: none"> Tenant-landlord eviction information Court procedures 	617-788-6233
Community Action Agency of Somerville (CAAS) 66-70 Union Square, Somerville 02143	<ul style="list-style-type: none"> Homeless prevention program Help with benefits 	617-623-7370
Cambridge & Somerville Legal Services (CASLS) 60 Gore Street, Suite 203, Cambridge 02141	<ul style="list-style-type: none"> Legal information and possible representation. 	617-603-2700
Harvard Legal Aid Bureau 23 Everett Street, Cambridge, MA 02138	<ul style="list-style-type: none"> Legal information and possible representation 	617-495-4408
Somerville Mediation Program 81 Highland Ave, Somerville, MA 02143	<ul style="list-style-type: none"> Mediation for tenants and landlords 	617-625-6600 ext.6146
Somerville District Court 175 Fellsway, Somerville 02145	<ul style="list-style-type: none"> Evictions Temporary Restraining Orders 	617-666-8000
FAIR HOUSING AND DISCRIMINATION		
Somerville Fair Housing Commission Somerville Human Rights and Commission for Persons with Disabilities	<ul style="list-style-type: none"> Information on fair housing Information on human rights and disability law 	617-625-6600 ext.2578 617-625-6600 ext.2323
Mass. Commission Against Discrimination (MCAD) 1 Ashburton Place–Suite 601, Boston 02108	<ul style="list-style-type: none"> Information on anti-discrimination laws (housing, workplace, etc); help with complaints; mediation, enforcement 	617-994-6000 TTY: 617-994-6196
HUD Office of Fair Housing and Equal Opportunity Region I 10 Causeway St, Boston 02222-1092	<ul style="list-style-type: none"> Information on fair housing law Fair housing enforcement 	617-994-8300 TTY: (617) 565-5453
Massachusetts Office on Disability 1 Ashburton Place – Rm 1305, Boston 02108	<ul style="list-style-type: none"> Information on disability law Information on resources for people with disabilities 	617-727-7440 voice/TDD
Disability Law Center 11 Beacon St., Ste.925 Boston 02108		617-723-8455 voice/TDD

AFFORDABLE/SUBSIDIZED HOUSING

Somerville Housing Authority 30 Memorial Road, Somerville 02145	<ul style="list-style-type: none"> • Public housing • Section 8 rental assistance 	617-625-1152
Wingate Residential 7 Memorial Road, Somerville, MA 02145	<ul style="list-style-type: none"> • Affordable and subsidized housing 	617-591-0577
Office of Strategic Planning & Community Development (OSPCD) 50 Evergreen Ave, Somerville 02145	<ul style="list-style-type: none"> • Inclusionary rental and homeownership opportunities 	617-625-6600

FINANCIAL ASSISTANCE

Somerville Homeless Coalition 1 Davis Square, Somerville, MA 02144	<ul style="list-style-type: none"> • Rental and utility arrears assistance based on income restrictions • Adult & Family Shelter 	617-623-6111
Just-A-Start 1035 Cambridge Street, #12 Cambridge, MA 02141	<ul style="list-style-type: none"> • Rental arrears assistance based on income restrictions • Start-up cost assistance 	617-918-7518
RAFT program through Metro Housing Boston 1411 Tremont Street Boston, MA 02120	<ul style="list-style-type: none"> • Rental and utility assistance based on income restrictions. 	617-425-6700 or 617-425-6612
Jewish Family & Children Services 1430 Main Street, Waltham, MA 02451	<ul style="list-style-type: none"> • Rental assistance 	781-647-5327
Fuel Assistance Program 51 Inman st., Cambridge, MA 02139	<ul style="list-style-type: none"> • Assistance to pay for heating costs and discount rates. • Based on income restrictions. 	617-349-6252

Appendix I:

LEGAL REFERENCES / OTHER GUIDEBOOKS/ USEFUL LINKS

The Tenant's Commandments:

A Consumer's Guide to Tenants' Rights

Executive Office of Consumer Affairs & Business Regulation

One Ashburton Place

Boston, MA 02108

Consumer Hotline: 617-973-8787

Toll free, Massachusetts only: 888-283-3757

Legal Tactics: Self-Defense for Tenants in Massachusetts Legal Tactics: Finding Public and Subsidized Housing Massachusetts Continuing Legal Education

10 Winter Place, Boston, MA 02108

(617) 482-2205

Residential Landlord & Tenant Law - Richard
Friedman 27th Annual Practical Skills Program Volume III
Massachusetts Continuing Education, Inc.
10 Winter Place, Boston, MA 02108
(617) 482-2205 (617) 357-0700

HELPFUL WEBSITES FOR TENANTS AND LANDLORDS

Massachusetts Dept. of Consumer Affairs: Tenant/Landlord Information – links to many publications

<http://www.state.ma.us/consumer/Info/lnldtnt.htm>

Neighborhood Legal Services (Lynn) – includes sample forms, letters, answers to frequently asked questions

<http://www.neighborhoodlaw.org/cat/43>

Massachusetts Trial Courts Law Library – links to many publications and forms <http://www.lawlib.state.ma.us/landlord.html>

Housing Consumer Education Center at Metropolitan Boston Housing Partnership – online services for landlords and tenants as well as extensive resources

<http://mbhp.org/edcenter/index.html>

(617) 425-6703

Massachusetts legal services site at <http://masslegalhelp.org>

EMERGENCY Information

A Handbook for Renters
.....

Assistance Available 24 hours per day, 7 days a week

SOMERVILLE POLICE	911
Somerville Police (Non-Emergency)	(617) 625-1600
SOMERVILLE FIRE ALARM	911
SOMERVILLE AMBULANCE	911
SOMERVILLE PUBLIC WORKS.....	(617) 625-6600
Somerville Hospital	(617) 591-4500
Cambridge Hospital.....	(617) 665-1000
Action Line	1-800-235-2331
American Red Cross-Mass office.....	(781) 410-3670
Arson Hotline	1-800-682-9229
Boston Area Rape Crisis Center.....	(617) 492-7273
Child at Risk Hotline	1-800-792-5200
Disabled Persons Protection Hotline	
1-800-426-9009 (V/TTY)	
Drug & Alcohol Abuse Hotline.....	1-800-662-4357
Elder Abuse Hotline	1-800-922-2275
(V/TTY)	
National Runaway Switchboard	1-800-RUNAWAY
Parental Stress Hotline	1-800-632-8188
Pine Street Inn	(617)-892-9100
Samaritans Suicide Hotline	(617)-247-0220
RESPOND Domestic Violence Crisis Hotline.....	(617)-623-5900
Somerville Homeless Coalition	(617) 623-6111

