

PART #6: Tenant – Landlord Issues

There are a wide variety of federal and state laws that govern the relationship between a tenant and a property owner. They cover everything from discrimination, housing quality and lead paint to security deposits and evictions. The publication *Legal Tactics: Tenants' Rights in Massachusetts* published by the Massachusetts Law Reform Institute is a must for every community organization. This comprehensive book covers many issues in excellent detail. We will focus on a few key items here.

Brainstorm: Common tenant-landlord issues

Discrimination: Under state and federal laws, it is illegal to discriminate against persons based on: race, color, national origin, sex, sexual orientation, religion, marital status, familial status, age, physical or mental disability, receipt of public assistance, receipt of a housing subsidy, status as a veteran.

In addition, a property owner can not refuse to rent to your client:

- ◆ Because your client has a child under six and an available unit has lead paint
- ◆ Because they don't like to deal with housing authorities or subsidy vouchers
- ◆ Because your client receives Social Security or welfare income

Property owners and their agents must respond to requests for reasonable accommodations and in many cases, reasonable modifications.

Strategies to avoid discrimination:

- ◆ When calling about an apartment, simply ask to see the unit. Don't discuss children, income or housing subsidies in advance.
- ◆ If you are asked whether you have children or a voucher, answer truthfully but write down the conversation. Your client may be able to use this for a claim.
- ◆ Watch out for 'steering', such as if an agent asks if you want to see a de-lead or lead unit or if they tell you the unit will be 'too small' for your client. Don't let the owner or agent discourage your client from viewing or pursuing a unit. Let the client decide.
- ◆ As with a housing authority, try to get specific information from an owner or agent about why they turned your client down.
- ◆ If you think your client has been discriminated against, run a quick 'test'—have someone else call looking for the same unit but with different data (e.g. higher income, no subsidy)
- ◆ Contact legal aid services for assistance.

Tenants with lease and Tenants 'at will': In MA law, there are 2 basic types of rental agreements—tenancies valid for a set time period and open-ended ('at will') tenancies. Both types of tenancies have full rights under MA law, including:

- ◆ Full 'possession' of the unit (the right to live in the unit)
- ◆ Decent housing conditions that meet housing codes
- ◆ Privacy (no unauthorized access by owner or agent)

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- ◆ Due process, including notice to quit and access to civil or housing court

The main difference between the two types of tenancy is that leases specify a date through which it is valid and sets the rent amount in writing. Written leases should specify start and end dates, rent amount, when rent is due (and to whom), amount of security deposit and rights concerning deposits.

Illegal lease clauses: Sometimes owners added illegal clauses to leases. These are invalid *even if the tenant signs a lease with them in it*. Common illegal clauses are:

- ◆ Tenant is responsible for all repairs (and not just the ones they have caused)
- ◆ Security deposit can be used for unpaid utilities
- ◆ Tenant must pay for utilities that remain in owners name
- ◆ Owner/agent can enter the unit without proper notification
- ◆ Tenant can not have guests
- ◆ Illegal fees: pet fees, credit check fees, application fees, hold deposits (some of these may be legal only if applied to rent or returned if applicant does not move into the unit)

In general get all promises (e.g. about pets, parking spaces, storage, etc) in writing, if possible. Otherwise, there may not be much a tenant can do if an owner or agent does not follow through.

Security deposits: Under MA law, the only charged that an owner can require in advance of moving in are: first month's rent, last month's rent, a security deposit and the cost of a new lock. (Licensed brokers can charge a 'finder's fee'; the owner can not). Never give an owner or agent cash without receiving a written, dated and signed receipt.

In the eyes of the law, a security deposit is still the property of the tenant, even though it is held by the owner. Massachusetts law is very specific about how deposits should be handled. Here are some key points:

- ◆ A security deposit is money held by the landlord to be used at move out to cover damages by the tenant to the unit. It can also be used to cover unpaid rent at move out.
- ◆ Tenant must be provided with a written receipt when the deposit is given.
- ◆ This receipt should indicate amount received, date received, use of money for security deposit only, name of person receiving the money and statement that tenant will be owed interest on deposit.
- ◆ Within 10 days of giving a deposit, the tenant should receive a 'statement of condition' from the landlord. This statement covers all *existing conditions* and should be *thoroughly reviewed by the tenant for accuracy*. If there are problems not recorded in the statement, the tenant should have them added by the landlord. Otherwise, the tenant may be held responsible for an existing condition at the time of move out. If the landlord does not give the tenant a statement, the tenant should create, sign, date and submit their own to the landlord.
- ◆ Within 30 days of deposit, the tenant should receive information about the account and bank where the deposit is deposited. Deposits for different tenants should be held in different accounts.
- ◆ At the end of each year, the tenant should receive a statement of interest earned on the deposit.

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- ◆ Security deposits can be used to pay for damages that are the fault of the tenant *before* they move out. The tenant and landlord must both agree to use the deposit in this way.
- ◆ When used to cover damages at move out, security deposits should NOT be used to cover “reasonable wear and tear” to the unit. For example, if a family occupied an apartment for 3 years, it would be reasonable to expect that the unit would need new paint in the kitchen, so it would NOT be allowable for the landlord to deduct paint costs from the security deposit.

Getting a security deposit back. The key point to remember is that security deposits belong to the tenant *unless the tenant owes for physical damages or unpaid rent*. Typically, the owner must give the security deposit back (or assess charges against it) within 30 days of the tenant leaving their unit. In certain cases, the tenant can request their security deposit back *before* moving out.

Security deposits can be received back early *if the owner or agent fails to comply with the security deposit law*. The tenant can get their security deposit back early if:

- ◆ The owner fails to put the deposit in a separate bank account
- ◆ The owner does not give the tenant a complete written receipt of the deposit
- ◆ The owner does not allow you to inspect records kept under the security deposit law

Also, remember that the tenant is due the *interest earned* on the deposit at the end of each year. This can be in the form of a payment from the property owner or a deduction on the rent.

At move out, security deposits can be used by the owner to cover the costs of damages in a “reasonable amount necessary.” If the owner wants to use the deposit to cover some repairs, they must give the tenant a written, signed and complete list of damaged items and estimated repair costs within 30 days, accompanied by documentation of repair estimates. If the owner fails to do this within 30 days, then they give up their right to the deposit.

If the owner refuses to return the deposit, contact legal aid. Security deposit disputes are common in Small Claims Court (under \$2,000) and the tenant has a lot of protection. If the court finds that the owner has violated some part of the security deposit law, they MUST award TRIPLE the value of the deposit to the tenant. This applies if the owner fails to properly put the deposit in a separate bank account or return it in a timely manner.

Housing Quality & Substandard Conditions: Massachusetts has a Sanitary Code that sets standards for housing quality in Massachusetts. It sets the minimum standards that property owners must meet. The Code requires that some conditions must be fixed within 24 hours, some within 5 days and some within 30 days.

Review MA Sanitary Code handout

What to do when there is a problem: When required by the Sanitary Code, the owner must fix problems *once they have been made aware of them*. This is a key point. If a tenant has a problem in their unit, it is up to them to make sure that the owner is fully aware of it. As with many things, notice of problems in the unit should be put in writing and the tenant should keep a copy. If the owner does not respond, the tenant should send the notice by *certified mail*. If the owner continues to fail to respond, the tenant can take legal actions described below.

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In some cases, the tenant may want an inspection of their unit by the local health department. Such an inspection can be useful for documenting problems. Also, health departments have the authority to require action by the owner. If the tenant calls a health inspector in, remember that retaliation by the owner for doing this is illegal. Retaliation can include verbal harassment but also if suddenly the owner decides not to renew a lease.

Once the owner has been notified, the tenant should find out when a repair will be made. This is important, since the owner or a repairman can not enter the unit without the tenant's permission (except in case of emergency).

What if an owner fails to make repairs: When an owner does not fix real code violations, this breaks the contract between the tenant and owner. There are a few options a tenant can take. All are serious, as they involve tenant action against the owner. Such action is best taken with the advice of legal aid.

- ◆ Withhold Rent: This can be done if the conditions “endanger or materially impair” the health, safety or well-being of the tenants, if the owner has been properly notified and if the tenant was not responsible for the conditions. To withhold rent, the tenant should notify the owner about this and place the withheld rent in a separate bank account.
- ◆ Repair and Deduct: The owner has failed to respond to legitimate complaints that endanger or impair the tenants. The tenant can take responsibility for getting repairs done. Repairs should only be for violations in their unit only. The law only lets a tenant deduct up to 4 months of rent in a given year. Save all bills and records.
- ◆ Break the Lease: When there are very serious health code violations and the owner fails to respond, this can represent a breaking of the lease agreement. This allows the tenant to move outside of the terms of the lease. This should be done with caution; the owner can sue for rent damages, if the tenant moves before the lease is up and without proper notice.
- ◆ Go to Court: There are a number of ways that a tenant can take the owner to court over code violation: tenant petition, emergency injunction, criminal complaint and civil lawsuit. These actions should only be pursued with the support of legal advice.