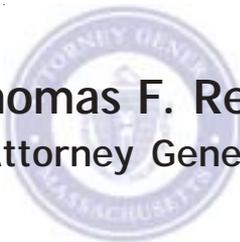




The Attorney General's Guide to Tenants' Rights

Thomas F. Reilly
Attorney General



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www.ago.state.ma.us



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Dear Massachusetts Tenant:

Renting an apartment is a serious business decision. Your choice of a home will have an impact on every other aspect of your life. It can also mean a major financial commitment. Understanding your rights as a tenant, and having good practical tips on how to go about renting an apartment, can mean the difference between finding a safe, comfortable home, and regretting the day you first saw your apartment.

I hope that this booklet will tell you what you need to know to make an informed decision about renting an apartment, and to exercise your rights as a tenant whenever it becomes necessary to do so. With helpful information at your fingertips, you can make the choices that are right for you.

If you have a dispute with a landlord or any other business person, you can call my Consumer Hotline at (617) 727-8400, or write to me at One Ashburton Place, Boston, MA 02108.

Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas F. Reilly". The signature is stylized and written in a cursive-like font.

Thomas F. Reilly

Finding the Right Apartment

Apartment Hunting

Looking for an apartment with the help of a professional can make the job easier, but carries a cost. Be aware that only a licensed real estate broker or agent may charge you a fee for helping you find an apartment, and only after the broker or agent has given you a written notice, with the broker or agent's name and license number written on it. The notice must state whether you will have to pay a fee for his or her services, how and when the fee will be paid, and whether or not the fee or any portion of it must be paid if a tenancy is not created.

Questions to Ask

Whether you are looking at apartments with the help of a real estate agent or not, look them over carefully and be sure to ask a lot of questions about any apartment you are considering renting.

- Does the rent cover all utilities, or will you be responsible for paying for them yourself?
- If you will be paying for the heat and hot water, ask whether they run on electric power, oil, natural gas or propane, and whether the previous tenant can provide information on annual utility costs for the apartment.
- Check every plumbing fixture, light switch, cupboard door, and appliance to make sure they all work properly.
- Ask whether a refrigerator and a stove are included. Make sure your lease or rental agreement states whether you or your landlord will provide each of these important appliances.

- Ask whether the landlord is willing to make specific repairs before or soon after you move in.
- What kind of parking is available? Is there an extra charge for a parking spot?
- Is snow shoveled from the walks in Winter? Is it plowed from the driveway or parking area? Who pays for that?
- What kind of security does the building have?
- How long did each of the previous two tenants stay in the apartment before moving out?

What Kind of Tenancy is the Landlord Offering?

There are two main kinds of tenancy. The rights and responsibilities that you have as a tenant depend partly on the type of tenancy you have, so this is an important thing to think and ask about before you settle on a particular apartment.

Tenancy Based on a Lease

One kind of tenancy is based on a written lease. When you sign a lease with a landlord, you agree that your tenancy will last for a certain amount of time, usually one year. During that year, your monthly rent will stay the same, and your landlord will not be able to end your tenancy (kick you out) unless you fail to keep up your end of the bargain. On the other hand, you are committed to paying rent for that whole year. You may only end the tenancy before the end of the year if the landlord agrees to let you out of the lease.

A lease is a good choice if you want stability in a tenancy. Also, because it is a written agreement between you and the landlord,

it should contain all of the rules that are going to apply to your tenancy; for example, the lease might say that you may have one pet, but no more, in the apartment. A lease gives you a chance to see what you are getting into ahead of time, and should prevent your landlord from trying to hold you to any rules that are not in the lease.

Tenancy-at-Will

The other kind of tenancy is called a tenancy-at-will, which means that it lasts for as long as the tenant and the landlord want to do business with each other. Sometimes there is no written agreement at all in a tenancy-at-will, but often the tenant is asked to sign a form that says "Rental Agreement" or "Tenancy-at-Will" at the top. This form should include the amount of the monthly rent, and basic rules, such as whether or not you may have a pet.

A tenancy-at-will does not last for any set amount of time; it does not end on a certain date, the way a lease does. In a tenancy-at-will you will pay the agreed upon rent each month, for an indefinite period of time. If you decide that you want to end the tenancy, you will have to give your landlord notice that you are planning to leave, either thirty days ahead of time, or one month ahead of time, counting from the day your next rent payment is due, whichever is longer. Likewise, if your landlord decides to replace you with another tenant for any reason, the landlord only has to give you notice that you must move out, either thirty days ahead of time, or one month ahead of time, counting from the day your next rent payment is due, whichever is longer.

If you are a tenant-at-will, the landlord can raise your rent in the same way, giving you advance notice that if you want to stay in the apartment, you must agree to new terms. The landlord must inform you of the rent increase thirty days before it takes effect or one month before it takes effect, counting from the day your next rent payment is due, whichever is longer. If you do not accept those new terms, you must move out before the day the "new"

tenancy would begin. However, if you are receiving a rent subsidy from the government, the landlord may not raise your rent without government approval.

As you can see, a tenancy-at-will is much more flexible than a tenancy based on a lease. However, it is also much less stable. Think about what kind of arrangement you want to have as a tenant, and when you look at an apartment, ask what kind of tenancy the landlord has in mind.

What Do the Two Kinds of Tenancy Have in Common?

In either kind of tenancy, the tenant must pay rent, follow the rules agreed upon with the landlord, and accept responsibility for any damage to the apartment that is more than just “normal wear and tear.” You will be responsible for the cost of repairing unusual damage to the apartment, whether you have caused the damage yourself, or a guest in your home has caused it.

In either kind of tenancy, the landlord must provide an apartment that is safe and clean, in compliance with a set of rules that applies throughout Massachusetts, called the Sanitary Code. The landlord also must live up to any promises in the lease or rental agreement, and may not ask you to pay to repair “normal wear and tear” to the apartment. No landlord may retaliate against you for exercising your legal rights, for instance, if you join a tenants’ union or report violations of the Sanitary Code.

In either kind of tenancy, you have a right to occupy your apartment, and the landlord may only enter under certain circumstances. The landlord must arrange with you in advance to enter the apartment to make repairs; to inspect the condition of the apartment; or to show the apartment to prospective tenants, buyers or real estate agents. The landlord may enter an apartment without a tenant's approval if it appears that the tenant has abandoned it.

Agreeing to Rent an Apartment

Before you decide to rent a particular apartment, be sure to read over the lease or rental agreement, and any list of rules that the landlord will expect you to follow. A lease or rental agreement is a contract between you and the landlord and you should know what is in it before you sign it. Do not let anyone rush you.

You Can Negotiate!

If you see something you do not like in the lease or rental agreement, tell the landlord that you want either to take that item out or to replace it with something else. For instance, if the lease or rental agreement says that no pets are allowed, but the landlord has told you that it is okay for you to have a cat, you will want the lease or rental agreement to state that you are allowed to have one cat.

If the landlord agrees to your changes, use a pen to cross out certain words or lines and write in your changes. Be sure to include a list of all repairs the landlord agrees to make to the apartment, and when they are to be done. Make all changes before you sign anything. If the landlord will not agree to a particular change you want to make, you can either move on in your apartment search or decide that you can live with the landlord's terms.

What Every Lease or Rental Agreement Must Include and May Not Include

Make sure that the lease or rental agreement has the following information: the name, address, and phone number of the owner and the person responsible for maintenance and repair of the apartment; and the name, address and phone number of the

person to whom you can give copies of formal notices, complaints, or court papers. If you pay a security deposit, the lease or rental agreement has to show the amount you paid, and must explain your rights to that security deposit money. Make sure you receive a legible copy of any lease or rental agreement you sign.

No landlord may include illegal terms in a lease or rental agreement! No landlord may require that you give up any of your legal rights in return for renting an apartment. Examples of terms that would be illegal in either kind of tenancy are:

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

Money Matters

What Payments May the Landlord Ask You for at the Start of Your Tenancy?



A landlord may only ask you for the following payments up front: the first month's rent, a security deposit to cover the cost of any damage you do to the apartment beyond normal wear and tear, the rent for the month that will turn out to be your last one in the apartment, and the cost of a new lock and key for your apartment. The amount of the security deposit may not be more than the amount of one month's rent.

Get a signed receipt for any payment you make with cash or a money order. The receipt should say what the payment was for, how much you paid, and the date the payment was made. The receipt should also show the name of the person to whom you gave the payment, the name of the landlord, and the address of your payment.

How the Landlord Must Handle Your Money

Your landlord must deposit your security deposit in a Massachusetts bank, in an account that collects interest. Sometime during your first month, the landlord must give you the name and address of the bank holding your security deposit, plus the actual account number. Each year, the landlord must either pay you the interest your security deposit has earned, or let you deduct that amount from a rent payment.

When your tenancy ends and you move out of your apartment, your landlord must return your security deposit, plus interest, within thirty days. However, the landlord may keep any unpaid rent, or the amount of money needed to repair damage you have

done to the apartment (beyond normal wear and tear). The landlord may also subtract from your security deposit your share of an increase in the landlord's property taxes, but only if your lease states that the landlord may do so.

If you pay your last month's rent up front, your landlord must give you a signed receipt, which must show that the landlord has received payment for your last month's rent, along with the amount you paid and the date of payment. The receipt should also show the name of the person to whom you gave the payment, the name of the landlord, and the address of your apartment. When you move out of your apartment, you are also entitled to receive any interest earned on the last month's rent you paid at the start of your tenancy.

Protecting Your Security Deposit

The landlord is supposed to give you a sheet called a "statement of condition" within 10 days of receiving your security deposit. The statement of condition describes the apartment, and any part of it that is damaged. This is a very important document! If the statement of condition is incorrect or incomplete when the landlord gives it to you, you have 15 days to add or correct any information you think is needed and return it to your landlord with your signature on it. It is worth taking the time to do this, since when you move out, you will want as much of your security deposit back as you are entitled to receive. Be sure to keep a copy of your corrected statement of condition.

If the landlord tries to keep all or part of your security deposit to cover the cost of repairing damage you have done to the apartment, she or he must give you a written description of the damage and an estimate of the repair cost, within 30 days from the time you move out of the apartment. The statement of condition is your proof that something in the apartment was damaged before you moved in, and that the landlord knew about it.

The statement of condition is so important, that if you do not receive one from the landlord, or it is not complete, you should make your own list of things in the apartment that are damaged when you first move in. Send your list to the landlord, and keep a copy for yourself. Be sure to give your landlord a forwarding address when you move out, so that she or he can return any money that is due you.

What Happens with a New Landlord?

If your landlord sells the apartment or building in which you are living, she or he must pass along all of the information about your money to the new landlord. The new landlord should send you a letter within a couple months, saying that your old landlord did transfer your money to the new landlord, and giving you the new landlord's name, address and phone number. A new landlord has the same responsibility for your money as did the old landlord, once the transfer of accounts takes place and you receive notice of that.

What Must a Landlord Provide in an Apartment?

In Massachusetts, landlords must provide their tenants with safe and "habitable" places to live. "Habitable" means comfortable and clean enough for a person to live in. The state Sanitary Code is the specific set of rules that landlords must follow. Here are some of the basic rules in the Sanitary Code.

Water/Hot Water: The landlord must provide water for the apartment, with enough pressure that all plumbing fixtures can be used. Although you may be responsible for buying the fuel that heats your water, your landlord is responsible for making sure that your hot water heater works. The landlord may charge you for water or sewer costs.*

*Please refer to addendum at the back of the book regarding water usage.

Heat: You may buy the fuel you use for heat, but your landlord is responsible for making sure your heating system works. If heat is included in your rent, and the landlord controls the temperature, your apartment must be heated to at least 68 degrees during the day and at least 64 degrees at night from Fall to Spring. During those seasons, the landlord may not let the temperature of your apartment go above 78 degrees.

Structure of the Apartment: The landlord must keep the foundation, floors, walls, doors, windows, ceilings, roof, staircases, porches, chimneys and other parts of the structure of your building in good repair. This means that the building should protect against wind, rain and snow, and be free of rodents and insects, as well as permanent dampness.

Kitchen: The landlord must provide a working stove and oven unless your lease or rental agreement specifically says that you will provide your own. A landlord does not have to give you a refrigerator to use, but does have to provide enough space and an outlet for one. The landlord also must provide a sink in the kitchen that is big enough to do dishes in.



Lead Paint: The landlord has to remove or encapsulate all lead paint in an apartment if a child under the age of six is going to live there.

Cockroaches and rodents: A landlord must keep a building free of rodents and cockroaches if there are at least two apartments in the building.

Snow Removal: The landlord has to keep all doorways clear of snow so that tenants can come and go, but is not required to shovel the walk or plow a driveway or parking lot.

What Can You Do about Sanitary Code Violations?

If something about your apartment violates the Sanitary Code, you should first contact your landlord to report the problem. If a simple phone call does not work, write a letter to the landlord about the problem. Make sure you date the letter, and keep a copy for yourself.

If your landlord does not respond by making the needed repair, call your town or city board of health, or your local housing code inspection office. Report the problem, and ask that an inspector take a look. You may ask for a full inspection of your apartment.

Walk through your apartment with the inspector, so that you can answer the inspector's questions, and ask some of your own. Make sure that the inspector writes down a description of every violation of the Sanitary Code she or he finds.

The inspector will write up a report and give copies of it to you and your landlord. The report should give the landlord a deadline for repairing anything that violates the Sanitary Code. If the landlord ignores the report, you should contact the inspection agency again and ask the agency to enforce its order to repair the apartment.

If an inspector has found serious violations of the Sanitary Code, the inspector's report will show those as "Code 1" violations, and will tell the landlord that repairs must begin within 5 days and must be complete within 2 weeks after they are begun. If the landlord ignores a Code 1 order, you may make the repairs yourself, and then deduct the cost of them from your rent, up to an amount equal to four months' rent. If your landlord ignores a Code 1 order from the local agency that enforces the Sanitary Code, you may choose to move out of the apartment, even if you have a lease.

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May the Landlord Kick You Out?

Whether you have a lease or are a tenant-at-will, your landlord may not suddenly throw you out on the street, even if you have stopped paying your rent. Likewise, a landlord may not evict you because you have exercised your legal rights, for instance, by going to the local Sanitary Code enforcement agency to request an inspection of your apartment. However, if you do not pay your rent, or you destroy the apartment, or break your agreement with the landlord in some other way, the landlord may ask a judge for permission to evict you. No landlord may evict a tenant without a court order giving her or him permission to do so.

When You Fail to Pay the Rent

If your landlord wants to evict you because you have failed to pay your rent, the first step she or he must take is to give you a written Notice to Quit. The Notice to Quit will state that you have 14 days to move out of the apartment before the landlord sues you. If you receive a Notice to Quit from your landlord, you may decide that you want to move out, in which case you should let your landlord know that you plan to do so.

However, if you want to remain in your apartment, you can try to work things out with the landlord. If you pay your landlord all of the rent you owe within ten days of receiving the Notice to Quit, your landlord may not sue to evict you, unless this is not the first time she or he has given you a Notice to Quit in the past 12 months.

Eviction for Any Reason Other than Failure to Pay Rent

If your landlord seeks to evict you for any reason other than your failure to pay rent, she or he will not give you the fourteen day Notice to Quit described above. Your tenancy ends when your lease expires, or if you are a tenant-at-will, when your landlord gives you notice that your next full month in the apartment is your last. If you are still living in the apartment after your tenancy ends, your landlord may sue to evict you. Also, your lease or rental agreement might list specific reasons for which the landlord may sue to evict you, even before your tenancy ends.

Mediation as an Option

If you want to try to make some other kind of arrangement with your landlord, you can contact the Attorney General's Consumer Complaint and Information Section at (617) 727-8400, or the state Communities and Development Housing Services Program, or your local Housing Court to ask for help in resolving your dispute with the landlord. Mediation can be an excellent way to get back on track, but will only work if the tenant and landlord can agree on a solution to their problem.

The Eviction Process

The formal eviction process gets underway when your landlord files a Summary Process Complaint against you in court. Your landlord must give you a copy of the Complaint, with a form called a Summons. The Summons tells you that you have a certain amount of time to file an Answer to the Complaint in the clerk's office of the court, and gives you the date, time, and location of your eviction trial.

If you receive a Summons and Complaint, go to the clerk's office of the court in which you have been sued, and ask for the form you need for an Answer to a Summary Process Complaint. Fill out the form, telling your side of the story. Did you tell your landlord about serious problems with the apartment and he refused to fix anything? Is your landlord suing you to get back at you for calling the local Sanitary Code inspector? Is there a good explanation for why you have not paid rent? Is your landlord's story inaccurate?

After you fill out the Answer form, give a copy to your landlord, keep one for yourself, and give the original to the clerk's office at the court in which you are being sued. Take a copy of your Answer with you when you go to your eviction trial. Tell the judge your side of the story when it is your turn to speak. If you do not show up, you will automatically lose the case, and the judge will order you out of your apartment.

If you live in public housing, your landlord will have to follow additional procedures before evicting you. You will have the chance to tell your side of the story at a hearing held by the appropriate public housing board.

What Happens if You Lose?

If you lose your eviction trial and there is a really good reason why you cannot move out of the apartment in the near future, you may ask the judge to give you a certain amount of time to move out before the landlord has permission to remove you from the apartment. Disabled or elderly tenants may ask for as much time as a year to find a new place to live.

If you lose your eviction case and you want to appeal, you can ask for a Notice of Appeal form in the clerk's office; follow all directions on the form carefully. If you decide to accept the judge's decision, it is best to make plans right away to move all of your things to the home of a friend or family member.

If you lose your eviction case and do not move out promptly yourself, the judge will give the landlord permission to do it for you. Ten days after deciding to evict you, the judge will give your landlord an order called an "execution," a copy of which your landlord must deliver to you, either with the help of a constable or by registered mail. The execution gives the landlord the right to lock you out of your apartment, and to take your things out of the apartment and put them into storage. Your landlord must tell you, in writing, the date and time she or he is going to evict you, at least 48 hours before showing up with the execution.

Making Peace with Your Landlord

If you lose your eviction case and still want to work things out with your landlord, you can offer to pay what the judge decided you owe your landlord, plus the current rent payment. If your landlord accepts this money, she or he may not use the execution and may not throw you out. If the landlord does not want to accept this money, however, she or he may go ahead and use the execution to evict you.

What Happens if Your Possessions are Put in Storage?

Once your possessions are in storage, you will have to pay to get them out. This may include the monthly storage fee and moving fees. If your goods have been in storage for 6 months, and the storage company has not received payment, the company can sell your goods to cover the storage fees, and sue you for any balance remaining on your bill. If you are being evicted and cannot arrange to keep your things with a friend or with your family, make a complete list of your possessions, so that you know what is being sent to the storage company.



New State Law on Eviction Storage

Effective November 8, 2004, a new state law went into effect, amending laws related to eviction storage. The law now requires:

If you have been evicted, and the landlord has an execution served on you, the constable serving the execution must notify you, the tenant, in writing, on the 48 hour eviction notice just who will be storing your property when it is removed, and the location of the storage site. The storage company must provide you with a list of the items it is storing, and must give you access once free of charge to inspect your property or to remove items having primarily personal or sentimental value, such as photographs, passports, documents, funeral urns and the like. The storage company has the duty of due care, and cannot require you to sign a release of its liability as a condition of the release of the property, or before allowing you to inspect the property. The storage company must file monthly rates with the Department of Public Safety, which may reject rates that are not "commercially reasonable." The storage company may only charge monthly fees-no "docking" fees, "administrative" fees, or "minimum three month" fees. If you have questions about these fees, call the Department of Public Safety at (617) 727-3200.

You may also choose to have delivery of your goods to your own storage space instead of the landlord's chosen licensed storage company. If you want to do this, you must give the constable written notice of your alternative choice at the time of the move, or before. You are not required to have your goods moved to a licensed warehouse, but may choose any "storage facility," including a self-storage facility or basement.

A violation of these requirements is a violation of the Consumer Protection Act.

Discrimination in Housing is Against the Law

Except in owner-occupied two family buildings, it is against the law for a landlord to refuse to rent an apartment to someone because of the person's race, color, national origin, ancestry, gender, marital status, religion, age, sexual orientation, or military background, or because the person is blind, hearing impaired, or needs a guide dog. With some exceptions, it is also illegal to refuse to rent to someone with children. If you have any concerns about being discriminated against by a landlord, contact the Civil Rights Division of the Attorney General's Office at (617) 727-2200, or the Massachusetts Commission Against Discrimination at (617) 727-3990.

Office of the Attorney General

Consumer Helplines

*(617) 727-8400
Consumer Hotline*

*(888) 243-5337
AG-Elder Hotline*

Supplemental Information on Billing Tenants for Water Use

If your tenancy started after March 16, 2005, there will be situations in which you can be billed separately for your water usage. In order to bill you separately for water, certain conditions must be met. These include:

- You must have a written rental agreement signed by you and the landlord that states that you are responsible for a separate water bill. The agreement must also set out what the billing arrangements are.
- The landlord must have had a licensed plumber install meters that measure an individual unit's water use. ("Submeters" from the building meter.)
- Water conserving, low-flow faucets, showerheads and toilets must also have been installed.
- If landlords intend to bill separately for water, they must file a certificate with the local Board of Health or Inspectional Services Department that certifies that they have taken each of the steps outlined above. To be sure, ask to see such a certification if the landlord wants you to agree to be billed for water.

If your tenancy began before March 16, 2005, the landlord is not permitted to bill you directly for your water use, even if your tenancy continued after that date, and even if the landlord tries to create a new tenancy by terminating your tenancy and sending you a new lease. The landlord can, however, install submeters during your tenancy anticipating future tenants. If you are renting a single-family house, the landlord may bill directly for water use and is not required to install a submeter if the meter measures only your direct use.

**Office of the Attorney General
Consumer Protection and Antitrust Division**
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