

By Mr. Moore, a petition (accompanied by resolve, Senate, No. 801) of Richard T. Moore, Edward G. Connolly and Paul K. Frost for legislation relative to rent withholding. Housing.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO RENT WITHHOLDING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 8A of Chapter 239 of the General Laws is
2 hereby amended by striking out the second, third and fourth para-
3 graphs and inserting in place thereof the following:

4 Whenever any counterclaim or claim of defense under this
5 section is based on any allegation concerning conditions affecting
6 the premises or services or equipment provided therein, the tenant
7 or occupant shall not be entitled to relief under this section unless:

8 (1) (a) the board of health or other local enforcement agency
9 has certified that such conditions constitute a violation of the stan-
10 dards of fitness for human habitation as established in the state
11 sanitary code, the state building code, or any other law, ordinance,
12 by-law, rule or regulation establishing such conditions.

13 (b) the tenant or occupant, following such certification, prior to
14 any withholding of rent, shall be required to notify the landlord,
15 or the landlord's agent, in writing, and such notice to be received
16 by the landlord, or the landlord's agent, before any rents become
17 arrears

18 (2) the landlord does not show that such conditions were caused
19 by the tenant or occupant or any other person acting under his or
20 her control, except that the defendant shall have the burden of
21 proving that any violation appearing solely within that portion of
22 the premises under his or her control and not by its nature reason-

23 ably attributable to any action or failure to act of the landlord was
24 not so caused;

25 (3) the premises are not situated in a hotel or motel, or in a
26 lodging house or rooming house wherein the occupant has main-
27 tained such occupancy for less than three consecutive months;

28 (4) the landlord does not show that the conditions complained
29 of cannot be remedied without the premises being vacated, pro-
30 vided however that nothing in the clause shall be construed to
31 deprive the tenant or relief under this section when the premises
32 are temporarily vacated for purposes of removal of covering or
33 paint, plaster, soil or other accessible materials containing dan-
34 gerous levels of lead pursuant to chapter one hundred and eleven;
35 and

36 (5) the tenant shows proof that all rent has been deposited as it
37 becomes due, in the event the tenants' rent is subsidized by any
38 governmental agency, or governmentally subsidized program, that
39 the tenants, rent escrowing requirements are limited to only that
40 portion of the rent paid by the tenant:

41 (a) into an account with the court, (b) into an escrow account
42 controlled by an attorney, or (c) into an escrow account at a com-
43 mercial bank located within the Commonwealth payable on the
44 signatures of both the tenant or occupant and the landlord or
45 person to who rent is customarily paid.

1 SECTION 2. Any amounts so deposited shall be paid over in
2 accordance with the direction of the court after hearing the case as
3 the parties may mutually agree. If the landlord is required by law
4 to make repairs to the premises, any amounts so deposited and
5 otherwise payable to the landlord shall be used for such purposes
6 if the court so orders.

1 SECTION 3. This statute shall not apply unless the landlord has
2 included the language of this statute in the written tenancy agree-
3 ment.

1 SECTION 4. Rent Escrow Accounts at Commercial Banks.

2 Every commercial bank in the Commonwealth, upon the
3 request of a person claiming relief under this section, shall create
4 an account payable only (except as provided below) upon the sig-

5 natures of two named parties, one being the person claiming relief
6 and the other being any person named by the person claiming
7 relief The bank shall not require any signature or identity verifica-
8 tion of the person named by the person claiming relief in order to
9 create the account nor until such time as a payment from the
10 account is requested. The bank shall provide, upon demand of
11 either of the named parties on the account of the court, a statement
12 of the deposits to the account and the named two-party authorized
13 payers. At the time that a payment from the account is requested,
14 the bank shall accept a standard signature guarantee as sufficient
15 authorization for payment by the person named by the person
16 claiming relief. If such signature guarantee is executed in the
17 normal and customary manner, the bank shall not be held liable
18 for claims of incorrect payment. The bank shall also make pay-
19 ment from such account upon court order The bank may deduct
20 from the account all ordinary and reasonable expenses for oper-
21 ating the account at any time If the account is left inactive for
22 longer than two years, the bank shall make payments of the entire
23 amount in the account (less ordinary and reasonable banking fees)
24 to the person named by the person claiming relief, upon receipt of
25 a duly authorized signature guarantee.

1 SECTION 5. The act shall take effect upon passage.

