

By Mr. Barrett, a petition (accompanied by bill, Senate, No. 694) of Michael J. Barrett, Richard A. Kraus, Salvatore R. Albano, John W. Olver and Frederick E. Berry for legislation relative to terminations of residential tenancies and summary process actions relative thereto. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Eight.

AN ACT CONCERNING SUMMARY PROCESS ACTIONS IN RESIDENTIAL PROPERTY.

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 11 of Chapter 186 of the General Laws
2 is amended by adding the following paragraph: —

3 In all other cases involving residential tenancies, the landlord
4 shall only terminate the lease by a notice in writing which shall
5 specify the reason(s) for termination of the lease. The time of such
6 notice shall be sufficient if it is equal to the interval between the
7 days of payment or thirty days, whichever is longer.

1 SECTION 2. Section 12 of Chapter 186 of the General Laws
2 is amended by adding the following sentence between the first and
3 second sentences: — Such written notice need not specify any
4 reason(s) for the termination of tenancy except as otherwise
5 provided in this section or as provided in section thirteen A.

1 SECTION 3. Section 13 of Chapter 186 of the General Laws
2 is amended by adding the following sentence between the first and
3 second sentences: — Such written notice need not specify any
4 reason(s) for the termination of tenancy except as otherwise
5 provided in section twelve or section thirteen A.

1 SECTION 4. Chapter 186 of the General Laws is hereby
2 amended by inserting after section 13 the following section: —

3 Section 13A. (a)(1) When a residential tenancy has been
4 terminated by written notice as provided for in sections eleven,
5 twelve, thirteen, or seventeen, the landlord thereafter may rely
6 only upon the reasons stated in such notice in any action brought
7 pursuant to chapter two hundred and thirty-nine. If the reason(s)
8 on such notice do not allege fault of the tenant, the tenancy shall
9 be deemed to have been terminated without the fault of the tenant
10 or occupant.

11 (2) When a residential lease has expired by its terms, the
12 tenancy shall be deemed to have been terminated without the fault
13 of the tenant or occupant unless the lessor, at least thirty days
14 prior to the expiration of the lease, gives a written notice stating
15 that there is fault of the tenant or occupant, and specifying such
16 fault.

17 (b)(1) In any residential tenancy, if the termination notice
18 required by sections eleven, twelve, thirteen, or seventeen alleges
19 that the reason for termination is due to the tenant or occupant's
20 breach of the written lease or the terms of the tenancy at will, and
21 such breach is remediable by repairs by the tenant or occupant,
22 by changes in the conduct of the tenant or occupant or members
23 of his/her household or guests, or by payment of damages by the
24 tenant or occupant to the landlord, the lease or tenancy at will
25 shall not terminate if the tenant or occupant adequately remedies
26 the breach within twenty days of receipt of the notice. Adequate
27 remedy may include, in appropriate cases, any vendor payment
28 or representative payee arrangements which are available through
29 the federal government, the commonwealth, or any municipality,
30 or any departments, agencies, or authorities thereof.

31 (2) The termination notice shall notify the tenant or occupant
32 of his or her right to the protections of this section as well as what
33 mitigation in the form of repairs, changes in conduct, or payment
34 is sought. If the provisions of subsection (b) apply and the landlord
35 fails to provide the notice required by subsection (b), the lease
36 or tenancy shall not terminate.

37 (3) The right to mitigate provided by subsection (b) shall not
38 be available where the tenant or occupant or a member of his/
39 her household has engaged in intentional and willful conduct
40 which presents an immediate and serious danger to the safety of
41 other tenants or occupants or the landlord or substantially the

42 same act or omission for which notice was previously given under
43 subsection (b) recurs within six months

44 (4) The provisions of subsection (b) shall not apply to
45 terminations of tenancy for non-payment of rent; however, in any
46 case involving non-payment of rent, the tenancy shall be reinstated
47 if the tenant by the trial date pays the full amount of any rent
48 due through any combination of emergency payments which are
49 available through the federal government, the commonwealth, or
50 any municipality, or any departments, agencies, or authorities
51 thereof, and payments from any other source.

52 (c) Any provisions of a lease or other rental agreement relating
53 to residential property whereby a lessee or tenant enters into a
54 covenant, agreement, or contract, by the use of any words
55 whatsoever, the effect of which is to waive the provisions of this
56 section shall be deemed to be against public policy and void.

1 SECTION 5. Section 15A of Chapter 186 of the General Laws
2 is amended by striking the phrase "section eleven and twelve," and
3 by substituting therefore the phrase: — "sections eleven, twelve,
4 thirteen, and seventeen".

1 SECTION 6. Section 17 of Chapter 186 of the General Laws
2 is amended in the following respects: —

3 (a) By adding in the first sentence, after "occupancy of a
4 dwelling unit within," the phrase: — "a dormitory of a charitable
5 or philanthropic institution or";

6 (b) By adding in the second sentence, after "Occupancy of a
7 dwelling unit within," the phrase: — "a dormitory of a charitable
8 or philanthropic institution"; and

9 (c) By adding the following sentence to the end of the
10 section: — "Except as otherwise provided in this section or sections
11 eleven, twelve, or thirteen, such notice need not specify the
12 reason(s) for the termination of tenancy or occupancy except as
13 provided in section thirteen A."

1 SECTION 7. Chapter 233 of the General Laws is hereby
2 amended by inserting after section 75 as appearing in the 1984
3 Official Edition, the following section: —

4 Section 75A. In any action arising under or to enforce the

5 provisions of any general or special law, ordinance, by-law, rule
6 or regulation as is concerned directly or indirectly with the health,
7 safety, or welfare of any occupant of any place used, or intended
8 for use, as a place of human habitation and the possession,
9 condition, rent, or use of any housing accommodations or
10 household goods or services situated thereon or furnished in
11 connection therewith, the court shall take judicial notice of such
12 laws, ordinances, by-laws, rules and regulations.

1 SECTION 8. Chapter 233 of the General Laws is hereby
2 amended by inserting after section 76 as appearing in the 1984
3 Official Edition, the following section: —

4 Section 76A. In any action arising under or to enforce the
5 provisions of any general or special law, ordinance, by-law, rule
6 or regulation as is concerned directly or indirectly with the health,
7 safety, or welfare of any occupant of any place used, or intended
8 for use, as a place of human habitation and the possession,
9 condition, rent, or use of any housing accommodations or
10 household goods or services situated thereon or furnished in
11 connection therewith, the report of any inspector serving in the
12 housing inspection department of a city or the board of health
13 of any city or town, or of any other agency having powers of
14 inspection relative to the condition of residential premises, shall
15 be admissible in evidence and shall be prima facie evidence of the
16 facts stated therein.

1 SECTION 9. Chapter 239 of the General Laws is amended by
2 striking section 2 as appearing in the 1984 Official Edition, and
3 substituting the following section: —

4 Section 2. (a) Such person may bring an action in the superior,
5 housing, or district court division in the venue of which the land
6 lies, by a summons and complaint in the form prescribed by the
7 supreme judicial court.

8 (b) The summons and complaint shall state:

- 9 (1) the location of the premises in question;
10 (2) that the defendant is in possession of the premises;
11 (3) that the plaintiff seeks to recover possession of the premises;
12 (4) whether the underlying tenancy is (A) a tenancy under a
13 lease, (B) a tenancy at will, or (C) another type of tenancy, the

14 nature of which must be described in the complaint;

15 (5) whether the tenancy is a residential tenancy;

16 (6) the method by which the tenancy was terminated; and

17 (7) if rent and use and occupation is claimed, that the defendant
18 owes rent and use and occupation in the amount stated. Failure
19 to claim rent and use and occupation in said actions shall not bar
20 a subsequent action therefor.

21 (c) If the underlying tenancy is a residential tenancy, the
22 complaint shall also state:

23 (1) whether the tenancy was subsidized by any federal, state,
24 or local subsidy program, the specific type of subsidy, if any, and
25 the facts demonstrating compliance with the termination
26 requirements of the subsidy program;

27 (2) whether the tenancy is governed by any rent, eviction, or
28 condominium conversion control laws, including local ordinan-
29 ces, by-laws, or regulations. In jurisdictions where such controls
30 are in effect, the plaintiff shall state what type of controls apply
31 to the premises, and the facts demonstrating compliance with said
32 controls;

33 (3) whether the termination of the tenancy was due to fault by
34 the defendant; and

35 (4) the reasons for the eviction, which shall be stated in concise,
36 untechnical form and with sufficient particularity and complete-
37 ness to enable an unrepresented defendant to understand the
38 reasons for the eviction and the facts underlying those reasons,
39 so as to prepare a defense. The plaintiff may rely only upon the
40 reasons stated on the complaint, and no amendment to the
41 statement of reasons shall be permitted. If the reasons stated on
42 the complaint allege that the tenancy was terminated due to fault
43 by the defendant, the court may award possession to the plaintiff
44 only if the plaintiff proves such fault; if the reasons stated on the
45 complaint do not allege that the tenancy was terminated due to
46 fault by the defendant, the termination shall be deemed to have
47 been without fault.

48 (d) The plaintiff must file with the clerk of the court, no later
49 than the entry date, the following documents:

50 (1) the original of the properly completed summons and
51 complaint;

52 (2) a return of service showing that service has been made in
53 accordance with subsection (e), where applicable;

54 (3) a copy of any applicable notice of termination of the
55 defendant's tenancy and any proof of delivery of such notice. The
56 plaintiff may not rely upon any notices or proof of delivery of
57 such notices unless they have been filed in accordance with this
58 subsection;

59 (4) a copy of any applicable lease or rental agreement. The
60 plaintiff may not rely upon any leases or rental agreements unless
61 they have been filed in accordance with this subsection;

62 (5) in jurisdictions where rent and/or eviction controls are in
63 effect, a copy of any documents which applicable law requires to
64 be filed to show that the eviction complies with such controls;

65 (6) in jurisdictions where condominium conversion controls
66 are in effect, a copy of any documents which applicable law
67 requires to be filed to show the eviction complies with such
68 controls.

69 (e) If the underlying tenancy is a residential tenancy:

70 (1) The summons and complaint shall be served upon the
71 defendant by delivering a copy to the defendant personally, except
72 as provided in subsection (e)(2).

73 (2) If the person authorized to serve process makes return that
74 after diligent search he cannot find the defendant, the court may
75 on motion of the plaintiff permit service to be made in accordance
76 with Rule 4(d) of the Massachusetts Rules of Civil Procedure,
77 provided that if service is made at the last and usual place of abode,
78 service shall not be deemed completed until the officer making
79 service has also mailed first-class to such last and usual place of
80 abode.

81 (3) If the return of service fails to show that service was made
82 in accordance with this subsection, or if the court finds
83 insufficiency of service, the court or the clerk shall dismiss the
84 action unless the defendant waives the insufficiency of service in
85 a writing filed with the court.

86 (f) No judgment shall enter in favor of the plaintiff unless the
87 plaintiff has complied fully with the requirements of this section.

88 (g) Any provision of any rental agreement purporting to waive
89 the provisions of this chapter shall be deemed to be against public
90 policy and void.

1 SECTION 10. Chapter 239 of the General Laws is hereby
2 amended by inserting after section 5 the following section: —

3 Section 5A. Any party aggrieved by an order of a trial court
4 justice denying relief from judgment or post-trial relief in an action
5 under this chapter involving a residential tenancy where review
6 is otherwise unavailable by appeal under section five of this
7 chapter may petition for review pursuant to the provisions of the
8 first paragraph of section one hundred and eighteen of chapter
9 two hundred and thirty-one.

1 SECTION 11. Chapter 40 of the General Laws is hereby
2 amended by inserting after section 4H the following section: —

3 Section 4I. A city or town may invite proposals to be submitted
4 in accordance with the provisions of section four B from
5 warehouses located within said city or town setting rates for the
6 storage of the personal property of evicted tenants under the
7 provisions of section four of chapter two hundred and thirty-nine.

8 Said city or town shall choose the warehouse submitting the
9 lowest responsible bid as the approved warehouse for the storage
10 of such property.

1 SECTION 12. Section 4 of Chapter 239 of the General Laws,
2 as most recently amended by Chapter 357 of the Acts of 1987,
3 is hereby further amended by striking out the first two sentences
4 and inserting in place thereof the following two sentences: — “If
5 an officer, serving an execution issued on a judgment for the
6 plaintiff for possession of land or tenements, removes personal
7 property, belonging to a person other than the plaintiff, from the
8 land or tenements and places it upon the sidewalk, street or way
9 on which the land or tenements abut, he may forthwith, and before
10 the expiration of the time limited in any ordinance or by-law for
11 the removal of obstructions in the street, remove such property
12 and cause it to be stored for the benefit of the owners thereof;
13 provided, however, that such property shall be stored only in
14 warehouses located in cities and towns which have chosen such
15 warehouses after a process of open bidding has been completed
16 and rates for such storage have been approved. Whoever accepts
17 the same on storage from such officer shall have a lien thereon
18 for such approved storage fees and for reasonable expenses of

19 removing it to the place of storage, but such lien shall not be
20 enforced by sale of the property until it has been kept on storage
21 for at least six months.”