

a Massachusetts consumer guide to

# landlord rights and responsibilities

---



**Consumer Affairs &  
Business Regulation**



### **Finder's fees**

When renting an apartment, you are not permitted to charge a finder's fee to a prospective tenant if you are also the landlord of the unit (M.G.L. c. 112, § 87DDD and 254 C.M.R. § 2.01 *et seq.*). Only a licensed broker or salesperson can lawfully collect a fee for bringing together a landlord and a tenant.

### **Duty Not to Discriminate Unlawfully**

A matrix of Federal, State and local laws combine to prohibit discrimination on the basis of race, color, national origin, ancestry, sex (gender), sexual orientation, age, marital status, religion, military/veteran status, blindness, hearing impairment, receipt of public assistance or housing subsidy, and children, with minor exceptions. Discrimination is prohibited against children because the apartment contains lead paint and you do not want to incur the expense of deleading the apartment. Be certain your rental agents understand that you will not tolerate rental discrimination.

### **Screening Prospective Tenants**

Because paying your mortgage is directly dependant upon your tenants paying you, you should always run a credit check and a check of the tenant's prior rental history through companies making this information available for a nominal fee. You should always confirm current employment, salary level, prospects for remaining with the employer, and landlord references from not just the current landlord, but the tenant's landlord just prior to the prospective tenant's current landlord. Also, you may want to meet your tenants prior to giving final approval, especially in an owner-occupied multi-unit rental. The rule of thumb that tenants should pay no more than  $\frac{1}{4}$  of their income for rent has been stretched beyond that recommendation by increases in

market rents. However, if the tenants offer a co-signature of a parent or friend on their lease to guarantee their rental obligation to you, consider carefully that a guarantee by an out of state signer is very difficult to enforce.

### **Pre-Rental Preparation of the Apartment**

Before renting an apartment, you should inspect it completely after the current tenant vacates or near the end of the current tenant's occupancy to assess any damage, to assure that it is in good repair when attempting to re-rent the apartment, and for the incoming tenant once it has been rented. You are obligated under certain circumstances to have the local Board of Health inspect and verify that the apartment meets State Sanitary Code and safety standards prior to re-renting.

It makes good business sense to do this on all occasions whether required to or not, because anticipating and resolving problems before they become major issues is essential to the smooth, cost-effective and profitable operation of residential property.

### **Inspector's Sign-Off Once All Violations Cited Have Been Repaired**

Obtain the Inspector's sign-off once all violations have been corrected. This sign-off also acts as violation-free base line if the tenant should claim there are problems with the apartment after taking occupancy.

### **Obligation to Delead The Apartment**

Whenever a child under the age of six (6) resides in residential premises containing unlawful levels of lead, you are obligated to properly remove the offending substances (M.G.L. c. 111, § 199(a)).

You or your agent are required to give the Massachusetts Lead Law Notification form to tenants regarding the dangers of lead paint, and the requirement to remove lead paint where children under six (6) intend to reside.

### **Maximum Pre-payments**

While a tenant may have a pet, or some interest such as portrait painting, which may potentially harm the apartment, you are prohibited from collecting as advance payments more than the first and last month's rent, one month's security deposit, and the cost of installing a new lock (M.G.L. c. 186 § 15B).

It is an unfair or deceptive practice for you to demand that a tenant prepay rent when a tenant is not obligated to and did not, in fact, occupy the dwelling, unless otherwise agreed to in writing by both parties (940 CMR § 3.17 (6)(d)).

A violation of the Consumer Protection Statute c.93A, for committing an unfair or deceptive act against a tenant exposes you to up to treble damages, costs and payment of the tenant's attorney's fees.

## **Types of tenancies.**

Your legal rights will vary depending on the type of tenancy.

### **A Tenant Under Lease**

A lease generally means a signed agreement to rent an apartment for a finite time, for a specific amount of money usually paid per month. You may not evict the tenant before the end of the term, unless the tenant violates some provision of the lease. You may not increase the rent until the end of the term, unless the lease states otherwise. Most leases provide that if the tenant violates the lease you may evict the tenant. A fourteen (14) day notice to quit is required for nonpayment of rent (M.G.L. c. 186, § 11). Although your tenant has agreed to pay you for every month

of the tenancy the lease exists, if the tenant leaves the apartment without your consent, the tenant, except as stated below, owes rent for the entire remaining balance of the lease. However, you must make reasonable efforts to find a new tenant to take over the balance of the former tenant's lease. This is known as the landlord's duty to mitigate damages.

### **Tenancy At Will**

You have a Tenancy at Will when, with your permission, a person occupies your apartment, paying rent regularly, usually monthly. A Tenancy at Will may be written or oral. Either you or your tenant may terminate this agreement at any time for a specific reason or for no reason by giving 30 days written notice or notice which covers a full rental period, whichever is longer. Termination of a Tenancy at Will for nonpayment requires only a 14 day notice to quit (M.G.L. c.186, § 12).

While a valid Tenancy at Will may be either oral or written, reducing the agreement to writing provides added protections for both you and the tenant, and this should be done at all times. It is also recommended that the tenancy agreement be written because in the absence of a written document placing the burden of paying utilities on the tenant, the law places the burden of paying those utilities on the landlord, even in the face of an oral agreement stating the tenant will pay them. A handshake is nice, but a written agreement is far better (105 C.M.R. § 410.190, § 410.201, § 410.354).

### **Subsidized Tenancy**

Most aspects of a subsidized tenancy are controlled by the lease and applicable State and Federal law, much of which differs from the summaries given here for the market rate tenants.

## Security deposit and last month's rent.

### **Last Month's Rent**

A last month's rent is a prepayment made at the beginning of the tenancy to the landlord to be applied to the last month of the tenancy. There is no requirement for you to escrow the money in a separate interest-bearing account. A receipt must be given at the time the last month's rent is taken indicating the amount, date of receipt, a notation identifying the money as the last month's rent, the name of the person receiving the money or for whom the money is being received, the description of the premises for which the last month's rent is taken, a statement indicating the tenant's entitlement to yearly interest at the rate of 5 % or such lesser amount as the landlord actually receives if the landlord chooses to escrow the money, and a statement telling the tenant to provide a forwarding address by the end of tenancy to which the interest may be sent. Upon increase of the rent, you may require the tenant to increase his or her last month's rent to the current rent level (M.G.L. c. 186, § 15B).

### **Payment of Interest On Last Month's Rent**

Interest must be paid to the tenant either on the anniversary date of the tenancy or on a pro-rata basis, if the tenancy ends before one year, for all months except the last month of the tenancy. On the anniversary date of the tenancy, the landlord must send a statement as to the amount of interest due with payment of that interest or a statement indicating that the tenant may deduct the appropriate amount from the next rental payment. If you have not sent either of the above to the tenant by the anniversary date of the tenancy, the tenant may lawfully deduct the prescribed amount of interest from the next rental payment. This deduction is not

a breach of the tenancy agreement allowing eviction. If you do not pay the interest within 30 days after the end of the tenancy, or the removal of the tenant from the premises, you will be exposed to liability of three times the interest due, plus court costs and attorney's fees (M.G.L. c. 186, § 15B (2)(a)).

### **Transfer of Last Month's Rent to New Landlord**

Upon the sale, foreclosure or other transfer of the building, the landlord must transfer the last month's rent to the new landlord with accrued interest. The new landlord must give the tenant written notice of the transfer within 45 days of receipt. If the former owner fails to make the proper transfer, s/he is still liable to the tenant, but so is the new landlord in the amount of the last month's rent. The new landlord can discharge their duty to the tenant, by allowing the tenant to live free for a period covered by the last month's rent.

### **Security Deposit**

A security deposit is money, paid by the tenant to you, and held in a separate interest-bearing escrow account to indemnify you against losses due to the tenant's failure to pay rent, failure to pay appropriate tax escalators, or if the tenant damages the premises. Because this deposit belongs to the tenant until properly applied by you, you must:

1. Hold the deposit in an interest-bearing Massachusetts bank separate from your own money;
2. Give a receipt to the tenant within 30 days of taking the deposit, identifying the bank, address, account number, and the amount of the deposit held; and
3. Pay 5 % interest or any lesser amount of interest actually received from the bank where the deposit is held, if the tenant resides on the premises for at least one year. Said

payment is to be made on the anniversary date of the tenancy.

### **Payment of Interest on Security Deposit**

On the anniversary date of the tenancy, you must send the tenant a statement of the interest owed with a check for the interest, or you must notify the tenant that s/he may deduct it from the next rental payment. If within 30 days of the anniversary date of the tenancy you have failed to pay the interest, the tenant may lawfully deduct it from the next rent payment. Upon termination of the tenancy, you must forward the interest due to the tenant within 30 days.

### **Statement of Condition**

Either upon receipt of the deposit or within ten (10) days thereafter, you must provide the tenant with a Statement of Condition, which contains a comprehensive list of all then-existing damage to the unit, which list is signed by you or your agent. The notice must inform the tenant that s/he must sign the list within fifteen (15) days of receipt or move-in, if it is correct. You must further inform the tenant that failure to re-submit the list may allow a court to view the tenant's failure to sign as agreement to the completeness of the landlord's proposed Statement of Condition. You then have fifteen (15) days to sign off on the tenant's list of damages or send a clear statement of disagreement to the tenant. Although there are forms available for these purposes, it is recommended that an attorney or other real estate professional be consulted when taking a security deposit.

### **Deductions From the Security Deposit**

Upon termination of the tenancy, you must return the security deposit or balance thereof within thirty (30) days of the tenant's vacating the apartment. You may only deduct for the following items:



- ▶ Unpaid rent not lawfully withheld;
- ▶ Unpaid increases in real estate taxes the tenant is bound to pay pursuant to a valid tax escalator clause in the lease; and
- ▶ Any reasonable amount necessary to repair damage caused by the tenant or their pets or guests.

The normal wear and tear in an apartment is not a deductible item of damage.

If you deduct for damages, you must provide the tenant with a statement sworn to under the pains and penalties of perjury listing the damages for which you are deducting along with documentation showing the actual or estimated costs of these repairs such as bills, receipts, or invoices. You may not deduct for damages set out in the respective Statement of Condition unless you made repairs to them subsequent to the start of tenancy and they were again damaged by the tenant or persons within the tenant's control.

If damages exceed the security deposit, you are free to sue for those as well.

## **Transfer of Security Deposit to New Landlord**

---

### **Notice from New Owner**

Within forty five (45) days of the transfer, the new owner must notify the tenant that the security deposit has been transferred and that s/he is holding it for the benefit of the tenant. The notice must be written and must contain the new owner's name, business address, business telephone number, and the same information for any agent.

## **Penalties For Failure to Properly Handle Security Deposit**

If you do the following, the tenant is entitled to the immediate return of the security deposit:

- ▶ Fail to make the security deposit records available to the tenant during business hours;
- ▶ Fail within thirty (30) days of taking a security deposit to give the tenant a receipt with the name, address of the bank where the money is held, and account number of the bank in the amount of the deposit;
- ▶ Make deductions for damages without submitting proper documentation described above; or
- ▶ Use a lease with provisions that conflict with the Security Deposit Law and you attempt to enforce this lease or attempt to make the tenant waive his or her rights.

If you do the following, the tenant is entitled to the immediate return of the security deposit and treble damages, court costs and attorney's fees:

- ▶ Fail to place the security deposit into a Massachusetts interest-bearing bank account separate from your own;
- ▶ Fail to return the security deposit or balance thereof within thirty (30) days after termination of the tenancy; or
- ▶ Fail to transfer the security deposit to the new landlord (M.G.L. c. 186 § 15B).

A new landlord has the same transfer responsibilities as stated above for last month's rent.

## **Continuing Liability of Former Owner**

The former owner and agent remain liable under the treble damages provision of the Statute for retention and accounting, until either:

1. The security deposit has been transferred and the tenant has been given the above-written notice or
2. The security deposit has been returned to the tenant.

The new owner has full liability for the treble damages, even if the former owner fails to transfer the security deposit and fails to give the proper notice described immediately above.

It is recommended that if you choose to take a security deposit, you consult an attorney or other real estate professional before doing so, because the penalties for failing to properly handle the tenant's money are severe.

## Other common landlords' rights, duties & remedies.

### **The Right to Prompt Payment**

You have the right to receive the rent on the first of each month unless the parties otherwise agree. There is no grace period in Massachusetts and therefore if the tenant does not pay on the first of the month, you may begin an eviction by sending a notice to quit.

### **The Right to Have Compliance With Tenancy Agreement**

You have the right to have the tenant abide by the terms of the tenancy, whether it is oral or written. If the tenant breaches terms of the tenancy, for example by having unauthorized sub-tenants, pets, smokers, or other prohibited uses such as raising pigeons in the apartment, you have the right to terminate the tenancy and to move to evict. See Eviction below.

### **Increasing Rent**

You may increase the rent in any amount you believe the market will bear for a non-subsidized unit or for a unit that

does not fall under the few remaining restrictions of rent control pertaining to mobile homes, under the following circumstances:

Under a tenancy at will, you must end the tenancy and notify the tenant of the rent increase at least a full rental period in advance, but not less than 30 days in advance of the effective date of the increase.

You may only increase the rent of a tenant under a lease after the lease terms expires, unless the lease states otherwise. Typically, the lease will state notice deadlines for renewal which should be observed when seeking a rent increase of a tenant under lease. Rent increases can be complicated. The advice of an attorney should be sought before attempting it. Increasing rent incorrectly could lead to costly, time-consuming and needless problems or litigation with your tenant (M.G.L. c. 186, §§ 11, 12).

### **Late Payment Penalty**

You may not charge a late fee or penalty for rent paid past the due date unless it is paid 30 days or more past the due date. A reverse penalty to encourage early payment is also illegal. For instance, where you promised to reduce the rent by 10 % if the rent is paid within the first five days of the month, this is an illegal provision (940 CMR § 3.17 (6)(a)). However, because there is no “grace period,” you may begin eviction if the rent is only one day late.

### **Utilities**

You may require tenants to pay their own electricity and gas bills. But, if you do not put this obligation in a written tenancy agreement, you may later be charged with paying past utility bills, if the tenant refuses to pay, despite having verbally agreed to pay them.

## **The Right to Enter The Apartment**

A landlord may generally enter the apartment at reasonable times and upon reasonable notice for these reasons:

- ▶ To show the apartment to prospective tenants, purchasers, lenders or their agents;
- ▶ To inspect the premises;
- ▶ To make repairs;
- ▶ To inspect within 30 days of the end of the tenancy to determine damages to be deducted from the security deposit;
- ▶ If the premises appear to be abandoned; or
- ▶ Pursuant to Court order.

## **Duty to Provide Habitable Premises**

You must provide habitable apartments and common areas for the entire tenancy in accordance with the minimum standards of the State Sanitary Code which seeks to protect the health, safety, and well-being of your tenants and the general public.

Heat: Landlords must provide a heating system for each apartment or one system that services all apartments in good working order. The landlord must pay for the fuel to provide heat and hot water and electricity unless the written rental agreement states that the tenant must pay for these. The heating season runs from September 16 through June 14th, during which every room must be heated to between 68° F and not more than 78° F between 7:00 a.m. to 11:00 p.m., and at least 64° F at all other hours.

Kitchens: In each kitchen landlords must provide a sink sufficient for washing dishes and kitchen utensils, stove

and oven in good working order, unless the written rental agreement states the tenant must provide this, and electrical hook-ups for installation of a refrigerator. The landlord is not required to provide a refrigerator, but if s/he does, it must be maintained by the landlord in good working order.

Water: If the landlord meets certain legal requirements then they may charge a new tenant for water consumption by installing a water meter for the unit. Landlords should be reminded that they are still responsible for payment of the water and sewer bills and must bill their tenants separately. Before installing separate water meters, landlords must contact the Massachusetts Department of Public Health for required forms. Landlords must still provide the facilities for heating water to a temperature between 110° F and 130° F and must pay for this fuel unless the written tenancy agreement states that the tenant must pay for it.

Infestation: Landlords must maintain the common areas and apartments free from rodent, insect and other infestation if there are two or more apartments in the building.

Structural Elements: Landlords must maintain the foundation, floors, walls, doors, windows, ceilings, roof, stairwells, porches, chimneys and all structural elements so as to exclude wind, rain, and snow; so as to be rodent-proof, weather tight, watertight, and free of chronic dampness, in good repair and fit for human habitation at all times.

Maintenance of Exits: Each exit used or intended for use by the building's occupants must be maintained by you and kept free of all snow, trash and other obstructions.

## Tenants' rights.

### **Rent Withholding**

If you fail to maintain the premises during the entire tenancy, in habitable condition, your tenants may rightfully

withhold part of the rent from the date you have notice of breach of the Warranty of Habitability, if:

- ▶ They complained to you of defects or problems or the Board of Health cited the apartment or building for Code violations;
- ▶ The tenant was not in arrears in rent before you knew of the conditions complained of;
- ▶ You do not show that the complained of conditions were caused by the tenant or occupant;
- ▶ The premises are not in a hotel or motel or in a lodging house in which the tenant had resided for less than three (3) consecutive months; and
- ▶ You fail to show that the needed repairs are so extensive that the apartment must be vacated to complete them.

### **Repair and Deduct**

Your tenant may validly make repairs him/herself and deduct from future rent if:

- ▶ The Board of Health certifies that there are violations present which may endanger health, safety, or well-being of the residents;
- ▶ You are notified in writing of the violation;
- ▶ You have failed to contract with someone to do the repairs within five (5) days of receiving written notice or you fail to substantially complete the repairs within fourteen (14) days of receiving notice;
- ▶ The tenant did not cause the violations;
- ▶ The tenant must deduct only reasonable amounts of rent in light of the violations and alternative corrective measures; and

- ▶ The tenant did not unreasonably deny you access to make repairs.

The tenant is limited to a maximum deduction of four (4) months in a twelve (12) month period. If your tenant does not wish to make repairs, and the problems have been certified by the local Board of Health to exist as described above, the tenant may declare the tenancy void and may leave within a reasonable time so long as, the tenant pays the fair rental value for the time s/he occupies the apartment (M.G.L. c. 111, § 127L).

## **Retaliation**

You cannot retaliate against your tenants for exercising their legal rights such as complaining to you or the Board of Health about problems with the apartment, joining a tenant's union or lawfully withholding rent or repairing and deducting. It will be presumed that you are retaliating against your tenant if within six (6) months of the tenant's exercising any protected rights as briefly stated above, you terminate the tenancy, increase the rent, or otherwise attempt to change the terms of the tenancy. In order to then avoid penalties of up to three (3) month's rent, attorney's fees and costs of the action, you will then have to prove in court non-retaliatory reasons for doing these acts.

## **Keeping good records.**

Like any business, the efficient operation of residential property requires good record keeping. It is strongly urged that you keep detailed records of all aspects of the tenancy. In addition to the extensive records required of you if you take a security deposit, you should keep records of all contacts and complaints by tenants, with dates, and notes regarding conversations; contacts with repairmen, health department inspections, invoices, paid repair bills, and similar information. Massachusetts tenants have many rights and



remedies. Frequently, good records mean the difference between winning and losing your case in court or avoiding court altogether.

## Evictions.

### **Resolving Disputes Without Court**

When complaints or disputes with tenants arise, investigate them and address them quickly. Ignoring tenant complaints or flatly refusing to address them can lead to costly, acrimonious, eviction cases, and a prolonged stoppage of rent payments while the matter is litigated. Therefore, it is prudent to try to resolve all issues before filing an eviction case in court, after which time, the tenant may well cease paying rent until a judge tells him or her how much and when they must begin paying again for their continued occupancy of your apartment. This could and often does take many months to resolve if contested.

In attempting to work with tenants having a hard time financially, or suffering other problems which interfere with their living up to their agreement with you, do not allow the problems to drag on for long without fairly quick written resolution. Because Summary Process cases (eviction cases) can take months to resolve, especially if contested, if you allow a nonpayment situation to continue for long without receiving regular payments against the arrearage, you will have lost many months of rent by the time you win an execution (court order for the move out). In the absence of any mandatory rent escrowing requirements, you will likely lose the rent entirely for the intervening months.

## Early termination.

Near the end of a lease, you may sometimes begin eviction, if you have substantial grounds to believe the tenant is likely to continue in possession of the premises after the termination

date in the lease. However, no Execution (court order for move out) can be issued before the termination date in the lease. But, you will have saved time and perhaps the incoming tenancy by having the court's permission before hand to evict a tenant holding over after his or her lease has ended (M.G.L. c. 239, § 1A).

## No lock-outs.

If you want a tenant out of your apartment permanently, the only way to evict the tenant lawfully is by getting an Execution (court order to move out). You cannot lock out a tenant under any but a few narrowly interpreted and exceptional circumstances. The penalties for unlawfully shutting off the tenant's utilities or for unlawfully barring a tenant access to the apartment without an Execution can be severe, running the gamut from three month's rent, attorney's fees, and injunctions forcing you to put the wronged tenant back in the apartment, and criminal penalties and fines in some instances (M.G.L. c. 186, § 14).

## Termination of tenancy: Notice to Quit.

Tenants under lease: If you want to evict a tenant under a lease for a reason other than nonpayment, such as having unauthorized sub-tenants, or property damage, the lease will generally tell you what type of Notice to Quit you must use and when to serve it. If you are evicting the tenant for nonpayment, you must send a 14 day Notice to Quit (M.G.L. c. 186, § 11). But, if the tenant pays all monies due, plus costs, interest and your court filing fees by the date her Answer is due in court, the tenant has an absolute right to stop the eviction.

Tenants at Will: If you are evicting for a reason other than nonpayment, or for no reason, you must give the tenant a

30 day Notice to Quit. If the eviction is for nonpayment, you must give a 14 day Notice to Quit. But, if the tenant pays the amount claimed due, plus costs, interest and your court filing fees in 10 days, and if this is only the second Notice to Quit for nonpayment within 12 months, the tenant has an absolute right to stop the eviction. If you do not place notice of this fact in the Notice to Quit, the tenant has a right to stop the eviction by paying the above sums not later than the date his Answer is due in court (M.G.L. c. 186, § 12).

Subsidized Tenancies: While eviction of these tenants is no longer subject to the exclusive authorization of the local housing authority, eviction is still controlled by the specific terms of the lease and by a matrix of Federal and State law. An attorney should be consulted when evicting a subsidized tenant.

The many types of Notices to Quit vary depending on the type of tenancy sought to be terminated and the rights you wish to reserve to yourself after terminating the tenancy. The rules governing timing and method of service are confusing to the new landlord as well. It is recommended that you should not rely solely on the advice of a constable when sending a Notice to Quit, but rather that you also consult an attorney before you move to evict. Although most constables are knowledgeable as to service, they may not know all of the requirements of terminating tenancies technically required of you in order not to have your case dismissed in court, or to reserve certain rights to you.

## Summons and complaint.

When the notice period ends, you or your lawyer must serve a Summary Process Summons and Complaint on the tenant. This officially brings the tenant under the court's power and informs him or her of the trial date, the place of the hearing,

the reasons for eviction and how much money, if any, you claim the tenant owes you.

## Answer.

This is the tenant's written response sent to you in which s/he states why s/he should not be evicted and what, if any, counterclaims for money damages s/he has against you such as violations of the State Sanitary Code, retaliation, or faulty eviction procedures.

## Trial.

If you cannot reach an agreement with the tenant resolving the reasons for eviction, there will be a trial. At this hearing, the tenant and you or your lawyer present your witnesses and documents and a judge or jury decides if you win or if the tenant wins and how much money, if any, the tenant must pay or how much, if any, you must pay the tenant.

## Appeal.

Either party may appeal within 10 days of entry of the judgment, if dissatisfied with the outcome of the trial, by filing a Notice of Appeal (M.G.L. c. 239, §§ 3, 5 and M.G.L. c. 231, § 97). But, as a condition of the tenant's appeal, s/he must post an appeal bond in an amount determined by the court. Or, the court may waive the bond if the tenant can show s/he is indigent and has a real defense. If the bond is waived by the court, the tenant must still pay the rent which comes due during the appeal. If the court will not waive the bond, the tenant must pay past due rent and rent accruing as the appeal progresses, if the tenant wants to stay in the apartment during the appeal. The tenant cannot be physically evicted until the appeal has been dismissed or decided. Appeals are fraught with procedural pitfalls and should be undertaken with a knowledgeable attorney.

## Execution.

The Execution is the court's order requiring the tenant to move from the apartment. After the appeal is decided or dismissed, Execution will be issued, but not before then. The Execution must be used within three months of its issuance or it expires. If you accept the full amount of the rent awarded by the court in a nonpayment case, you effectively waive your right to remove the tenant and you have created a new tenancy.

## Physical move out.

To physically remove the tenant from your apartment, you must hire a constable and a moving company, if the tenant has refused your request to go. The constable must give the tenant 48 hours notice that s/he is coming with the truck. On the date set, the constable goes to the property, physically removes the tenant and her goods, orders the movers to store them in a storage facility, at your expense initially, and gives the keys to you. That ends the eviction process.

The tenant must now go to the storage company for her property. Because the warehouse has a lien on the property for its unpaid fees, if the tenant does not retrieve the property within six months, the warehouse may sell it. You may sue the tenant for your costs of the eviction (M.G.L. c. 239, § 4).

## Stay of execution.

If the eviction was a no-fault eviction and if the tenant cannot find a new apartment, s/he may ask the judge for a stay of execution of up to six months, or if s/he is elderly or handicapped, up to one year. If the eviction was for nonpayment, technically, the judge has no power to grant a stay. However, if in a nonpayment case, the tenant's award on his counterclaims was less than the amount of rent

awarded to you, the tenant can avoid eviction by paying the difference, with interest and court costs in seven (7) days (M.G.L. c. 239 § 8A).

## Documentation.

When the tenant is leaving, you should view the apartment, take pictures and review the Statement of Condition, if any, so as to definitively verify the condition of the apartment on the date of move out. This will establish what was damaged by the tenant during his time in the apartment and should avoid a later problem with security deposit deductions and possible litigation.

## other resources

### Consumer Guides

30-Day Demand Letter

Do Not Call Registry

Interest-Only Mortgages and Option ARMs:  
Are they right for you?

Home Improvement

Lemon Aid Law

Managing Credit and Debt

New & Leased Car Lemon Law

Shopping Rights

Small Claims Court

Tenant Rights and Responsibilities

Used Vehicle Warranty Law

### Consumer Fact Sheets

The Mechanics of Auto Repair

Making Health Clubs Work Out for You

Online Auctions: Bidder Beware

### Consumer Hotline

(617) 973-8787

Toll Free (888) 283-3757


### Online Resource Center

[www.mass.gov/consumer](http://www.mass.gov/consumer)

### email

[consumer@state.ma.us](mailto:consumer@state.ma.us)

This publication provides general information about Massachusetts consumer issues and procedures. It is not designed to address all questions in detail and consumers are encouraged to seek further guidance by contacting the agency directly.

 Printed on recycled paper

Last updated: May 2007

### Massachusetts Office Of Consumer Affairs & Business Regulation

10 Park Plaza  
Suite 5170

Boston, MA 02116

Administration:

(617) 973-8700

Consumer:

(617) 973-8787

TTY/TDD:

(617) 973-8790

Deval L. Patrick  
Governor

Timothy P. Murray  
Lt. Governor

Daniel O'Connell  
Secretary of Housing &  
Economic Development

Daniel C. Crane  
Director

**Consumer Affairs &  
Business Regulation**



**Consumer Affairs &  
Business Regulation**



Massachusetts Office of  
Consumer Affairs & Business Regulation  
10 Park Plaza, Suite 5170  
Boston, MA 02116