

The Attorney General's

Guide to Landlord/Tenant Rights

Commonwealth of Massachusetts
**Office of Attorney General
Martha Coakley**



June 2007

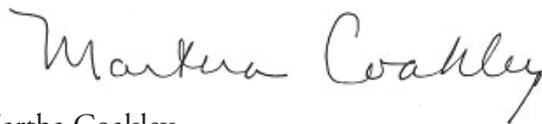
Dear Massachusetts Resident,

Across the Commonwealth of Massachusetts, thousands of residents elect to rent their homes, while thousands of others serve as landlords. When creating or signing into a rental agreement, there are a number of issues that you, whether a landlord or a tenant, should consider.

This guide outlines not only rental agreement considerations, but also tenancy, payment agreements, eviction, habitable living conditions, and housing discrimination. It is important for both landlords and tenants to understand the laws and regulations that govern these areas and what they might mean for their particular living arrangement.

While the Attorney General's Office cannot provide you with legal advice, I encourage you to review this information and be aware of your rights before entering a rental agreement. I also encourage you to contact our Consumer Complaint and Information Hotline at (617) 727-8400 to answer additional questions.

Cordially,

A handwritten signature in black ink that reads "Martha Coakley". The signature is written in a cursive style with a large, flowing "M" and "C".

Martha Coakley
Massachusetts Attorney General



Contents

- I.** Information About Renting an Apartment in Massachusetts
- II.** The Terms of Tenancy
 - A.** Tenancy Based on a Lease
 - B.** Tenancy-at-Will
 - C.** Obligations of the Landlord and of the Tenant
 - D.** Negotiations
- III.** Terms of a Rental Agreement
- IV.** Payments at the Start of a Tenancy
 - A.** Laws Governing the Security Deposit
 - B.** Laws Governing the Last Month's Rent
- V.** The State Sanitary Code and the Condition of an Apartment
- VI.** Eviction
 - A.** Mediation as an Option
 - B.** The Eviction Process
- VII.** Discrimination in Housing is Against the Law
- VIII.** Resources

I. Information About Renting an Apartment in Massachusetts

There are many laws and regulations that govern the relationship between a landlord and a tenant in Massachusetts. These laws apply whether you live in or own a two-family with an apartment or a multi-family apartment building. Some laws outline the landlord's obligations and others set forth what a tenant must do.

In addition to these laws, there are several issues that any prospective tenant should consider before renting an apartment and of which a landlord should be aware before beginning to show an apartment for rent. For example:

- ❖ Does the rent cover all utilities? If the tenant is responsible for paying for the heat and hot water, the landlord should make clear whether these run on electric power, oil, natural gas, or propane. Is there is information available that will provide a prospective tenant with an idea of the annual utility costs for the apartment?
- ❖ The landlord and the prospective tenant together should check every plumbing fixture, light switch, cupboard door, and appliance to make sure they all work properly. If repairs are necessary, both parties should discuss whether the landlord will make the repairs before the tenant moves in.
- ❖ Similarly, the lease or rental agreement should include a list of all repairs that the landlord agrees to make during the tenancy, and the timeframe in which the repairs must be completed.
- ❖ The lease or rental agreement should also note if major appliances are included with the tenancy, such as a

refrigerator, stove, washing machine, etc.

- ❖ Is parking available? Is there a fee involved, and if so, is it included in the rental payment?
- ❖ Will the landlord or the tenant will be responsible for snow shoveled from the walks in winter? Is it plowed from the driveway or parking area? Is there a fee involved, and if so, who pays for it?



II. The Terms of Tenancy

There are two main kinds of tenancy. The rights and responsibilities of both the landlord and the tenant depend partly on the type of tenancy that is created.



A. Tenancy Based on a Lease

One kind of tenancy is based on a written lease. When a tenant signs a lease with a landlord, the tenant agrees that the tenancy will last for a certain amount of time, usually one year. During that time, the monthly rent will stay the same and the landlord cannot end the tenancy (evict) unless the tenant fails to follow the conditions agreed upon in the lease. On the other hand, the tenant is committed to paying rent for the term of the lease. The tenant may only end the tenancy before the close of the lease term if the landlord agrees to early termination of the lease.

A lease is a good option for tenants and landlords seeking stability in a tenancy. Because it is a written agreement between the tenant and the landlord, it should contain all of the rules that will apply to the tenancy.

B. Tenancy-at-Will

The other kind of tenancy is called a tenancy-at-will, which means that the lease agreement lasts for as long as both parties 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.

A tenancy-at-will does not last for any set amount of time and does not end on a certain date, the way a lease does. In a tenancy-at-will the tenant pays the agreed-upon rent each month, for an indefinite period of time. Either the landlord or the tenant can decide to end the tenancy by giving the other party notice, either 30 days or one month before the due date of the next rent payment, whichever is longer. In this type of agreement, the rent can change according to the same terms (either 30 days or one month before the due date of the next rent payment, whichever is longer).

C. Obligations of the Landlord and of the Tenant

Whether a lease or a tenancy-at-will, 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” (whether caused by the tenant or caused by a guest of the tenant). The landlord must provide an apartment that is safe and clean, in compliance with the rules set forth in the Massachusetts Sanitary Code, and must live up to any promises in the lease or rental agreement.

In either kind of tenancy, the tenant has a right to occupy the apartment and the landlord may only enter under certain circumstances. The landlord must arrange with the tenant 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. However, the landlord may enter an apartment without a tenant’s approval if it appears that the tenant has abandoned it.



D. Negotiations

Although it is not a part of any set of laws or regulations, it is important for both a landlord and a tenant to know that they can negotiate with each other over the terms of a lease. In general, the landlord should not rush a tenant to make a decision, and both parties should be very clear about the terms and conditions before either signs the lease. Any changes to which they agree should be written down into the lease in pen, making sure to cross out any sections that are changed by the terms of the negotiation.



III. Terms of a Rental Agreement

Every rental agreement must have certain terms, and is prohibited by law from containing other terms. **M.G.L. c. 186, § 15A-F, §16.**

The lease must set forth the name, address, and phone number of the owner, the person responsible for maintenance, and person to whom the tenant can give copies of formal notices, complaints, or court papers.

If the landlord receives a security deposit, the lease or rental agreement has to show the amount paid, and must explain the tenant's rights to that security deposit money. **M.G.L. c. 186, § 15B.**

The landlord must make sure that the tenant is given a legible copy of any lease or rental agreement. **M.G.L. c. 186, § 15D.** The lease must not include illegal terms such as:

- ❖ 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.)



IV. Payments at the Start of a Tenancy

A landlord may only ask for the following payments up front:

- ❖ The first month's rent
- ❖ A security deposit to cover the cost of any damage to the apartment beyond normal wear and tear (which may not exceed the amount of one month's rent)
- ❖ The last month's rent (the month that will turn out to be the tenant's last one in the apartment)
- ❖ The cost of a new lock and key for the apartment

The landlord should provide a signed receipt for any payment that is made with cash or a money order. The receipt should say the amount paid, the date the payment was made, and what the payment was for. The receipt should also include the landlord's name, the tenant's name, and the name of the person to whom the payment was given.



A. Laws Governing the Security Deposit

All security deposits must be deposited in a Massachusetts bank, in an account that collects interest, and within the first month of the tenancy. The landlord must provide the tenant with the name and address of the bank holding the security deposit, plus the actual account number. Each year, the landlord must either pay the tenant the interest on the security deposit or let the tenant deduct that amount from a rent payment.

The landlord should give the tenant a "statement of condition"

within 10 days of receipt of the security deposit, which describes the condition of the apartment and any damage that exists at that time. The tenant has 15 days to add to the “statement of condition” or make changes to it. Both parties should keep copies of the final “statement of condition.” **M.G.L. c. 186, § 15B.**

When the tenancy ends, the landlord must return the security deposit, plus interest, within 30 days. However, the landlord may keep any unpaid rent or the amount of money needed to repair damage done to the apartment (beyond normal wear and tear). If the lease provides for it, the landlord may also deduct the tenant’s share of any increase in the landlord’s property taxes.

If the landlord must keep all or a part of the security deposit for damages, then the landlord must give the tenant a written description of the damage and an estimate of the repair cost within 30 days from the time the tenant moves out.



B. Laws Governing the Last Month’s Rent

If the tenant provides the landlord with the last month’s rent at the commencement of the tenancy, then the landlord must give the tenant a signed receipt. Like all receipts in the tenancy process, the receipt should say the amount paid, the date the payment was made, what the payment was for, the landlord’s name, the tenant’s name, and the name of the person to whom the payment was given. When the tenancy ends, the tenant is entitled to any interest earned on the last month’s rent. **M.G.L. c. 186, § 15B.**



V. The State Sanitary Code and the Condition of an Apartment

In Massachusetts, the State Sanitary Code (**105 C.M.R. 410**) governs what it means to provide a habitable place in which to live. In general, “habitable” means a place that is comfortable and clean enough for a person to live safely.

If a landlord does not respond to a tenant’s complaints about a sanitary code violation, the tenant may request that a code enforcement officer or the local board of health inspect the apartment. An inspector can then come to the apartment, review the conditions, and order the landlord to fix the problem if deemed necessary. In the event that the landlord still fails to fix the problem, then a tenant may move out, even if there is a lease or rental agreement in place. A tenant may also be able to pay a lower rental rate for what the unit, as it is constituted, is actually worth. Before taking action, a tenant seeking this option should contact a private lawyer or legal services for more information. **M.G.L. c. 111, § 198. 105 C.M.R. 410.**



VI. Eviction

There are detailed provisions that govern when a landlord may evict a tenant for non-payment of rent. **M.G.L. c. 239. M.G.L. c. 186, § 11.**



A. Mediation as an Option

If the landlord and the tenant agree, they may utilize mediation services through the Attorney General's Office to resolve a dispute that might otherwise result in an eviction. In addition, the Massachusetts Communities and Development Housing Services Program or the local housing court can provide help in resolving a dispute between a landlord and a tenant.

B. The Eviction Process

The formal eviction process is called Summary Process and starts when the landlord files a Complaint in court. If a tenant is evicted, the tenant's property (left in the apartment) will be placed into storage. The laws and regulations governing that process are complex, but generally require that the tenant will be responsible for payment of the storage and any moving fees, and that the goods can be sold by the storage company if they remain without payment for six months. **M.G.L. c. 239. M.G.L. c. 105.**

VII. Discrimination in Housing is Against the Law

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. For more information about housing discrimination, contact the Civil Rights Division of the Attorney General's Office or the Massachusetts Commission Against Discrimination. **M.G.L. c. 151B.**

VIII. Resources

Office of the Attorney General Consumer Protection Division

www.mass.gov/ago

(617) 727-8400 Consumer Complaint and Information Hotline

(617) 727-2200

One Ashburton Place

Boston, MA 02108

Massachusetts Department of Housing and Community Development

www.mass.gov/dhcd

(617) 573-1100

100 Cambridge St., Suite 300

Boston, MA 02114

Massachusetts Housing Court

<http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/index.html>

(617) 788-6500

Edward W. Brooke Courthouse

24 New Chardon Street, 6th Floor

Boston, MA 02114-4703

Massachusetts Commission Against Discrimination

www.mass.gov/mcad

(617) 994-6000 Boston

One Ashburton Place, Room 601

Boston, MA 02108

(413) 739-2145 Springfield

436 Dwight Street, Room 220

Springfield, MA 01103



Office of Attorney General

Martha Coakley

Consumer Protection Division

One Ashburton Place

Boston, MA 02108

(617) 727-2200

www.mass.gov/ago