

Smart Consumer Practices for Tenants

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Leasing a rental unit involves numerous steps that can be confusing, especially for a first time renter or anyone who does not know his rights and responsibilities as a tenant in Massachusetts. Considering the amount of money often needed to secure a unit - most, if not all landlords, require that the tenant provide some sort of down payment such as last month's rent and/or a security deposit – it would behoove all renters to brush up on their knowledge of landlord/tenant law. The following suggestions, while by no means exhaustive, cover the most basic things all tenants should know.

Searching/Moving In

During your search for a rental unit you may deal with the landlord directly or with a real estate broker, and if you are from out-of-state your contact may be limited to emails and phone conversations. It is extremely important that you be cautious and take your time to sort out all of the details of a rental agreement before making any decisions, especially if you cannot secure the unit in person.

In order to best protect yourself, you should not sign a lease (usually a one year agreement) until you have read each page carefully; made sure that the broker or landlord has put any additional oral provision(s) in writing; and of course, until you are completely sure that you want a unit. Additionally, if you use a broker, it is a good idea to meet the landlord and review the lease with him/her to make sure there are no mistakes. If you will be securing a Tenancy at Will (a month to month agreement), which can be created orally, it would still be wise to reduce it to writing, especially if you and your landlord make any agreements pertaining to subjects such as pets, roommates, guests or parking privileges, which tend to create problems for many tenants when these are merely made orally.

Most landlords require that a tenant pay a security deposit, which is quite often the source of many headaches for tenants when they are moving out. Among other things, security deposits ensure that the landlord has the funds available to correct any damage a tenant has caused to a unit. As a tenant, you have the right to a receipt of your deposit and proof that the landlord put it in an interest bearing escrow bank account; if you rent a unit for 12 months or more, your landlord must pay you interest on this prepayment at the expiration of your lease, even if you renew it. As you might have already guessed, the best way to protect your security deposit is to document the condition of your rental unit when you move in. If you give a landlord or his agent a security deposit in Massachusetts, he must give you a signed statement of the present condition of your rental unit, including any existing damage. In addition to a security deposit, the landlord may request a last month's rent prepayment. The landlord must be give a receipt for this, and s/he and must also pay you interest on this additional deposit at the expiration of your lease (if your tenancy lasted for at least 12 months).

The maximum a landlord can charge you when you move in is the first month's rent, the last month's rent, a security deposit and the cost of a new lock and key. If you use a separate broker,

s/he may also charge you a finder's fee. If the landlord charges you a separate "application fee," this is illegal. In this case, if you really want the apartment, the best course of action would be to pay the fee and later deduct it from your rent.

If you are from out-of-state and cannot rent a unit in person, there are several steps you can take to better protect yourself, including:

- a) Contacting the Massachusetts Attorney General's Office at (617) 727-2200 or searching the Better Business Bureau (www.bbb.com) to check if any complaints have been filed against the real estate agency or landlord you are dealing with;
- b) If possible, having someone you trust in Massachusetts oversee the deal and visit the unit you want to rent, AND;
- c) If you will be attending a college or university in Massachusetts, checking with your school's housing office for rental postings or other assistance.

Once You Move In

In Massachusetts, you have a right to privacy in your rental unit, in addition to safe and habitable living conditions. A landlord or his agent may only enter your unit for legitimate reasons such as to inspect it, make repairs or show to prospective tenants, and you have the right to reasonable notice whenever entry into your unit is necessary. The State Sanitary Code provides guidelines with respect to water, heat, kitchens, pests, the structural elements of your rental unit and snow removal; every landlord in Massachusetts must abide by this code. If your landlord is not maintaining your unit in sanitary conditions there are several remedies you can resort to, including rent withholding and making any necessary repairs yourself and then deducting these costs from your rent. These remedies cannot be entered into lightly; there are several requirements you must meet before you can take either step, and it is recommended that you seek legal advice if you are thinking of withholding rent, as your landlord may try to evict you for nonpayment of rent. Usually, the most important requirements you must meet are 1) providing the landlord with written notice of the problem in your unit, and 2) contacting your city's housing inspector to verify the problem.

It is every tenant's legal right to live in a habitable unit, and you may exercise this right without fear of retaliation from your landlord. Thus, if your landlord tries to change any aspect of your tenancy within six months of your exercising your legal rights, his actions will be presumed to be retaliation and he will have the burden to prove the change was legitimate.

Moving Out

Depending on the type of tenancy you have, there are different steps you must take as you prepare to move out. If you are a Tenant at Will, unless otherwise agreed, you are required to provide your landlord with 30 days or a full rental period's written notice, whichever is longer, before you move out. If you have a lease, it is important that you read it carefully to make sure it is not self-extending, in which case there are certain procedures you must follow, such as providing your landlord with written notice that you want to terminate your tenancy. Once these details are taken care of, you should schedule a walk-through of your unit with your landlord to inspect it for damage; you may want to get a written and signed statement of the condition of the

unit at this time from your landlord or you may want to take and date photographs of the unit, especially if you did not secure a statement of condition at the beginning of your tenancy or if you lost it. It would also be a good idea to bring a friend as a witness. If you, your pet or any of your guests have caused damage to the unit, the landlord may deduct the reasonable cost of repair from your security deposit. If s/he makes these deductions, the landlord must provide you with a list of the damages and their necessary repairs, and the estimated costs or receipts for the repairs. The landlord has 30 days after the tenancy ends to return the security deposit and interest to you, or to explain in writing any deductions retained.

If your move is not voluntary and your landlord is evicting you for nonpayment of rent or excessive damage to the unit, for example, you still have some protection under Massachusetts law. Under some circumstances, you may avoid eviction by paying the overdue rent and other fees. Additionally, only a judge's eviction order can give a landlord the authority to evict you, and current eviction procedures afford you the opportunity to bring a counterclaim against the landlord and appeal a final judgment against you. Finally, if you feel the eviction was not your fault or you can't find a place to live, you may try to obtain a Stay of Execution from a judge allowing you to stay in your unit for up to 6 months, or if you are elderly or disabled, for up to a year.

For more detailed information regarding tenancy in Massachusetts please contact the Cambridge Consumers' Council for a free pamphlet. When problems with your tenancy arise, knowing your rights and responsibilities and documenting *everything* will be incredibly helpful; and remember, the most effective way to prevent problems in the first place, and thus avoid a stressful experience, is to make sure all the terms of your rental agreement are *clear and in writing* from the start.