

ANSWER FORM
COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

a. _____, ss:
County

e. _____
Name of Court

f. _____
Docket No. Summary Process

- b. **Trial Date** Original Trial Date: _____ (No Discovery requested)
 Rescheduled Trial Date: _____ (Discovery requested)

c. _____
Plaintiff(s) – Landlord(s)

vs.

SUMMARY PROCESS ANSWER

- COUNTERCLAIMS**
 WITH JURY TRIAL REQUEST

d. _____
Defendant(s) – Tenants(s)

Facts

1. My name is _____.
2. I live at _____ . I moved in on or about _____.
3. I pay \$ _____ in rent per (month/week).
4. I receive a rent subsidy. The full contract rent is \$ _____.
5. I do ___/do not ___ have a written lease.
6. I deny that I live in my home unlawfully and against the right of the landlord.
7. I deny that I owe the amount of rent or use and occupancy listed in the landlord's complaint.
8. I no longer live at the address listed in the complaint.

Defense

Tenancy Not Properly Terminated and/or Case Not Properly Brought

Mass. Gen. Laws, c. 186, §§11-13, 17

9. I never received a Notice to Quit.
10. The Notice to Quit was defective.
11. The landlord did not terminate my tenancy properly.
12. I live in property covered by the federal CARES Act (the CARES Act covers evictions from property with federally backed mortgages, §4023, and certain federally assisted property § 4024) and
 - a. I did not receive a 30 day notice to quit after July 25, 2020 which is required by the CARES Act.; or
 - b. The mortgage on this property is in forbearance and the landlord cannot evict me while the mortgage is in forbearance

- 13. I sent my landlord the CDC declaration and so, under the CDC moratorium (85 Federal Register 55292), this eviction must be dismissed (or in the alternative, all proceedings stayed through December 31, 2020).
- 14. The landlord started this case before the Notice to Quit expired.
- 15. The landlord is a corporation or other business entity and this case was not brought by an attorney so it should be dismissed.
- 16. The Summons and Complaint is defective and/or was not properly served/filed.
- 17. If I have ever owed the landlord rent, I paid or offered to pay it all within the time allowed by law.
- 18. Even if my tenancy was terminated, a new tenancy was created by my landlord's conduct.
- 19. The Complaint and the Notice to Quit state inconsistent reasons for eviction.
- 20. The landlord does not have a superior right to possession and/or does not have standing to bring this action.
- 21. The landlord's case should be dismissed because:

Defense

Failure to Comply with Rules for Public and Subsidized Housing

- 22. I am a tenant in public or subsidized housing and:
 - a. The landlord did not terminate my tenancy as required by the lease, program rules and/or use restrictions that apply to the property.
 - b. I am a tenant under the Section 8 Program and the landlord did not provide a copy of the Notice to Quit in a timely way to the agency that oversees my voucher.
 - c. The landlord does not have good cause to evict me as required by the lease and/or program rules.
 - d. The landlord did not give me my right to a grievance hearing or conference as required by the lease and/or program rules or I requested a hearing/conference and the process was not completed before I received the complaint.
 - e. I reside in federal public housing or subsidized Section 8 or other covered federal housing and have a defense under the Violence Against Women Act (42 U.S.C. 14043e-11).

Retaliation

Mass. Gen. Laws c. 239, §2A; c. 186, §18

23. The landlord is trying to evict me and/or retaliate against me because:
- a. I withheld rent because of bad conditions.
 - b. I reported bad conditions in writing to the landlord.
 - c. I reported bad conditions orally and/or in writing to a public agency.
 - d. I took part in a tenants' meeting or organization.
 - e. I brought a case/claim against the landlord.
 - f. I or a member of my household took action to obtain a protection order under G.L. c. 209A or a harassment prevention order under G.L. c. 258E;
 - g. I or a member of my household reported an incident of domestic violence, rape, sexual assault or stalking to law enforcement or reported a violation of a protection or harassment prevention order.
 - h. I am a survivor of abuse, sexual assault, rape or stalking and the landlord is evicting me for exercising my rights to break my lease or change my locks for safety reasons under G.L. c. 186, §§23-29.
 - i. Other: _____

This entitles me to possession and one to three times the rent (calculated at the full contract rent for tenants with subsidies) or my actual damages, whichever is greater.

24. I am entitled to a presumption of retaliation because the landlord took action against me within 6 months of any of the above (listed in 21a through 21i).

Defense & Counterclaim

Discrimination

Mass. Gen. Laws c. 239; c. 151B; Federal Fair Housing Act; Americans With Disabilities Act; and/or Section 504 of the Rehabilitation Act

25. My landlord has discriminated against me and/or a member of my household based on:

- | | | |
|--|---|--|
| <input type="checkbox"/> Family status (having children) | <input type="checkbox"/> Race | <input type="checkbox"/> National Origin |
| <input type="checkbox"/> Age | <input type="checkbox"/> Religion | <input type="checkbox"/> Disability |
| <input type="checkbox"/> Public or Rental Assistance | <input type="checkbox"/> Sex | <input type="checkbox"/> Color |
| <input type="checkbox"/> Gender Identity | <input type="checkbox"/> Sexual Orientation | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Marital Status | <input type="checkbox"/> Veteran's Status | |

“Reasonable Accommodation” Based on Disability (Physical and/or Mental)

See BHA vs. Bridgewater, 452 Mass. 833 (2009)

26. I (and/or a member of my household) have a disability and I request/have requested that the landlord make changes in its rules or do what is necessary for me to have a fair housing opportunity. Failing to provide a reasonable accommodation to a qualified person with a disability is disability-related discrimination. *Note:* This may include allowing the tenant to get help or do something necessary to address a lease violation.

Sexual Harassment

See Gnerre v. MCAD, 402 Mass. 502 (1988); Mass. Gen. Laws c. 151B, §4 (6)
Fair Housing Act (42 U.S.C. § 3604)

27. My landlord (or agent/representative of my landlord) discriminated against me based on my sex/gender by sexually harassing me. This activity made my apartment less desirable to me. Check all that apply:

- I have been subjected to unwanted/unsolicited harassment of a sexual nature (includes verbal harassment and non-consensual physical acts of a sexual nature).
- I have been asked or pressured to give sexual favors.
- Terms of my tenancy were changed because of my response to the sexual harassment.
- I felt unsafe or uncomfortable in my home as a result of sexual harassment.

Defense

Tenant Not Responsible for Alleged Behavior

28. I/a household member/guest did not do what my landlord alleges is the reason for this eviction.

29. What my landlord is claiming is not a violation of the rental agreement.

30. I am a tenant in state public housing and the landlord is evicting me for alleged behavior of a household member, guest, or someone over whom I had no control. I did not violate my lease or any law. I had no way to control or no reason to know about the alleged behavior.

Defense

**Tenant Should Not Lose His/Her Apartment
(Avoidance of Forfeiture)**

31. Based on principles of equity and fairness, it is unfair to evict me.

Defense & Counterclaim

or Offset to Any Claim for Use and Occupancy

Bad Conditions in My Home and Other Claims

Mass. Gen. Laws c. 239, §8A; c. 93A; and/or Implied Warranty of Habitability

32. I have a defense and counterclaim because of past or present problems in or around my home that the landlord knew or should have known about, including but not limited to the following:

cockroaches, other insects, mice or rats

defective or leaky windows

water leak and plumbing problems

defective ceilings, walls, or floors

electrical problems

problems with heat and/or hot water

lead paint

defective locks or security problems

other: _____

33. The landlord knew or should have known about the bad conditions because:

a. I told the landlord orally.

b. I told the landlord in writing.

c. The landlord was notified by Inspectional Services, Board of Health, housing agency, or someone else.

d. All or some of the conditions existed when I moved in.

e. All or some of the conditions existed when the landlord purchased the property or at the time of foreclosure.

f. All or some of these conditions exist in common areas that the landlord has access to.

g. Other: _____

I am entitled to damages for the reduced value of my home, calculated as the difference between: (a) the full market rental value of my home in good condition, and (b) the reduced value of my home in its bad condition. *(If the rent is subsidized, the damages are calculated based on the full rental value and not just the tenant's share.)* I am also entitled to damages for any other losses, injuries, or expenses resulting from bad conditions.

Defense & Counterclaim

Violation of the Security Deposit Law

Mass. Gen. Laws c. 239, §8A; c. 186, §15B; and/or c. 93A

34. I paid a security deposit of \$ _____ to my current/former (*circle which one*) landlord.
35. The landlord violated the security deposit law by:
- a. Charging more than 1 month's rent for the deposit, *allowing me 3 times the deposit and interest required by law.*
 - b. Not putting the deposit in a separate bank account, *allowing me 3 times the deposit and interest required by law.*
 - c. Not giving me the required receipts, *allowing me 3 times the deposit and interest required by law.*
 - d. Not paying or deducting from my rent yearly interest, *Allowing me 3 times the interest owed on the deposit.*
 - e. Not taking responsibility for the security deposit, which I paid to the prior landlord, *allowing me 3 times the deposit and accrued interest.*
 - f. Other: _____

Defense & Counterclaim

Last Month's Rent

Mass. Gen. Laws c. 239, §8A; c. 186, §15B; and/or c. 93A

36. I paid last month's rent of \$ _____ to my current/former (*circle which one*) landlord and my landlord has not paid me yearly interest or given me rent credit for this interest, entitling me to three times the amount of interest owed.

Defense & Counterclaim
Or Offset to Any Claim for Use and Occupancy
**Interference with Utilities and Use of Home
(or Breach of Quiet Enjoyment)**
Mass. Gen. Laws c. 239, §8A; c. 186, §14; and/or c. 93A

37. The landlord did the following:
- a. Did not provide adequate heat.
 - b. Did not provide adequate hot water.
 - c. Did not pay for utilities that were the landlord's responsibility.
 - d. Shut off my utilities.
 - e. Locked me out of my home.
 - f. Put my possessions out without a court order.
 - g. Allowed bad conditions to exist in my home.
 - h. Entered my home without my permission and/or notice.
 - i. Interfered with my right to enjoy my home in other ways by:

38. I have been billed for gas, oil and/or electricity that go to other people's apartments or common areas (such as hallways, stairways, basements, or porches). This defense and counterclaim entitles me to damages under G.L. c. 186, §14, and/or c. 93A. See also Mass. Sanitary Code, 105 CMR 410.354.

This defense and counterclaim entitles me to three times the rent (calculated at the full contract rent for tenants with subsidies) or my actual damages, whichever is greater.

Defense & Counterclaim
Rent Liability in Public and Subsidized Housing

- 39. The housing authority is responsible for rent.
- 40. The housing authority stopped payments to the landlord because repairs were not made.
- 41. The housing authority/owner failed to properly calculate rent or to adjust the rent, and therefore I am entitled to a recalculation of rent and do not owe the amount claimed due.
- 42. The landlord charged me more rent than the amount approved by the housing agency.

Defense & Counterclaim
Or Offset to Any Claim for Use and Occupancy
Violation of the Consumer Protection Law
Mass. Gen. Laws c. 239 §8A, and/or c. 93A

- 43. Each of the acts stated in this Answer/Counterclaims was unfair and/or deceptive. My landlord is covered because she or he is not a housing authority or the owner-occupant of only a 2 or 3-family property in which I live. This pleading is a demand for a reasonable settlement offer.
- 44. The landlord acted in the following additional unfair or deceptive ways:
 - a. The landlord charged me late fees before my rent was thirty days late.
 - b. The landlord charged a rent amount that I never agreed to pay.
 - c. The landlord charged me constable or court fees unlawfully.
 - d. There are unlawful terms in my lease.
 - e. Other: _____

Therefore, under G.L. c. 93A, I am entitled to statutory damages for each violation, or actual damages (doubled or trebled because the landlord's conduct was willful and knowing), whichever is greater.

Other Defenses & Counterclaims

- 45. My rent is paid by the Department of Transitional Assistance through vendor payments; therefore, I had no control over nonpayment of the rent.
- 46. I have exercised my rights under the repair and deduct statute (G.L. c. 111, §127L).
- 47. The landlord required me to pay for water in violation of G.L. c. 186, §22.
- 48. Upon information and belief, the landlord plans to convert my unit into a condominium and did not follow the applicable state or local law.
- 49. There is a failure or delay of a government agency (such as RAFT or city funds) in the mailing or delivery of the rent payment and therefore, the court must postpone this case by at least 7 days (or such longer time as needed for the payment by the government agency) and then, if the payment of rent and court costs is offered to the landlord, the tenancy is treated as not having been terminated and the landlord's claims for rent and possession must be dismissed. G.L. c. 186, §11 (tenant under lease) and §12 (tenant at will).
- 50. I have other defenses or counterclaims as follows:

WHAT I WANT THE COURT TO DO

51. On all claims and defenses, award me possession of my home.
52. On all claims and defenses, award me money damages, costs, attorney's fees (where applicable), and such other relief as is fair.
53. Other:
-

The Court Should Allow Me to Stay in My Home

Mass. Gen. Laws c. 239, §8A (5th para.)

54. I request that the court apply G.L. c. 239, §8A (which applies both to non-payment and to no-fault evictions) to allow me to stay in my home as follows:
- Because the money owed to me on my counterclaims is greater than the amount of rent owed to the landlord, I win the eviction (possession of the property should be awarded to me in this action); or
 - I am entitled to the opportunity to pay to the court within seven (7) days the difference between what the court finds I owe my landlord and what the landlord owes me in order to keep possession of my home.

The Court Should Order the Landlord to Make Repairs

Mass. Gen. Laws c. 239, §8A (4th para.), and/or c. 111, §127I

55. I request the court to order the landlord to correct the defective conditions in my home.

The Court Should Order the Landlord to Make Reasonable Accommodations

Federal Fair Housing Act; Americans with Disabilities Act; Section 504
and/or Mass. Gen. Laws c. 151B

56. I and/or a member of my household have a disability and I request the court to order the landlord to accommodate the disability by stopping the eviction and/or taking steps to provide fair housing to allow me to remain in my home.

The Court Should Find That I Was Not At Fault

57. The court should find that the landlord has not proven that I was at fault. This is a fault eviction case in which the landlord claimed I did something wrong (other than nonpayment of rent). The landlord did not prove that I did anything serious enough to justify eviction; therefore, the court should allow me to stay in my home.

The Court Should Continue this Case for Payment by Government Agency

58. The court should postpone this case for at least seven days (or such longer time as needed for the tender by the government agency) and, if the rent and court costs are then tendered/offered, the landlord's claims for rent and possession must be dismissed. G.L. c. 186, §11 and 12.

The Court Should Allow Me More Time to Move

Mass. Gen. Laws c. 239, §9 or Court's Equitable Authority

59. If the court awards possession to the landlord, I need time to move. (The court may award *up to one year* for a household with an elderly or disabled person, or *up to six months* for any other tenant.)
- a. I am and/or a member of my household is elderly (over 60) or disabled.
- b. The court should also consider my situation as follows: _____

Request for a Jury Trial

Part I, Article XV of the Mass. Constitution; USPR 8; Mass. Gen. Laws c. 185C, §21 and c. 218, §19B

- I claim my right to a trial by jury. (Jury trials are available in all courts.)

Note to Tenants: If you check this box, go back to the first page of this form and check the box in the heading that says "With Jury Trial Request." If you have checked off any counterclaims, go back to the first page of this form and check the box in the heading that says "Counterclaims."

I hereby certify that I [caused to be] delivered or mailed (or emailed, with the landlord consenting to service by email) (*circle which one*) a copy of this Answer to the landlord or his/her lawyer (who is required to accept service by email) on _____ (*date*).

Note to Tenants: This Answer must be filed in court **AND** a copy received by your landlord, or by his/her lawyer if represented, on or before the first Monday after the Entry Date listed on the Summons and Complaint (or, **under COVID-19 orders, 3 business days before the first scheduled court event – parties will be notified by mail by court of the date of the first event**).

Signature of Tenant(s)

Signature of Tenant(s)

Printed Name

Printed Name

Note: *Each* person named as a Defendant in the Complaint **MUST** sign this Answer or file a separate Answer in order to protect his/her own rights.

Street Address

Apt. No.

City

State

Zip Code

Telephone Number

Email (if any)

Date