

Tenants' Rights in Massachusetts
MCLE Basic Benefits Training Series

September 16, 2025

Facing Eviction Part I

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Key Takeaways

- Only the court can evict a tenant.
- A tenant can win an eviction trial.
- There are things that you can do as an advocate to help tenants avoid eviction.

Evictions – In Court Only

- A landlord must get an “Execution” from the court in order to evict a tenant.
- A lease which says that a landlord can evict a tenant without going to court is illegal.
- It is illegal for a landlord to try to threaten or intimidate a tenant to leave.
 - Call the police.
 - File a Temporary Restraining Order:
https://apps.suffolklitlab.org/run/housing_tro

The Eviction Process

1. Notice to Quit
2. Summons and Complaint
3. Answer, Discovery, and Jury Claim
4. Tier-1/Mediation
5. Motions/Trial
6. Judgment
7. Appeal
8. Execution

See Eviction Timeline in materials

Notice to Quit

- **Before** filing an eviction case in court, the landlord must terminate the landlord-tenant relationship (the “tenancy”) by a written notice.
- Termination of the tenancy must be both
 1. according to the law; and
 2. according to the lease.
- The notice terminating the tenancy is called a Notice to Quit (NTQ). Sometimes the notice is titled “Notice Terminating Tenancy/Occupancy.”

Notice to Quit – Common Types

- **14-day NTQ for non-payment of rent**
 - For tenants with or without a lease.
 - If no federal subsidy is involved (CARES Act).
- **30-day NTQ for non-payment of rent**
 - For federal public housing and units assisted through federal Project Based Rental Assistance programs.
 - For federally-assisted units covered by the CARES Act. CARES Act protections apply to the entire property, even if only one unit is federally assisted.
- **Rental Period NTQ / 30-day NTQ**
 - For tenants without a lease / “tenants at will.”
 - Must be at least a 30-day period.
- **Other term for lease violation (not non-payment)**
 - Depends on the lease, can be longer or shorter than 30 days.

Notice to Quit

- The notice must be clear: date of termination, reason for termination (if required), names of tenants and landlord, property address.
- Per G.L. c. 186, Section 31, an “attestation” form and informational sheet must accompany a notice to quit for non-payment of rent.

See Form to Accompany Residential Notice to Quit in materials

Right to Cure Non-Payment of Rent

- If the reason for eviction is non-payment of rent, the tenant has a right to “cure” the non-payment by *timely* paying what they owe *in full*.
 - **Tenant at Will:** right to cure within 10 days after the notice; once every 12 months.
 - **Tenant with a lease:** right to cure until the Answer Date; must also pay court filing costs and service fee, if case was entered in court.
- If the tenant cured the non-payment BEFORE the filing of the eviction case, the landlord should not enter the case.
- If the tenant cured the non-payment AFTER the case was entered, the case should be dismissed.

Rental Assistance

- Tenants should apply for rental assistance as soon as they receive a Notice to Quit for non-payment of rent.
- In non-payment eviction cases, while tenants have a pending rental assistance application:
 - The court must “continue” (reschedule) any hearing.
 - The tenants should not be evicted.
- Landlord’s refusal to accept rental assistance could be a violation of the state anti-discrimination law.
- Rental Assistance rules and regulations may require the landlord to dismiss the eviction case upon payment of the back rent.

When the NTQ Expires

“Receipt of a notice to quit, however, does not legally require the tenant to move out of his or her home ... Rather, it simply declares the landlord's intent to go to court to seek an eviction order if the tenant does not move out voluntarily before the stated deadline.

Adjartey v. Cent. Div. of Hous. Court Dep't
481 Mass. 830, 850 (2019)

Summary Process

Eviction cases in Massachusetts have special rules of procedure and are called Summary Process actions.

Generally, the outcome of the case will include:

1. Possession
2. Time
3. Money
4. Court may also order the landlord to make repairs or to accommodate a disability

Summary Process

Tenants can win eviction cases!

- If the landlord did not follow the proper process, the case may be dismissed.
- The tenant and the landlord can agree on a resolution that is acceptable for both sides.
- If the landlord was found to be breaking laws protecting tenants, the tenant may win possession and/or money.

Summary Process

- Begins with Summons and Complaint.
 - Typically, a document of one double-sided printed paper.
 - It includes a **Complaint** detailing the allegations and a **Summons** to go to court.
- Must be served by the sheriff or a constable.
 - Service in hand not required (can be “mailed and nailed”).
- A separate notice of the exact date of the first court event (mediation) will be served by sheriff/constable at a later date.

See *Sample Summons and Complaint* in materials and in *Legal Tactics*, page 822.

Prepare for Trial

- When assisting a tenant facing eviction make sure to act promptly.
- Apply for rental assistance, if applicable.
 - Keep a proof of application.
- To find legal help in your area go to:
masslrf.org/en/home

Types of Evictions

<u>No-fault</u> (or No-Cause)	Tenant can raise counterclaims	If tenant loses, the court should consider a stay of the Execution to give tenant time to relocate
<u>Non-payment of rent</u>	Tenant can raise counterclaims	No law saying court should consider stay of the Execution.
<u>Fault</u> (or Cause)	Tenant may be able to raise counterclaims, but won't help tenant win possession.	No law saying court should consider stay of the Execution

Answer and Discovery

- Currently, Answer and Discovery are due **3 business days prior** to the first event in the eviction case (Tier-1 mediation).
- **Answer:** Tenant's opportunity to tell their side of the story, raise Defenses and Counterclaims, and claim trial by jury.
- **Discovery:** Tenant's opportunity to ask the landlord questions and demand relevant documents.

Answer and Discovery

- Helping a tenant get an Answer and Discovery filed (and served!) is one of the most important things you can do as an advocate.
- Call Legal Services ASAP. Especially if the case involves cause allegations or criminal activity.
- Fill out your own Answer and Discovery using MADE – an online form for unrepresented tenants and advocates:
<https://www.gbls.org/MADE>
- Or download **Answer, Booklet 3** and **Discovery, Booklet 4** at:
masslegalhelp.org/housing-apartments-shelter/eviction/booklets-representing-yourself-eviction

Answer and Discovery

- All forms must be filed in the court AND served on the landlord no later than **3 business days** before first mediation.
- Electronic filing is recommended; in-person filing is available for self-represented tenants.
- Late Answer will only be accepted with permission from the court. Motion for late filing is available through MADE or download **Late Answer & Discovery, Booklet 3A** at www.masslegalhelp.org/housing-apartments-shelter/eviction/booklets-representing-yourself-eviction

Answer

Defenses:

1. Denial of landlord's claims
2. Procedural Defenses
3. Retaliation
4. No Significant Lease Violation
5. Avoidance of Forfeiture

Answer

Counterclaims:

Also serve as Defenses that can prevent eviction in non-payment and no-fault cases; may be allowed in fault cases but will not win possession:

1. Bad Housing Conditions
2. Breach of Quiet Enjoyment
3. Discrimination/Reasonable Accommodation
4. Utilities violation
5. Security Deposit or Last Month's Rent violations
6. Unfair and Deceptive Business Practices

See **Most Common Defenses and Counterclaims for Tenants** Chart in materials and in *Legal Tactics*, page 394

Jury Trial

- Jury claim must be filed by the Answer date.
No second Chance!
- The parties can later agree to have a trial in front of a judge without jury (bench trial).
- A request for jury may postpone trial date.

Transferring Case to Housing Court

- The landlord can choose to file a Summary Process action in either a District Court or the Housing Court.
- The tenant can transfer the case to Housing Court anytime before the date of trial.
- Housing Courts often have more expertise on the issues.
- Housing Courts have more resources to serve unrepresented tenants: Housing Specialists, Tenancy Preservation Program, Lawyer for the Day.

Forms

- **MADE Online Forms**

gbls.org/MADE

- **Booklets: Representing Yourself in an Eviction**

masslegalhelp.org/housing-apartments-shelter/eviction/booklets-representing-yourself-eviction

- **Housing Court Forms at MassAccess**

<https://www.mass.gov/lists/housing-court-forms>

Information

- **Eviction Know Your Rights Information**
masslegalhelp.org/housing-apartments-shelter/eviction
- **Rental Assistance**
www.mass.gov/how-to/how-to-apply-for-emergency-housing-payment-assistance

Resources

- **Massachusetts Legal Resource Finder**
masslrf.org/en/home
- **Tenancy Preservation Program, Lawyer for the Day,
& Other Housing Court Resources**
www.mass.gov/guides/housing-court-resources
- **Volunteers Lawyers' Project Appeals Clinic**
vlpnet.org/civil-appeals-clinic/