

Tenants' Rights in Massachusetts
MCLE Basic Benefits Training Series
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Getting Repairs Made

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What you will learn today

- Legal framework regarding a right to a habitable apartment
- How to navigate the process of enforcing these rights
- Practical considerations to asserting a right to a safe and habitable home

Tenants Have a Right to a Decent Place to Live

In Massachusetts, there are 4 legal sources of this right:

1. State Sanitary Code [105 C.M.R. 410](#)
2. Local health ordinances
3. The warranty of habitability
4. Covenant of quiet enjoyment
[M.G.L. c. 186, §14](#)

Your Landlord Cannot Force You to Give up these Rights

- A landlord **cannot** avoid its obligation to provide safe and habitable housing by including a lease term that makes the tenant responsible for all repairs
- A landlord **cannot** claim that they charged less rent because of the bad conditions

State Sanitary Code

- State Sanitary Code are regulations issued by the Massachusetts Department of Public Health
- Purpose is to protect the health, safety and well-being of the occupants of residential housing
- Applies whether there is a lease or not
- Sets **minimum** standards that landlords must meet
 - For example: All rental housing must have heat, hot water and electricity; kitchens and bathrooms must have sinks with running water; all entry doors must have working locks
- Find the State Sanitary Code at [105 CMR 410](#)

Who Enforces the State Sanitary Code

- Local Board of Health
- In Boston, Cambridge and some other towns, it is Inspectional Services Department (ISD)
- If ISD or Board of Health find violation, landlord is ordered to make repairs within a certain number of days after being cited for the violation

Housing Code Checklist and MADE Up to Code

- **Booklet 2: Housing Code Checklist**
 - Outlines the main parts of the Sanitary Code
 - Tells you how long a landlord has to make repairs
 - Gives you direct legal citations to the Sanitary Code
- Share the Housing Code Checklist with tenants, organizers, and community partners
- Checklist translate into Spanish, Vietnamese, Portuguese, Haitian-Creole, Chinese, & Khmer (*links at the end*)
- Use **MADE Up to Code** to document conditions and notify the landlord about the conditions, in Spanish, too

Local Health Ordinances

- In addition to the Sanitary Code, landlords must comply with any local ordinances regulating rental housing
- Local ordinances may impose stricter health and safety requirements
 - FOR EXAMPLE: Some local ordinances require landlords to obtain a certificate of occupancy from the local Board of Health before renting
- Local ordinances apply whether or not a tenant has a written lease

Warranty of Habitability

- When renting property, landlords are promising that the apartments that they rent are safe and habitable
- This is true whether or not there is a lease and is not dependent on a tenant being current with their rent

Violating the Warranty of Habitability

- A landlord is in violation of the warranty from the moment they have notice of conditions that may endanger or impair health & safety under the Code

The Law of Quiet Enjoyment

- If conditions are so serious that they impact the tenant's ability to use & enjoy their home, a landlord has interfered with tenant's right to quiet enjoyment
- A tenant has a right to be free from unreasonable interference with the use of their home
- Conditions that might interfere with the tenant's quiet enjoyment include, but are not limited to:
 - No heat
 - No water
 - Rodent infestation

How to Get Repairs Made

- The tenant should contact the landlord and ask the landlord to make repairs
- Best to provide written notice (letter, text, email) in case the landlord later denies receiving notice
- Keep copies of all communications to help document notice to the landlord and efforts to get repairs made
- Take pictures or videos of the bad conditions, and record the date and time of the photographs or videos
- Again– use MADE Up to Code if possible.

Notice to Tenant about Making Repairs

- Landlord should give tenant “reasonable” notice of when they are coming to make repairs (at least 24 hours) except in an emergency
- It is reasonable for a tenant to ask the landlord to reschedule if the tenant cannot be available at the time he suggests
- However, it is important for the tenant to be reasonable in providing alternate times

When a Landlord Won't Make Repairs

- If a landlord does not make repairs after being notified and given a reasonable chance to make repairs - **the tenant should call ISD or the Board of Health and request inspection**
- Inspector will cite violations of the Sanitary Code and order landlord to make repairs in a certain period of time
- It is illegal for a landlord to take action against a tenant for calling the Board of Health
[M.G.L. Chapter, 186 § 18](#); [M.G.L. Chapter 239 § 2A](#)
- The law does not require that a tenant contact the landlord before calling the Board of Health or ISD

Board of Health Inspection

- Requests can be made in person, by phone, or often on-line
- Try to schedule a definite appointment for the inspection
- An inspection should be done within 5 days of the request (24 hours if an emergency such as no heat, no working toilet, no safe water supply, no lock for entry door)
- If a tenant has difficulty getting an inspection scheduled, write a letter to the Board of Health and keep a copy of it
 - Use sample Inspection Request Letter at www.masslegalhelp.org/housing/lt1-form-11-inspection-req.pdf

Getting Ready for the Inspection

- **Be prepared for an inspection** – inspectors can cite the tenant for violations of the Sanitary Code including not taking out trash, unsanitary kitchens, excessive clutter or blocking hallways or doorways
 - Clean up if necessary
 - But don't clean up mouse and roach droppings!
- **Request a “comprehensive” inspection** – which includes the apartment, the exterior of the building and all common areas
 - Otherwise, the inspector is only required to check for serious violations and the conditions the tenant specifically asks to be checked

Condemnation

- Before you call for an inspection it is important to be aware that it is possible that ISD/BOH will condemn the unit
- This could mean that you are ordered to vacate the unit immediately, even if you do not have alternate housing
- Some courts will order a landlord to provide alternate housing (new apartment or hotel room) to a tenant displaced by condemnation but not all courts will do so.; this is more likely if the court believes that necessary repairs can be made quickly.
- Be prepared for this possibility if the conditions of the apartment are especially severe

The Inspection

- Tenants should be prepared to advocate for themselves during the inspection
- Don't rely on the inspector to find everything, even if you request a comprehensive inspection
- Point out all violations you know about and make sure the inspector writes them down
- Inspector should give the tenant a copy of the report at the end of inspection, if the inspector doesn't, ask for one

Inspector's Findings and Order

- If inspector finds a condition is so serious it “may endanger or materially impair” the safety or well-being of the occupants, inspector must send the landlord a copy of the report within 12 hours
 - Landlord is required to make a “good faith effort” to correct violations within 24 hours of receiving the notice
- For less serious violations, the inspector should send the report within 7 days of the inspection
 - Inspection report must include an order that the landlord must begin making repairs within 5 days and complete them within 30 days of receiving the order

Inspections during COVID

- It has been far more complicated during COVID to get inspections done
- Some Boards of Health are contacting landlords based on representations of the tenant that there are defects
- Other Boards of Health are using pictures or videos of an apartment in order to issue a report

What If You Don't Agree with the Results of the Inspection Report

- File a complaint with the town Board of Health or the appeal the order
- Contact the state Department of Health Community Sanitation Division
- Speak to government representatives or the media

Options if a Landlord Refuses to Make Repairs

If a landlord does not make repairs after you or your client have notified them in writing or they have been ordered by the Board of Health to make repairs, a tenant has several options:

1. Withhold rent - M.G.L. Chapter 239 § 8A
2. Repair and Deduct - M.G.L. Chapter 111 § 127L
3. Go to Court - M.G.L. Chapter 111 § 127C
4. Break the lease - M.G.L. Chapter 111 § 127L

Rent Withholding

- Withholding rent can help get repairs done, but there are risks
- A tenant can withhold rent under M.G.L. Chapter 239 § 8A if:
 - Conditions violate the Sanitary Code exist
 - Conditions “endanger or materially impair” the health and safety of the occupants
 - Landlord had knowledge of the conditions before the tenant started withholding or otherwise fell behind in rent
 - Conditions not caused by the tenant, household member or guest

Rent Withholding

- If a tenant legally withholds rent, a landlord should not be able to evict the tenant for non-payment of rent, although they may try
- Withholding can give the tenant power to negotiate what repairs are made, when, and how much withheld rent a landlord will receive when repairs have been completed
- Although not required, the best practice is for the tenant to escrow the money
- Again, it is risky to withhold rent

Do Not Withhold Rent Lightly

- **Be prepared for how a landlord may react, if a tenant withholds rent** – landlord may try to evict for nonpayment
- Before withholding the rent, be sure to:
 - Document the bad conditions with pictures or videos
 - Save all communications with the landlord about the conditions to prove landlords had notice
 - Meet all the requirements of withholding rent
 - Put the withheld rent aside
- **Do not withhold rent lightly!!**

Rent Withholding and Section 8 Tenants

Section 8 voucher holders should be especially careful with rent withholding because many housing authorities are under the mistaken belief that a voucher holder may not withhold rent

Repair and Deduct

- If certain conditions are met, tenants have the right to make repairs and then deduct up to 4 months rent to cover the cost
- Doing this correctly is **VERY** tricky, so make sure you meet all the requirements before you utilize this option
- This method is not widely used because it is difficult to comply with the requirements of the statute
- [M.G.L. Chapter 111, § 127L](#)

Going to Court to Get Conditions Repaired

- If the landlord refuses to make repairs a tenant can file an action in court, including:
 - Request for an Emergency Restraining Order/Preliminary Injunction seeking to have heat restored
 - Petition to Enforce the Sanitary Code
 - Petition to appoint a receiver to make repairs
- The most effective type of complaint may depend on your region
- A landlord can be sued for monetary damages in a separate lawsuit, but that won't get the repairs made
- Be sure to bring your evidence (i.e. pictures, BOH reports, emails, texts) to any hearing on your complaint.

Breaking the Lease

- Where there are very serious violations of the Sanitary Code, a tenant may be able to break the lease
- Before breaking lease tenant should give a landlord written notice of the conditions and an opportunity to repair
- Also best to get a Board of Health inspection to document Sanitary Code violations
- Landlord may try to sue the tenant for the balance of the rent due under the lease, so make sure to document bad conditions and give landlord opportunity to make repairs
- [M.G.L. Chapter 111, § 127L](#)
- There are different steps for breaking a lease under Section 8. Tenants should consult with their section 8 administrator.

When Can a Landlord Enter the Apartment

- A landlord must have permission to enter a tenant's apartment
- A lease may allow landlord to enter to:
 - Inspect the apartment
 - Make repairs
 - Show apartment to prospective tenants or buyers
- Whether a tenant has a lease or not, tenants required to provide reasonable access to make repairs
- Absent an emergency a landlord cannot force their way into an apartment even if the lease says that landlord is entitled to access

Repairs During COVID

- During COVID all landlords are still obligated to ensure that apartments are safe and habitable
- COVID has made repairs more complicated:
 - COVID has led to tension between a tenant's desire to not be exposed to COVID and a tenant's desire to have repairs made
 - COVID has made it challenging for landlords to locate workers willing to enter units to make repairs
- Before workers enter an apartment, a tenant can inquire and insist that workers be masked while in their unit

Key Takeaways

- Numerous laws protect a tenant's right to a habitable place to live – keep reviewing these
- To protect this right it is important to help tenants document unsafe conditions and document all communications between a landlord and tenant about these conditions
- Use and distribute the Housing Code Checklist
- Use Made Up to Code

Housing Code Checklist

English	www.masslegalhelp.org/housing/lt1-booklet-2-housing-code-checklist-2021.pdf
Spanish	www.masslegalhelp.org/housing/lt1-booklet-2-housing-code-checklist-spanish.pdf
Vietnamese	www.masslegalhelp.org/housing/lt1-booklet-2-housing-code-checklist-vietnamese.pdf
Portuguese	www.masslegalhelp.org/housing/lt1-booklet-2-housing-code-checklist-portuguese.pdf
Haitian-Creole	www.masslegalhelp.org/housing/lt1-booklet-2-housing-code-checklist-haitian-creole.pdf
Chinese	www.masslegalhelp.org/housing/lt1-booklet-2-housing-code-checklist-simplified-chinese.pdf
Khmer	www.masslegalhelp.org/housing/lt1-booklet-2-housing-code-checklist-khmer.pdf

Tools and Forms

- MADE Up to Code madeuptocode.org/
- Sample Letter to Landlord to Request Repairs
www.masslegalhelp.org/housing/lt1-form-9-repair-letter.pdf
- Sample Consumer Protection Demand Letter
www.masslegalhelp.org/housing/lt1-form-10-repair-demand.pdf
- Inspection Request Letter
www.masslegalhelp.org/housing/lt1-form-11-inspection-req.pdf
- Tenant Petition to Enforce Sanitary Code
www.masslegalhelp.org/housing/lt1-form-14-tenant-petition.pdf
- Temporary Restraining Order for emergency repairs
www.masslegalhelp.org/housing/lt1-form-15-tro.pdf
- Temporary Restraining Order online from smartphone or computer
apps.suffoklitlab.org/run/housing_tro/#/1

Rules, regulations and case law

- State Sanitary Code [105 C.M.R. 410](#)
- The warranty of habitability
[*Boston Housing Authority vs. Ruth Hemingway*, 363 Mass. 184 \(1973\)](#)
- Covenant of quiet enjoyment
[M.G.L. c. 186, §14](#)
[*Darmetko v. BHA*, 378 Mass. 758 \(1979\)](#)
- Retaliation
[M.G.L. Chapter, 186 § 18](#); [M.G.L. Chapter 239 § 2A](#)
- Repair and deduct [M.G.L. Chapter 111, § 127L](#)