

Tenants' Rights in Massachusetts

MCLE Basic Benefits Training Series

February 15, 2023

# Rents and Other Payments

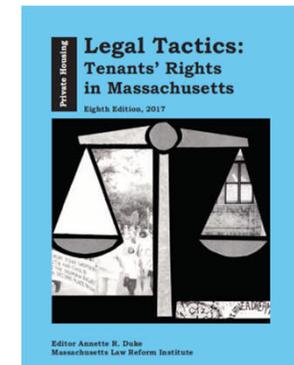
Colleen Hibbert-Kapler

*South Coastal Counties Legal Services*

# Where to Learn about Rent

## Legal Tactics:

- Chapter 1: Before You Move In
- Chapter 3: Security Deposit and Last Month's Rent
- Chapter 5: Rent
- Chapter 6: Utilities
- Chapter 16: Mobile Homes
- Chapter 17: Condominium Control
- Chapter 18: Tenants and Foreclosure



# What is Rent

- Rent is the amount a tenant agrees to pay in exchange for a landlord's promise to provide a decent place to live
- In private market - no legal limit on the amount of rent the landlord can charge
- In public and subsidized housing or mobile home parks covered by local rent control - limits on the amount that the landlord charge

# Subsidized Rent

- Rents are lower than market rate based on tenant's income
  - Typically rents are 30-40% of gross income
- Public Housing
  - Local Housing Authorities are the landlords
- State and Federal Tenant Based Mobile Vouchers
  - Vouchers from State or Federal sources administered by local agencies (Section 8, MRVP, AHVP, VASH)
  - Used to assist with rent in private market apartments
- Subsidy tied to the unit
  - Project Based vouchers
  - Low Income Housing Tax Credit housing
  - If a tenant is evicted, they lose the housing assistance

# Before You Move In

- What can a landlord charge before a tenant moves in?
  - First and last month's rent
  - A new lock and key
  - Security deposit
- Who pays for gas, electricity, hot water and heat?
  - Tenant pays if written agreement
  - Unit must be separately metered for gas and electricity

# How Much Is First, Last, and Security

- At the beginning of the tenancy the landlord can only charge:
  - First month's rent: actual rent
  - Last month's rent: no more than 1<sup>st</sup> month's rents
  - Security Deposit: no more than 1<sup>st</sup> month's rent

# Protect Yourself

- Get receipt for any money you pay the landlord at the time you give them the money!  
Use [Form 2: Rent Receipt](#) and [Form 4: Security Deposit and Last Month's Rent Receipt](#)
  - Ideally pay by check or money order
- Whether tenancy agreement is in writing or oral make sure it is clear:
  - How much is the rent?
  - When is rent due?
  - For how long the tenancy is.
  - Who pays for gas, electric, garbage removal, water & sewage?
- Use [Form 1: Moving In Checklist](#)

# Forbidden Discounts and Payments

- Discounts for substandard housing conditions or illegal terms in the lease are illegal
  - Your landlord cannot “discount” your rent to account for unsafe or unsanitary conditions in your home.
  - Your landlord cannot say your rent is “discounted” if you pay on time. This is an illegal late fee in disguise.
- Side-payments in subsidized housing are strictly forbidden

# Security Deposit

- To legally collect and keep a security deposit, your landlord must:
  - Give you a Statement of Conditions when you move in, use Form 3: Statement of Conditions if they do not
  - Keep your security deposit in a separate bank account
  - Give you a written receipt, stating where the account is held, and an annual statement of interest owed on deposit
  - Pay you interest on the security deposit once a year
  - Return the security deposit if they fail to comply with law
  - After you move out, your landlord can use the security deposit for limited purposes, and must return balance within 30 days
- If your landlord violates certain parts of the security deposit law, they could be ordered to pay you damages

# Last Month's Rent

- Landlord does not have to keep last month's rent in a separate bank account.
- Landlord must pay interest on last month's rent once a year.

# Late Payment

- Landlord cannot charge late fee unless lease or written agreement allows. If no lease or written agreement you do not have to pay a late fee.
- Late fees are only legal if rent is more than 30 days late. Illegal to collect late fee before rent is more than 30 days late.
- “Cure” rights exist to avoid eviction. Different deadlines for tenants with leases and without.
- Landlord can file an action for repeated late payment as a lease violation in a cause eviction.

# Rent Increase

- Landlord cannot increase your rent unless you both agree.
- Landlord cannot increase rent without proper notice.
- Landlord cannot increase rent during lease period unless there is a tax escalator clause.

# Illegal Increases

It is illegal for a landlord to increase rent in retaliation for a tenant:

- Reporting bad conditions to the landlord or a housing inspector.
- Joining or organizing a tenant group.
- Filing a lawsuit against the landlord or defending oneself in an eviction.

# Options - Rent Increase

- Refuse & Stay: Note this could result in an eviction (no-cause).
- Pay & Stay: Landlord can offer a new rent amount and you may agree to it.
- Negotiate: You can make a counter offer.
- Refuse & Move: If you decline rent increase:
  - You are still obligated to pay the current rent.
  - If you do not have a lease, the landlord may evict you through a no-cause eviction.
  - If you have a lease, the landlord may refuse to extend your lease after its expiration.

# Utilities

Landlords pay for the following utilities unless:

- Hot Water & Heat
  - There is a written agreement for the tenant to pay.
- Gas & Electricity
  - There is a written agreement for the tenant to pay.
  - There is a separate meter for the unit.
- Water
  - There is a written agreement for the tenant to pay.
  - There is a separate meter for the unit.
  - The landlord has a certificate showing that there are low-flow fixtures.

# Rental Assistance

- ERAP (Emergency Rental Assistance Program) and SHERA (Subsidized Housing Emergency Rental Assistance) have ended
  - Pandemic Eviction Diversion assistance programs, last applications accepted in April 2022
- RAFT (Residential Assistance for Families in Transition)
  - Financial assistance for tenants administered by the Department of Housing and Community Development (DHCD)
  - Policies continue to change so check DHCD website for latest requirements
- Local Rental Assistance

# RAFT

- Residential Assistance for Families in Transition
  - Rental arrears, utilities, or moving costs for tenants facing homelessness
  - Up to \$10,000 per household within a 12-month period
  - Require Notice to Quit or Court Summons for rental arrears
  - Subsidized tenants must provide proof of financial hardship and are only eligible for six months worth of rental arrears
  - Income at or below 50% AMI (60% in domestic violence situations)

# RAFT Application

- Massachusetts Emergency Housing Payment Assistance Portal
  - <https://applyhousinghelp.mass.gov/s/>
    - Must have an email address to create account and apply
  - Advocates can file on behalf of tenants
  - Administered by Regional Administering Agencies (RAAs) and the Rental Assistance Processing Center (RAP) run by Nan McKay & Associates
  - Each application gets an Application Number for tracking

# Local Rental Assistance

- Contact your local community agency, or local government's Housing Division to inquire about local rental and mortgage assistance programs.
- Get information about other local resources from your regional housing agency.
- Some owners and management companies may be willing to give tenants time to find funds to pay rent and negotiate a payment plan. Contact your landlord or management company as soon as you can. Only agree to a payment plan you understand and you can pay on time. Get everything in writing.

# Resources

Regional Rental Assistance agencies  
Call 800-224-5124 or find your agency here:  
[hedfuel.azurewebsites.net/raa.aspx](https://hedfuel.azurewebsites.net/raa.aspx)

How to apply for emergency rental assistance  
<https://www.mass.gov/how-to/how-to-apply-for-raft>

RAFT Portal Tenant's Guide  
<https://www.mass.gov/doc/tenant-portal-raft-reference-guide/download>

Homeowner Assistance Fund  
[mass.gov/how-to/homeowner-assistance-fund-haf](https://www.mass.gov/how-to/homeowner-assistance-fund-haf)

# Forms

Form 1: Moving In Checklist

[www.masslegalhelp.org/housing/lt1-form-1-moving-in-checklist.pdf](http://www.masslegalhelp.org/housing/lt1-form-1-moving-in-checklist.pdf)

Form 2: Sample Rent Receipt

[masslegalhelp.org/housing/lt1-form-2-sample-rent-receipt.pdf](http://masslegalhelp.org/housing/lt1-form-2-sample-rent-receipt.pdf)

Form 3: Statement of Condition

[masslegalhelp.org/housing/lt1-form-3-statement-of-condition.pdf](http://masslegalhelp.org/housing/lt1-form-3-statement-of-condition.pdf)

Form 4: Security Deposit Last Month's Rent Receipt

[masslegalhelp.org/housing/lt1-form-4-security-dep-last-months-rent-receipt.pdf](http://masslegalhelp.org/housing/lt1-form-4-security-dep-last-months-rent-receipt.pdf)

Letter to Demand the Return of Security Deposit:

CourtFormsOnlineMassAccess interactive interview

[apps.suffolklitlab.org/run/security\\_deposit\\_demand\\_letter/#/1](http://apps.suffolklitlab.org/run/security_deposit_demand_letter/#/1)