

Chapter 15

Using the Court System

Legal Tactics: Tenants' Rights in Massachusetts
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Using the Court System

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Italicized words are in the Glossary

You have the right to represent yourself in court. This is called *pro se*, meaning "on one's own behalf." Many tenants have been successful on their own, especially on matters related to security deposits, small claims, and some bad conditions cases.

The court system, however, is complex, with special rules about court procedures, what papers need to be filed, and what evidence is acceptable. The purpose of this chapter is to give you some basic information about the court system.

If you can find a lawyer to represent you, you are almost always in a better position to use the courts. Certain types of legal *claims* may also make it easier to find a lawyer to represent you when the law requires the other side to pay your attorney's fees if you win your claim. For example, the following types of legal claims provide for attorney's fees if you win your case:

- Breach of Quiet Enjoyment,
- Retaliation,
- Unfair or Deceptive Acts or Practices,
- Violation of the Freedom of Information Act.

See **Chapter 14: Taking Your Landlord to Court** for descriptions of the first three claims, and **Chapter 16: Getting (and Preventing) Access to Information** for the last claim.

A list of lawyer referral services and legal services offices, which represent low-income tenants, is in the **Directory** at the end of this book. You may also want to ask a tenants' rights organization or people you know for names of lawyers who represent tenants.

Resolving Your Problem Outside the Court System

Court cases can be lengthy, expensive, time-consuming, and emotionally draining. Many issues can be resolved outside the court system. When evaluating your case, you should consider whether you have tried all the reasonable alternatives. For example:

- Have you contacted your landlord more than once about making repairs, without results?
- Have you contacted the Board of Health?
- Do other tenants have similar problems, and have you met with them to discuss taking action as a group?
- Should you withhold rent or use the "repair and deduct" law?
- Are there community groups in your area that work with tenants needing assistance?
- If you owe rent, can you work out a payment plan for back rent that is realistic?

1. Mediation

There are independent and neighborhood agencies that provide *mediation* for a small fee or for free. A list of **Mediation Services** is in the **Directory**.

The purpose of mediation is to arrive at an agreement that is **agreeable to both sides**. Effective mediation is dependent upon the good faith and equal footing of the participants.

There are several advantages to using mediation. You can craft an agreement that is tailored to the exact needs of the parties. Mediation usually provides a faster and much cheaper resolution to problems. It can also provide an opportunity to repair the often very personal relationships between landlords and tenants.

Among the disadvantages of using mediation may be that you do not feel on equal footing with your landlord and this affects your ability to negotiate a good agreement for yourself. **If you are fearful of retaliation or unable to maintain your position in the face of a stronger personality, mediation may be a mistake for you.** In addition, many mediators are not trained in landlord-tenant law, and, unlike a judge, a mediator is not required to know the law. While it may be acceptable to ignore the legal issues in your search for an amicable agreement, you should do so only after you thoroughly understand what these issues are. You do not want to find yourself in the position of giving up too much because you are unaware of what may be due to you based on the law.

A successful mediation will result in a written agreement between the parties. Before you sign an agreement, read it very carefully. Be sure that you can meet its terms. For example, do not agree to a payment plan for back rent that is more than you can afford. If you have no other place to live, do not agree to move. Make sure that you understand every word of the agreement. If you do not, ask the mediator to rewrite the agreement using clearer terms that you understand.

If you are unable to resolve your dispute through mediation, you still have the right to use the court system. Everything said in mediation is confidential and should not be discussed in court. If information from the mediation is used in court, be sure to object to its use by asking the judge to disregard it.

The Massachusetts Court System

The Massachusetts state court system has three levels: the trial courts, the appeals courts, and the Supreme Judicial Court, the highest court in the state.

1. Trial Courts

The trial court system is where you first file a *complaint*. There are two departments in the trial court that are responsible for most landlord and tenant cases: housing courts and district courts.

a. The Housing Court

Housing courts handle a variety of issues about housing, including housing code violations, *evictions*, lockouts, housing discrimination, and *receiverships*. Housing courts also handle small claims and criminal complaints.¹

Housing courts are the best equipped to deal with landlord and tenant matters. However, housing courts are not yet available in every part of Massachusetts. Currently, there are five housing courts:

- Boston Housing Court
- Worcester County Housing Court
- Northeast Housing Court
- Southeast Housing Court
- Western Massachusetts Housing Court

Phone numbers for housing courts are listed in the **Directory**.

b. The District Court

District courts have the greatest number of locations throughout the state. Districts courts deal with minor criminal offenses, civil cases under \$25,000, eviction cases, and small claims cases (for \$2,000 or less).² For a list of district courts, see the **Directory**.

Note: If your landlord has declared bankruptcy, you cannot bring a lawsuit against her in housing or district court.³ If you want your complaint heard by a judge, you must go before the bankruptcy court, and that court will hear your complaint. Or you can ask the bankruptcy court for permission to have your case heard in housing or district court. You can call the bankruptcy court in Boston (617-565-8950) or Worcester (508-770-8900) to see if your landlord has declared bankruptcy.

2. Key Court Staff

a. Judges

The judge is the most powerful person in the courtroom. Judges rule on what procedures to follow, what evidence is acceptable, and how the law applies to your case. Through making decisions, judges create new laws and refine the meaning of old laws. They are appointed by the governor for a term that expires at age 70.⁴

Judges are faced with the difficult job of making very important decisions that affect people's lives. They have to hear a lot of cases, one after the other, often under high-pressure conditions. Judges also have different temperaments and interpret the laws differently.

Judges must be neutral, and you cannot expect a judge to be your advocate. To put yourself in a better position to be heard by a judge, come prepared with key documents and having thought through your claims. Be brief. Judges appreciate when people get to the point.

b. Clerks

Clerks organize court business. Their job is to file papers, call cases to be heard, locate files, make routine *fee waiver* decisions, and otherwise assist the judge. In the courtroom, the clerk usually sits in front of or next to the judge. You may ask the clerk to explain court procedures. However, clerks are not permitted to give legal advice.

c. Housing Specialists

Housing specialists work in the housing court. They perform many different functions, including case mediation and inspections of property. They work closely with the other court personnel to resolve housing problems.

d. Court Officers

Court officers are responsible for keeping order in the court. They open and close each court session with the familiar "all rise."

Civil Cases

Civil cases are cases brought to seek court *orders* telling someone to do something or to stop doing something and *judgments* for money *damages*. Two types of civil cases are specifically designed to be filed without the help of an attorney: a tenant petition to enforce the state Sanitary Code, and small claims cases.⁵ See **Chapter 8: Getting Repairs Made** for more about tenant petitions.

A civil court case requires you to negotiate hurdles of several kinds. These include filing the *complaint*, preliminary *hearings*, *service* of court documents, payment of *filing fees*, and the *trial* itself. In addition, time limits are set by the court for taking all the steps necessary to a successful lawsuit. You must be aware of these timing issues when you use the court system. This information can be found in the Massachusetts Rules of Civil Procedure and local court rules.⁶ These rules are complicated. Selected rules of civil procedure can be found at: www.lawlib.state.ma.us/civrules.html.

1. The Civil Complaint

a. Writing the Complaint

A civil case officially begins with the writing and filing of a *complaint* with the court.

The complaint is the document you create to define and start your lawsuit. At a minimum, it identifies the parties (*plaintiff* and *defendant*) and

clearly states the legal *claim* with the basic facts that support it. It also outlines the relief (*remedy*) that you want the court to provide. For example, do you want the court to:

- Order your landlord to make repairs?
- Order your landlord to turn on the heat?
- Order your landlord to return your security deposit?
- Order your landlord to compensate you for the harm you have suffered?
- Fine or jail your landlord for her behavior toward you?

See **Chapter 14: Taking Your Landlord to Court** for descriptions of legal remedies in landlord-tenant cases.

The courts provide complaint forms for small claims actions and tenant petitions. See **Form 14** for a sample **Tenant Petition for Enforcement of the State Sanitary Code** you can use. Legal form books provide a guide for writing other civil complaints. However, an attorney's guidance may be essential to be certain that your complaint is in the proper form.

b. Filing the Complaint

To begin a lawsuit, the original copy of the complaint is filed in the clerk's office of the court with *jurisdiction* over your case. The clerk does not have to accept complaints that do not comply with court rules.⁷ You should keep at least three copies of your complaint.

When you file your complaint, you are required to pay a *filing fee* unless you can show the court that you are *indigent* (unable to pay the fee).⁸ The procedure for *waving* (not having to pay) filing fees is discussed in the **Paying Court Fees** section in this chapter.

When your complaint is filed, a court clerk will assign a case number called a "docket number." Ask the clerk to write this number down for you, and keep it in a safe place. This number will be used to file and identify your case, and

it must appear on all court papers filed in your case.

c. Serving the Complaint

After your complaint is filed, the clerk will give you a *summons* to *serve* on (deliver to) the person or entity named as the *defendant* in your lawsuit. A summons is the official court document that tells a person when to appear in court. A complaint tells a person why she must appear in court.

A copy of the summons, together with a copy of the complaint, must be delivered to the defendant within a certain period of time to notify her that you are initiating a lawsuit. This is called *service*.⁹ The time period will vary, depending on the type of legal action you are initiating. To serve the summons and complaint, you can:

- Hire a sheriff or constable to serve the papers, or
- Ask the court to appoint a "special process server."

A special process server is someone who is not involved in your case, over age 18, and willing and able to serve the papers on the defendant.¹⁰ A special process server usually does the work at no cost. The disadvantage is often a lack of experience in dealing with a defendant who may be very upset or try to refuse receipt of service.

After service is made, the person who served the complaint completes what is called the "return of service" section on the original summons, describing how service was made. For example, the process server may give a copy of the summons and complaint in person to the defendant. The server then files the original summons and complaint with the court. Service is not complete until the summons, with the return of service section properly filled out, is filed with the court. Improper service of the complaint could be grounds for your complaint to be dismissed.¹¹ For example, you cannot mail a summons and complaint to an individual defendant.¹²

d. Paying Court Fees

If you cannot afford court fees, they may be *waived* if you meet the court's definition of indigency under the indigency guidelines.¹³ See **Booklet 9: Affidavit of Indigency**. You can use this form to ask that you not have to pay court fees.

The clerk is empowered to make the decision to waive routine filing and service fees. You must go before a judge to waive special fees, such as fees for an interpreter, a *deposition*, or an expert witness.

2. Before the Trial

a. The Answer and Counterclaims

The defendant is required to file an *answer* to your complaint with the court. The answer admits or denies the allegations of your complaint. It also states *defenses* to your claims, and asks the court to take action favorable to the defendant. The defendant may also file *counterclaims* that create a countersuit against you. **You should file your own answer to the counterclaims**, just as the defendant is required to file an answer to your complaint.¹⁴

b. Motions

Motions are written requests filed with the court that seek orders about your case.¹⁵ Most motions can be made at any time in the case by any party to the case. Common examples are a *motion to dismiss*, which asks the court to end the case; a motion for a *temporary restraining order*, which asks the court to prevent or require certain actions by a party; or a motion for an *attachment*, which asks the court to freeze the assets of a party in anticipation of a *judgment* for money.

c. Discovery

All parties to a lawsuit are entitled to ask for *discovery*.¹⁶ Discovery is the process that allows the parties to examine each other's evidence,

including a list of witnesses. Discovery takes different forms:

- A *deposition* is your verbal questioning of a witness under oath with a transcriber who produces a transcript of the deposition;
- *Interrogatories* are your written requests for sworn written answers to questions;
- *Requests for Production of Documents* are your written requests to examine documents or receive copies of documents; and
- *Requests for Admissions* are your written requests that a party admit or deny in writing particular statements of fact.

The discovery process can be very complicated and time-consuming, but it can be a very important part of a civil lawsuit. Remember: Both sides in a case are entitled to discovery.

3. Preparing for Trial

When you go to trial, your goal is to persuade a judge or a jury to decide in your favor. You will tell your story both with evidence and with argument. To accomplish this, you must prepare to prove your case. Before you go to court, you should:

- Be thoroughly familiar with the facts in your case.
- Prepare yourself and your witnesses to testify about these facts.
- Gather all the physical evidence, including paperwork, that you want the court to see.
- Evaluate each witness, document, or object and consider whether people who have no knowledge about your case will find the facts as you present them believable and relevant.

a. What Is Evidence

Evidence is what the court allows you to use to prove your case.¹⁷ It can be testimony by witnesses or documentary and physical evidence, such as letters, photographs, and

reports. Evidence is convincing to the extent that it is credible or believable. For example, a witness may testify to the exact facts of your case, but if she also admits that she previously told a very different version of the facts, few judges will rely on her testimony to decide your case.

b. Preparing Witnesses

Witnesses play an important role in a trial. The purpose of a witness is to reveal the facts of a case or to confirm facts already revealed. In some cases, the testimony of witnesses may be your best evidence.

With some exceptions, witnesses may testify only about events about which they have personal knowledge. Witnesses cannot testify about what most people said to them or to anyone else. This is called *hearsay*, and hearsay is generally not allowed in court. To illustrate: Your neighbor can testify that she saw a workman in the basement working on the furnace. She usually cannot testify about what he said to her.

Before you go to court, it is very important that you prepare all of your witnesses. This includes yourself if you plan to testify. Witnesses are usually nervous, and preparation helps them feel more comfortable. Witnesses are telling a story to a judge who is almost certainly completely unfamiliar with the facts of your case. Their testimony must be organized to present all the important facts in a logical order. You do not want to have any surprises when your witnesses testify. To prepare each witness:

- Make a list of the facts that you believe this person may be able to testify to.
- Create a list of questions that ask the witness to state the facts.
- Write your questions down in a logical order.
- Go through your questions with your witnesses once or twice so you are all familiar with both the questions and the answers.

When you create questions to ask witnesses, the court does not allow you to put the answer in the question. This is called "leading the witness." To use a very simple example: If you want a witness to say that a person was present on a particular day, you should ask: "On June 1, 2008, who visited you?"—not: "On June 1, 2008, did Jane Doe visit you?"

Here is an example of questions that create a story and do not lead the witness. You want to prove that your landlord knew about bad conditions using the testimony of a neighbor who was present when your landlord visited your apartment. You might ask questions as follows:

- Please state your name and address.
- On January 1, 2003, did you visit my apartment?
- On that date, was anyone else present?
- Who was present?
- What rooms did my landlord enter?
- Did I say anything to the landlord?
- What did I say? (This is not hearsay because a witness can testify about what you, as the plaintiff or defendant in a case, said.)
- Did my landlord say anything?
- What did my landlord say?

Go through your questions with your witnesses, including yourself, and write down the answers. You can bring a written list of the questions and answers to court. You do not have to memorize them. Witnesses, however, may not bring a written list of answers. Also, make sure you tell your witness—**and remind her of**—the date and time your case is scheduled in court.

4. Preparing Evidence

Evidence such as documents, damaged personal property, photographs, reports, and other papers or objects play an important part in proving your case. For example, a photograph of a ceiling falling down or dead mice in an apartment can create a lasting impression on a judge. As they say, "a picture is worth a thousand words."

In court, documentary and physical evidence will be referred to as "exhibits" and will be assigned numbers. Exhibits can be very important. Here is a list of evidence that you may be able to use in court:

- A *lease* to prove you have a *tenancy*.
- Rent receipts and cancelled rent checks to prove that you have paid rent.
- Board of Health reports, which can be used to prove violations of the state Sanitary Code.
- Letters and notices that you sent the landlord, which prove you gave her notice of bad conditions.
- Photographs of bad conditions, which can prove their existence.
- Diaries, logs, calendars, or other written records, which may be used to show when certain events occurred and can also be used to refresh your memory of them.
- Damaged personal property.

There are procedures for items to be accepted as evidence by the court. First, you must ask a judge permission to have your evidence (or exhibit) "marked for identification." A clerk will then give your evidence an exhibit number. Then you must establish that the evidence is authentic and relevant. Usually this is done by asking a witness questions about the exhibit. For example, you might ask a witness to identify a photograph, and then ask if the photograph is a fair and accurate representation of the place or object just identified. Then you ask a judge to "admit" the exhibit into evidence.

As you can see, the admission of evidence is sometimes a complicated matter, and not all courts handle it the same way. Board of Health reports that have been *certified* "under the penalties of perjury" by the Board of Health inspector may be placed into evidence even if the inspector is not in the courtroom to testify about the report. You (the tenant) should be prepared to testify about when and why you called the Board of Health for an inspection, and then you can put into evidence the inspector's report yourself.

a. Preparing Your Argument

You make an "argument" to the court when you summarize the facts of your case and explain what you want the court to do for you. Before the court hears testimony in a trial, the parties sometimes each make an "opening statement" or "opening argument." This statement should be short and to the point, highlighting the main points of your case and the relief you want from the court. At the end of the trial, each side will make a "closing statement." At this time, you should emphasize the facts that support your case, explain why you believe your case is the more persuasive, and again tell the judge what you want her to do.

5. Going to Court

Going to court is an unfamiliar experience for most people. One way to help yourself feel more comfortable in court is to visit the courthouse before your trial date. You can learn a great deal from simply watching court cases. If possible, watch cases similar to yours. Look at where the parties stand, where they put their papers, and how they address the judge. Watch how the clerk and the judge do their jobs.

Just remember that almost everyone is nervous in court. You can steady your nerves if you know your rights, know the facts in your case, and remember what your goal is and why you are using the court system.

a. Common Sense About Court Etiquette

When you go to court, you should keep the following in mind:

Dress Appropriately

Unfortunately, people make quick judgments based on appearance, and your clothing might influence the treatment that you receive. Judges, clerks, and lawyers wear business clothing. If you dress nicely, you may be treated with greater respect than if you appear in jeans and a T-shirt.

Be on Time

If court begins at 9:00 a.m., be there early to give yourself time to find the right room. If you are not present when your case is called, a clerk may *dismiss* your case. If you know you will be late, call the court and let the clerk know. Not being on time can have serious consequences in court. For example, if you do not appear in an eviction case when the list of cases is called, the clerk will enter a *default judgment* and you will lose your case (unless you had a good reason and you later ask the court to remove the default judgment).

Be Respectful

While you may find that some court staff are more agreeable than others, they have the power to make your life very difficult if they feel mistreated. When you arrive at the courthouse, you should be polite to everyone. You never know when you may need to ask someone for assistance.

Make Sure You Are in the Right Place

When you arrive at the court, go to the clerk's office and ask which courtroom your case is in. Go to that courtroom. The first thing that usually happens is that a clerk calls the names of all the cases scheduled. When your name is called, let the clerk know that you are present. At that time, if you are negotiating a settlement with the other side, you can ask the clerk for more time to work out your agreement.

If the clerk finishes reading the list of case names without calling your name, immediately go to the clerk and ask her to determine where your case is. You may be in the wrong courtroom, or the clerk's office may have made an error and not sent your case to the courtroom yet.

Ask Questions

If you are unsure of what to do or what has happened, ask someone for help. On the whole, court staff can be very helpful.

b. Negotiating a Good Settlement

Most people settle cases before the trial begins. Many times, settlement occurs on the trial date. This happens because trials are time-consuming and expensive. They are also unpredictable. No one can be sure how a judge or jury will decide a case.

For this reason, you should know what your bottom line is for settlement of your case. There are a number of factors to consider:

- How strong is your case?
- If money is involved, what is the most or least you could gain in a court decision, and what is the lowest amount acceptable to you?
- What alternative settlement options do you have? For example, would you rather have money or stay in your home?
- Do you have any other goals, such as repairs or better security?

It is helpful to prepare a list of your goals for settlement. Include in the agreement a timeline for action by your landlord or you. The more specific you are, the better.

The heart of settlement negotiations is the willingness, on all sides, to compromise. Figure out which compromises you are willing to make to resolve your case. You will feel better about the decisions you make in settlement talks if you have thought your choices through in advance.

When you negotiate, be persistent. If you feel that you are losing control of your emotions or actions, ask for a "time out" in order to calm down so you will be able to think clearly. You can also ask for time out if you feel the other side is losing control. Try to have a friend or someone else with you when you negotiate.

If you reach a settlement, you must put it in writing and file it with the court as an *Agreement for Judgment*. Before you sign this document, read it very carefully. Be sure you understand its terms and can carry them out. For example, if you have agreed to a payment plan for back rent, make sure it is realistic, because if you don't keep to the agreement, a landlord may be able to evict you. In addition, once you have signed the agreement, it will be very difficult, if not impossible, to make any changes. At the request of a party, the agreement can be enforced by the court.

c. The Trial

Your trial begins when your case is called by the clerk. The parties are then usually asked to make brief opening statements. Remember, your statement should be short and to the point. You should tell the court the important facts of your case and what you want the court to do for you.

After both sides make opening statements, each side will present its case by calling witnesses to testify and by introducing exhibits. Do not be afraid to ask for help. After each witness testifies, the other side will have a chance to question the witness. This is called *cross-examination*.

When all the evidence has been presented, the parties will make closing arguments to the judge. This is when you tell the judge what you have proved and why she should decide in your favor. The judge may tell you her decision when closing arguments are completed, but, more often, the judge will "take the case under advisement."¹⁸ If so, you will receive the decision in the mail. Do not be surprised if you have to wait a few weeks or even a few months for a judge's decision.

6. Judgments and Appeals

The court's decision is called a *judgment*.¹⁹ Under certain circumstances, you may wish to consider challenging the decision and *appealing* the case. Generally, if a judge decided against you because she felt that the other side was more believable, you probably have no *grounds* for an appeal. On the other hand, if the judge did not follow the law, you may have a better chance of succeeding on appeal. A decision to appeal is complicated, and requires the assistance of an attorney. It is important to be careful when filing an appeal because you can be required to pay money to the other side for filing a frivolous appeal.²⁰

If you want to appeal a decision, you must act quickly after receiving the court's decision, because appeals must be filed within a very short time. For example, in most civil lawsuits, the parties have 30 days to appeal a decision. In eviction cases, the appeal period is only 10 days. If the decision is not appealed within the time limit, the judgment becomes final.

7. Enforcing Court Judgments

Collecting money from or enforcing a *judgment* can be the hardest part of winning your case, and it certainly can be the most frustrating. If your landlord is not willing to pay you or cooperate with the court's order, you should probably consult an attorney who specializes in collection law. In most cases, a judgment is enforceable for 20 years.²¹ The primary legal ways to seek compliance with and payment of a civil judgment are:

- Attachment,
- Trustee Process,
- Execution,
- Supplementary Process,
- Contempt.

a. Attachment

An *attachment* is created to place a hold on the sale or transfer of property during a lawsuit so that it will be available to satisfy a court judgment.²² An attachment can be requested as soon as you begin your court case. You must show the court that you have a good chance of winning your case and that your landlord may dispose of the property if she is not prevented from doing so. If you win a court judgment, the property attached will be available to pay the judgment.²³

b. Trustee Process

Trustee process is similar to the attachment process in that it places a hold on property during a lawsuit.²⁴ The difference is that a third party, a trustee, is asked to control or hold the property owned by the landlord. Most often, trustee process is used to ask a bank to freeze accounts held in the name of the landlord. When used against bank accounts, trustee process is a powerful weapon. It is hard to do business on a cash basis.

c. Execution

When your court judgment is final, you must request the court to issue an *execution* in order to enforce the judgment.²⁵ A sheriff can then be hired to "levy on" the execution to obtain satisfaction of the judgment.²⁶ This means that a sheriff can have certain property sold to satisfy the judgment. Because the levy process is complicated, an attorney should be hired to oversee it.

d. Supplementary Process

When you have an unpaid *execution* that requires your landlord to pay money to you, you are a creditor and your landlord is a debtor. In supplementary process, a court hearing is held so a creditor can ask a debtor about the debtor's ability to pay the money owed under the judgment.²⁷ Using the information obtained from a supplementary process hearing, the court can create an order requiring payment

according to a specific schedule. In some cases, however, the court is powerless because a debtor has no assets and is judgment-proof.²⁸ Small claims (for no more than \$2,000) has its own supplementary process.²⁹

e. Contempt

When a landlord fails to follow the terms of a court order, she may be held in contempt and punished by the court.³⁰ For example, a landlord who fails to make court-ordered repairs may be ordered to live in her building until the repairs are completed.³¹

Criminal Cases

Criminal cases are prosecuted by the district attorney's office on behalf of the citizens of the Commonwealth. They are used for violations of the law that carry criminal penalties.³²

Any person can file a criminal complaint. If the state Sanitary Code has been violated, the Board of Health can also file a criminal complaint. For more about criminal complaints and Sanitary Code violations, see **Chapter 8: Getting Repairs Made**. For a list of criminal laws most frequently violated by landlords, see **Chapter 14: Taking Your Landlord to Court**.

1. Filing a Criminal Complaint

To file a criminal complaint, go to a housing or district court and ask the court staff for a criminal complaint.³³ Fill it out and return it to the clerk. There is no charge to file a criminal complaint.

The clerk will schedule a *hearing* called a show-cause hearing for the next available court date. **If it is an emergency and your physical safety is in immediate danger, ask the clerk to schedule a show-cause hearing that day.** You can also call the police and ask that a criminal complaint be filed against your landlord.

2. The Show-Cause Hearing

A show-cause hearing is used by a clerk or magistrate to determine whether your complaint should be officially issued by the court. A show-cause hearing is less formal than a court hearing. At the hearing, the clerk will ask you to state the facts in your complaint. If the landlord is present, the clerk will then ask the landlord for her version of events. The clerk must then decide whether the facts taken at face value match what are known as the "legal elements" of a crime. The clerk does not decide who is telling the truth or the guilt or innocence of your landlord. If the clerk finds that the law may have been violated, she should issue a complaint.

In the district court, and in housing cases in particular, some clerks will not issue a criminal complaint immediately. Instead, the show-cause hearing will be postponed, for example, to give the landlord time to make the repairs and avoid criminal liability. Sometimes clerks will repeatedly delay issuing a criminal complaint. If this occurs, complain to the presiding judge of the court.

3. Arraignment and Thereafter

If the clerk issues a criminal complaint, a court date will be set to *arraign* the landlord. At an *arraignment*, the person charged with a crime appears before a judge and enters a plea of guilty, not guilty, or *nolo contendere* (which means the charges are not contested). A district attorney will be assigned to prosecute the case. The case will be called *Commonwealth v. The Name of Your Landlord*.

After the arraignment, a pre-trial conference date is set. The judge may allow the landlord time to remove the *grounds* for the complaint. At the pre-trial conference, the case will be settled ("plea bargained"), postponed for another pre-trial conference, or a trial date will be set. Again, this date may be postponed several times as the judge gives the landlord time to remove the underlying grounds for the complaint. If the landlord does resolve the issue in the complaint, the district attorney may dismiss or settle the case. If not, a trial will be held and the landlord may be fined or even face jail under some statutes. See **Chapter 14: Taking Your Landlord to Court** for landlord-tenant statutes with criminal consequences.

Endnotes

1. G.L. c. 185C.
2. G.L. c. 218. District courts have broad equity powers in landlord and tenant cases. G.L. c. 186, §14. District courts also have an Appellate Division that hears certain limited appeals, G.L. c. 231, §§108-110.
3. 11 U.S.C. §362 provides that once a petition for bankruptcy has been filed, all actions already filed prior to the petition or which may be filed in the future are stayed.
4. Mass. Const., Pt. 2, Ch. III, art. 1. After retiring at age 70, a judge may still be assigned to hear cases, as long as no one assignment lasts longer than 90 days. Mass. Const. Art. of Amend., art. XCVIII; G.L. c. 211B, §14.
5. G.L. c. 218, §§21-25.
6. Massachusetts Rules of Civil Procedure are found in Massachusetts Rules of Court, West Publishing Company.
7. Mass. R. Civ. P. 7-10.
8. G.L. c. 261, §§27A-27G.
9. Mass. R. Civ. P. 4.
10. See Mass. R. Civ. P. 4(c), which allows service by a disinterested person.
11. Mass. R. Civ. P. 12(b)(5).
12. Mass. R. Civ. P. 4 tells you how court papers must be served.
13. G.L. c. 261, §§27A-27G. The guidelines for determining indigency status are revised each year. Be sure the clerk is using the most recent guidelines.
14. Mass. R. Civ. P. 12, 13.
15. Mass. R. Civ. P. 7(b), 12.
16. Mass. R. Civ. P. 26-37.
17. See Paul J. Liacos, *Handbook of Massachusetts Evidence* (8th Ed. 2006).
18. If it is a jury trial, the judge will give the jury instructions on how to make its decision. The jury will then go to the jury room to make its decision. When the jury has made its decision, it will return to the courtroom and the judge will ask the foreperson to announce the jury's decision.
19. Mass. R. Civ. P. 54-63.
20. Mass. R. App. P. 25.
21. G.L. c. 260, §20.
22. Mass. R. Civ. P. 4.1.
23. A sheriff can "levy on the attachment." G.L. c. 236. See also G.L. c. 235 (regarding execution on personal property following judgment). This means that a sheriff can sell the attached property at an auction. Proceeds from the sale can then be used to pay the judgment. Because auctions often bring a low price, the threat of this proceeding is often sufficient to make a landlord pay a judgment. The levy process is complicated, and should be handled by a lawyer who specializes in "collections."
24. Mass. R. Civ. P. 4.2.
25. Mass. R. Civ. P. 69.

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26. G.L. c. 235 (regarding personal property); G.L. c. 236, §1 et seq. (regarding land).
 27. Mass. R. Civ. P. 4.3; G.L. c. 224, §§14-18.
 28. G.L. c. 224, §16 (debtor unable to pay judgment); G.L. c. 235, §34 (property exempt from execution).
 29. Uniform Small Claims Rule 9.
 30. Mass. R. Civ. P. 65.3 (civil contempt).
 31. See *Rodgers v. Smith*, Boston Housing Court, 27890-91-92-93 (Daher, C.J., Nov. 22, 1989).
 32. G.L. c. 218, §§26-37.
 33. G.L. c. 185C, §19 (housing court procedure); G.L. c. 218, §35A (process for criminal misdemeanor complaints).

