

Chapter 4

What Kind of Tenancy Do You Have

Legal Tactics: Tenants' Rights in Massachusetts
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What Kind of Tenancy Do You Have

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Italicized words are in the Glossary

All renters in Massachusetts have the right to a decent apartment and the right to live in that apartment until either you decide to move or, if the landlord is trying to evict you, a judge decides that you must move out of your apartment. What specific rights (and responsibilities) you have in addition to this will depend on:

- What type of *tenancy* you have, and
- What type of housing you rent.

This chapter will help you figure out what type of tenancy you have. We make reference to these tenancies throughout this book. Other chapters tell you what your rights are if you live in a rooming house, mobile home, or condominium.

What Kinds of Tenancies Are There

In Massachusetts, there are four main types of tenancies. You can be a:

1. **Tenant with Written Lease**
Tenant with a written agreement that states the agreed-upon rent and the length of the tenancy (typically 1 year, but may be shorter or longer].
2. **Tenant at Will**
Tenant with a month-to-month tenancy, which may be either written or oral. See the section called **Who is a Tenant at Will** later in this chapter.
3. **Tenant at Sufferance**
Tenant who stays in an apartment after her

tenancy has ended without permission from the landlord.

4. **Tenant by Regulation**

A tenant in public or subsidized housing who has additional tenant protections beyond those described here. For more information about your rights in public housing and finding public and subsidized housing, go to www.MassLegalHelp.org and check through the Housing section.

Tenants with Leases

A *lease* is a written agreement between a landlord and a tenant that sets the amount of rent **and** the length of time of your tenancy. For example, if you sign a one-year lease for an apartment with rent of \$950 a month, you agree to pay the landlord \$950 every month for one year. During this year, the landlord cannot raise the rent or evict you just because she may want you to move out. During this year, the landlord can evict you **only** if you have not paid your rent or if you have violated the terms of your lease (for example, you have a dog and the lease says you cannot have pets].

1. Is Your Lease Legal

To be enforceable, your lease must be valid. For more information about what constitutes a valid lease, see the section called **Is Your Lease Legal** in **Chapter 2: Moving In**.

Even if your lease is valid, however, it may contain clauses that are illegal. Your landlord cannot force you to comply with any illegal lease

clauses. For more information about what constitutes an illegal lease clause, see the section in **Chapter 2: Moving In** called **Are There Illegal Clauses**.

2. How Long Is Your Lease Valid

Most leases are for a fixed period of time—for example, a year. You need to know whether your lease is self-extending or whether you have an option to renew. Usually, you can figure this out by reading the first 10 or 15 lines of the lease.

a. Self-extending Leases

You have a self-extending lease if your lease says something like:

... this lease will continue in full force and effect after the above term from year to year until either the Lessor (landlord) or the Lessee (tenant), on or before the first day of the month in any year, gives to the other written notice of intention to terminate this lease. . . .

In other words, if you have a self-extending lease, the lease says that you (or your landlord) must give written notice if you want to *terminate a tenancy*. If you do not give your landlord notice (or your landlord does not give you notice), your lease will automatically extend itself for another year, or however long your original lease period was.

If you stay under a self-extending lease, the terms of your original lease will remain in effect unless you and your landlord agree in writing to change the lease. If you want to leave, pay careful attention to when the lease says you must give your landlord notice. Usually, leases require that you give your landlord notice at least one month before the lease ends.

b. Option to Renew

You have an option to renew if your lease says something like:

... the tenant's option to renew must be exercised in writing and must be received by the landlord no less than ___ days before the expiration of this lease. . . .

If your lease gives you an option to renew, you must give your landlord notice that you want to stay. If, on the other hand, you plan on leaving at the end of the lease, you are not required to give your landlord notice.

Read your lease to figure out when you must give your landlord notice. If you want to stay for another lease term, you may have to enter into a new lease or sign the existing lease again.¹ The new lease can have the same terms as the old lease, or you or your landlord may want to change certain terms. For example, your landlord may want to increase the rent. (For more information about rent increases, see **Chapter 5: Rents**). If you have an option to renew and you do not give your landlord notice that you want to stay and you then later decide to stay, you will become a *tenant at will* (if your landlord agrees to your staying) or a *tenant at sufferance* (if your landlord protests your staying).

Tenants without Leases

1. Tenants at Will

If you are living in your apartment without a *lease* but with the permission of your landlord, you are a *tenant at will*. This is the most common type of tenancy. It is also referred to as month-to-month tenancy because landlords usually require tenants to pay rent once a month, in advance.

As a tenant at will, you have the right to "lawful and exclusive possession" of the place you rent. This means that your landlord cannot come into your apartment without your permission. If she does, the law says that she is trespassing.² Unfortunately, many landlords think that they can enter an apartment whenever they want

because they own the property. The law allows a landlord to enter a tenant's apartment only in certain situations. For more information about when a landlord can enter your apartment, see **Chapter 8: Getting Repairs Made**.

a. Who Is a Tenant at Will

The law says you are a *tenant at will* if:

- You have an oral agreement to rent;³
- You have a written tenancy at will agreement that either says you have a month-to-month tenancy or does not specify when your tenancy ends. (Remember, if you have a written agreement that is for a fixed term or specifies the date your tenancy ends, you have a *lease*].
- Your written lease has ended or "expired," you have not signed a new lease, and your landlord continues to accept rent at the beginning of the month without objecting or writing on your rent check "for use and occupancy only";
- Your landlord sends you a valid *notice to quit* that *terminates your tenancy* and then later decides to allow you to stay on without a new lease;
- You have a written lease that does not state the date on which your tenancy will end or the amount of the rent (in other words, your lease is not valid);⁴
- You have lived in a rooming house for more than three consecutive months;
- You have a written lease that is **not** subsidized under state or federal law (for example, a Section 8 voucher) and the landlord lost the building in foreclosure on or after November 29, 2007.⁵

2. Tenants at Sufferance

If you remain in your apartment without permission from your landlord after your lease or tenancy at will agreement ends or your landlord *terminates your tenancy*, you are a *tenant at sufferance*.⁶ Technically, under the law, you do not

have a tenancy because your landlord does not agree to your having possession of the apartment. The law, however, does not consider you to be a trespasser because, at one point in time, your landlord did agree to your renting the apartment.⁷ See **Chapter 5: Rents** for more about rental payments for tenants at sufferance.

Like other tenants, tenants at sufferance have a right to a decent place to live, can enforce the state Sanitary Code, and have the right to sue their landlord for negligence.⁸

The biggest difference between a tenant at will and a tenant at sufferance is that if you are a tenant at sufferance, a landlord can evict you without giving you any written notice that she wants you out. This does not mean that a landlord can come into your apartment and physically move you out. If you are a tenant at sufferance, a landlord must still go to court and ask the court for permission to evict you.⁹

Even though the landlord does not have to let you know that she is going to court, once a landlord goes to court, she must send you notice of the eviction *hearing*. The document that you will receive is called a *Summons and Complaint*. If you receive a court summons, do not ignore it. Contact an attorney as soon as possible, and see **Chapter 13: Evictions**. You have a right to defend yourself in court and try to prevent or delay the *eviction*.

a. Who Is a Tenant at Sufferance

You are a tenant at sufferance if:

- Your written lease expires (it is not self-extending or you do not renew it for another term) and the landlord protests your staying;¹⁰
- Your landlord sends you a valid *notice to quit* and terminates your tenancy for breaking your lease;
- Your landlord sends you a valid 14-day notice to quit for non-payment of rent;¹¹

- You were a tenant at will and you are now in your apartment or *holding over* after your landlord sent you a valid notice to quit;¹²
- You are a subtenant and you are *holding over* after the original tenant's lease ended;¹³
- You are in an apartment after your landlord has gotten an *order* from the court giving her permission to evict you (even if you have received a *stay of execution* from the court, giving you permission to stay for a certain period of time);¹⁴ or
- Your landlord loses her property by eminent domain¹⁵ and the new owner has not accepted rent from you.

To figure out whether a notice to quit is valid, see the section called **Receiving Proper Notice** in **Chapter 13: Evictions**.

b. Can a Tenant at Sufferance Become a Tenant at Will

A tenancy at sufferance can easily be converted back into a tenancy at will. All that is required is for you and your landlord to agree to the arrangement, either in writing or orally, or by your landlord's accepting rent without "reserving her rights." For example, if you pay rent at the beginning of the month and your landlord accepts it without reserving her rights, you become a tenant at will. To properly reserve her rights to keep you as a tenant at sufferance, a landlord should give you a receipt for rent or money paid stating "for use and occupancy

only." If a landlord does not do this, you may become a tenant at will.¹⁶

Other Types of Tenancies

1. Transitional Housing

Transitional housing is a program that provides temporary housing and services to families and individuals as they look for permanent housing. In Massachusetts, courts have found that people with government housing subsidies who live in transitional housing facilities are tenants and are entitled to protection against unfair evictions. This means that a landlord of a transitional housing facility must use the court's *eviction* process to evict a tenant in a transitional housing facility.¹⁷ Transitional housing facilities must also be in good condition and comply with the state Sanitary Code.

2. Tenancy by Regulation

Tenants who live in mobile homes or public or subsidized housing may have additional protections under various regulations. If this applies to you, then under the law you would be considered a *tenant by regulation*.¹⁸ If you live in a mobile home, see **Chapter 19: Mobile Homes**. If you live in public or subsidized housing, go to www.MassLegalHelp.org and check through the Housing section.

Endnotes

1. *Lebel v. Backman*, 342 Mass. 759, 763 (1961) (holding that mere notice to renew or extend may be sufficient to extend or renew absent a new instrument); *Scirpo v. McMillan*, 355 Mass. 657, 659 (1969). Note that the use of the word "renew" is not sufficient to imply renewal if the circumstances showed that the party contemplated an extension. *Gibbs Realty & Investment Corp. v. Carvel Stores Realty Corp.*, 351 Mass. 684, 686 (1967).
2. *Dickinson v. Goodspeed*, 62 Mass. (8 Cush.) 119, 120-21 (1851).
3. G.L. c. 183, §3. "An estate or interest in land created without an instrument in writing signed by the grantor or by his attorney shall have the force and effect of an estate at will only. . . ."
4. *Murray v. Cherrington*, 99 Mass. 229, 230-31 (1868); *Berman v. Shabean*, 273 Mass. 343, 344 (1930); *Marchesi v. Brabant*, 338 Mass. 790, 790 (1959) (holding that a memorandum without date of commencement or termination of occupancy was not a lease).
5. G.L. c. 186, §13. If the tenant has a written lease subsidized under state or federal law (for example, via a Section 8 voucher), a foreclosure does *not* affect the lease or the terms of the tenancy. G.L. c. 186, §13A (effective November 29, 2008); *Federal Home Loan Mortgage Corp. v. Hobbs*, Boston Housing Court, 95-SP-04475 (Winik, J., Dec. 18, 1995).
6. *Staples v. Collins*, 321 Mass. 449, 451 (1947).
7. G.L. c. 266, §120.
8. Traditionally, tenants at sufferance were hardly more than trespassers, *Benton v. Williams*, 202 Mass. 189, 192 (1909). In recent years, tenants at sufferance have gained most of the rights of tenants at will, such as the right to enforce the state Sanitary Code, *Brown v. Guerrier*, 390 Mass. 631, 633 (1983), and the right to sue the landlord for negligence, *King v. G & M Realty Corp.*, 373 Mass. 658, 664 (1977). For an excellent summary of the traditional view of tenants at sufferance, see *The Tenancy at Sufferance in Massachusetts*, 44 *Boston University Law Review* 213 (1964).
9. G.L. c. 184, §18; G.L. c. 186, §14; G.L. c. 186, §15F; and G.L. c. 266, §120. At one time, a landlord could evict a tenant without going to court, if she could do so without breaching the peace. This is no longer the law and your landlord must have a proper court order to evict you.
10. *Ames v. Beal*, 284 Mass. 56, 59 (1933).
11. G.L. c. 182, §12. Any tenant who has not received a 14-day notice to quit in the preceding 12 months may avoid becoming a tenant at sufferance by paying the rent due within 10 days of receiving the notice.
12. *Benton v. Williams*, 202 Mass. 189, 192 (1909).
13. *Evans v. Reed*, 71 Mass. (5 Gray) 308, 309 (1855).
14. *Galjaard v. Day*, 325 Mass. 475, 476 (1950).
15. Lowell Hous. Auth. v. Save-Mor Furniture Stores Inc., 346 Mass. 426, 430 (1963).
16. *Jones v. Webb*, 320 Mass. 702, 706 (1947).
17. *Serrezze v. YWCA of Western Mass.*, 30 Mass. App. Ct. 639, 643 (1991). Someone who occupies premises under the Chapter 707 residential services program, 760 C.M.R. §38, should be considered a tenant and can be evicted only through summary process. The court further found that the occupant was a tenant and not a licensee. *Marvin Carr v. Friends of Homeless*, Hampden Housing Court, 89-LE-3492-S (Abrashkin, J., April 3, 1990).
18. *Spence v. O'Brien*, 15 Mass. App. Ct. 489, 496 (1983).

