

# The Answer

## Representing Yourself in an Eviction Case

As a tenant, you have many rights that you may use to defend yourself against an eviction. The Answer is the court document that helps you tell your story to the judge.

### What is an Answer

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This Answer form includes basic Defenses and Counterclaims.

- Defenses are the legal reasons why you should not be evicted. Example: *The landlord is evicting you for not paying the rent and you paid the rent.*
- Counterclaims are your claims against your landlord for money or for a court order telling your landlord to do (or stop doing) something. You may or may not be able to file counterclaims, depending on the reason for which you are being evicted. When you fill out the Answer form, it will guide you through whether you can file counterclaims. Example: *Bad conditions, such as lack of heat or a broken stove, make your home worth less than the rent the landlord is charging and entitle you to money and an order that the landlord make repairs.*

You may have other claims that are not listed on this form.

### Try to get legal help

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This form does not take the place of a lawyer. If you can, you should try to get a lawyer. Some courts have an Attorney of the Day program offering free legal advice on your court day: Be sure to use it if you do not have your own lawyer.

### Fill out this Answer form as soon as possible!

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You must get your Answer to the court and the landlord (or the landlord's attorney) on or before the first Monday after the Entry Date listed on your *Summons*. The day your Answer is due – the Answer date – should also be listed on the bottom of your *Summons*. If you are unsure about when your Answer is due, call the court clerk.

Mailing this form on your Answer date is not good enough. Both the court and your landlord must receive it on or before that date. Hand-deliver it if you are not sure it will be received by that date.

If your Answer date has passed, file a *Motion for Leave to File Answer (& Discovery) Late* stating a good reason for not filing on time. Attach your completed Answer form to the Motion to show the court you have good claims.

Also look on your Summons to see which court is hearing your case.

Produced by the Mass. Law Reform Institute, with assistance from legal services offices in Massachusetts, and available online at [www.MassLegalHelp.org](http://www.MassLegalHelp.org)  
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BOOKLET

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# How to Use This Answer Form

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## Try to Get Legal Assistance

If you are eligible for free legal assistance, many Legal Services offices in Massachusetts have clinics that can help you fill out the attached Answer form. Contact your local legal services program to find out more about these clinics. To find a legal service program in your area go to: [www.MassLegalHelp.org](http://www.MassLegalHelp.org) and click on “Find Legal Aid.”

You also have a right to request Discovery. Discovery allows you to get information from your landlord to help you prove your case. If you request Discovery, this also postpones your eviction trial for two weeks. But your trial will be postponed ONLY if the Discovery request is received by the court and your landlord when your Answer is due. If you want to request Discovery, use Booklet 4: Discovery. You can also contact your local legal services program and ask for Booklet 4: Discovery.

## Complete the Top of the Answer Form

- a. Write the county you live in, if you know it.
- b. Write the Original Trial Date, which you will find in your Summons and Complaint.  
If you are doing Discovery, check “Rescheduled” and put in the date exactly 2 weeks later than the Original Trial Date. If you are not doing Discovery, check “Original.” If, however, you request a jury trial, the Original or Rescheduled Trial Date may become your pre-trial conference date (at which time a jury trial date will usually be assigned). Check with the Clerk’s office to find out when the pre-trial conference is being scheduled.
- c. Write your landlord’s name as it is on the Summons and Complaint.
- d. Write your name as it is on the Summons and Complaint.
- e. Copy the name of the court from the upper-right-hand corner of the Summons and Complaint form.
- f. Fill in the Docket Number, if you know it. The Docket Number is the number the court has assigned to your case. You may ask the court for this number, or leave it blank.
- g. Check off “Counterclaims” if, after completing the form, you have checked any boxes in the Answer form under claims listed as both *Defenses and Counterclaims*.

Think about whether you may want a jury to hear your case. If you want to request a Jury Trial, check off the box “With Jury Trial Request” and on the last page of the form and also check off “I claim my right to a trial by jury.” You must claim your right to a jury by your Answer date or you lose that right.

## Fill Out the Rest of the Answer Form as Appropriate for Your Case

This Answer form lists the most common *Defenses* and *Counterclaims* that tenants can use to prevent an eviction. When you fill out the Answer form, do not be afraid to check off all the defenses and counterclaims supported by the facts in your case so they can be heard by the court. Otherwise, you will need to get a judge's permission to add a defense or claim later.

- If you are being evicted for nonpayment of rent or for a reason that is not your fault, you are allowed to use *counterclaims* to defend against and prevent your eviction.
- If you are being evicted for “fault” (something the landlord claims you did wrong, other than nonpayment of rent), you may not be able to bring counterclaims in this case.

At the end of the Answer form, check off What You Want the Court to Do.

## Deliver the Answer Form

- Sign your full name and print your address and telephone number.
- Remove the Answer form from this booklet. Make 2 copies—one for yourself and one for your landlord (or his/her lawyer).
- Deliver the original Answer to the court.
- Ask the court to stamp the date on your copy so that you have proof that you filed it on time.
- Deliver a copy of the Answer to your landlord (or his/her lawyer).
- Keep your copy to bring to court.

# ANSWER FORM

*Please print or type*  
COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

a. \_\_\_\_\_, ss:  
County

e. \_\_\_\_\_  
Name of Court

f. \_\_\_\_\_  
Docket No. Summary Process

b. Trial Date     Original Trial Date: \_\_\_\_\_ (No Discovery requested)  
                   Rescheduled Trial Date: \_\_\_\_\_ (Discovery requested)

c. \_\_\_\_\_  
Plaintiff(s) – Landlord(s)

vs.

SUMMARY PROCESS ANSWER  
 COUNTERCLAIMS  
 WITH JURY TRIAL REQUEST

d. \_\_\_\_\_  
Defendant(s) – Tenants(s)

## Facts

1.  My name is \_\_\_\_\_.
2.  I live at \_\_\_\_\_. I moved in on or about \_\_\_\_\_.
3.  I pay \$ \_\_\_\_\_ in rent per (month/week).
4.  I receive a rent subsidy. The full contract rent is \$ \_\_\_\_\_.
5.  I do \_\_\_/do not \_\_\_ have a written lease.
6.  I deny that I live in my home unlawfully and against the right of the landlord.
7.  I deny that I owe the amount of rent or use and occupancy listed in the landlord's complaint.
8.  I no longer live at the address listed in the complaint.
9.  I am not a tenant of the landlord listed above.

## Defense

Tenancy Not Properly Terminated  
and/or Case Not Properly Brought  
Mass. Gen. Laws, c. 186, §§11-13, 17

10.  I never received a Notice to Quit.
11.  The landlord did not terminate my tenancy properly.
12.  The landlord started this case before the Notice to Quit expired.
13.  The landlord is a corporation or other business entity and this case was not brought by an attorney so it should be dismissed.
14.  The Summons and Complaint is defective and/or was not properly served/filed.
15.  If I have ever owed the landlord rent, I paid or offered to pay it all within the time allowed by law.
16.  Even if my tenancy was terminated, a new tenancy was created by my landlord's conduct.

17.  The Complaint and the Notice to Quit state inconsistent reasons for eviction.
18.  The landlord does not have a superior right to possession and/or does not have standing to bring this action.
19.  The landlord's case should be dismissed because \_\_\_\_\_
- 

*Defense*

**Failure to Comply with Rules for  
Public and Subsidized Housing**

20.  I am a tenant in public or subsidized housing and:
- a.  The landlord did not terminate my tenancy as required by the lease or program rules.
  - b.  I am a tenant under the Section 8 Program and the landlord did not provide a copy of the Notice to Quit in a timely way to the agency that oversees my voucher.
  - c.  I am a tenant in public or subsidized housing and the landlord does not have good cause to evict me as required by the lease and/or program rules.
  - d.  I am a tenant in public or subsidized housing and the landlord did not give me my right to a grievance hearing or conference as required by the lease and/or program rules or I requested a hearing/conference and the process was not completed before I received the complaint.
  - e.  I reside in federal public housing or subsidized Section 8 or other covered federal housing and have a defense under the Violence Against Women Act (42 U.S.C. 14043e-11).

*Defense*

**Retaliation**

Mass. Gen. Laws c. 239, §2A; c. 186, §18

- Counterclaim where tenancy is terminated for nonpayment of rent or without fault
21.  The landlord is trying to evict me and/or retaliate against me because:
- a.  I withheld rent because of bad conditions, and/or told the landlord about bad conditions.
  - b.  I reported bad conditions in writing to the landlord.
  - c.  I reported bad conditions orally and/or in writing to a public agency.
  - d.  I took part in a tenants' meeting or organization.
  - e.  I brought a case/claim against the landlord.
  - f.  I or a member of my household took action to obtain a protection order under G.L. c. 209A or a harassment prevention order under G.L. c. 258E;
  - g.  I or a member of my household reported an incident of domestic violence, rape, sexual assault or stalking to law enforcement or reported a violation of a protection or harassment prevention order.
  - h.  I am a survivor of abuse, sexual assault, rape or stalking and the landlord is evicting me for exercising my rights under G.L. c. 186, §§23-29.
  - i.  Other: \_\_\_\_\_

This defense entitles me to possession. Where this is raised as a counterclaim, this entitles me to one to three times the rent (calculated at the full contract rent for tenants with subsidies) or my actual damages, whichever is greater.

22.  I am entitled to a presumption of retaliation because the landlord took action against me within 6 months of any of the above (listed in 21b through 21i).

*Defense*

**Discrimination**

Mass. Gen. Laws c. 239; c. 151B;  
Federal Fair Housing Act; Americans With Disabilities Act;  
and/or Section 504 of the Rehabilitation Act

Counterclaim where tenancy is terminated for nonpayment of rent or without fault

23.  My landlord has discriminated against me and/or a member of my household based on:

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Family status (having children) | <input type="checkbox"/> Race               | <input type="checkbox"/> National Origin |
| <input type="checkbox"/> Age                             | <input type="checkbox"/> Religion           | <input type="checkbox"/> Disability      |
| <input type="checkbox"/> Public or Rental Assistance     | <input type="checkbox"/> Sexual Orientation | <input type="checkbox"/> Gender          |
| <input type="checkbox"/> Marital Status                  | <input type="checkbox"/> Veteran's Status   | <input type="checkbox"/> Other: _____    |

“Reasonable Accommodation” Based on Disability (Physical and/or Mental)  
*See BHA vs. Bridgewater*, 452 Mass, 833 (2009)

24.  I (and/or a member of my household) have a disability and I request that the landlord make changes in its rules or do what is necessary for me to have a fair housing opportunity.  
*Note:* This may include allowing the tenant to get help or do something necessary to address a lease violation.

*Defense*

**Tenant Not Responsible for Alleged Behavior**

25.  I am a tenant in state public housing and the landlord is evicting me for the alleged behavior of a household member, guest, or someone over whom I had no control. I did not violate my lease or any law because I had no way to control or no reason to know about the alleged behavior.

*Defense*

**Tenant Should Not Lose His/Her Apartment  
(Avoidance of Forfeiture)**

26.  Based on principles of equity and fairness, it is unfair to evict me.



READ  
THIS  
BOX Defense &

If you are being evicted for “fault” (the landlord claims you did something wrong other than not paying your rent), skip questions #27-63 then go directly to #64 and complete the rest of the form.

If you are not being evicted for “fault,” complete #27-45, then go directly to #60 and complete the rest of the form.

If you are a former owner being evicted after a foreclosure, skip questions #27-45, go directly to #46 and complete the rest of the form.

If you are a tenant being evicted after a foreclosure, complete #27 to the end of the form.

*Counterclaim*  
*Or Former Owner's Offset to Any Claim for Use and Occupancy*  
**Bad Conditions in My Home and Other Claims**  
Mass. Gen. Laws c. 239, §8A; c. 93A; and/or Implied Warranty of Habitability

27.  I have a defense and counterclaim because of past or present problems in or around my home that the landlord knew or should have known about, including but not limited to the following:
- |   |   |
|---|---|
| <input type="checkbox"/> cockroaches, other insects, mice or rats | <input type="checkbox"/> defective or leaky windows           |
| <input type="checkbox"/> water leak and plumbing problems         | <input type="checkbox"/> defective ceilings, walls, or floors |
| <input type="checkbox"/> electrical problems                      | <input type="checkbox"/> problems with heat and/or hot water  |
| <input type="checkbox"/> lead paint                               | <input type="checkbox"/> defective locks or security problems |
| <input type="checkbox"/> other: _____                             |   |
- 
28.  The landlord knew or should have known about the bad conditions because:
- a.  I told the landlord orally.
  - b.  I told the landlord in writing.
  - c.  The landlord was notified by Inspectional Services, Board of Health, housing agency, or someone else.
  - d.  All or some of the conditions existed when I moved in.
  - e.  All or some of the conditions existed when the landlord purchased the property or at the time of foreclosure.
  - f.  Other: \_\_\_\_\_

I am entitled to damages for the reduced value of my home, calculated as the difference between: (a) the full market rental value of my home in good condition, and (b) the reduced value of my home in its bad condition. *(If the rent is subsidized, the damages are calculated based on the full rental value and not just the tenant's share.)* I am also entitled to damages for any other losses, injuries, or expenses resulting from bad conditions.

*Defense & Counterclaim*  
**Violation of the Security Deposit Law**  
Mass. Gen. Laws c. 239, §8A; c. 186, §15B; and/or c. 93A

29.  I paid a security deposit of \$ \_\_\_\_\_ to my current/former (*circle which one*) landlord.
30.  The landlord violated the security deposit law by:
- a.  Not putting it in a separate bank account, entitling me to three times the deposit and interest at the rate of 5%.
  - b.  Not paying or deducting from my rent yearly interest, entitling me to three times the interest owed on the deposit.
  - c.  Not giving me the required receipts and statements of conditions, entitling me to \$25 for each of these violations.
  - d.  Not taking responsibility for the security deposit, which I paid to the prior landlord, entitling me to three times the deposit and accrued interest.

*Defense & Counterclaim*

**Last Month's Rent**

Mass. Gen. Laws c. 239, §8A; c. 186, §15B; and/or c. 93A

31.  I paid last month's rent of \$ \_\_\_\_\_ to my current/former (*circle which one*) landlord and my landlord has not paid me yearly interest or given me rent credit for this interest, entitling me to three times the amount of interest owed.

*Defense & Counterclaim*

*Or Offset to Any Claim for Use and Occupancy*

**Interference with Utilities and Use of Home  
(or Breach of Quiet Enjoyment)**

Mass. Gen. Laws c. 239, §8A; c. 186, §14; and/or c. 93A

32.  The landlord did the following:
- a.  Did not provide adequate heat.
  - b.  Did not provide adequate hot water.
  - c.  Did not pay for utilities that were the landlord's responsibility.
  - d.  Shut off my utilities.
  - e.  Locked me out of my home.
  - f.  Put my possessions out without a court order.
  - g.  Allowed bad conditions to exist in my home.
  - h.  Entered my home without my permission and/or notice.
  - i.  Interfered with my right to enjoy my home in other ways by:

\_\_\_\_\_

\_\_\_\_\_

33.  I have been billed for heat, hot water, electricity and/or gas and the landlord and I did not have a *written* agreement requiring me to pay for these utilities. I request that the landlord promptly start paying for such utilities. This defense and counterclaim entitles me to damages under G.L. c. 186, §14, and c. 93A. See also Mass. Sanitary Code, 105 CMR 410.354.
34.  I have been billed for gas, oil and/or electricity that go to other people's apartments or common areas (such as hallways, stairways, basements, or porches). This defense and counterclaim entitles me to damages under G.L. c. 186, §14, and/or c. 93A. See also Mass. Sanitary Code, 105 CMR 410.354.

This defense and counterclaim entitles me to three times the rent (calculated at the full contract rent for tenants with subsidies) or my actual damages, whichever is greater.



*Defense & Counterclaim*  
**Rent Liability in Public and Subsidized Housing**

- 35.  The housing authority is responsible for rent.
- 36.  The housing authority stopped payments to the landlord because repairs were not made.
- 37.  The housing authority/owner failed to properly calculate rent or to adjust the rent, and therefore I am entitled to a recalculation of rent.
- 38.  The landlord charged me rent in excess of the amount approved by the housing agency.

*Defense & Counterclaim*  
*Or Offset to Any Claim for Use and Occupancy*  
**Violation of the Consumer Protection Law**  
Mass. Gen. Laws c. 239 §8A, and/or c. 93A

- 39.  Each of the acts stated in this Answer/Counterclaims was unfair and/or deceptive. My landlord is covered because she or he is not a housing authority or the owner-occupant of only a 2 or 3-family property in which I live. This pleading is a demand for a reasonable settlement offer.
- 40.  The landlord acted in the following additional unfair or deceptive ways:
  - a.  The landlord charged me late fees before my rent was thirty days late.
  - b.  The landlord charged a rent amount that I never agreed to pay.
  - c.  The landlord charged me constable or court fees unlawfully.
  - d.  There are unlawful terms in my lease.
  - e.  Other: \_\_\_\_\_

Therefore, under G.L. c. 93A, I am entitled to statutory damages for each violation, or actual damages (doubled or trebled because the landlord's conduct was willful and knowing), whichever is greater.

**Other Defenses & Counterclaims**

- 41.  My rent is paid by the Department of Transitional Assistance through vendor payments; therefore, I had no control over nonpayment of the rent.
- 42.  I have exercised my rights under the repair and deduct statute (G.L. c. 111, §127L).
- 43.  The landlord required me to pay for water in violation of G.L. c. 186, §22.
- 44.  Foreclosure-related defenses/counterclaims (G.L. c. 93A):
  - a.  The foreclosure is void due to failure to comply with the:  
(i) power of sale in the mortgage contract, (ii) statutory foreclosure requirements, and/or (iii) Note holding/transfer requirements pursuant to applicable law.
  - b.  I was treated unfairly with respect to loan modification and/or alternatives to foreclosure.
  - c.  I was treated unfairly with respect to pre-foreclosure notices.
  - d.  My loan was predatory, unfair, and/or was unaffordable based on my income.
- 45.  I have other defenses or counterclaims as follows:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# Evictions after Foreclosure

## *Defenses & Counterclaims*

### For Tenants Post-foreclosure

No just cause to evict tenants from properties when plaintiff is  
a bank or other “foreclosing owner”  
Mass. Gen. Laws c. 186A, §2; c. 186, §14; and c. 93A

- 46.  I am a *bona fide* tenant entitled to the protections of G.L. c. 186A.
- 47.  Because the plaintiff does not have just cause to evict me and there is no binding purchase and sale agreement on the property as required by G.L. c. 186A, §2, this case should be dismissed.
- 48.  The plaintiff’s service of a Notice to Quit or other actions to force me to vacate the premises without just cause or without a contract for sale on the property violate G.L. c. 186A, §2; c. 186, §14; and c. 93A.
- 49.  This defense and counterclaim entitles me to possession and damages under G.L. c. 186, §14, and/or c. 93A.

## *Defense & Counterclaim*

### For Tenants Post-foreclosure

Failure to comply with notice provisions of Mass. Gen. Law c. 186A  
when plaintiff is a bank or other “foreclosing owner”  
Mass. Gen. Laws c. 186A, §3 and §4; c. 186, §14; and c. 93A

- 50.  I am a *bona fide* tenant entitled to the protections of G.L. c. 186A.
- 51.  Within 30 days of foreclosure, the plaintiff did not post, deliver or slide under my door a notice giving the plaintiff’s contact information and information about who to call for repairs in violation of G.L. c. 186A, §§3 and 4.
- 52.  The plaintiff served me with a Notice to Quit less than 30 days after it posted and delivered the required contact information in violation of G.L. c. 186A, §§3 and 4.
- 53.  The plaintiff did not provide me with a written notice about my right to a court hearing in violation of G.L. c. 186A, §§3 and 4.
- 54.  The plaintiff did not give me written notice claiming that I had substantially violated my lease or tenancy in violation of G.L. c. 186A, §4.
- 55.  The plaintiff did not give me 30 days to cure the claim that I substantially violated my lease or tenancy in violation of G.L. c. 186A, §4.
- 56.  The plaintiff did not inform me of the amount of monthly rent it claims and to whom the rent should be paid in violation of G.L. c. 186A, §§3 and 4.
- 57.  Because the plaintiff did not comply with the notice requirements of G.L. c. 186A, §§3 and 4, this case should be dismissed.
- 58.  This defense and counterclaim entitles me to possession and damages under G.L. c. 186, §14, and/or G.L. c. 93A.

*Defense*

For Tenants and Owners Post-Foreclosure

Plaintiff has no standing/no superior right to possession

- 59.  The plaintiff's case should be dismissed because it does not have proper title to the property and therefore it cannot prove a superior right to possession of the property and the foreclosure is void. *Wayne Inv. Corp. v. Abbott*, 350 Mass. 775 (1966) (title defects can be raised as defense in summary process); G.L. c. 239, §1 (summary process available to plaintiff only if foreclosure carried out according to law).

**WHAT I WANT THE COURT TO DO**

- 60.  On all claims and defenses, award me possession of my home.
- 61.  On all claims and defenses, award me money damages, costs, attorney's fees (where applicable), and such other relief as is fair.
- 62.  On my claims and defenses, set aside and/or declare void the foreclosure upon my home, or grant other equitable and/or declaratory relief with respect to possession of my home.
- 63.  Other:

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**The Court Should Allow Me to Stay in My Home**  
Mass. Gen. Laws c. 239, §8A (5th para.)

- 64.  I request that the court apply G.L. c. 239, §8A (which applies both to non-payment and to no-fault evictions) to allow me to stay in my home as follows:
  - a. Because the money owed to me on my counterclaims is greater than the amount of rent owed to the landlord, I win the eviction (possession of the property should be awarded to me in this action); or
  - b. I am entitled to the opportunity to pay to the court within seven (7) days the difference between what the court finds I owe my landlord and what the landlord owes me in order to keep possession of my home.

**The Court Should Order the Landlord to Make Repairs**  
Mass. Gen. Laws c. 239, §8A (4th para.), and/or c. 111, §127I

- 65.  I request the court to order the landlord to correct the defective conditions in my home.

**The Court Should Order the Landlord to Make Reasonable Accommodations**  
Federal Fair Housing Act; Americans With Disabilities Act; Section 504  
and/or Mass. Gen. Laws c. 151B

- 66.  I and/or a member of my household have a disability and I request the court to order the landlord to accommodate the disability by stopping the eviction and/or taking steps to provide fair housing to allow me to remain in my home.

**The Court Should Find That I Was Not At Fault**

67.  The court should find that the landlord has not proven that I was at fault. This is a fault eviction case in which the landlord claimed I did something wrong (other than nonpayment of rent). The landlord did not prove that I did anything serious enough to justify eviction; therefore, the court should allow me to stay in my home.

**The Court Should Allow Me More Time to Move**  
Mass. Gen. Laws c. 239, §9 or Court's Equitable Authority

68.  If the court awards possession to the landlord, I need time to move. (The court may award *up to one year* for a household with an elderly or disabled person, or *up to six months* for any other tenant.)
- a.  I am and/or a member of my household is elderly (over 60) or disabled.
- b.  The court should also consider my situation as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Request for a Jury Trial**

Part I, Article XV of the Mass. Constitution; USPR 8; and Mass. Gen. Laws c. 218, §19B

- I claim my right to a trial by jury. (Jury trials are available in all courts.)

Note to Tenants: If you check this box, go back to the first page of this form and check the box in the heading that says "With Jury Trial Request."

If you have checked any counterclaims (boxes 28-59), go back to the first page of this form and check the box in the heading that says "Counterclaims."

I hereby certify that I delivered or mailed (*circle which one*) a copy of this Answer to the landlord or his/her lawyer on \_\_\_\_\_ (*date*).

Note to Tenants: This Answer must be filed in court AND a copy received by your landlord, or by his/her lawyer if represented, ON OR BEFORE the first Monday after the Entry Date listed on the Summons and Complaint.

\_\_\_\_\_  
Signature of Tenant(s) (or Former Owner of Record)

\_\_\_\_\_  
Signature of Tenant(s) (or Former Owner of Record)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

Note: *Each* person named as a Defendant in the Complaint MUST sign this Answer or file a separate Answer in order to protect his/her own rights.

\_\_\_\_\_  
Address Apt. No.

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Telephone Number Date