

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 Tenants' Rights in Massachusetts

Different Kinds of Tenancies

To figure out your rights you need to know the kind of tenancy you have.

Tenant at Will

If your agreement with your landlord is a month-to-month tenancy, you are a **tenant at will**. Your agreement can be written or spoken. Most tenants are tenants at will.

Tenant with Lease

If your lease is for a specific time period, that is, it has an end date, you are a tenant with a lease. Usually leases last 1 year. Make sure you know if you have to renew your lease or if it renews automatically from year-to-year.

Tenant at Sufferance

If your tenancy ends, but you are still in your apartment you are a tenant at sufferance. Your tenancy ends when your lease ends or your landlord sends you a *Notice to Quit*. The biggest difference between a tenant at sufferance and other tenants is that a landlord does not need to give you a *Notice to Quit*. But you must receive court papers. Your landlord must go to court to evict you. They can only move you out with a court's permission.

Tenant in a Rooming House

If you rent a single room that is not an apartment and at least 4 other people who are not related to the landlord rent room there, you are a tenant in a rooming house. Your rights depend on how long you live there. For more see **Rooming Houses | Pullout 15**.

Tenants in Public and Subsidized Housing

If you are a tenant in public or subsidized housing you have special protections against rent increases and eviction. There are many different government housing programs. To figure the type of housing you have see **Housing Programs in Massachusetts:** www.masslegalhelp.org/housing/housing-programs

Mobile Homes

If you live in mobile home or a manufactured home, you have special protections. For more see **Mobile Homes | Pullout 16**.

Tenant in Transitional Housing

If you are in a program that provides temporary housing and services while you look for permanent housing, you are a tenant in transitional housing. Just like any other landlord, a transitional housing facility will usually have to use the court's eviction process to evict you.



All Tenants Have Rights

All tenants in Massachusetts – even tenants who overstay their rental agreement – have legal rights. These include the right to:

- A safe, decent place to live with heating, hot water, and electricity.
- Ask the landlord to repair things that do not work or fix any unhealthy conditions.
- Privacy. The landlord is only allowed to enter your apartment if you give them permission, if it is an emergency, or if they have a court order. Even if repairs are needed, they must notify you first.
- Stay in your apartment until you move or a judge orders you to move out.
- Refuse to pay illegal fees.
- Take your landlord to court if they do something illegal.

You may have other rights. Your other rights depend on the kind of tenancy or lease you have and the kind of housing you rent.

Protect Yourself

- Ask the landlord to repair things that do not work or fix any unhealthy conditions. You have a right to a decent place to live.
- If a landlord refuses to make repairs, you can ask a Board or Health or a court to order the landlord to make repairs.
- You have the right to live in your apartment until you decide to move out or a judge orders you to move out. The only legal way your landlord can make you move out is to file an eviction case in court.



[MassLegalHelp.org/Tenancies](https://www.masslegalhelp.org/Tenancies)
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What Kind of Tenancy Do I Have

by Pattie Whiting

Italicized words are in the Glossary

If you are a **tenant** in Massachusetts you have the right to a decent apartment. Under the law, landlords must keep the property they rent in good condition. See **Chapter 8: Getting Repairs Made** for more about housing conditions.

You also have the right to live in your apartment until **you** decide to move out or **a judge orders you** to move out. The only legal way your landlord can make you move out is to file an eviction case (also called "summary process" and take you to court. See **Chapter 12: Evictions** for more information about this process.

Your other rights and responsibilities depend on:

- The kind of *tenancy* you have, and
- The kind of housing you rent.

This chapter helps you figure out the tenancy you have. Other chapters explain your rights.

What Kinds of Tenancies Are There

In Massachusetts, there are several kinds of tenancies. You can be a:

1. **Tenant with Written Lease**
2. **Tenant at Will**
3. **Tenant at Sufferance**
4. **Tenant by Regulation**
5. **Other Kinds of Non-Traditional Housing**

1. **Tenant with Written Lease**
You and your landlord have a written agreement, a *lease*, that states your rent and the length of your tenancy. Usually a lease is for 1 year. But it may be shorter or longer.
2. **Tenant at Will**
There is no agreed upon date for you to move out, so you have a month-to-month tenancy. Either party may end the tenancy at any time after giving the required notice. Your agreement with your landlord may be written or oral. See the section called **Who is a Tenant at Will** later in this chapter.
3. **Tenant at Sufferance**
Your tenancy has ended because either your lease ended or the landlord has sent you a *notice to quit* terminating your tenancy. Your landlord has not agreed to it, but you are staying in your apartment anyway.
4. **Tenant by Regulation**
You rent a mobile home or you are a tenant in public or subsidized housing. You have more protections than tenants who have a private landlord. For more information about your rights in mobile homes See **Chapter 16: Mobile Homes**. For more about public housing go to **Public Housing** at: MassLegalHelp.org/public-housing.
5. **Other Kinds of Non-Traditional Housing**
If you are in a program that provides temporary **housing** and **services** while you look for permanent housing, you **may** have rights similar to a tenant. For example, you

may have the right to challenge an eviction in court. This depends upon the type of program.

Tenants with Leases

A *lease* is a written agreement between a landlord and a tenant. It states the amount of the rent **and** the length of your tenancy. 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. Nor can she 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 don't follow the terms of your lease. For example, if the lease says you cannot have pets and you get a dog without your landlord's permission.

1. Is My Lease Legal

Your landlord cannot force you to follow the terms of the lease if the lease is not legal. See **Chapter 1: Before you Move In - Is Your Lease Legal.**

If your lease is legal, it may have clauses that are not legal. Your landlord cannot force you to follow any illegal lease clauses, see **Chapter 1: Before you Move In - Are There Illegal Clauses.**

2. How Long Is my Lease Valid

Most leases are for a fixed period of time—for example, 1 year. You need to know if your lease is "self-extending" or 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. . . .

This means, you or your landlord must give the other written notice if you want to *terminate the tenancy*. If neither you nor your landlord gives the other notice, your lease continues or "extends" automatically for another year. If the original lease was not 1 year, it extends for the same amount of time as the original lease.

If you have a self-extending lease, the terms of your original lease stay the same. You can only change them if you and your landlord agree and write it on the lease. If you want to leave, pay attention to when the lease says you must give your landlord notice. Usually, leases say you must give your landlord notice at least 1 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. . . .

This means:

- **If you want to stay**, you must give your landlord written notice by the date specified in the lease.
- **If you plan to leave** at the end of the lease, you do not have to give a landlord notice.

Read your lease to figure out when you must give your landlord notice that you want to renew

the lease. Write this on your calendar so you remember to do this.

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 can change certain terms. For example, your landlord may want to increase the rent. See **Chapter 5: Rent**.

If you have an option to renew and you do not give your landlord notice in time and then you 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 tells you to leave.

Tenants at Will

If you do not have a lease, but you do have your landlord's permission to live in your apartment, you are a *tenant at will*. This is the most common kind of tenancy. It is also called a "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 your landlord can only come into your apartment with your permission. If she does not get your permission, she is trespassing.² Many landlords think they can enter an apartment whenever they want because they own the property. Your landlord is allowed to enter your apartment only in certain situations. For more information about when a landlord can enter your apartment, see **Chapter 8: Getting Repairs Made: Landlord's Right to Enter Your Home**.

You are a *tenant at will* if:

- You have an oral agreement to rent;³

- You have a written agreement with your landlord that says you have a month-to-month tenancy or it does **not** say when your tenancy ends. If you have a written agreement for a fixed term or it gives the date your tenancy ends, it is 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 says it *terminates your tenancy* and then later decides to allow you to stay on without a new lease;
- You have a written agreement with your landlord that says that it's a lease but does not state the date on which your tenancy ends or the amount of the rent -This is not a lease but rather a *tenancy at will* agreement.⁴ See **Chapter 1: Before You Move In - Is My Lease Legal**.
- You have lived in a rooming house for more than three consecutive months. For more about your rights as a rooming house tenant see **Chapter 15: Rooming Houses**.
- Your written lease is **not** subsidized under state or federal law and the landlord lost the building in foreclosure on or after November 29, 2007.⁵ Note: A Section 8 voucher **is** subsidized.

Tenants at Sufferance

If you do not have your landlord's permission to stay in your apartment after your lease or agreement ends or after your landlord *terminates your tenancy* by sending you a *notice to quit*, you are a *tenant at sufferance*.⁶

You are a tenant at sufferance if:

- Your written lease expires and the landlord wants you to leave.⁷ Your lease will expire if

you do not renew it for another term or it is not self-extending. See **How Long is My Lease Valid**.

- You have a lease and your landlord sends you a valid *notice to quit* that terminates your tenancy for not paying your rent or otherwise breaking your lease;
- You were a tenant at will and your landlord sends you a valid 14-day notice to quit for non-payment of rent⁸ or a 30-day notice to quit for any other reason; or
- You are a subtenant and you are living in the apartment after the original tenant's lease or tenancy ended.⁹

To figure out if a notice to quit is valid, see **Chapter 12: Evictions - Receiving Proper Notice**.

Like other tenants, tenants at sufferance:

- Have a right to a decent place to live,
- Can ask a Board or Health or a court to order the landlord to make repairs,
- Have the right to "lawful and exclusive possession," which means a landlord can only come into your apartment with your permission (unless it's an emergency or there is a court order),
- Have the right to live there until a judge orders you to move, and
- Have the right to sue their landlord for negligence.¹⁰

The biggest difference between a tenant at sufferance and other tenants is that if you are a tenant at sufferance a landlord does not have to give you a "notice to quit" to start the eviction process. She does not need to tell you ahead of time that she is going to ask the court to evict you.

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.¹¹

Even though the landlord does not have to send you a *notice to quit* before asking the court for permission to evict you, if she goes to court, she must send you notice of the eviction *hearing*. You must get a *Summons and Complaint*. If you receive a court summons, do not ignore it. Talk to a lawyer as soon as possible, and see **Chapter 12: Evictions**. You have a right to defend yourself in court and try to prevent the eviction or postpone it so you have time to move.

Can a Tenant at Sufferance Become a Tenant at Will

A tenancy at sufferance can easily be converted back into a tenancy at will. You and your landlord only need to agree to the arrangement. You can agree in writing, 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 and does not say she reserves her right to have you leave the apartment, you become a tenant at will. If she wants to keep you as a tenant at sufferance, she must reserve her rights and should give you a receipt for rent paid stating "for use and occupancy only." If a landlord does not do this, you may become a tenant at will.¹²

Tenancy by Regulation

If you are a tenant in a mobile home or public or subsidized housing, you are a *tenant by regulation*.¹³ You may have more protections as a tenant.

If you live in a mobile home, see **Chapter 16: Mobile Homes**.

If you live in public or subsidized housing, go to:

- **Public Housing** at www.MassLegalHelp.org/housing/public-housing.

- **Housing Programs in Massachusetts at** www.masslegalhelp.org/housing/housing-programs

Other Types of Non-Traditional Housing

If you are in a program that provides you with temporary **housing** and **services** while you look for permanent housing, you may have some rights similar to a tenant. For example, Massachusetts courts have established that people with certain government housing subsidies who live in transitional housing that also provide various services to assist people with securing permanent housing have the right to protection from unfair evictions. Just like any

landlord, a landlord of such a transitional housing facility must use the court's *eviction* process to evict a tenant.¹⁴

However, people that live in other types of transitional housing, such as those who reside in Emergency Assistance shelters are not entitled to defend an eviction in court. For more information about your rights if you are in an Emergency Assistance shelter go to: www.masslegalhelp.org/homelessness

For more information about your rights if you live in a rooming house or Department of Mental Health Residential Housing, go to **Chapter 15: Rooming Houses.**

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. 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; *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 (1947). A tenant at sufferance is not a trespasser. See G.L. c. 266, §120.
7. *Ames v. Beal*, 284 Mass. 56, 59 (1933).
8. G.L. c. 186, §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
9. *Evans v. Reed*, 71 Mass. (5 Gray) 308, 309 (1855). Note: A tenancy at sufferance can also result from the termination of the original tenancy by operation of law for example, by the death of the original leaseholder or owner. See G.L. c. 186, §13.
10. 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).
11. 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.
12. *Jones v. Webb*, 320 Mass. 702, 706 (1947).
13. *Spence v. O'Brien*, 15 Mass. App. Ct. 489, 496 (1983).
14. *Serzege 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).