

# Form 20: Motion to Dismiss

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## How to Use this Form

You can use this sample Motion to Dismiss form to ask the court to dismiss your eviction case. Courts also have blank motion forms you can use.

## How to Fill Out this Form

Complete this form by following these instructions. The letters and numbers in these directions match those on the form.

### Court Heading

- a. Write the name of your county.
- b. Write the original trial date, which you will find in the *summons and complaint* you received. If you are filling out the **Discovery Form**, check the box that says "Rescheduled Trial Date" and write the date that is exactly two weeks after the original trial date. If you are not doing Discovery, check box before "Original Trial Date."
- c. Write your landlord's name as it is written on the summons and complaint.
- d. Write your name as it is written on the summons and complaint.
- e. Copy the name of the court from the summons and complaint.
- f. Fill in the Docket Number. The Docket Number is the number the court has assigned to your case. The Docket Number is usually listed on the summons and complaint, or on the top right hand side of a notice you receive from court telling you about a hearing or a decision. If it is unclear what the docket number for your case is, ask the court for this number when you bring your motion to court.

### Motion Section

Check off the reason or reasons (boxes 1 through 6) that a judge should dismiss your case. Bring to court any documents or receipts that will prove what you are saying.

### Notice of Hearing

Under this section in the motion you notify your landlord when your motion will be heard by the court. This will be on the date and time when your eviction was originally scheduled unless the clerk of the court tells you otherwise. Check with the clerk to make sure you list the correct

Note: If you are filing for Discovery, the original trial date will be automatically postponed for two weeks to a rescheduled trial date. The Motion to Dismiss will, however, be on the original trial date. If the judge dismisses your case after the

hearing, you will not have to go back to court on the rescheduled trial date for the eviction trial.

## **Certificate of Service**

Anything you file in court you must also give to your landlord or your landlord's lawyer. This part of the form that tells the court how and when you gave the Motion to Dismiss to the landlord or her lawyer (if a lawyer signed the summons). Circle either "delivered" or "mailed" and fill in the date you did this. Mailing is easier if you have the landlord's correct address. Be sure to send the motion by first class mail, not certified mail.

When you are done filling out the motion, sign your full name and print your address and telephone number.

## **How to Deliver the Motion**

- Make two copies of the completed motion.
- Deliver the original motion to the court. **You should file your motion with the court no later than 7 days before your original trial date. If you cannot get the form in within that time, get it to the court with as much advance notice as you can.**
- Deliver or mail a copy to your landlord (or her lawyer). The landlord (or her lawyer) should also receive it no later than seven days before your original trial date. Get it to her with as much advance notice as you can.
- Keep a copy for yourself to bring to court.

(Please type or print)

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.

**MOTION TO DISMISS**

d. \_\_\_\_\_

Defendant(s) – Tenants(s)

The Defendant moves in this summary process action that the Plaintiff's claim for possession be dismissed because:

1.  The landlord started this case before the Notice to Quit expired.
2.  The landlord did not serve me with a Notice to Quit or did not properly terminate my tenancy.
3.  I have paid rent or tried to pay the landlord and therefore the landlord cannot terminate my tenancy with a 14-day Notice to Quit.
4.  I "revived" my tenancy by paying all the rent "owed" within the time the law allows.
5.  The landlord accepted my rent without reservation after service of Notice to Quit, creating a new tenancy, and, therefore, is barred from recovering possession of premises, G.L. c. 239, §1.
6.  Other \_\_\_\_\_  
\_\_\_\_\_

**Notice of Hearing**

This Motion to Dismiss is scheduled for a hearing on (the original trial date or other date scheduled by the court): \_\_\_\_\_.

**Certificate of Service**

I delivered or mailed (*circle which one applies*) a copy of the Motion to Dismiss to my landlord or his/her lawyer on \_\_\_\_\_ (*date*).

\_\_\_\_\_  
Signature of Tenant

\_\_\_\_\_  
Tenant's Name (print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

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