

Chapter 4

What Kind of Tenancy Do You Have

Legal Tactics: Tenants' Rights in Massachusetts
Ninth Edition, January 2025

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Types of Tenancies

Tenants' Rights in Massachusetts

As a renter in Massachusetts, some of your rights and responsibilities depend on:

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

You also have certain rights no matter what type of tenancy you have.

Types of Tenancies

Learn more below about the different types of tenancies and your rights.

Tenant with Lease

If you have a written agreement to rent for a specific time period at a specific amount of rent, you are a tenant with a lease. Usually leases last 1 year.

- § Your rent cannot be raised during the time period in your lease.
- § Make sure you know if you have to renew your lease or if it renews automatically from year-to-year.
- § Your landlord cannot evict you during your lease term, unless you have violated the lease or not paid your rent.
- § If your building gets sold during your tenancy, the new landlord has to honor the agreements in your current lease.

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.

If your landlord wants to raise your rent, they must give you at least 30 days' advance written notice to end your tenancy at the existing rent.

Tenant at Sufferance

Your tenancy ends when your lease ends or your landlord sends you a Notice to Quit. If your tenancy ended but you are still in your apartment, you are a tenant at sufferance.

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 if they want to evict you. But if the landlord wants to evict you, they must go to court, and you must receive a Summons and Complaint. They can only move you out with a court's permission. See **Chapter 12: Evictions**.

Tenant in Public or Subsidized Housing

There are many different government housing programs.

- § **Public housing** is owned and run by a housing authority. It can be state or federal.
- § **Subsidized housing** is owned by a private landlord or company that gets money from the state or federal government to keep rents affordable.

§ **Vouchers** are payments from the state or federal government that you can use to rent housing in the private market.

If you are a tenant in public or subsidized housing, you have special protections against rent increases and eviction. See www.masslegalhelp.org/housing-apartments-shelter/public-subsidized-housing.

Tenant in a Mobile Home

If you live in a mobile home or a manufactured home, you have special protections. See **Chapter 16: Mobile Homes**.

Tenant in Transitional Housing

If you are in a program that provides transitional housing and services while you look for permanent housing, you are a tenant in transitional housing. Some tenants in transitional housing may have protections against evictions. But others do not have the right to defend an eviction in court. This includes tenants who are in Emergency Assistance shelters.

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 rooms there,

you are a tenant in a rooming house. Your rights depend on how long you live there. See **Chapter 15: Rooming Houses**.



For more, scan the QR Code for: **Legal Tactics, Chapter 4: Tenancies**
MassLegalHelp.org/LT-tenancies

Protect Yourself All Tenants Have Rights

As a renter in Massachusetts, you have certain rights no matter what type of tenancy you have. These include the right to:

- § A safe and habitable place to live with heating, hot water, and electricity. See **Chapter 1: Before You Move In**.
- § Ask the landlord to repair things that do not work or fix any unhealthy conditions. See **Chapter 8: Getting Repairs Made**.
- § 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. See [Landlord's right to enter your home](#).
- § Stay in your apartment until you move or a judge orders you to move out. See **Chapter 12: Evictions**.
- § Refuse to pay illegal fees. See [Illegal retaliatory rent increases](#).
- § Take your landlord to court if they do something illegal. See **Chapter 13: When to Take Your Landlord to Court**.
- § Protection from discrimination based on race, whether you get public benefits, or whether you get a housing subsidy. See **Chapter 7: Discrimination**.

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:

- § Tenant with Written Lease
- § Tenant at Will
- § Tenant at Sufferance
- § Tenant by Regulation
- § Other Kinds of Non-Traditional Housing

1. **Tenant with Written Lease**

If you and your landlord have a written agreement that states your rent and the length of your tenancy, then you have a *lease*. 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](https://www.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 that 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 they 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. Does My Lease Have Illegal Terms

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

2. How Long Is my Lease Valid

A lease is 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 or in certain situations. If they do not get your permission, they are trespassing.² Many landlords think they can enter an apartment whenever they want because they own the property. 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 of 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 their rights." For example, if you pay rent at the beginning of the month and your landlord accepts it and does not say they reserve their right to have you leave the apartment, you become a tenant at will. If they want to keep you as a tenant at sufferance, they must reserve their 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 who 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. Shaheen*, 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 they 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).

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14. *Serreze 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).