

# Chapter 8

## Getting Repairs Made

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*Legal Tactics: Tenants' Rights in Massachusetts*  
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## Getting a Landlord to Make Repairs

### Tenants' Rights in Massachusetts

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All tenants have the right to live in a safe and habitable place. **You do not need a lease to have this right.**

If your landlord knows about a dangerous or unhealthy problem in your apartment or building and they don't fix it, they are breaking the law.

### What types of problems is my landlord required to repair?

The [Massachusetts Sanitary Code](#) sets minimum requirements for housing. For example, all rental housing must have heat, hot water, and electricity. Kitchens and bathrooms must have sinks with running water. Unit doors and windows must have locks.

**If you have a more serious problem** like no heat or hot water, the landlord must make a

good faith effort to fix the problem **within 24 hours** of notice from a Board of Health.

### My apartment needs a repair. What can I do?

- § **Tell your landlord as soon as possible.** The best way to do that is in writing (including email). Your landlord must fix the problem within a reasonable period of time.
- § **Ask your landlord when a repair person will come.** It is important for you, or someone, to be home so that the repair person can get into the apartment.

**If your landlord refuses to make the repairs, you can call your city's Board of Health to ask for an inspection.** A housing inspector will examine your home to see if it follows the state Sanitary Code. If there are violations, an inspector can order your landlord to make repairs within a certain time.

### Can my landlord evict me if I ask for repairs?

No. It is illegal for a landlord to evict you, raise your rent, or make a major change in your rental agreement because you:

- § Ask in writing for needed repairs,
- § Report bad conditions in your apartment or building to the Board of Health or other local officials,
- § Join a tenants' organization, or
- § Withhold rent because of bad conditions.

### Document the Problem

**Take photos or videos** of problems.

**Communicate with your landlord in writing**, email and text. This way, you have a record of what you told your landlord and when.

**Use UpToCode** to document bad conditions and take action to get the repairs made. [uptocode.org](http://uptocode.org)

Use the **Housing Code Checklist (Booklet 2)**: [www.masslegalhelp.org/Housing-Code-Checklist](http://www.masslegalhelp.org/Housing-Code-Checklist)

## What if my landlord refuses to make repairs?

If you told your landlord about a problem (it is best to do this in writing) or the landlord has been ordered by the Board of Health to make repairs, **and** the landlord refuses to make repairs, you have the right to do these things:

**Withhold rent** or part of it until the landlord makes the repairs. They may try to evict you. To protect yourself from eviction, put the rent money you withhold in a separate bank account so you have this money if your landlord takes you to court. Before you are behind in rent, write your landlord a letter, list the repairs needed, and say you will withhold rent until the problems are fixed. Keep a copy of your letter. See **When You Can Withhold Rent** at [www.masslegalhelp.org/LL-refuses-repairs](http://www.masslegalhelp.org/LL-refuses-repairs).

**Repair and deduct.** Get the repairs made and deduct (subtract) the cost from your rent. This can be complicated, and you must follow the law, including getting a Board of Health report.

**Join with tenants.** If other tenants need repairs, work together on solutions.

**Break your lease.** If your landlord refuses to fix serious problems, you may be able to break your lease. This means moving out before the end date on your lease and not paying rent after you leave. You must get a board of health inspection report first.

**Take your landlord to court.** If you prove the landlord broke the law, a judge may order them to make repairs or pay you money for bad conditions. Or, the judge may order a temporary landlord called a “receiver” to make the repairs.

## What should I know about inspections?

Board of Health housing inspections are free. If you ask for an inspection, you should:

**Be prepared.** Before the inspection, fill out the Housing Code Checklist: [www.masslegalhelp.org/Housing-Code-Checklist](http://www.masslegalhelp.org/Housing-Code-Checklist)

**Clean your home.** Make sure hallways and doors are not blocked, and trash is taken out so you do not get in trouble for Sanitary Code violations.

**Be there.** If you cannot be there when the inspector comes, arrange for someone else to be there. Leave a note that says this person has your permission to let the inspector inspect your home.

**Ask for a complete inspection.** Ask for inspection inside your apartment, outside of the building, and all common areas.

**Point out problems.** If the inspector misses a problem, point it out so it’s in the report.

**Ask for a copy of the inspector’s report.** If your apartment or building needs serious repairs, the inspector must send a repair order to your landlord within 12 hours.

**Follow up.** If the landlord doesn’t make repairs by the date and time on the order, contact the inspector and ask for a re-inspection.



For more, scan the QR Code for: Legal Tactics, **Chapter 8: Getting Repairs Made** [MassLegalHelp.org/LT-Repairs](http://MassLegalHelp.org/LT-Repairs)

# Getting Repairs Made

by Susan Hegel

*Italicized words are in the Glossary*

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From the time you move into an apartment until the time you leave, you have a right to a safe and decent place to live. Under the law, landlords must keep the property they rent in good condition. The fact is that not all landlords follow the law. If this happens, you need to know your rights.

This chapter tells you what your landlord's responsibilities are and what you can do if your landlord is not making repairs. You will also find in the **Forms** section at the end of this book a detailed checklist to help you evaluate the condition of your apartment, as well as sample letters and forms that can help you assert your right to a decent place to live.

## Your Right to a Decent Place to Live

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All tenants have a right to a decent, safe, and sanitary place to live. In Massachusetts, there are primarily four sources of law that give tenants this right:

- § The state Sanitary Code,
- § Local health ordinances,
- § *A warranty of habitability*, and
- § The law of *quiet enjoyment*.

### 1. State Sanitary Code

In Massachusetts, the state Sanitary Code is the primary source of law that gives tenants a right to decent housing.<sup>1</sup> The purpose of the state Sanitary Code is to protect people's health, safety, and well-being.<sup>2</sup> It sets the minimum legal standards that all landlords must meet, and it applies to you whether you have a *lease* or not. For example, all rental housing must have heat, hot water, and electricity. Kitchens and bathrooms must have sinks with running water. Doors and windows must have locks.

The **Housing Code Checklist (Booklet 2)** outlines the main parts of the state Sanitary Code. It will tell you which violations a landlord must repair within 24 hours of being notified by the Board of Health and which violations must be repaired by the landlord within 30 days of being notified by the Board.

If you need to know exactly what the state Sanitary Code says, it is available online at:

- § Sanitary Code minimum standards for housing are at:  
[mass.gov/doc/105-CMR-410-minimum-standards-of-fitness-for-human-habitation-state-sanitary-code-chapter-ii](https://www.mass.gov/doc/105-CMR-410-minimum-standards-of-fitness-for-human-habitation-state-sanitary-code-chapter-ii)
- § Sanitary Code administrative provisions are at:  
[mass.gov/regulations/105-CMR-40000-state-sanitary-code-chapter-i-general-administrative-procedures](https://www.mass.gov/regulations/105-CMR-40000-state-sanitary-code-chapter-i-general-administrative-procedures)
- § Regulations for lead poisoning prevention and control are at:  
[mass.gov/regulations/105-CMR-46000-lead-poisoning-prevention-and-control](https://www.mass.gov/regulations/105-CMR-46000-lead-poisoning-prevention-and-control)

The Sanitary Code can also be purchased in person by going to:

- § State House Bookstore, State House  
Room 116, Boston, MA 02133  
617-727-2834
- § Western Office of the  
Secretary of the Commonwealth  
436 Dwight St., Springfield, MA 01103  
413-784-1376
- § Southeastern Office of the  
Secretary of the Commonwealth  
218 South Main St., Suite 206  
Fall River, MA 02721  
508-646-1374

You can also order the Sanitary Code online on the state house bookstore website (but there is a shipping cost for it to be mailed to you).

Note: While most problems that tenants face are covered in the state Sanitary Code, there are a number of other state codes in Massachusetts that affect residential property, including codes on building, fire safety, electricity, and plumbing.<sup>3</sup> These codes are more complex and detailed than the state Sanitary Code, and in many cases cover the same material.

## **2. Local Health Ordinances**

Cities and towns have the right to pass local health ordinances that are stricter than the state Sanitary Code.<sup>4</sup> For example, in some cities and towns, local health ordinances require landlords to obtain a certificate of occupancy or certificate of habitability from a local Board of Health before renting.<sup>5</sup> The reason for this requirement is to make sure that rental housing is safe. If a city or town requires

such a certificate and a landlord has not obtained one, the landlord is in violation of both the local health ordinance and the state Sanitary Code. If a landlord rents an apartment without getting a certificate where it is required, they may be prohibited by a court from collecting rent that a tenant withholds for conditions that violate the state Sanitary Code.<sup>6</sup>

Local health ordinances apply to tenants with *leases* and tenants without leases.

### **3. Warranty of Habitability**

Like businesses which must guarantee the safety of products they sell, landlords in the business of renting property must guarantee that the apartments they rent are safe and habitable. This is called a *warranty of habitability*.<sup>7</sup> Basically, this warranty recognizes that in return for your promise to pay rent, your landlord promises to keep your apartment in good condition.

The warranty of habitability applies whether you have a written lease or not. It is a right your landlord cannot ignore or take away from you.<sup>8</sup> For example, it is illegal for a landlord to put a clause in your lease that denies you a warranty of habitability or that states that you are responsible for making all repairs.<sup>9</sup> Also, a landlord cannot claim that they lowered the rent you were charged because of the bad conditions.<sup>10</sup>

A landlord violates the warranty of habitability from the time they have knowledge of conditions that may endanger or impair your health, safety, or well-being.<sup>11</sup> When a landlord breaches the warranty of habitability, you have several options. You may be able to withhold your rent or deduct the cost of repairs from your rent. You can go to court and ask a judge to order your landlord to make repairs and reduce your rent until repairs are made. You can choose to cancel your lease or rental agreement and move out. You can go to court and ask a judge to cancel your lease or rental agreement and give you a full or partial refund of the rent money you have already paid.<sup>12</sup> For more about your options, see the section in this chapter called **Options If Your Landlord Refuses to Make Repairs**.

Note: Where a tenant claims that a landlord has breached the warranty of habitability, the courts have established a formula to calculate the *damages*. This amount is called the *fair rental value*. It is the value of your apartment with all its problems and code violations.<sup>13</sup> Not every violation of the state Sanitary Code, however, violates the warranty of habitability.

### **4. The Law of Quiet Enjoyment**

Some conditions are so serious, such as no water or heat, that they may violate a state law that gives tenants a right to *quiet enjoyment*—the right to be free from unreasonable interference with the use of your home.<sup>14</sup>

For interferences with the right to quiet enjoyment, you may sue the landlord for money *damages*, which are your actual damages or 3 times your rent, whichever is more.<sup>15</sup> A judge may also fine the landlord between \$25-\$300 per violation and put the landlord in jail for up to 6 months. For more information about your rights under this law, see **Chapter 13: When to Take Your Landlord to Court -Breach of Quiet Enjoyment.**

## **Establishing That Your Landlord Had Knowledge of Illegal Conditions**

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Because your right to get repairs made is dependent upon your landlord's having knowledge of bad conditions, it is important to understand what constitutes knowledge. Under the law, your landlord has knowledge of bad conditions in the following situations:

- § If the problem existed before you moved into your apartment,<sup>16</sup>
- § If your landlord actually sees the problem,
- § If you tell or write your landlord about the problem (it is always best to notify your landlord in writing),
- § If the Board of Health notifies your landlord about a problem,<sup>17</sup>
- § If another tenant has notified the landlord about a problem that affects you, too, or
- § If the problem existed at the time a new landlord bought your building.<sup>18</sup>

## **Documenting the Problem**

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### **1. Notify Your Landlord**

If something needs to be repaired after you move in, tell your landlord about the problem. If there is an emergency—for example, a burst water pipe—contact your landlord immediately.

Once a landlord has knowledge of conditions that violate the law, the law requires them to make repairs. Most tenants, and many landlords, do not know what the law requires. The law requires that your housing meet minimum conditions under the state Sanitary Code. The **Housing Code Checklist (Booklet 2)** summarizes the state Sanitary Code. Use it to evaluate the condition of your home.



In most cases, landlords make repairs after tenants notify them about problems. If your landlord refuses to make repairs see **Options If Your Landlord Refuses to Make Repairs**.

When you contact your landlord about making repairs, ask the landlord to let you know when a repair person will be coming to fix the problem.

This is a good idea because one of the most common excuses landlords use when they don't make repairs is that a repair person could not get into a tenant's apartment. **Make sure you know when the repair person is coming so that your landlord cannot use this excuse.**

## **2. Put It in Writing**

If you have notified your landlord about a problem and they refuse to make repairs within a reasonable time, you should send your landlord a written letter asking them again to make the repairs. Before you give them this letter, make a copy for yourself. It may not seem important now, but later, if you ever have to prove that your landlord had knowledge about the conditions in your apartment, you will be glad that you kept a copy. For a sample see **Repair Letter (Form 9)**.

If your landlord does not respond to this letter, you should send an identical copy of the letter by *certified mail*. Request a return receipt so that you can prove that you sent your landlord notice and it was delivered.

If you have repeatedly notified the landlord about bad conditions, you can also send them a second, more formal *demand letter* which puts them on notice that if they do not respond, you may take further legal action. For a sample see **Repair Demand Letter (Form 10)**.

## **3. Take Photographs or Videos**

You should also take photographs or videos (with a cell phone or camera) of the bad conditions. Make sure the date and time of the photograph is indicated.

## **Landlord's Right to Enter Your Home**

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Many landlords think that they can let themselves into your apartment any time they want. This is not true.

Your landlord must have your permission to enter. If you do not give your landlord permission to enter, the landlord can enter if there are terms of your lease or written tenancy agreement which are legal and give the landlord permission to enter or your landlord has a court order.

Under the law<sup>19</sup>, a lease may allow the landlord to enter your apartment so that the landlord can:

- § Inspect the apartment,
- § Make repairs,<sup>20</sup> or
- § Show the apartment to prospective tenants, purchasers or mortgagees.

In addition, regardless of the lease or tenancy agreement provisions, a landlord may also enter your apartment:

- § If your apartment appears to have been abandoned, or
- § To inspect it during the last 30 days of your tenancy to determine if there are damages that would lead to a reduction in the return of your security deposit, or
- § In accordance with a court order.<sup>21</sup>

If you have a lease and it states other reasons that your landlord can enter your apartment, that part of your lease is illegal.<sup>22</sup>

If you do not have a lease or a written tenancy agreement, then arguably the landlord cannot enter your apartment unless they must make repairs or have a court order.<sup>23</sup>

Whether you have a lease or not, you are still required to allow your landlord reasonable access (by appointment if possible) for the purpose of making repairs to Sanitary Code violations.<sup>24</sup>

Absent an emergency, the landlord must give you at least 48 hours' notice of when they are entering for repairs.<sup>25</sup> The law also does not require you to give a landlord a key to your apartment.<sup>26</sup>

However, given that you will want the repairs made as soon as possible, it is always best to be cooperative in allowing access for making repairs.

## **Getting an Inspection**

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Tenants in Massachusetts have a right to have their home inspected by a local housing inspector. Before you call a housing inspector, you should make sure you have given your landlord a chance to make repairs. If, however, you have given your landlord a chance to make repairs and they refuse or don't reply, a housing inspector can be helpful. Housing inspectors examine properties to see whether they comply with the state Sanitary Code and the local health ordinance. If there are violations, an inspector has the power to order your landlord to make repairs within a certain period of time. In many cases, a landlord will then make the repairs.

## 1. How to Contact the Housing Inspector

Housing inspectors are required to inspect your apartment upon your request. To request an inspection, call your local town or city hall. Housing Inspectors are often located at your local Board of Health office, but can also be in other departments, for example.

- § In Boston, Cambridge, Chelsea, Somerville, and Worcester, contact the Inspectional Services Department.
- § In Springfield, contact the Department of Code Enforcement, Housing Division.

When you call to make an appointment, try to schedule a definite appointment for the inspection. Housing inspectors are required to use their best efforts to inspect at a time mutually satisfactory to you and to them. An inspection should be done within 5 business days of your request.<sup>27</sup> **If there are serious problems, such as lack of heat or water, tell the inspector. By law, they must use their best efforts to come within one business day of such a request.**<sup>28</sup>

An inspector may tell you that they will just call the landlord and get the landlord to fix the problem. There is no rule that prohibits an inspector from calling a landlord. However, the law still requires a housing inspector to inspect your property. The law also requires a housing inspector to inspect your home after you request an inspection whether or not you have notified your landlord about bad conditions.<sup>29</sup>

Unfortunately, sometimes housing inspectors do not respond to tenants' requests for inspections and may even claim that tenants never contacted them. If an inspector does not respond to your call, write the Board of Health a letter requesting an inspection. (For a sample see **Letter Requesting an Inspection (Form 11)**). Save a copy of this letter so you will always have proof of when you contacted your local inspector. For localities with 311 service (like Somerville), call there as the operators log in all calls. See the section called **What If the Inspector Fails to Do the Job** for more information.

In some housing courts, you can also file papers requesting that the judge order a "housing court specialist" to inspect your apartment.<sup>30</sup> If you do that, you will need to give the landlord notice that you are filing such a request. If there is already a lawsuit or an eviction filed, you can file a motion requesting the inspection. If nothing has been filed in court yet, you may file your own lawsuit. See the section entitled **Go to Court** in this chapter for more information.

## 2. Be Prepared

If you call the Board of Health, keep the following two things in mind:

- § It is illegal for a landlord to retaliate against you for calling the Board of Health.
- § It is very important to be prepared for a Board of Health inspector.

### a. Retaliation Is Illegal

Contacting your local housing inspector may cause your landlord to become angry and retaliate against you by raising your rent, sending you an *eviction* notice, or harassing you in other ways. **Retaliation is illegal.** You have a right to tell the landlord of code violations, request an inspection from the Board of Health, and take legal action against your landlord if they refuse to make repairs.<sup>31</sup>

If your landlord attempts to retaliate against you, you can bring a lawsuit against them. The law seeks to protect tenants against being harassed or evicted for trying to enforce their rights. See **Chapter 12: Evictions** and **Chapter 13: When to Take Your Landlord to Court** for more on retaliation.

### b. Be Prepared for Inspectors

While housing inspectors can be very helpful to tenants in getting repairs made, some inspectors have been known to bend the rules in favor of landlords. In some cases, housing inspectors have also cited tenants for violating the Sanitary Code for things like failure to take out the trash, dirty toilets, unsanitary kitchens, or excessive clutter or otherwise blocking doorways or hallways. Because you may not know the inspectors in your community, the best thing to do is to prepare for an inspection. Take the **Housing Code Checklist (Booklet 2)** and go through your apartment and the common areas, such as halls, basements, or front and back doors, which you share with others. Be sure that the apartment is clean and not severely cluttered.

## 3. What Should the Inspector Inspect

Someone must be present on your behalf during any inspection inside your apartment.<sup>32</sup> If a neighbor is going to let an inspector in, prepare a written note that will tell the inspector that the neighbor has your permission to take the inspector through the apartment.

When an inspector comes to your apartment, you have a right to request a full inspection, called a "comprehensive" inspection, which includes the interior of your apartment and exterior of the building and all common areas.<sup>33</sup> If you do not request a comprehensive or complete inspection, a housing inspector is required

only to check for serious violations and the conditions you specifically ask to be checked. For example, if you report a problem with the heat, the inspector only has to check the heat.

When the inspector comes to your apartment, have your **Housing Code Checklist (Booklet 2)** with you. If an inspector doesn't think something is a violation, ask them why. Don't be afraid to talk to the inspector. And don't assume that the inspector will see all the violations that you know exist. Point out violations if they miss them, and make sure they write them all down. For example, if there are mouse droppings, make sure the inspector writes this down even if they do not see a mouse.

### **a. Getting the Inspector's Report**

At the end of the inspection, the inspector must give you or whoever is authorized to be there a verbal summary and, if requested, a copy of their report.<sup>34</sup> The inspector must also send your landlord an original, signed copy of the report and/or order to correct and mail you a copy within 7 calendar days of the inspection.<sup>35</sup> The inspector's report and order must include at least the following:<sup>36</sup>

- § The inspector's name,
- § The date and time of the inspection,
- § A list and description of the conditions that violate the state Sanitary Code or local health ordinances,
- § The time frame for repairs,
- § Any need for an additional inspection by a specialized inspector,
- § Whether any violations "may endanger or materially impair" the health, safety or well-being of you or anyone else in the apartment,
- § The notice of a right to a hearing, and
- § The inspector's signature after the statement: "This inspection report is signed and certified under the pains and penalties of perjury."

With the report, the inspector must mail you a copy of the Department of Public Health's (DPH)'s Occupants' Legal Rights and Responsibilities which is available in multiple languages online at: [mass.gov/lists/housing-community-sanitation#occupants%E2%80%99-legal-rights-and-responsibilities-](https://www.mass.gov/lists/housing-community-sanitation#occupants%E2%80%99-legal-rights-and-responsibilities-)

It is very important to get an accurate report. If an inspector leaves a violation off the report, call and ask them to make the correction.

## **b. What If There Are Violations**

The state Sanitary Code lists 17 specific conditions that are considered so serious that they "may endanger or materially impair" your health, safety or well-being.<sup>37</sup> These are listed in the **Housing Code Checklist (Booklet 2)**. If an inspection finds any of these violations, the inspector must send your landlord a repair order within 12 hours of the inspection.<sup>38</sup> This report should include a notice to the landlord to make a "good-faith effort" to correct these violations within 24 hours of receiving the notice.

If the repairs are not serious, the inspector should send a repair order to the landlord within 7 calendar days of your inspection. The order should state that the landlord must correct the violations within 30 days of receiving the order or sooner if the board so orders.<sup>39</sup>

You should receive copies of all repair orders or notices that inspectors send to your landlord.<sup>40</sup> **Save these notices.**

If your landlord fails to correct any problem within the time ordered by the Board of Health, contact the inspector and request a reinspection.<sup>41</sup> You may also consider whether you want to withhold your rent, organize with other tenants, make repairs and deduct their cost from your rent, break your lease, or take your landlord to court. Each of these options is discussed in this chapter.

## **c. What If the Inspector Fails to Do the Job**

If a local inspector refuses to do their job properly or respond to your request for an inspection, this may prevent you from getting the help and documentation you need to force your landlord to make repairs. There are several ways you can try to correct this problem if it happens.

You have the right to complain to the Board of Health if an inspector fails to do the following:<sup>42</sup>

- § Inspect your apartment,
- § Inspect within the required time,
- § Certify violations as serious, when appropriate,
- § Issue a report, or
- § Issue an order to the landlord to make repairs.

To file a complaint with the Board, submit a written letter to the Board within 30 calendar days of receiving an inadequate inspection report or requesting an inspection.<sup>43</sup> A hearing will then be scheduled before the Board within 14 days. You can bring witnesses, pictures, or any other evidence to the hearing to show

what the inspector failed to do. The Board must then inform you, in writing, of its decision within 5 calendar days of the hearing.<sup>44</sup> If you do not agree with its decision, you can challenge the decision in court.<sup>45</sup>

§ You can also contact the Massachusetts Department of Public Health (DPH) Division of Healthy Homes and Childhood Lead Poisoning at 617-624-5757 for more information and guidance.

§ If there is a serious backlog of requests for inspections in your town or city, you may want to contact a local or state tenant group and ask them to help you develop a plan to put pressure on the Board of Health. For example, the local newspaper could do a story about the need for more inspectors. Tenants could ask a mayor or local government official to appoint a special prosecutor to help code inspectors enforce orders.

## Options If Your Landlord Refuses to Make Repairs

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If your landlord does not make repairs after you have either notified them in writing or they have been ordered by the Board of Health to make repairs, you may need to consider other options, such as withholding your rent, making repairs and deducting the cost from your rent, working with other tenants to put pressure on the landlord, taking your landlord to court, or breaking your lease. What you can and want to do will depend on your situation. Once you inform yourself of the options, you may want to consult with a tenant advocacy organization or lawyer (see **Directory**).

### 1. Withhold Rent

One way to get your landlord to fix bad conditions is to withhold all or some of your rent until the landlord actually makes the repairs. This is called "rent withholding."<sup>46</sup>

Tenants have a right to withhold rent because landlords are obligated to provide safe and habitable housing under the *warranty of habitability*. If a landlord breaks this obligation, a tenant's obligation to pay the full amount of rent stops until repairs are made.<sup>47</sup> A tenant may want to withhold all or part of the rent, depending on the seriousness of the violations.<sup>48</sup> The law does not state how much or for how long you can withhold.

If you are considering withholding your rent, it is very important that you do it right. **Before** you begin to withhold, read the next sections in this chapter very carefully. Use the sample **Rent Withholding Letter (Form 12)**.

Note: If you are living in a hotel or motel or have lived in a rooming house for less than 3 consecutive months, you do not have the right to withhold your rent

to get the landlord to make repairs. For more information about the rights of rooming house tenants, see **Chapter 15: Rooming Houses**.

**a. When Can You Withhold Rent**

Before you can withhold rent, you must meet certain requirements.<sup>49</sup> If you can answer **yes** to all five of the questions below, you have met these requirements and can legally withhold your rent.

	YES	NO
Do defective conditions exist in your apartment?	<input type="checkbox"/>	<input type="checkbox"/>
Do these conditions "endanger or materially impair" the health, safety, or well-being of anyone living in the home? (See <b>Housing Code Checklist (Booklet 2)</b> ).	<input type="checkbox"/>	<input type="checkbox"/>
Does the landlord know about the defective conditions (and know this before you were behind in your rent)?	<input type="checkbox"/>	<input type="checkbox"/>
Were the conditions caused by something or someone other than yourself, household member, guest, or other person under your control?	<input type="checkbox"/>	<input type="checkbox"/>
Can your landlord make repairs without you having to permanently move out?	<input type="checkbox"/>	<input type="checkbox"/>

If you answer yes to all five questions, you can legally withhold your rent and your landlord cannot evict you—although they may try. If a landlord tries to evict you and you have properly withheld your rent, your landlord may be violating other laws. See **Chapter 12: Evictions - Retaliatory Evictions**.

**b. Withholding Gives You the Power to Negotiate**

Rent withholding is the most direct way that you can force your landlord to make repairs. More often than not, it is also the most successful tactic. It is particularly successful in a building where tenants agree to join together to withhold their rent. See **Chapter 10: Getting Organized** about how to organize a rent withholding campaign. Withheld rent may also provide funds for a receiver to make repairs. See section on **Receivership**.

While you are withholding rent, you are in a better position to negotiate with the landlord about what you want. Some of the issues that you can negotiate include:

- § The date when the landlord will start and complete repairs,
- § How much rent you will pay (or withhold) while repairs are being completed, and



§ How much of the withheld rent you will return (if any) once repairs are properly completed.

**c. Protect Yourself When You Withhold**

The right to withhold does not mean that you have a right to live in your apartment rent-free. Rent withholding is a way to get the landlord to make repairs. Once a landlord makes repairs, you must resume paying rent.

The best way to protect yourself while you are withholding rent is to take your rent money and set it aside in a bank account separate from any other bank account that you have. (Do not keep cash in your apartment.) Although the law does not require you to put your rent in a bank, there are several reasons why this is a good idea.

§ First, if your landlord tries to evict you, you can show the court that you had the money to pay rent and you did not simply stop paying because you were unable to pay. Setting up a separate bank account will also strengthen your case and give you more credibility in the eyes of a judge if you take the landlord to court or the landlord attempts to evict you.

§ Second, if a judge eventually orders you to pay some or all of the withheld rent to the landlord, you will have this money available. If you don't pay, you can be evicted. It is very unusual that a judge would find that the conditions are so bad that you would be entitled to withhold all (100%) of your rent, which is why it is so important to have that rent money set aside.

Note: Legally, once your landlord makes repairs, you do not automatically have to give the landlord back any of the rent you have withheld. Only a judge can order you to do this. You may decide to keep some or all of the rent you withheld because of the impact these conditions had on your use of the apartment. If your landlord decides to take you to court to get back the withheld rent, explain to the judge how the conditions affected you and your family. Depending on the situation, a judge may decide you can keep part or all of the withheld rent.<sup>50</sup> To try to avoid court and eviction, you can also negotiate with the landlord to try to agree on a fair sum to be given to the landlord for the period when you lived with the bad conditions.

**d. Be Prepared for How Your Landlord May React**

While you have a legal right to withhold rent, your landlord may try to evict you. The best way to protect yourself against eviction is to make sure you:

§ Document the bad conditions,

§ Meet all the requirements for withholding rent (for more information see **When Can You Withhold Rent**),

§ Deposit your rent in a bank, and

§ Use the sample **Rent Withholding Letter (Form 12)** to notify your landlord about the bad conditions.

A copy of a housing inspection report that accurately describes code violations is the best way to document violations of the state Sanitary Code. It is also proof that the landlord knew about the conditions.<sup>51</sup> Again, if you have a camera or video camera (or can borrow one), take pictures of the bad conditions ideally with a date and time stamp. If you print out the pictures write the date and time they were taken on the back of the picture. A good picture will be worth a thousand words if you need to prove that bad conditions exist.

If a landlord wants to evict you, they must go to court and get permission from a judge. If a judge finds that you have followed all the requirements under the rent-withholding law, you will have a legal *defense* to the eviction.<sup>52</sup> This means a judge should not give the landlord permission to evict you and you can stay in your home. You may also have a legal *claim* against them for money *damages*. See **Chapter 12: Evictions** for more about evictions and **Chapter 13: When to Take Your Landlord to Court** for more information about other legal claims.

However, if a landlord starts an eviction, the court may order that you pay, each month by a certain date, ongoing rent (“use and occupancy”) into court or an escrow account while the case is pending. The court will hold a hearing on this monthly amount, including whether the payment should be reduced based on bad conditions.<sup>53</sup> This reduced amount is called the *fair rental value* to the court. The fair rental value is the value of your apartment with all its problems and code violations.<sup>54</sup> The court can decide to give your landlord permission to use the money you pay to the court to make repairs.

At the end of an eviction case, if a judge finds that, because of code violations, your landlord owes you the same amount as or more money than you owe them, you win the case and can stay in your apartment. If, on the other hand, the court finds that you owe the landlord money, you can stay in your apartment only if you pay the amount you owe to the court. (This is why it is important to set aside your rent money—so if a judge says you owe money, you can pay and stay.) You must pay this amount to the court within 7 days of receiving a notice from the court about the amount due.<sup>55</sup> If you do not, you can be evicted. The court may also require you to pay certain court costs.<sup>56</sup>

## 2. Repair and Deduct

Under certain conditions, tenants in Massachusetts have the legal right to make repairs and deduct up to 4 months' rent to pay for them.<sup>57</sup> This is referred to as "repair and deduct." The advantage of choosing to repair and deduct is that the repairs get done. The disadvantages are that you are taking responsibility for arranging the repairs and making sure that the repairs are done well. See the sample **Repair and Deduct Letter (Form 13)**.

### a. When Can You Repair and Deduct

To be able to deduct the cost of repairs from your rent, certain conditions must be met. If you can answer yes to all five questions below, you can repair and deduct.

	YES	NO
Are there violations that "endanger or materially impair" the health, safety, or well-being of a tenant that have been <b>certified by a housing inspector or that a court finds exist</b> ? <sup>58</sup>	<input type="checkbox"/>	<input type="checkbox"/>
Have you given the landlord or their agent written notice of the violations?	<input type="checkbox"/>	<input type="checkbox"/>
Did the landlord fail to substantially complete repairs within 14 days after this written notice, or within such shorter time if ordered by a housing inspector ?	<input type="checkbox"/>	<input type="checkbox"/>
Were the conditions caused by something or someone other than yourself, household member, guest, or other person under your control?	<input type="checkbox"/>	<input type="checkbox"/>
Have you given your landlord access to your home to make repairs?	<input type="checkbox"/>	<input type="checkbox"/>

### b. What Can You Repair

You are allowed by law to repair anything in your apartment or in the common areas of your building. If there are violations that affect several apartments or an entire building, a group of tenants can get together and have the repairs made. Make sure, however, that everyone is in agreement, that you have a certified Board of Health report documenting the problems, and that you have given your landlord written notice of the violations. Each and every tenant can then deduct up to 4 months' rent for their share of the total.

For example, you and other tenants may get the boiler in your building fixed, and then all affected tenants can subsequently deduct up to 4 months of rent, depending on how much the repair cost.

### **c. How Much Can You Deduct**

Under the law, you may deduct only a total of 4 months' rent in any 12-month period. You cannot store up months of withheld rent over several years and then deduct more than 4 months' rent in a single year. If you decide to repair and deduct, save all bills and receipts for materials and labor as proof of your costs. Remember: When you make the repair, you are taking responsibility for making sure it's done right. When you hire someone to do the repairs, ask what complications or risks there may be in doing the repair. It is also a good idea to get a reference for anyone you hire and a few estimates for the work so you can show the cost of the person you hire is reasonable.

### **d. What If the Landlord Thinks You Deducted Too Much**

If a landlord feels that you deducted too much for repairs, they are allowed to go to court to try and get back some of this money. The law does not, however, allow your landlord to evict you if the court believes that you have deducted too much rent.<sup>59</sup> It is also illegal for landlords to raise your rent for repairs you legally made under the repair and deduct statute, unless there is a court order permitting a rent increase.<sup>60</sup>

If your landlord does take you to court to try to get back possible excess rent deductions, do not ignore the court notice. To show that the deductions were excessive, the landlord will have to show that the deductions were for more than 4 months' rent during a 12-month period, or were unreasonable given the circumstances. In deciding if deductions were unreasonable, a judge will look to see what alternatives the tenant had at the time the violations were first reported, how urgent the repairs were, and the quality and cost of the work done.<sup>61</sup>

Repairs for minor code violations, such as screens, small leaks, or small holes in the walls, will probably not be found reasonable by the court unless there are so many of them that you can prove that the overall effect is dangerous.<sup>62</sup> This is difficult to do.

## **3. Organize**

If other tenants in your building or community face bad conditions, there are ways to work together to improve everyone's living conditions. Tenants can all agree to withhold rent until the landlord makes repairs. A group of tenants can ask a judge to order the landlord to make repairs. If the landlord absolutely refuses to fix the bad conditions, tenants can ask a court to appoint a temporary landlord called a *receiver* in order to make repairs. For more see section in this chapter called **Receivership**. Tenants can also organize and together put pressure

on the local Board of Health to inspect their apartments and enforce the state Sanitary Code and local health ordinances. Tenants can amplify the issue through a media campaign, by contacting local press, and by contacting local officials to request a hearing at city council.

**Chapter 10: Getting Organized** will give you information about how to begin to organize tenants. It will also give you specific organizing steps you can take to get repairs made.

## 4. Break Your Lease

When there are very serious violations of the Sanitary Code in your apartment (and you have a Board of Health report) and you feel you must move, the law allows you to break your lease. If you do not have a lease, you can leave without giving the usual 30-day notice (or whatever notice may be required in your situation) to the landlord. You are allowed to break your lease or move out without giving the usual notice because the landlord has violated their obligation to provide a habitable apartment under the *warranty of habitability*.<sup>63</sup>

If you move out early, your landlord may try to sue you for moving early and for the balance of the rent due under any lease.

Keep in mind: If violations are **not serious or you do not have a Board of Health report**, you may be held responsible for paying the rent if you leave without proper notice.

When you move out because of serious violations, you are entitled to get back your security deposit. If you have to go to court to get your deposit back, you might have to prove that the conditions in your apartment were severe enough to permit your leaving. For more information about getting security deposits back and moving out, see **Chapter 3: Security Deposits and Last Month's Rent** and **Chapter 11: Moving Out**.

## 5. Go to Court

If your landlord refuses to make repairs, you can take them to court. The court has the power to do a number of things. A judge can:

- § Order your landlord to make repairs,
- § Order your landlord to pay you money for the harm that you have suffered,
- § Appoint a receiver: a person or organization appointed by the court to manage and fix up the property (see section in this chapter called Receivership),<sup>64</sup>

§ Fine your landlord or put your landlord in jail for violating the law.

There are primarily 3 types of documents that you can file with the court to demand that a landlord make repairs:

§ Tenant Petition;

§ Civil Complaint (with or without a request for an Emergency Injunction, also called a *Temporary Restraining Order*), and

§ Application for Criminal Complaint.

#### **a. Tenant Petition**

Tenants can ask a judge to order their landlord to repair conditions that violate the state Sanitary Code (or local health ordinance, if it is stricter). This is called a tenant petition.<sup>65</sup> See the sample **Tenant Petition for Enforcement of the State Sanitary Code (Form 14)**. When you file a tenant petition, a judge can:

§ Order the landlord to make repairs, or

§ Appoint a temporary landlord called a *receiver* to make repairs.

The benefits of bringing a tenant petition are that it may be a safe way for you to get repairs made without having to withhold rent and the court filing fee is low.<sup>66</sup> If you withhold your rent, you may have to go to court to defend yourself against an *eviction*. If you file a tenant petition, you—not your landlord—are bringing the matter before a judge. A tenant petition also puts you in a better position to negotiate what you want with the landlord. For more about negotiating, see **Chapter 14: Using the Court System – Negotiating a Good Settlement** and **Chapter 10: Getting Organized - Negotiating a Solution with the Landlord**.

When you file a tenant petition, a judge also has the power to make certain other decisions. A judge may decide that until your landlord makes repairs, your rent should be lowered to the *fair rental value* of your apartment. The fair rental value is the value of your home with all of its problems. A judge can require you to pay this amount to the court clerk (in addition to any past rent you have withheld or owe) while the landlord makes repairs.<sup>67</sup> Ideally, you want the court to hold onto this money until the landlord makes repairs, so that the landlord has some incentive to get them done. A judge can, however, release this money to your landlord for purposes of making repairs.<sup>68</sup>

Note: A judge also has the power in a tenant petition to order the Board of Health to condemn a very dangerous building. This could lead to tenants' evictions.<sup>69</sup> (For more about condemnations, see **What If Your Building Is Condemned** in this chapter.)

**b. Civil Complaint with or without a Request for Emergency Injunction**

If you want a judge to order your landlord to make emergency repairs, you can file a civil complaint and ask a court to issue an *injunction*.<sup>70</sup> An injunction is an order from the court that tells your landlord to take immediate action to correct a problem or to stop doing something that is illegal. For example, a judge can order your landlord to immediately fix the heating system.

In most cases, tenants request an emergency order called a *temporary restraining order* or TRO when they first go to court and file the complaint. Because this is an emergency, you may request a TRO without first notifying the landlord. See a **Temporary Restraining Order (Form 15)**.

If a judge grants you a TRO, it is good for only a short period of time—the maximum is 10 days. If you need an order to last longer than 10 days, you must ask the court to schedule another *hearing* where you can request what is called a *preliminary injunction*. A preliminary injunction is an order that can cover a longer period of time. If you use Form 15, you can ask for a hearing for a preliminary injunction at the same time you ask for a TRO.

If you get a TRO from the judge, take a copy of it to a sheriff's or constable's office immediately. A sheriff or constable must *serve* the complaint, summons, and the TRO on your landlord. A TRO is not good unless your landlord has knowledge of it. If your landlord refuses to obey a TRO, you should go back to court and tell the judge. If a judge finds that your landlord has not obeyed the TRO, the landlord may be held in *contempt* and can be arrested and fined.

When you file the complaint to seek a TRO and preliminary injunction, you will also need to pay the filing and service fees. If you cannot afford these fees, you can ask the court to *waive* or eliminate the filing fee and to pay the service fee. To do this use the **Affidavit of Indigency form (Booklet 9)**.

In this complaint, you can also ask the judge to appoint a receiver. (See section called **Receivership**).

You could also try to ask the court to order your landlord to provide you with a hotel or other temporary housing for the period of repairs.<sup>71</sup>

The complaint should also include claims for money for the harm that you have suffered or are suffering because of code violations. There are primarily six types of legal *claims* you can include:

- § Breach of Warranty of Habitability,
- § Breach of Quiet Enjoyment,
- § Unfair and Deceptive Practices,

§ Negligence,

§ Infliction of Emotional Distress,

§ Nuisance.

Each of these legal claims is described in **Chapter 13: When to Take Your Landlord to Court**. As you read through Chapter 13, you may discover that your landlord has violated other laws. Before you decide to bring a lawsuit against your landlord, you need to carefully evaluate the strength of your case.

### **c. Application for Criminal Complaint**

If your landlord refuses to make repairs, you can file an application for criminal *complaint* (and pay the filing fee) or ask the Board of Health to file an application for a criminal complaint. You can do this at the same time you pursue other strategies. Because it can take several weeks for a court to schedule a clerk's hearing for a criminal complaint, this strategy does not usually produce a quick result. A criminal complaint can, however, result in a landlord having to pay a fine or spend time in jail. The advantages of a criminal action over a civil action are:

§ It may put more pressure on the landlord to make repairs.

§ If the Board of Health brings the criminal complaint, you may not have to go to court because the inspector can present all the necessary evidence.

The major disadvantage of a criminal action is that you lose control over the case. The Assistant District Attorney or the City's Attorney will prosecute the case. You or your lawyer do not control the day-to-day direction of the suit. Also, you must be willing and able to appear in court, sometimes on a week-to-week basis, if you are the person bringing the complaint. You may get quicker results if you file a civil complaint or a tenant petition.

There are two kinds of criminal cases that tenants can bring against landlords who fail to repair Sanitary Code violations. The first is where the landlord fails to comply with the Sanitary Code.<sup>72</sup> You or the Board of Health may bring this kind of complaint.<sup>73</sup> Fines for violations of the state Sanitary Code can range from \$10 to \$500 a day.<sup>74</sup>

The second type of case is where the landlord fails to provide heat, hot water, or other utilities or interferes with your *quiet enjoyment*. Only tenants who are affected by the landlord's illegal behavior can file this type of criminal complaint. To bring this type of complaint, you do not need a Board of Health inspection, although it is very helpful. In addition to fining your landlord, a judge can also sentence a landlord to serve up to 6 months in jail for violation of the law of quiet enjoyment.



# Receivership

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As part of the tenant petition or civil complaint, a tenant may ask the court to appoint a receiver.

## 1. What is a Receiver?

A receiver is a person or organization appointed by a court to temporarily manage a property in order to enforce the state Sanitary Code and respond to an irresponsible or absentee landlord. Tenants can use receivership as a strategy to accomplish needed repairs and prevent a building from deteriorating.

Tenants get a receiver by asking a court to appoint one.<sup>75</sup> If a court appoints a receiver, the receiver usually is empowered by a court to:

- § Make repairs and improve the conditions.
- § Manage the building.
- § Collect the rents.
- § Pay expenses, including taxes and insurance.

Additional duties of a receiver vary depending upon what tenants request and what a judge eventually puts in a written receivership *order*.

## 2. How to Get the Court to Appoint a Receiver

### a. Filing a Tenant Petition or Civil Complaint

If you decide that you want a receiver, you need to go to court. If there is a housing court in your area, go there. Housing courts have more experience in dealing with receiverships than other courts do. However, you can also go to the local district or superior court.<sup>76</sup> For more about different courts see the **Chapter 14: Using the Court System - Massachusetts Court System**.

When you go to court, it is best to bring as many other tenants from your building as possible. You can complete the **Tenant Petition for Enforcement of the State Sanitary Code (Form 14)**<sup>77</sup> or your attorney can draft a complaint for you which could include claims for money damages due to bad conditions.

In the petition or complaint, you must specifically request the court to appoint a receiver. You must also describe the bad conditions. Attach copies of the Board of Health reports or, if an inspection has not been made yet, the date you requested an inspection. It is best to get an inspection before you file a petition or complaint.<sup>78</sup>

## **b. Getting an Order of Notice**

When you file the tenant petition or complaint with the court and request a receiver, the clerk's office must issue a document called an "Order of Notice."<sup>79</sup> This document requires the landlord to:

- § Appear in court for a hearing at a designated date and time within 14 days of when the court issues the Order of Notice; and
- § File an answer to the petition and include the names and addresses of any mortgagees or lienors of record.

## **c. Serving the Petition or Complaint and Order of Notice**

You must then take a copy of your tenant petition or complaint and the **original** Order of Notice to a sheriff or a constable. The sheriff or constable must deliver (*serve*) these documents on your landlord at least 7 days before the hearing date in the Order of Notice. The sheriff or constable then fills out on the original Order of Notice how they delivered the Order of Notice and either you or the sheriff or constable file this original with the court.

If your tenant petition asks for the appointment of a receiver, then the landlord must (within 3 days) provide you with a written list of all the *mortgagees* and *lienors of record*. You must then send a copy of your tenant petition and notice of the hearing date, time, and place to each of the mortgagees and lienors by *certified mail* at least 14 days before the hearing (or less than 14 days if the court so orders).<sup>80</sup>

## **d. Payment or Waiver of Fees**

There is a court fee to pay for filing a tenant petition or complaint and a fee for serving the petition or complaint on your landlord.<sup>81</sup> If you are a low-income person, you can file a form asking the court to *waive* or eliminate the filing fee and to pay for the cost of service on your landlord.<sup>82</sup> This form is called an **Affidavit of Indigency**. To see a copy, go to **Booklet 9**.

## **e. Preparing for the Hearing**

As soon as you file a tenant petition, you should begin researching who might be a good receiver, so that when you go back to court, you are prepared to give the judge your recommendation. (See **How to Get a Good Receiver** in this chapter.) It is also important to take to court any evidence showing the conditions of the building and any evidence that shows tenants' efforts to get the landlord to make repairs in order to show to the court that a receiver is necessary.

## **f. The Hearing**

When you go to court for the hearing, be prepared to tell a judge how bad the conditions are and why you need a receiver. Read **Chapter 14: Using the Court System** for information about how to prepare for court. On the day that you go to court, bring any information or pictures that will help the judge understand how your landlord has not properly managed the building. Make sure the pictures have a date on them so that the court will know when the pictures were taken.

Since receivership is a remedy of last resort, you may want to first ask the judge to order you to pay your rent (or a percentage of your rent) to the court<sup>83</sup> and give the landlord another chance to make the repairs themselves according to a written repair schedule approved by the court. If your rent is subsidized by a housing authority or other entity, you could also ask the court to order the subsidy provider to pay the subsidy into court until the landlords has made the repairs.<sup>84</sup>

## **3. The Receivership Order**

If the court decides to appoint a receiver, a judge must prepare a receivership order. This order says: 1) who the receiver is, and 2) what powers and duties the receiver will have.<sup>85</sup>

It is important for tenants to work together, and if possible with a lawyer, to develop a proposed order to give to the court. Your proposed order should outline what specific powers and duties you want a judge to include in a receivership order. For example, a receivership order can:

- § Require that all funds received by a receiver first be used to make emergency repairs.<sup>86</sup>
- § Require the receiver to install a security system for vacant units.<sup>87</sup>
- § Order the receiver to make reasonable efforts to keep rents affordable.<sup>88</sup>
- § Lower tenants' rents by 50% until repairs are made and the court orders tenants to pay more rent.<sup>89</sup>
- § Require the receiver to submit monthly project reports to the tenants and the court, showing what money has been received and how money is being spent.
- § Authorize the receiver to seek and obtain rental subsidies for some of the apartments.<sup>90</sup>

## **4. How to Get a Good Receiver**

### **a. Possible Receivers**

When you go to court to request a receiver, you will have the most control over who the receiver is—and you may have a quicker result—if you suggest to the court possible people, organizations, or companies that are available to be a receiver. But remember— while you may suggest or recommend possible receivers, it is the court that ultimately has the power to appoint a receiver.

It is a good idea to find out before you go to court about a judge's track record in appointing receivers. Who has the judge appointed as receivers? Did the judge take the tenant's recommendations? What kind of job did that person do? Network with other groups to find out who would be qualified. The following sections suggest a few places to look for possible receivers.

### **b. Local Nonprofit Organization**

A local community development corporation (CDC), local nonprofit housing organization, or housing authority may be a good place to start. Nonprofit housing organizations have experience operating and developing housing and keeping rents low. Because an organization is nonprofit, it may be less likely to charge a fee above its own expenses for its services as receiver.<sup>91</sup> Also, if your goal is to keep your housing affordable for the long term, this goal may best be realized through a nonprofit's involvement. A nonprofit might in the future purchase the property or help you and a group of tenants buy it. A list of nonprofit housing organizations is in the **Directory**.

### **c. Private Management Company**

If a nonprofit organization is not available, you may also consider a private management company. The drawback of a private company is that its decision to become receiver will be driven in part by its desire to make money. For this reason, it is more likely that a for-profit company will charge a higher fee for its services than a nonprofit organization.<sup>92</sup> In order to maximize profits, a for-profit management company may not be as aggressive in making necessary repairs. It may also be more aggressive in collecting rents and evicting tenants. On the plus side, a management company is in the business of managing properties. It has expertise in operating and running residential property.

### **d. Experienced Individuals**

Individuals can also be receivers. For example, experienced contractors have acted as receivers. Attorneys who have experience in nonprofit housing development have also acted as receivers. The Eastern and Western Housing Courts have a list of receivers which you may want to review (if you live in or near the area served by these courts).

## 5. Getting More Money for Repairs

As a practical matter, in many cases, even if every tenant paid the full rent, a receiver may not have enough money to make the necessary repairs. Here are some ways to get more money for the receivership.

- § Get banks or organizations that lend groups money, such as local revolving loan funds, to lend money to the receiver by offering them what's called a "priority lien" or "super lien." This means that when the building is sold, the bank or organization that gave the loan can get back the money they lent before any other bank or person recovers what they are owed.<sup>93</sup> They have first priority. In some cases, tenant groups and local nonprofit development groups have used specific projects as the motivation to actually create local revolving loan pools.<sup>94</sup>
- § Negotiate with the bank that holds the mortgage on the property to give the receiver money for repairs. Since the bank has an interest in preserving the value of the property, it has a reason to pay for repairs. Because banks do not want to be held legally responsible for the condition of the property, if you propose that a bank take steps that make it look like it is legally responsible, such as paying for repairs, it may not cooperate. You may relieve a bank of these fears by having a judge indicate in an order that the bank's money for repairs will not make it legally responsible for the property.<sup>95</sup>
- § Investigate other possible sources of funds, such as local Community Development Block Grant (CDBG) funds; funds from a local affordable housing trust fund; local rehabilitation, energy conservation, and deleading funds; or state funds.
- § Ask the court to order the landlord to provide funds from other property that they own.

## 6. Options After the Receivership

A receivership, while it may be needed to repair bad conditions, can be one of those bad things that can turn into something good. When a landlord abandons a building or files for bankruptcy, tenants can organize, grab onto all the uncertainty in their situation, and make their homes better places to live.<sup>96</sup>

As a tenant, you may be able to work with your receiver to help motivate a bank to sell to a nonprofit organization at a below-market price. Under both federal and state laws called the Community Reinvestment Act (CRA), the government requires banks to meet the credit and banking needs of low- and moderate-income people in the bank's "designated lending area."<sup>97</sup> Tenants have used CRA to negotiate below- market loans in order to buy their buildings.

A tenant group can also become a nonprofit organization and try to purchase the building itself. There are resources to provide tenants with legal help and groups that help tenants develop strong, democratic, and effective organizations. For information about where to get legal services and tenant-organizing assistance, see the **Directory**.

You can also seek out local city officials from the Board of Health or the community development department to get their help in moving the banks to act responsibly in terms of providing financing on good terms.<sup>98</sup> Local governments may have Community Development Block Grant funds which tenants can use to hire organizers, staff, and experts to help them purchase their building.

## **What If Your Building Is Condemned**

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If a housing inspector finds that all or a part of the building you live in is "unfit" to live in and that repairs cannot be made while you are living in the property, the Board of Health may issue a finding that the dwelling or a portion of the dwelling is unfit for human habitation.<sup>99</sup> This finding may lead to the Board of Health's ordering that the building be condemned, that the landlord close up the property, and that the occupants vacate the portion that is unfit.

### **1. Right to a Hearing**

If a Board of Health intends to condemn a building, it must first send all occupants a written notice. This notice must tell tenants that the Board of Health will hold a public *hearing* to consider whether the property or a specific part of the property should be condemned and why it should be condemned. The notice must also include a copy of the inspection report and tell you when a hearing is scheduled.<sup>100</sup>

At the hearing, the landlord, any occupant, or any other person affected may speak up and oppose the condemnation. As a tenant, you may present witnesses and documents showing why the building should not be condemned. The best way to challenge a condemnation is to show that the property is structurally sound and can be safe if certain repairs are made. You can do this by having a person who is trained to inspect residential property testify about the structural integrity of the building at the hearing.

Note: If an inspector determines that the conditions are so dangerous, then there is no advance public hearing but a tenant may request one to contest the determination.<sup>101</sup>

## 2. Challenging an Order to Condemn

At the same time or any time after a Board of Health determines that a building is unfit for human habitation, it may issue an order to condemn. This order will state that the building must be vacated and that the landlord must secure it.<sup>102</sup>

As a tenant, you may challenge the Board of Health's order to condemn at a Board of Health hearing or by going to court.<sup>103</sup> There are several things you can do at court.

- § If the conditions are not too severe, and your landlord has adequate funds, you can ask the judge to order the landlord to make the repairs necessary to avoid condemnation.
- § If the conditions are not too severe, but the landlord does not have adequate funds, you can ask the judge to appoint a *receiver* to manage and repair the property (see section called **Receiverships**).
- § If you are able to get an order that the repairs get made and the apartment not be condemned, you will probably need to leave your apartment for a period of time in order for the repairs to be made. If you have not already sought the help of an attorney, you should do so at this point. If, within one year of the order to condemn, an owner has not made the necessary repairs, the Board of Health may order the building to be demolished.<sup>104</sup>

## 3. Moving Expenses and Other Help

If the Board of Health condemns your building under the state Sanitary Code and orders you to vacate it, the State Sanitary Code requires (as of May 12, 2023) that the owner provide the affected tenants with comparable suitable housing.<sup>105</sup> This housing must be provided for the shorter of:

- § The remaining term of the lease or rental period;
- § Until the time that the residence is deemed suitable for habitation by the Board of Health; or
- § When the occupant finds alternative permanent housing and voluntarily terminates the tenancy.

If the Board of Health condemns your unit under the state Sanitary Code and orders you to vacate, the city or town in which the building is located is required to provide occupants with relocation assistance and a relocation payment for their moving expenses unless such payment is otherwise provided.<sup>106</sup>

Tenants forced to leave their apartments due to violations of the state Sanitary Code may apply for Emergency Assistance shelter from your local Department

of Transitional Assistance office. For more information see Emergency Assistance Advocacy Guide at [MassLegalHelp.org/homelessness/emergency-assistance/advocacy-guide](https://www.masslegalhelp.org/homelessness/emergency-assistance/advocacy-guide)

You can also apply for emergency (state public and maybe federal public or Section 8) housing from your local housing authority or another housing authority.<sup>107</sup> Privately owned developments with a mortgage loan from MassHousing also must provide a priority for apartments to those displaced by code enforcement but there are often long wait lists.<sup>108</sup>



## Endnotes

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1. The state Sanitary Code is a regulation that applies to the whole state. It has two chapters: Chapter I: General Administrative Procedures, and Chapter II: Minimum Standards of Fitness for Human Habitation. The Massachusetts Department of Public Health, the state agency which is responsible for enforcing the state Sanitary Code, may from time to time change or amend these regulations. Chapter I is printed in 105 C.M.R. §400.000; Chapter II is printed in 105 C.M.R. §410.000.
2. [105 C.M.R. §410.001](#).
3. See [Building Code \(780 C.M.R.\)](#), [Mass. Comprehensive Fire Safety Code \(527 C.M.R. §1.00\)](#), [Electrical Code \(527 C.M.R. §12.00\)](#), [Plumbing Code \(248 C.M.R.\)](#), [Lead Poisoning Prevention and Control \(105 C.M.R. §460.000\)](#), and [cross metering of utilities \(220 C.M.R. 29.00\)](#). All of these codes are available for purchase from the State House Bookstore and searchable online by regulation number at: <https://www.sec.state.ma.us/divisions/bookstore/numerical.htm#100>
4. [105 C.M.R. §400.015](#).
5. Some cities/towns with local laws are: Boston, Chelsea, Malden, Milton, Newton, Scituate, and Weymouth. To find out if your city or town has a local law you can (1) call the Board of Health or (2) check the city/town's website (under the clerk's office or the board of health).
6. See *Coder v. Lauer*, Gloucester District Court, 870236 (D'Avolio, J.)(1987), where court found that a rental agreement made without the benefit of a certificate of occupancy was illegal. The landlord was precluded from recovering rent which had been withheld by the tenant. However, in general, where an apartment is "illegal" the court will look at the factors described in *Town Planning and Engineering Associates, Inc. v. Amesbury Specialty Co., Inc.*, 369 Mass. 737 (1976) and *Hastings Associates Inc. v. Local 369 Building Fund*, 42 Mass. App. Ct. 162 (1997) to determine if all or part of the rent must be returned. See, e.g, *Camp v. Guilbert*, Hampden Housing Court, No. 90-CV-0146 (Abrashkin, J. Nov. 12, 1991).
7. [Boston Housing Auth. v. Hemingway](#), 363 Mass. 184 (1973).
8. [Boston Housing Auth. v. Hemingway](#), 363 Mass. 184, 199 (1973); G.L. c. 111, §127K; See also [Crowell v. McCaffrey](#), 377 Mass. 443 (1979).
9. See endnote 8. This may also be a violation of [G.L. c. 93A](#) (the Consumer Protection Law).
10. *Haddad v. Gonzalez*, 410 Mass. 855 (1991)[cannot nullify the warranty of habitability by giving a discount in rent]; *McKenna v. Begin*, 3 Mass. App. Ct. 168, 170-171 (1975).
11. [105 C.M.R. §410.630](#) sets out the conditions that may endanger or impair the health, safety, or well-being of tenants. Any violation not included in this list has the potential to fall within this category, given the specific conditions.

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12. [Boston Housing Auth. v. Hemingway](#), 363 Mass. 184, 200-01 (1973). If a tenant goes to court, a judge will use several factors to decide whether the lease should be rescinded. These factors include: (1) the seriousness of the defective conditions and the effect on the habitability of the residence; (2) how long a tenant has had to live with the defective conditions; (3) whether or not the defects could be fixed within a reasonable amount of time; and (4) whether or not the tenant is responsible for the defective conditions.
  13. [Cruz Mgmt. Co. v. Wideman](#), 417 Mass. 771, 775 (1994); [Darmetko v. Boston Housing Auth.](#), 378 Mass. 758 (1979); [McKenna v. Begin](#), 5 Mass. App. Ct. 304 (1977). The damages are the difference between the “value of the premises as warranted” and the value of the premises in their actual (defective) condition. Specifically, a judge determines what major code violations there are in your apartment (and associated common areas), the time period each violation existed, and the percentage by which your use and enjoyment of the apartment has been diminished by the existence of these violations. The court then calculates the amount the landlord owes you applying this percentage to the value as warranted for each month in which each serious condition existed (after notice to the landlord) and totaling those amounts. See [McKenna v. Begin](#), 5 Mass. App. Ct. 304 (1977). The value as warranted is generally the “agreed upon rent” but could be higher. [McKenna v. Begin \(I\)](#), 3 Mass. App. Ct. 168 (1975); [Haddad v. Gonzalez](#), 410 Mass. 855 (1991). Tenants with subsidies are entitled to damages calculated on the basis of the full contract rent, not just the tenant's portion of the rent. [Cruz Mgmt. Co. v. Wideman](#), 417 Mass. 771, 774-775 (1994). The damages for the breach of the implied warranty of habitability may be doubled or trebled under the Consumer Protection statute (G.L. c. 93A) depending on the circumstances.
  14. [G.L. c. 186, §14](#); [Darmetko v. Boston Housing Authority](#), 378 Mass. 758 (1979).
  15. [G.L. c. 186, §14](#); [Charles E. Burt, Inc. v. Seven Grand Corp.](#), 340 Mass. 124 (1959); [Homesavers Council of Greenfield Gardens, Inc. v. Sanchez](#), 70 Mass. App. Ct. 453 (2007) (providing that actual and consequential damages can include emotional distress). In order for you to recover under G.L. c. 186, §14, the landlord does not have to intentionally try to disturb you; it is their conduct and not their intentions that are controlling. [Blackett v. Olanoff](#), 371 Mass. 714 (1977). For example, the fact that an owner failed to provide heat because they could not afford to buy heating oil does not diminish the tenant's right to recover for the loss of “quiet enjoyment” that occurred during the time the apartment was unheated. [Lowery v. Robinson](#), 13 Mass. App. Ct. 982 (1982). The rent for tenants with subsidies is the full contract rent and not the tenant’s portion of the rent. [Simon v. Solomon](#), 385 Mass. 91, 111, n. 13 (1982).
  16. [South Boston Elderly Residences, Inc. v. Moynahan](#), 91 Mass. App. Ct. 455, 463 n.6 (2017); [McKenna v. Begin](#), 5 Mass. App. Ct. 304 (1977); [McKenna v. Begin](#), 3 Mass. App. Ct. 168, 173-174 (1975).
  17. [G.L. c. 239, §8A](#).
  18. See endnote 16. See also [Henriquez v. Ahearn & Kocher](#), Northeast Housing Court, No. 18-SP-4781 (Dalton, F.J., Apr. 23, 2019); [Bank One National Association v. Colon](#), Hampden Housing Court, No. 00-SP-1309 (Fein, J., August 1, 2000) (landlord's liability for breach of warranty attaches when it purchased the premises); [Young v. Jackson](#), Boston Housing Court, No. 40979 (Abrashkin, J., April 10,

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- 1987)(liability for violations attaches at the time of transfer of ownership); *Pastryrak v. Williams*, Worcester Housing Court, No. 86-SP-0123 (Martin, J., Jan. 24, 1986).
19. [G.L. c. 186, §15B\(1\)\(a\)](#). Although the statute refers to a “lease”, this probably also applies to any written tenancy agreement.
  20. A tenant must give the landlord reasonable access, upon reasonable notice and if possible, by appointment, to make repairs required by the state sanitary code. [105 C.M.R. §410.003\(E\)](#).
  21. [G.L. c. 186, §15B\(1\)\(a\)](#); [940 C.M.R. §3.17\(6\)\(e\)](#).
  22. [G.L. c. 186, §15B\(1\)\(a\)](#); [940 C.M.R. §3.17\(6\)\(e\)](#).
  23. See *Strycharski v. Spillane*, 320 Mass. 382, 385 (1946) (in the absence of an agreement that the landlord might enter to inspect, the landlord has no such right); *Young v. Garwacki*, 380 Mass. 162, 170 (1980). See also *Milton Hospital and Convalescent Home v. Board of Assessors of Milton*, 360 Mass. 63, 68 (1971).
  24. See endnote 20.
  25. [105 C.M.R. 410.003 \(E\)](#).
  26. No statute or regulation gives the landlord a right to a key. Under case law, the tenant has exclusive right to possession. *Strycharski v. Spillane*, 320 Mass. 382, 385 (1946); *Young v. Garwacki*, 380 Mass. 162, 170 (1980). See also *Milton Hospital and Convalescent Home v. Board of Assessors of Milton*, 360 Mass. 63, 68 (1971)
  27. [105 C.M.R. §410.600\(C\)\(2\)](#).
  28. [105 C.M.R. §410.600 \(C\)\(1\)](#)). There is a list of serious problems which require a 24-hour response from the Board of Health found at [105 C.M.R. §410.630\(A\)](#).
  29. [105 C.M.R. §410.600 \(A\)\(1\)](#).
  30. [G.L. c. 185C, §16](#). These were suspended during COVID-19 but resumed as per the Housing Court’s Standing Order effective June 5, 2023. See Interim Housing Court Standing Order 1-23, paragraph 3 (i)(B).
  31. A landlord may not retaliate against you for doing these things. [G.L. c. 186, §18](#); and [G.L. c. 239, § 2A](#).
  32. [105 C.M.R. §410.600 and §410.620](#).
  33. [105 C.M.R. §410.620\(B\)](#).
  34. [105 C.M.R. §410.620\(C\)](#).
  35. [G.L. c. 111, §127B \(¶6\)](#); [105 C.M.R. §410.680\(C\)](#)
  36. [105 C.M.R. §410.610 \(report\)](#); [§410,640 \(order\)](#), and [§410.670 \(order\)](#)
  37. [105 C.M.R. §410.630](#).
  38. [105 C.M.R. §410.640\(A\)\(1\)](#).
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39. [105 C.M.R. §410.640\(A\)\(2\)](#).
  40. [105 CMR 410.680 \(C\)](#); [G.L. c. 111, §127B ¶6](#)
  41. [105 C.M.R. §410.660](#). If your landlord fails to respond to an order of the Board of Health involving a very serious condition, you can request that the Board of Health repair the property. The Board is permitted by law to repair or clean the property and then charge the landlord for any and all expenses incurred. [G.L. c. 111, §127B](#); [105 C.M.R. §410.940](#).
  42. [G.L. c. 111, §127B](#); [105 C.M.R. §410.800](#); [105 C.M.R. §400.500](#) (describing hearing rights). See also the Notice of Occupants' Legal Rights and Responsibilities (revised November 2023) for helpful chart with deadlines available at: [mass.gov/lists/housing-community-sanitation#occupants%E2%80%99-legal-rights-and-responsibilities-](https://mass.gov/lists/housing-community-sanitation#occupants%E2%80%99-legal-rights-and-responsibilities-).
  43. [105 C.M.R. §410.800\(B\)](#).
  44. [105 C.M.R. §410.840](#) .
  45. [105 C.M.R. §410.860](#).
  46. [G.L. c. 239, §8A](#).
  47. *Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973); *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196 (1979).
  48. See *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196 (1979).
  49. [G.L. c. 239, §8A](#).
  50. [G.L. c. 239, §8A](#).
  51. [G.L. c. 239, §8A](#).
  52. [G.L. c. 239, §8A](#).
  53. *Davis v. Comerford*, 483 Mass. 164 (2019).
  54. *Darmetko v. Boston Housing Auth.*, 378 Mass. 758 (1979); *McKenna v. Begin*, 5 Mass. App. Ct. 304 (1977).
  55. [G.L. c. 239, §8A](#).
  56. The court costs are the filing fee (\$135 in Housing Court and \$195 in District Court); \$5.00 for the summons; \$22-\$27 for e-filing, and the costs of service of the complaint and the first court event notice (which varies but is generally about \$45-65 per defendant per document). Check the court file for the returns of service which will indicate the costs of service.
  57. [G.L. c. 111, §127L](#) is the basis for the entire repair and deduct section. See also [940 C.M.R. §3.17\(1\)\(h\)](#).
  58. The part of the state Sanitary Code at [105 C.M.R. §410630](#) sets out those conditions which are automatically considered to "endanger or materially impair the health or safety, and well-being" of the tenant.

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59. [G.L. c. 111, §127L \(¶3\)](#).
60. [G.L. c. 111, §127L \(¶3\)](#).
61. [G.L. c. 111, §127L \(¶3\)](#).
62. See *McKenna v. Begin*, 5 Mass. App. Ct. 304 (1977).
63. *Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). Under the repair and deduct statute, [G.L. c. 111, §127L \(¶1, last sentence\)](#), tenants may break the tenancy or lease agreement, pay only the fair rental value, and vacate the premises in a reasonable period of time.
64. The superior, housing, and district courts are explicitly given the power to appoint receivers under [G.L. c. 111, §127I](#). Housing courts' jurisdiction is reaffirmed by [G.L. c. 185C, §3](#). District courts have authority under [G.L. c. 218, §19C](#).
65. [G.L. c. 111, §127C](#).
66. See endnote 81 as to the costs.
67. [G.L. c. 111, §127F](#).
68. [G.L. c. 111, §127F](#).
69. [G.L. c. 111, §127B](#).
70. [G.L. c. 111, §127I](#) explicitly gives the power to grant injunctions and temporary restraining orders to the superior courts, housing courts, and district courts. Housing courts also have the power under [G.L. c. 185C, §3](#). District courts likewise have the power to grant injunctive relief necessary to enforce [G.L. c. 111, §§127A-127K](#) under [G.L. c. 218, §19C](#).
71. Some lower courts (especially the Western Housing Court) have ordered the landlord to provide and pay for temporary housing (such as a hotel, Airbnb or other unit in the building) and a meal allowance where the conditions prevent occupancy, at least where the conditions and/or delay in repairs are due to the owner's negligence or other wrong doing. *Winspeare v. Woods et al*, Western Housing Court, No. 23-CV-1051 (Fields, J. Dec. 26, 2023); *Devine v. Longhill Gardens North Brooklyn Mgmt*, Western Housing Court, No. 23-CV-1004 (Fields, J. Dec. 4, 2023); *Caballero v. Nagatti*, Central Housing Court No. 23H85CV00653 (Mitchell-Munevar, J. Nov. 3, 2023); *Jardine v. BCFC Park LLC*, Northeast Housing Court, No. 22H77CV000226 (del Puerto, J., Sept. 26, 2022); *Christian Center Housing Corp. et al v. Hebert*, Western Housing Court, No. 21H79CV000459 (Winik, J., Sept. 7, 2022)[landlord may be obligated to provide a tenant with alternative housing as an injunctive remedy where apartment rendered uninhabitable due to landlord's breach of warranty or negligence, citing [G.L. c. 186, §14](#), but here fire started by tenant so injunction denied]; *Stallings v. Johnson et al*, Eastern Housing Court No. 22SP4472 (Kelleher, J., April 14, 2022); *Adshade v. Northbrook Senior LP et al*, Housing Court, Central Division, No. 20H85CV000242 (Kane, J., May 22, 2020); *Reno v. Hayes*, Somerville District Court, No. 1410CV62 (Yee, J., Feb. 6, 2014); *Pagan et al v. Chateau Associates of Springfield LP*, Western Housing Court, No. 05-CV-493 through 05-CV-500 (Fein, J., October 28, 2005). The board of health may also so order the landlord (as was done in Randolph), see *Federal National Mortgage*

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*Association v. Brilliant*, Quincy District Court, No. 1356-SU-343 (Coven, J., March 11, 2014) or the court may order the city to relocate the tenants but at the landlord's expense, *Grundberg v. Charles Gill*, Worcester Housing Court, No. 98 CV 943 (Martin, J., March 11, 1999). However, at least one Appeals Court single justice has held, in a series of cases from Eastern Housing Court, that there is no such obligation for the owner to actually provide (and pay in advance for) such temporary housing although the landlord may later be liable to reimburse the tenant for temporary housing costs. See, e.g., August 29, 2022 order in *Beans v. Water's Edge L.P.*, Appeals Court, No. 2022-J-0464 (Sacks, J.) However, as of May 12, 2023, owners are now required to provide such temporary housing where the unit is condemned under the state sanitary code. 105 C.M.R. § 410.900 (E). The lease may also require the owner to provide temporary housing where the tenant cannot occupy due to repairs. *Adams v. Taburro*, Eastern Housing Court, No. 23H84CV000099 (Malamut, J., February 21, 2023); State public housing lease, Section VII Hazardous Condition [must offer temporary unit if available and the conditions not caused by tenant, household member, or guest]. Also, the City of Cambridge requires an owner to provide an equivalent temporary unit at the building when an Inclusionary Zoning restricted unit is taken out of service for repairs and other localities may have similar requirements for zoning restricted units.

72. [Commonwealth v. Haddad, 364 Mass. 795 \(1974\)](#).
73. [Commonwealth v. Haddad, 364 Mass. 795 \(1974\)](#), explains the legal basis for a citizen's complaint for code violations.
74. [105 C.M.R. §400.930](#).
75. [G.L. c. 111, §§127B-127O](#) sets forth the relevant provisions regarding receivership. See also [Mass. R. Civ. P. Rule 66](#). For additional information on receiverships, see the [Mass. Attorney General's Abandoned Housing Training Manual](#) and "How to Take the Distress Out of Abandoned Housing" (Mass. Continuing Legal Education, 1998).
76. [G.L. c. 111, §127C](#); [G.L. c. 218, §19C](#) provides that district courts have the power to appoint receivers. Receivers can also be appointed under [G.L. c. 186, §14](#). See also [G.L. c. 223, §130](#) for law on dissolution of certain attachments by a receiver.
77. See [G.L. c. 111, §127C](#) for the required content of the petition.
78. Because receiverships are a remedy of last resort, it is best to have as much documentation as possible so that when you present a petition to the court, a judge will see what steps you have already taken to get repairs made.
79. See [G.L. c. 111, §127D](#).
80. See [G.L. c. 111, §127I ¶2](#).
81. The filing fee for a tenant petition is \$2 ([G.L. c. 111, §127D](#)), plus the \$15 surcharge ([G.L. c. 262, §4C](#)). The filing fee for a "regular" civil complaint in housing court is \$135, district court is \$195, and superior court is \$240 (including the surcharge). Service costs vary, but are generally around \$45-65 per defendant.
82. [G.L. c. 261, §27A-G](#).

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83. If a tenant paid rent into court under [G.L. c. 111, §127F](#) (even where no receiver was appointed), then the tenant cannot be evicted except for tenant fault for the nine months after the court order has ended. See the uncodified statute at [Chapter 404 of the Acts of 1968 \(approved June 18, 1968\)](#), and *Olde Holyoke Development Corporation v. Morales*, Hampden Housing Court, 90-SP-01291-H (Abrashkin, J., July 3, 1990).
  84. In *Belizaire v. Hsu and Chen*, Cambridge District Court, Civil Action 0152-CV-0629 (Sprague, J., April 10, 2001), the court allowed the tenant's motion to authorize the tenant and the Cambridge Housing Authority to pay the last agreed-upon rent into court.
  85. See [G.L. c. 111, §127I](#).
  86. *Rogers v. Smith*, Boston Housing Court, CA-27890, CA-27891, CA-27892, CA-27893, Order for Appointment of Receiver (December 8, 1989).
  87. *Mena v. Shapiro*, Hampden Housing Court, LE-3696-89 (Order of November 16, 1989).
  88. *Rogers v. Smith*, Boston Housing Court, CA-27890, CA-27891, CA-27892, CA-27893, Order for Appointment of Receiver (December 8, 1989).
  89. *Mena v. Shapiro*, Hampden Housing Court, LE-3696-89 (Order of November 16, 1989).
  90. See paragraph 7 of the undated Order (issued in June 1987) in *Pires et al. v. Ribeiro*, Cambridge District Court, 2530/06 (Menton, J.), where the court authorized the receiver to obtain rental subsidies for all the units for a 10-year period. The receiver then obtained state project-based rental subsidies for most of the rental units. Although such subsidies are no longer available, there are Section 8 subsidies which could be attached to rental units.
  91. In *Harris v. Houde*, Worcester Housing Court, CA-90-CV-0052 (Order of February 28, 1990), the Fitchburg Community Development Corporation volunteered to become receiver of eight properties without requesting any additional fees for its services.
  92. See, e.g., *Garcia v. Shea*, Hampden Housing Court, CA-90-CV-0022-H (Order of March 8, 1990), where the receiver, V.P.M., Inc., was paid 6% of the collected rents over and above its out-of-pocket expenses, but only after securing vacant units and making emergency repairs.
  93. Pursuant to [G.L. C. 111, §127I](#), receivers can have a lien with priority over all other liens except municipal liens. Such liens may be assigned to lenders for purposes of securing loans for repairs, operations, maintenance, and management of priority. See also *Turner v. State Wharf and Storage Co.*, 263 Mass. 92 (1928).
  94. In Lowell, the Coalition for a Better Acre, a nonprofit community development corporation, when seeking financing for the redevelopment of a 267-unit subsidized apartment complex, was instrumental in creating the Lowell Development Financial Corporation (LDFC), which set up a special loan pool to increase affordable housing development in Lowell. Start-up funds for LDFC came from nine local banks. For information about how the loan pool was set up, see *Everybody in the Pool*,

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HOUSING MATTERS, Vol. 4, #3 (December 1990), published by the Massachusetts Law Reform Institute. The Mass. Attorney General's office uses revolving loans from the Chelsea Restoration Corporation.

95. In *Garcia v. Shea* (endnote 92), *Mena v. Shapiro* (endnote 87), and *Cardona v. Sheedy*, Hampden Housing Court, CA-91-CV 0181 (September 10, 1991), mortgagees of the properties involved agreed to advance to the receivership money for repairs to the extent the rent money collected was insufficient. Depending upon the language of the bank's mortgage agreement with the landlord, money given by the bank to the receiver may be added to the landlord's mortgage and may have the same priority as the bank's original mortgage.
96. In *Olde Holyoke Dev. Corp. v. Morales*, Hampden Housing Court 90 SP 01291 H (July 3, 1990), the court held that, pursuant to [Chapter 898 of the Acts of 1965, Section 4](#), as amended by [Chapter 404 of the Acts of 1968, Section 1 \(approved June 18, 1968\)](#) after a receivership ends, for nine months following the receivership, the new owner was prohibited from terminating the tenancy without a reason. The reasoning of this decision would presumably also prohibit rent increases during this nine-month period.
97. Community Reinvestment Act of 1977, as amended, [12 U.S.C. §§2901 et seq.](#) The state community reinvestment law is found at [G.L. c. 167, §14](#). For more about federal CRA history, regulations, and how to access CRA lending information, see the Federal Financial Institutions Examination Council website at <http://www.ffiec.gov/cra/default.htm>.

You may want to call the bank and ask to speak with its Community Reinvestment Act (CRA) officer. Every bank appoints an officer to monitor compliance with the CRA. If a bank has been unresponsive to your requests for assistance, you may want to write a letter to the bank, outlining all of the relevant facts and specifically stating what you would like the bank to do. At the end of the letter, ask the bank to "include your letter in their Community Reinvestment Act Public Comment File." As a result of making this request, the bank will be required to show your letter to government officials who monitor the bank's compliance with this law. You may also want to send a copy of your letter to the monitoring agency. Remember to keep a copy of the letter for future reference.

98. In Fitchburg, tenants of the *Harris* receivership, [*Harris v. Houde*, Worcester Housing Court, CA-90-CV-0052-H (Order of February 28, 1990)], worked closely with city officials in their efforts to get the bank to deal with three properties for which it held mortgages; the Fitchburg Board of Health pursued the bank by issuing correction orders regarding the properties; the Planning Department pursued contacts with bank officials in the unrealized hopes of negotiating the properties' sale to the CDC; and the mayor wrote a letter to the bank, attaching a local paper's editorial condemning the bank's inaction.
99. [105 C.M.R. §410.650](#). See also definition of "Condition Making a Unit Unfit for Human Habitation" at [105 C.M.R. §410.010](#).
100. [105 C.M.R. §410.650](#). With one exception, tenants must receive at least 5 days' notice of the public hearing to determine whether a unit is unfit. [105 C.M.R. §410.650\(D\)](#). The exception is where the Board of Health determines, in writing, that the danger to life or health is immediate in which case there is no hearing in



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- advance but the tenant may request one to contest the determination. 105 C.M.R. § 410.650 (E).
101. [105 C.M.R. § 410.650\(E\)](#). See also endnote 71 (relating to where some courts have ordered temporary housing prior to this new provision and where the unit was not formally condemned).
102. If a building is not occupied, the owner and any affected person at this point has a right to a public hearing before the Board of Health.
103. [105 C.M.R. §410.860](#).
104. [105 C.M.R. §410.831\(F\)](#).
105. [105 C.M.R. §410.900\(E\)](#).
106. [G.L. c. 79A, §13](#). The state housing agency, formerly Department of Housing and Community Development (DHCD) and now Executive Office of Housing and Livable Communities, then pays for half of the cost of moving by reimbursing the local Board of Health. The Bureau of Relocation (BOR) administers the state relocation assistance reimbursements. See [760 C.M.R. §27. 86 Federal Register 40227 \(July 27, 2021\)](#) contains the current fixed residential moving cost schedule.
107. Where you are being displaced for enforcement of the state sanitary code, you would qualify as an emergency for state public housing and state rental subsidies at any local housing authority that has such housing (but should apply through the online centralized system known as CHAMP). In addition, some housing authorities have similar provisions for emergency status for federally funded public housing and/or Section 8. You would need to check with the individual housing authority as to the type of public housing it has (and if federal, whether it provides for emergency status based on condemnation or displacement due to code enforcement).
108. See [MassHousing Tenant Selection Plan, rev. 2022](#); see also Appendix to G.L. c. 23A, Section 1-7 available in the Acts and Resolves at [St. 1966, Chapter 708, Section 1-7](#), p. 717, which provides: "Tenant selection plans provide that as between applicants equally in need and eligible for occupancy of the unit, preference shall be given to persons displaced by public action or natural disaster...."