

Chapter 11

Moving Out

Legal Tactics: Tenants' Rights in Massachusetts
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Moving Out

Tenants' Rights in Massachusetts

When you move out of your apartment, it is a good idea to prepare ahead of time to avoid problems with your landlord. There are laws about when to tell your landlord you are leaving, security deposits, and more.

How can I get ready to move out?

1. Tell your landlord in writing that you are leaving. Keep a copy.
2. Remove your belongings and clean the apartment.
3. Repair any damage you caused.
4. Do a walk-through with your landlord.
5. Review your Statement of Condition if you signed one.
6. Take pictures before you leave.
7. Return your keys on or before your move-out date.
8. Arrange for the landlord to return your security deposit.

For a more detailed and longer checklist, see **Moving Out Checklist (Form 17)**.

When do I need to tell my landlord that I'm moving out?

If you do not have a lease

Tell your landlord **1 full** rental period before you move out (this is usually **30 days**).

If you cannot give 30 days' notice, talk to your landlord and explain your situation. They may agree to your move-out date.

If you have a written lease

Some leases renew automatically. Some do not. Read your lease to find out. See **Tenants with Leases in Chapter 4: Kinds of Tenancies** to learn more.

If your lease renews automatically, you must give your landlord written notice that you are not renewing. Your lease says the number of days' notice you must give. Many leases require notice 30 days before the last day of the lease. Some require more.

You may have a lease that ends on a certain date and does not renew automatically. If you plan to move out by the end date on the lease, you do not have to give the landlord notice.

If you live in state public housing

You must mail or deliver a notice in writing to the housing authority at least 30 days before the date you want to move out.

If you live in federal public housing

Check your lease to see what you are required to do. The process may be different depending on your housing authority, but it is usually the same as state public housing.

What if I need to move out before my lease ends?

If you live in private housing

You have options:

- **Surrender.** Talk to the landlord. They may agree to an earlier move-out date. If so, send a note, email, or text that says you are “surrendering” the apartment. Ask the landlord for a written acceptance of the “surrender.”
- **Bad conditions.** If your apartment has unsafe or unhealthy conditions that your landlord does not fix, the law sometimes allows you to end your lease and move out. You must follow certain legal steps to have the right to break your lease because of bad conditions. See **Break Your Lease in Chapter 8: Getting Repairs Made.**
- **Sublet.** If your lease allows, you can sublet or assign your lease. But be careful. If the subletter damages the apartment or does not pay the rent, **you** are responsible. Even if the lease says no subletting or assigning, some tenants sublet anyway. If you do this, sign an agreement with the subletter that says they may have to move out if the landlord finds out about the sublet and does not agree.

If you or someone in your household is a survivor of domestic violence, stalking, or rape, you may be able to break your lease. See MassLegalHelp.org/DV-lease.



For more, scan the QR code for **Legal Tactics, Chapter 11: Moving Out.** MassLegalHelp.org/LT-Moving-Out

If you live in public housing

You may be able to break your lease early if:

- **You have a disability or are a survivor of domestic violence.** You will need to explain to the housing authority why you need to get out of your lease.
- **The housing authority refuses to fix very serious conditions in your apartment.** Before you leave, have a local board of health inspect the apartment to document how bad the conditions are.
- If things the housing authority does or doesn't do have **interfered with what is called your "quiet enjoyment,"** and you have to move right away, you may be able to do so without legally breaking your lease.

Getting your security deposit back

- If you leave your place in the same condition as you found it, the landlord **must** return 100% of your security deposit, with interest, within **30 days** after you move out or your lease ends.
- When you move out, send your landlord a letter that asks them to return your security deposit. Give them an address to send the check or ask them how you can pick up your check. Keep a copy of your letter.

To learn more about security deposits, including what to do if your landlord does not give you yours back, see **Chapter 3: Security Deposits.**

Moving Out

by Pattie Whiting

Italicized words are in the Glossary

The key to leaving your apartment without problems is careful and thorough preparation ahead of time. This chapter will tell you what steps you should take before you move out or sublet your apartment. To help you get ready before you leave, use the **Moving Out Checklist (Form 17)**.

Your Responsibilities When You Leave

1. If You Have a Lease

If you have a written *lease* and you want to move out permanently, there are two questions you need to ask yourself:

- When is my lease supposed to end?
- When do I want to move out?

a. Moving at the End of Your Lease

For a written lease to be valid, it must include the date on which your *tenancy* is to end. If it does not contain an end date, it is a written *tenancy at will* agreement and you should read the next section in this chapter, called **If You Do Not Have a Lease**.

If you have a valid lease and you plan to leave on the date that your lease ends, look in the first 10 or 15 lines of the lease to see whether your lease automatically extends itself. If it does, it will say something like:

. . . this lease will continue in full force and effect after the above term from year to year until either the Lessor (landlord) or the Lessee (tenant) on or before the first day of the month in any year, gives to the other written notice of intention to terminate this lease.

If your lease automatically extends, you have what is called a "self-extending lease," and you must give your landlord notice that you are leaving. Your notice must be in writing, and you must deliver it to the landlord by a certain date. Check your lease to see when and how you need to give the landlord this notice. Usually, one month's notice is required. If you fail to properly notify your landlord that you are leaving, your lease will be extended for another term and

your landlord may be able to hold you responsible for paying rent after you move out.

If your lease does not automatically extend itself, then your tenancy simply ends on the last day of the lease. In this situation, you do not have to give your landlord notice that you are leaving. For more information about self-extending lease clauses, see **Chapter 4: What Kind of Tenancy Do You Have - How Long Is My Lease Valid.**

b. Moving Before the End of Your Lease

If you want to break your lease and move out before it ends, the situation is somewhat tougher. By signing a lease, you agree to pay the landlord rent for however long your lease is.

Your lease may also have a clause that says that if you leave before the end of your lease, you are responsible for the rent after you leave through the end of the lease term. Despite this clause, there are several ways you may be able to end your lease early and reduce the amount of rent you may owe if your landlord tries to sue you for all the money due on the lease when you move out. Each of the methods of ending your lease early listed below involve different risks in terms of your responsibility for rent. You should carefully consider the risks when deciding whether to leave your apartment before the end of your lease.

1. The Landlord Agrees to Your Moving Out

You can contact the landlord or their property manager and tell them that you must move out before the end of your lease. Propose a specific date. The landlord may agree that you can leave early. If they do agree, immediately send them a written notice (email, text or letter) thanking them for agreeing to let you move early and saying that you will be "surrendering" the apartment by (state the date) and ask for written "acceptance of the surrender."¹

You must use these specific words. Then make sure the landlord sends you back something in writing (email, text or letter) saying that they have agreed to your leaving by a specific date. Once this date has arrived and you have moved all of your belongings out of your apartment, you must return the keys to your landlord. So long as you have received the letter from your landlord accepting early surrender of your apartment and returned the keys on or before the agreed upon date, your landlord cannot hold you responsible for the rent after you leave.²

You should be careful about just accepting a verbal agreement with your landlord that it's okay to leave early, even if you and your landlord are on good terms. If they will not send back a signed copy of the letter saying they agree that you can leave early, you should consider whether

you want to assume the risk that they may later decide to try to hold you responsible for the rent after you move out.

2. The Landlord Refuses to Make Repairs

If there are major Sanitary Code violations or **seriously** defective conditions in your apartment, you have notified the landlord **and** a city or town housing inspector of the violations or conditions, and the landlord has not repaired them promptly, you can legally end (*void*) the lease.³ However, before you can legally end (*void*) the lease, you **must** take the specific steps outlined below:

- You must have a local housing inspector inspect the apartment and write up a report documenting the conditions that violate the state Sanitary Code.⁴ For information about how to get a housing inspection, see **Chapter 8: Getting Repairs Made**.

The landlord must receive the inspection report from the housing inspector and have an opportunity to complete the repairs before you can break the lease. While the housing inspector is supposed to serve a copy of the report on your landlord, it is a good idea for you to send a copy of the report to your landlord so they can't later say that they didn't get it. Include with the report a letter detailing any prior requests that you made to the landlord to make repairs and how long the problems cited by the inspector have lasted. After receiving the inspection report, the landlord must begin all repairs by the date specified in the inspector's report or contract with a third party to have repairs made within a specified period of time.⁵

- If the landlord has not repaired or substantially completed all necessary repairs within the time specified in the inspection report, you can choose to break your lease and move out of your apartment, but you must move out "within a reasonable time."⁶ It is unclear what is "a reasonable time" in which to move out because of poor conditions.
- Although it is not required, before you move out, you should also send your landlord a letter giving them written notice of the reason why you are moving out. Below is a sample letter.

Dear Landlord,

This is to inform you that because of the multiple Sanitary Code violations existing in this apartment that you have failed to repair, we can no longer live in this apartment and are moving out on _____ (date).

You had notice of these violations through our letters to you and the

housing inspection report of _____ (date). As you have failed to make any repairs, you have breached your warranty of habitability and we hereby choose to void the tenancy agreement between us.

You should also take pictures of the problems in your apartment so if your landlord later decides to sue you for breaking your lease, you will have additional proof that it was the landlord who broke the lease by not providing a safe and sanitary apartment.

3. **You Assign Your Lease**

You may be able to turn over (*assign*) your lease to another person. When you assign a lease, you move out permanently and a new tenant moves in for the remainder of your lease term. This person is referred to as the "assignee." Both you and the new tenant will be responsible to the landlord for the condition of the apartment and the rent. However, you should check your lease before deciding whether to assign, because many leases prohibit tenants from assigning their lease, or allow assigning only with the landlord's permission. For more information about assigning your lease, see the section in this chapter called **Assigning Your Lease**.

4. **You Leave**

You can leave and run any risks that might follow. The risks are that the landlord will probably keep your security deposit. They may also try to sue you or hold you responsible for the rent until another tenant moves in. While some landlords may be willing to let you out of the lease, others may not. However, the law requires the landlord to make a reasonable effort to find another tenant.⁷ If, after notifying the landlord in writing that you will be leaving, they are not willing to let you out of the lease, you can take a number of steps to try to protect yourself:

- **Letter to Landlord:** Write the landlord a letter telling them they cannot just demand that you pay the rest of the rent for the term of the lease, and that under the law they must make a reasonable effort to find a new tenant to reduce (*mitigate*) their damages.
- **Help Find New Tenant:** You can try to find someone (either a person you know or a stranger) willing to take over your lease. If you don't know anyone who would be interested in moving into your apartment, you can advertise the apartment yourself. If you do, describe the apartment and the current rent you are paying. If people contact you, show them the apartment and explain to them that you are moving out and are not sure whether the landlord will increase the rent. If they are interested in renting the apartment, give them the landlord's name and phone number and tell them to contact the landlord directly.

You should also send your landlord a written communication (email, text, letter) with this person's name and contact information and tell your landlord that you have found someone who is willing to move into the apartment. You may also want to include a reminder to your landlord of their responsibility to find someone to move into the unit to *mitigate* (reduce) their loss of rent. Keep a copy of all written communications in case the landlord tries to sue you for the rest of the rent under the lease.

- **Offer Broker's Fee:** You could offer to pay a broker's fee to help the landlord find a new tenant.

2. If You Do Not Have a Lease

If you do not have a lease and are occupying the apartment with the permission of your landlord, then you are a *tenant at will*.⁸ For more information about tenants at will, see **Chapter 4: What Kind of Tenancy Do You Have**. As a tenant at will, there are basically three ways you can legally end your tenancy.

a. Give Your Landlord Proper Notice

The law requires tenants at will to give landlords written notice that they are moving out at least one full rental period or 30 days (whichever is longer) before moving.⁹ This time period starts to run from the time your landlord receives the notice, not from the time you send it.¹⁰ Thus, if your rent is due on the first of every month and you want to leave by April 1, your landlord must receive your notice before the end of February (February 28 is OK, but March 1 is not.) You can mail, email or text the notice to your landlord or give it to them directly. Make sure that if you mail the notice, you leave enough time for them to get the notice before the deadline. If you want to leave by April 1, mail your notice at least a week before February 28th so that they receive it on or before February 28th. Be sure to save a copy for yourself.

If you choose to mail the notice, it might also be a good idea to deliver a copy of the notice yourself as well. Otherwise, there could be a question of whether the landlord received the notice.¹¹ If you are worried that your landlord may say they did not get it, send the notice by *certified mail*, return receipt requested, **and** regular mail, and keep a copy for yourself. If you only send the notice certified mail and the landlord refuses to sign for it, the notice will not be effective to terminate your tenancy. Send it by regular mail as well.

Never attempt to verbally end (*terminate*) your tenancy. Your notice must be in writing.¹² To follow the law, you should use the following words in your notice:

You are hereby notified that I shall quit and deliver up at the end of the next month of my tenancy on _____ [put the last day of the rental

period], beginning after this notice, the premises now held by me as your tenant, namely _____ [your name and address of apartment].¹³

[Your Signature]

If you give proper notice, you may move out with no further obligations to a landlord. If you do not terminate your tenancy properly, you may be held responsible for additional rent.

Note: If you have to leave in the middle of the month, you cannot simply give notice that you plan to move out in the middle of a rental period and pay half a month's rent.

b. You and Your Landlord Can Agree to End the Tenancy

If you cannot give the landlord proper notice that you will be moving out—for example, if you have to move because of a family emergency—you can always ask the landlord if they would agree to end the tenancy. A landlord and tenant can, at any time and for any reason, reach an agreement to end a tenancy.¹⁴ Get this agreement in writing. If you think the landlord will not agree to this in writing, but may agree to it verbally, have someone go with you to witness what the landlord says. You can then send the landlord a letter, email or text "thanking" them for letting you leave without giving the right amount of notice, which will help you document your agreement.

c. You Can "Surrender" Your Apartment

A tenant at will can end their tenancy by "surrendering" the apartment. This happens when you do not have enough time to give proper notice and the landlord will not agree to end the tenancy when you need to end it. In this case, you may legally leave if the landlord accepts what is called "surrender" of the tenancy. A landlord accepts the surrender if they accept the fact that you are leaving or have left.¹⁵ Ways to prove that a landlord has accepted your surrender might include the following:

- Your landlord accepts your keys. (Bring a witness when you return the keys.)
- Your landlord advertises the apartment for rent, makes repairs, or actually rents it. (You might even try to find replacement tenants and give these names to the landlord so that they can take steps to fill the apartment. See the section in this chapter called **You Simply Leave.**)

3. Risks of Leaving without Proper Notice

If you leave your apartment without giving the required notice under your tenancy at will agreement (at least one month, unless you've agreed to a different amount of notice) or if do not return the keys on or before the date you said you were leaving, a landlord may try to make you pay rent for the next rental period (usually the next month).¹⁶ Unless you voluntarily agree to pay the landlord this money, they will have to sue you to get it. Depending on how much money is involved, a landlord may decide it's too much trouble to sue you. But if you paid a security deposit, they may refuse to return it if they claim that you owe rent because you didn't provide sufficient notice that you were moving.

Subletting Your Apartment

1. When Can You Sublet

If you need to move out of your apartment temporarily and do not want to pay rent while you are gone, one potential option is to sublet your apartment to someone else for a specific period of time. A sublet is meant to be a temporary arrangement where a subtenant returns the apartment to the original tenant before the original tenancy ends. If you make an agreement to rent an apartment to someone else and do not plan to return, this is called an *assignment*. (For more information, see the section of this chapter called **You Assign Your Lease**.)

When you sublet your apartment, you, as the original tenant, remain responsible to the landlord for the apartment. This is why subletting can be risky. If you have a written lease, your subtenant must abide by all the terms of the lease. As the original tenant, you ultimately remain responsible for all of the terms in the lease, including the obligation to keep the place in good condition and to pay rent.¹⁷ This means that if the subtenant refuses to pay the rent, your landlord can take action against you for non-payment of rent. A subtenant may also sue you, as the original tenant, for breaches of the sublease (if you signed one) or other violations of law.¹⁸

2. How to Sublet

To sublet, you must be a tenant with a lease.¹⁹ This is one of the advantages of having a lease. If your lease does not mention or prohibit subletting, you are free to do so.²⁰ Most leases require that a landlord give written consent before you can sublet. If this is the case, contact the landlord and try to get their written consent before subletting.

If a landlord refuses to give you written permission to sublet your apartment, there are two ways you might try to resolve this problem. Keep in mind, however, that if you decide to sublet without the landlord's permission, you risk that the landlord will try to evict you for violating your lease.

Option 1: Sublet and Pay the Rent

Often, the landlord is unaware of what the lease says, and, in many cases, does not care who is in the apartment as long as the rent comes in on time. If that is the case, you may decide to sublet the apartment and have a subtenant pay you the rent while you continue to pay the landlord directly. If the landlord does not find out about this arrangement until you move back in, they may just let it go.

Option 2: Sublet and Inform the Landlord When the Subtenant First Pays Rent

Another option is to have the subtenant pay the landlord directly and to inform the landlord of the sublet arrangement when the subtenant first pays rent. If a landlord accepts a rent check from a subtenant without writing on the check "for use and occupancy only," the landlord cannot deny the subtenant the use of the apartment.²¹

In addition to Options 1 and 2, to protect yourself you should have a written agreement with a subtenant that states that if the landlord does not consent to the sublet, the sublet is invalid and the subtenant must move out.²²

The following is a sample sublease agreement between a tenant and a subtenant (remember to date the agreement):

The validity of this sublease agreement is subject to securing the consent of [write in landlord's name]. Should [write in tenant's name] fail to secure this consent, the sublease agreement is null and void.

Subtenant Signature

Tenant Signature

When using this as a sublet option, after the subtenant signs the sublease agreement, contact the landlord and attempt to get their consent. If they immediately says "no" to the sublet, ask them why and whether they would reconsider your request. Tell them you will get back to them. Wait a few weeks and call again. If they give their permission, ask them to send a letter putting it in writing.

If the landlord flatly refuses to allow you to sublet, send the following notice to the subtenant:

"I have been unable to secure the consent of [write in landlord's name] to the conditional sublease per agreement dated [write in date of sublease]. Therefore, the sublease agreement is null and void."

a. Does a Subtenant Have to Pay a Security Deposit

A landlord may ask a subtenant to pay a security deposit. Under the security deposit law in Massachusetts, a landlord may not collect a security deposit that is greater than one month's rent. This means that while a landlord may collect a security deposit from both a tenant and a subtenant, the total amount they collect may not exceed one month's rent. If a landlord has already collected a month's security deposit from the original tenant and then collects another month's deposit from the subtenant, they are in violation of the law.²³

Assigning Your Lease

When you *assign* a lease, you move out permanently and a new tenant moves in for the remainder of the lease term. An assignment of a lease differs from a sublet. With a sublet, the original tenant gives up an apartment temporarily. With an assignment, the original tenant gives up the apartment **permanently**.²⁴

The person to whom you assign your lease is referred to as the "assignee." Both you and the assignee remain responsible to the landlord for the obligations contained in the lease.²⁵ As the original tenant, you can escape such responsibilities only if the landlord clearly releases you from them.²⁶

To be valid, an assignment must be in writing.²⁷ While your lease may say that you need the landlord's permission to assign, many leases also state that the landlord cannot unreasonably deny their consent. If this is the case, the landlord cannot unreasonably deny you permission to assign.²⁸

Where a lease does not specifically prohibit a landlord from unreasonably denying consent, they can deny their consent for any reason. If a lease forbids assignment, you assign anyway, and the landlord objects to it, the landlord can terminate your lease.²⁹ If you then move out, the landlord will have a duty to make reasonable efforts to find a new tenant. If the landlord attempts to sue you for any rent or costs they have incurred because of your *breach* of the lease, you can argue that you had a person willing to take over the lease who could have paid the landlord the rent. Also, even if you do not get the landlord's permission before assigning the lease, if the landlord knowingly accepts rent from the assignee, then they are probably required to accept the assignment.³⁰

If you are moving out, you should also arrange with the landlord to get your security deposit back if you paid one. See **Chapter 3: Security Deposits and Last Month's Rent**.

What to Do Before Moving Out

Whether or not you paid a security deposit when you moved into your apartment, there are several steps that you should take to protect yourself against claims by your landlord that you either damaged the apartment or left it so dirty that they had to hire a professional cleaning service. While many landlords are honest, there are some that may make false claims that you damaged the apartment or left it in an unclean condition so that they can keep your security deposit or use it to prepare the apartment for the next renter (which is illegal).

In order to protect your security deposit and have evidence to defend yourself in the event that the landlord tries to sue you for damage to the apartment that you did not cause, you need to take several steps to document the condition in which you leave your apartment:

- **Do a walk-through with the landlord.**
Try to arrange to have the landlord come to the apartment and walk through the apartment with you to view the condition of unit. If possible, you should have moved out most or all of your belongings and have cleaned the apartment prior to the walk through, so any damage (or lack thereof) will be plainly evident. You should make a list of everything you see during this walk through and try to get your landlord to sign it. If the landlord will not sign it, mail the landlord a copy after you move out and save a copy for yourself.
- **Take pictures.**
Whether or not you do a walk through with your landlord, you should take pictures of the condition you leave the apartment in before you move out. It is best if you take pictures after you have moved out all of your belongings and cleaned the apartment, so the landlord cannot later claim that your furniture hid a big hole in the wall or you left the refrigerator or the rugs filthy.
- **Return the keys.**
If you do not return your keys at all or do not return them by the end of the day you are supposed to move out of your apartment, the landlord may try to charge you rent for the following month and either take such "rent" out of your security deposit or try to sue you for unpaid rent. To prevent this from happening, be sure to return the keys to the landlord no later than the agreed upon move out date, and if possible, bring along someone who does not live in the apartment as a witness.

- **Send your landlord a letter after you move out with your forwarding address.**

Sometimes landlords claim they did not return a security deposit because they did not know where to send it. To prevent your landlord from making this claim, send them a written communication (letter, email, text) asking them to forward your security deposit to a particular address. Keep a copy of this communication for yourself.

Endnotes

1. The law requires that surrender of a rental unit be in writing. [G.L. c. 183, §3](#): "no estate or interest in land shall be . . . surrendered unless by such writing or by operation of law." However, "any acts which are equivalent to an agreement on the part of a tenant to abandon and on the part of the landlord to resume possession of demised premises, amount to a surrender by operation of law." [Talbot v. Whipple](#), 96 Mass. 177, 180 (1867); see also [Guaranty Bank & Trust Co. v. Mid-State Ins. Agency, Inc.](#), 383 Mass. 319 (1981) (where tenant gave their only set of keys to the landlord at the landlord's request in order to show the premises to a potential tenant, there was a valid termination by surrender); [Net Realty Holding Trust v. Giannini](#), 13 Mass. App. Ct. 273 (tenant must show that landlord intended to relieve them of the lease obligation), rev. denied, 386 Mass. 1102 (1982).
2. [Security Sys. Co. v. S. S. Pierce Co.](#), 258 Mass. 4, 5 (1926).
3. [Boston Hous. Auth. v. Hemingway](#), 363 Mass. 184, 199-200 (1973), which established the implied warranty of habitability in Massachusetts and, at the same time, abolished the judicial fiction of constructive eviction for tenants who want to stop paying rent due to bad conditions. In doing so, the court notes that a tenant has contractual rights arising out of the landlord's breach of warranty, including the right to rescind the lease from the time when the warranty of habitability was first breached.
4. [G.L. c. 111, §127L](#), often referred to as the Repair and Deduct Statute, also provides for the tenant to void the lease as an alternative to making the repairs and deducting the cost from the rent. The following conditions must be met:
 - 1) Inspection by the Board of Health;
 - 2) Existence of conditions that endanger or materially impair the health, safety or well-being of the tenants; and
 - 3) Failure of landlord to begin making the repairs or to arrange in writing to have them made within five days or failure to substantially complete all necessary repairs within 14 days of the notice.
5. [G.L. c. 111, §127L](#) (the landlord must "begin all necessary repairs or . . . contract in writing with a third party for such repairs within five days after such notice, and . . . substantially complete all necessary repairs within fourteen days after such notice, unless a board of health, local code enforcement agency or court has ordered that said violations be corrected within a shorter period, in which case said period shall govern")
6. [G.L. c. 111, §127L](#).
7. For various statements of the landlord's requirement to mitigate damages, see [Edmonds v. Rust & Richardson Drug Co.](#), 191 Mass. 123, 128 (1906). The Massachusetts Supreme Court found that the "[landlord] owed to the [tenant] the duty to use reasonable diligence and to make the loss or damage to the [tenant] as light as [the landlord] reasonably could." [Woodbury v. Sparrell Print](#), 198 Mass. 1, 8 (1908). See also [Loitherstein v. International Business Mach. Corp.](#), 11 Mass. App. Ct. 91, 95 and n. 3 (1980), rev. denied 441 N.E.2d 1042 (1981); [Cantor v. Van Noorden Co.](#), 4 Mass. App. Ct. 819 (1976). But see [Fifty Assocs. v. Berger Dry Goods Co. Inc.](#), 275 Mass. 509, 514 (1931). Note that the Boston Housing Court has

at least twice found a clear obligation to mitigate. *Bridges v. Palmer*, Boston Housing Court, 07326 (May 24, 1979); *Grumman v. Barres*, Boston Housing Court, 06334 (March 1, 1979). See also *Gagne v. Kreinest*, Hampden Housing Court, 91SC1569 (December 6, 1991), where the judge found that a landlord who did not advertise a vacant unit in the newspaper had not mitigated their damages.

8. [*Williams v. Seder*, 306 Mass. 134, 137 \(1940\).](#)
9. [G.L. c. 186, §12](#). Note that the landlord can terminate the tenancy with such a notice, as well.
10. [May v. Rice](#), 108 Mass. 150, 152 (1871); George Warshaw, *Massachusetts Landlord-Tenant Law*, §3.3 (1987). [Ryan v. Sylvester](#), 358 Mass. 18 (1970), readily advises the sufficiency of service.
11. See [Ryan v. Sylvester](#), 358 Mass. 18 (1970); [Gerson Realty Inc. v. Casaly](#), 2 Mass. App. Ct. 875 (1974).
12. [G.L. c. 186, §12](#).
13. Taken from E. George Daher and Harvey Chopp, 33A *Massachusetts Practice: Landlord and Tenant Law*, §15:47, Notice to terminate tenancy at will—Tenant—Form (2001).
14. [Farson v. Goodale](#), 90 Mass. 202, 203 (1864), which held that a tenancy at will may be terminated at any time and in any manner which may be mutually agreed upon by the parties. A landlord may waive the notice to which he is entitled.
15. [Talbot v. Whipple](#), 96 Mass. 177, 180 (1867) ("any acts which are equivalent to an agreement on the part of the tenant to abandon and on the part of the landlord to resume possession of the demised premises amounts to surrender"); see also [Guaranty Bank & Trust Co. v. Mid-State Ins. Agency, Inc.](#), 383 Mass. 319, 319 (1981); and [Means v. Cotton](#), 225 Mass. 313, 318-19 (1916). Even given some promising case law, this will not ensure a finding of "surrender by operation of law." [Taylan Realty Co. v. Student Book Exch.](#), 354 Mass. 777, 777 (1968); compare [Taylor v. Tuson](#), 172 Mass. 145 (1898).
16. This is generally called an abandonment by the tenant. [Taylor v. Tuson](#), 172 Mass. 145 (1898); [Commonwealth v. Lanigan](#), 12 Mass. App. Ct. 913, 914 (1981), *cert. denied sub nom. Maloney v. Lanigan*, 488 U.S. 1007 (1989).
17. [Miller v. Prescott](#), 163 Mass. 12 (1895); [Dunlap v. Bullard](#), 131 Mass. 161 (1881).
18. [Smith v. Abbott](#), 221 Mass. 326 (1915); [Casassa v. Smith](#), 206 Mass. 69 (1910).
19. Cf. [Hart v. Bouton](#), 152 Mass. 440 (1890)
20. [Valley Oil Co. v. Barberian](#), 344 Mass. 759 (1962); [Leitner v. Foster](#), 280 Mass. 128, 134 (1932).
21. [Paeff v. Hawkins-Washington Realty Co. Inc.](#), 320 Mass. 144 (1946); see [Saxeney v. Panis](#), 239 Mass. 207, 210 (1921). Common reservations include "Rent accepted for use and occupation only without creating any new tenancy"; "Rent accepted without waiving any rights under the lease"; and "Rent accepted, subtenant not accepted hereby."
22. See [Howland v. Town of Plymouth](#), 319 Mass. 321 (1946).

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23. [G.L. 186, §15B\(1\)\(b\).](#)
 24. [Marcelle, Inc. v. Sol & S. Marcus Co.](#), 274 Mass. 469, 472 (1931).
 25. [Dwyer v. Lavigne](#), 319 Mass. 26 (1946), cases cited therein, and [Carlton Chambers Co. v. Trask](#), 261 Mass. 267 (1927).
 26. [Walker v. Rednalloh Co.](#), 299 Mass. 591 (1938); [London v. Grossman](#), 21 Mass. App. Ct., Dec. 91 (1961); and [General Properties, Inc. v. Gallo](#), 19 Mass. App. Ct., Dec. 188 (1960).
 27. [G.L. c. 183, §3.](#)
 28. If a court finds that the landlord did unreasonably deny consent to the assignment, the original tenant is not liable for the rent. [Adams, Harkness & Hill, Inc., v. Northeast Realty Corp.](#), 361 Mass. 552, 557 (1972). However, where a lease does not specifically prohibit a landlord from unreasonably denying consent before assigning or subleasing, the landlord is free to deny consent for any reason. [Slavin v. Rent Control Board of Brookline](#), 406 Mass. 458, 463 (1990).
 29. [Healthco, Inc. v. E & S Assocs.](#), 400 Mass. 700, 702 (1987).
 30. [Maybury Shoe Co. v. Izenstatt](#), 320 Mass. 397 (1946).