

Motion to Dismiss

Representing Yourself in an Eviction

How to Use this Form

You can use this sample Motion to Dismiss form to ask the court to dismiss your landlord's claims against you in an eviction case. Courts also have blank motion forms you can use. You may also contact the attorney for the day program (in housing court) or your local legal services program for more detailed motions to dismiss for use by self-represented tenants.

How to Fill Out this Form

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

Court Heading

- a. Write the name of your county.
- b. Write your landlord's name as it is written on the Summons and Complaint.
- c. Write your name as it is written on the Summons and Complaint.
- d. Copy the name of the court from the Summons and Complaint.
- e. Fill in the Docket Number. The Docket Number is the number the court has assigned to your case. The Docket Number is usually listed on the Summons and Complaint, or on the top right-hand side of a notice you receive from court telling you about a hearing or a decision. If it is unclear what the docket number for your case is, ask the court for this number when you bring your motion to court.

Motion Section

Check off the reason or reasons in boxes 1 through 11 that a judge should dismiss the landlord's claims against you.

Certificate of Service

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

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

How to Deliver the Motion

- Make two copies of the completed motion.
- Deliver the original motion to the court by mail, hand-delivery, or e-filing.
You should file your motion with the court by the Answer Date, which is 3 business days before the first court event. If you cannot get the form in within that time, get it to the court with as much advance notice as you can.

What is the first court event? In Housing Court it is called a Tier 1 event or Housing Specialist Conference. In District/Municipal Court it is called a Case Management Conference.

- Deliver a copy to your landlord (or her lawyer) at the same time that you deliver it to the court. This can be done by hand-delivery, mail, and, if the landlord has an attorney, then email to the attorney.
- Keep a copy for yourself to bring to court.

Hearing on Motion

- Typically, the clerk's office will notify you and your landlord of the date, time, and place of the hearing.
- Bring to court any documents or receipts that will prove what you are saying.
- If you have raised counterclaims in your Answer (and the court allows your motion to dismiss the landlord's claims), you will need to decide what to do with your counterclaims. **Counterclaims** are your claims against your landlord. For example, you may claim the landlord owes you money because they broke the law. You can dismiss your counterclaims (so that you can raise again in a future case) or you can request that the judge still hold a trial on the counterclaims (which could be in many months or years if the counterclaims are transferred to the civil session of the housing court).

(Please type or print)
**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

a. _____, ss:
County

d. _____
Name of Court

e. _____
Docket No. Summary Process

b. _____
Plaintiff(s) – Landlord(s)

vs.

**DEFENDANT's MOTION TO DISMISS
the LANDLORD's CLAIMS**

c. _____
Defendant(s) – Tenants(s)

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

1. ☐ The landlord started this case before the Notice to Quit expired.
2. ☐ The landlord did not serve me with a Notice to Quit and is required to do so.
3. ☐ The landlord did not properly terminate my tenancy because *(check all that apply)*:
 - The Notice to Quit (from the time of service to the time of purported termination) did not provide a full 30 days and/or did not terminate on a rent date (for evictions of tenants at will for reasons other than nonpayment of rent).
 - The landlord is required to provide at least 30 days' notice of termination because I live in a property covered by the federal CARES Act and sent a notice with less time.
 - The Notice to Quit contains the wrong or insufficient address.
 - The Notice to Quit does not make clear the date by which I must vacate.
 - The Notice(s) to Quit rely on multiple reasons for termination (non-payment, fault, and/or no fault).
 - The Notice to Quit fails to comply with the subsidy and/or the lease requirements for termination of tenancy.
 - Other: _____
4. ☐ The notice to quit and the summary process complaint list different reasons for the eviction.

5. ☐ The summary process Summons and Complaint is defective or insufficient because:
- It is not signed by landlord or their attorney.
 - It did not state an entry date.
 - It did not state the reasons for the eviction in a concise, untechnical form and with sufficient particularity and completeness to enable me to understand the reasons for the requested eviction and the underlying facts.
 - Other
6. ☐ The summary process Summons and Complaint was served late (less than 7 days before the entry date).
7. ☐ The summary process Summons and Complaint was entered late (after the stated entry date), without my written assent.
8. ☐ This is an eviction for non-payment of rent and the landlord failed to give me the required state form called "Form to Accompany Residential Notice to Quit" that contains certain information about rights and resources, including how to get rental assistance. G.L. c. 186, §31.
9. ☐ The eviction is brought by a corporation, limited partnership, limited liability company, property manager for a corporate entity, trust or trustee and the plaintiff is not represented by an attorney.
10. ☐ The eviction is brought by a person or entity who is not the owner of the property or the landlord who signed my lease or rental agreement.
11. ☐ I "revived" my tenancy by paying all the rent "owed" within the time the law allows.
12. ☐ Other _____
- _____

Certificate of Service

I ☐ hand-delivered, ☐ mailed, or ☐ emailed (*check which one applies*) a copy of this Motion to Dismiss to my landlord or their lawyer on _____ (*date*). Attorneys are required to accept service by email.

Signature of Tenant

Tenant's Name (print)

Address

City

State

Zip

Telephone Number

Email Address (if any)