

Chapter 2

Before Moving In

Legal Tactics: Tenants' Rights in Massachusetts
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Before Moving In

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Italicized words are in the Glossary

Looking for a place to live with enough room that is in safe and decent condition and affordable is challenging. You may also need a place by a certain date or near where you work or where your children go to school. Whatever your situation is, you will be better off if you know your rights before you agree to take an apartment.

The purpose of this chapter is to tell you what steps you can take to protect your rights as you look for and move into an apartment and how you might be able to avoid potential problems or misunderstandings with your landlord.

For more information about applying for public and subsidized housing, go to: www.MassLegalHelp.org, Housing section, and click on **Finding Housing**.

Dealing with the Landlord

The basic rule to follow when you are looking for an apartment is: Be careful. Rental agents and property managers work for landlords, and most landlords are in the business of renting property to make money. As in any business, some landlords are responsible; some are not.

When you first meet a landlord, a rental agent, or a property manager, she may seem to be very helpful. But remember—she wants to rent out apartments as quickly as possible. When you are checking out an apartment:

- Don't let a landlord or her agent rush you.
- Carefully inspect the apartment.
- Read any agreement before you sign it.
- Get all promises in writing.

It is also a good idea to learn as much as possible about the landlord or property manager's reputation. The more you know about how a person operates her business, the better off you will be. Try to talk to current tenants. Ask them how well the landlord takes care of the place or whether they have had trouble getting repairs made. Also ask current tenants whether they have heard anything about the building being *foreclosed* upon. If they have, follow up by asking the landlord and read the section called **How to Get Information about a Foreclosure in Chapter 21: Foreclosures**.

If you decide to rent a place, be sure to get both the office phone number and an emergency phone number that you can use after business hours to contact your landlord or the property manager. If there is ever an emergency or serious problem with the apartment, you will need to know how to contact the person responsible for the premises at any hour.

Tenant Screening Companies

In different parts of the state, there are private reporting companies that supply landlords with information about tenants. These companies collect information about tenants from courts, previous landlords, and other companies, such as credit reporting agencies. The problem is that sometimes the information in these reports is very misleading. It may also be flat out wrong.

If you have ever had an *eviction* case brought against you and you then try to find a new apartment, you might discover that one of these private companies has a file about you in its computer, and that new landlords do not want to rent to you because they think you are a

troublemaker (even though it may have been your landlord who was violating the law).

A landlord may obtain certain types of tenant screening reports without your permission.¹ Landlords are also supposed to let tenants know that they are using a tenant screening report or that they are denying you housing based on information in the report.² But this may not happen. If your application for an apartment is denied, ask the landlord why. Ask the landlord whether she used a tenant screening company and, if so, what the name of the company is.

All reporting companies are required to have a toll-free number so you can call to find out about your report and how to dispute it.³

You have the right to find out from the company what information it is giving out about you and who it gave the information to. You also have the right to add to the file your own statement or explanation of what happened, so that whenever a new landlord checks your file, she will see your explanation about the information in it. For example, if an eviction case was brought against you and it shows up in your file, you can explain that it was because your landlord made an accounting error and claimed that you owed rent when, in fact, you did not.

Once you identify the tenant reporting agency, go to the agency in person or send a letter to request the disclosure of the information in your file. Every reporting company must, upon your request and proper identification, disclose the information in your file. You may be charged a reasonable fee, which cannot be more than \$8. If you have been denied housing, you have a right to see and obtain a free copy of your report.⁴ After you have reviewed your file, ask the agency to verify information you feel is inaccurate or incomplete. You have the right to dispute the accuracy or completeness of the information in your report.

Within 30 days of receiving your request to verify information, the agency must reinvestigate and make corrections to your file.⁵ If you have

documentation that shows the information is wrong, send copies of this documentation to the agency with your request. For example, if you have receipts for rent and the report claims you did not pay, send the agency copies of these receipts (do not send the original receipts). If the agency determines that information in the report is inaccurate or can no longer be verified, the agency must delete this information within three business days.⁶ If the reinvestigation does not resolve the dispute, you may send a statement explaining your side of the story, and the agency must include it in any report it issues about you.⁷

If information has been removed from your report or cannot be verified, you may request the reporting company to send the revised report to any person who received your report within the previous six months. The agency must do this within 15 days of your request and cannot charge you a fee for this service.⁸

Checking Out a Place

Before you agree to rent a place, go look at it. Walk through the entire apartment and around the building. Many times, landlords think they can get away with renting an apartment that is in bad condition and in need of certain repairs. And, many times, they do. The law, however, requires landlords to put apartments in good condition before renting them. This means that an apartment must meet certain minimum requirements. See the **Housing Code Checklist** that summarizes these minimum requirements (**Booklet 2**). Read over this checklist and take it with you when you look at apartments.

You can also find out whether any tenants or local housing inspectors have ever reported an apartment or building for not meeting the requirements listed on the **Housing Code Checklist**. Although this takes time, if you really want to know who you are renting from, this information may be worth finding out. To do this, go to the local Board of Health in the town or city where the apartment is located. Ask someone there whether there are any housing inspection reports listed for the address of that

building. If there are, read the reports. If a report shows that there were cockroaches in the apartment (or other problems that would not have been obvious when you first saw the place), you can ask the inspector listed on the report whether the landlord corrected this problem.

See the **Moving In Checklist (Form 2)**, which suggests some specific things you can do when you are checking out apartments.

1. What If There Are Bad Conditions

If you want an apartment but there are problems with it, you should ask the landlord when she plans to make certain repairs. If this repair schedule is agreeable to you and you decide to rent the apartment, make a list of the problems. Then get the landlord to promise in writing when she will make the repairs. This will make it more likely that the landlord will actually keep her word. In addition, if the landlord later refuses to make the repairs and you have her promise in writing, she will not be able to turn around and blame you for causing these problems.

If the landlord agrees to make repairs orally but will not put it in writing, you should write a letter to your landlord after you've moved into the apartment thanking her for agreeing to make repairs (and then list what repairs she agreed to make). This will document both the need for repairs and the landlord's promise to make them.

If your landlord requires a security deposit, by law she must prepare a statement describing the conditions of the apartment. This is called a "Statement of Condition." See a sample **Statement of Condition (Form 3)**. Make sure all problems with the apartment are listed on this statement.

If a landlord does not take a security deposit, it is still a good idea to prepare your own statement describing the condition of an apartment when you first move in. See **Statement of Condition** section in **Chapter 3: Security Deposits and Last Month's Rent**. If you have a camera or a

video recorder (or can borrow one), you may want to take pictures of certain conditions in the apartment before you move in. For example, if the window is broken, take a picture of the broken window. Write the date on which you took the pictures on the back of each one. If you make a video, film someone in the apartment saying the date. **Spending 20 minutes documenting the condition of an apartment before you move in may save you a lot of aggravation and money later on.**

Read the Lease Carefully

You are a legal tenant whether or not you have a written *lease*. Many tenants do not, in fact, have written leases.

If you do plan to sign a written lease, read it carefully. A landlord may try to rush you into signing a lease. She may say that all leases are "standard" and that you shouldn't bother reading it. There may be a lot of small print and words you do not understand. Don't let a landlord intimidate you or stop you from reading the lease. Even if you are nervous or feel shy, be firm and polite and tell her you want to read the lease. You may want to bring the lease home with you and go over it with a friend or lawyer.

1. Is Your Lease Legal

Both you and your landlord must sign your lease. Within 30 days of signing it, the landlord must give you a copy.⁹ The lease must include the following information:

- The amount of rent,
- The date on which your tenancy ends,¹⁰
- The amount of your security deposit, if you paid one,
- All your rights concerning the security deposit,¹¹ and
- The names, addresses, and phone numbers of your landlord, any other person responsible for maintaining the property,

and the person authorized to receive notices and court papers.¹²

If a lease does not include an ending date or a rent amount, the lease will not be valid.

2. Should You Sign a Standard Form Lease

Many landlords use "standard form leases." While these standard leases are generally weighted in favor of landlords, you can request a landlord to either add or take away specific provisions so that a lease is more tailored to your situation. When you alter a lease—either by adding or removing provisions—make sure that both you and your landlord write your initials next to each change. A landlord may be more inclined to make changes in the terms of a *tenancy* either at the time you agree to rent or if it is off-season for renting apartments in the area, there are a lot of vacant units, or she wants to rent an apartment quickly.

But be careful. While a lease may look like a standard lease and a landlord may even say that it is a standard lease form, it still might have illegal clauses.

3. Are There Illegal Clauses

Some leases may contain illegal clauses. For example, the following clauses are illegal:

- A clause that says the tenant is responsible for making all repairs. (The law requires the landlord to make repairs, except when a tenant breaks something.)
- A clause that says a landlord can use your security deposit to pay for utilities if you don't pay for them. (A security deposit can only be used to pay for damage caused by the tenant.)
- A clause that says you must pay for electricity or gas where the service or bill is in your landlord's name. (A landlord must pay electricity or gas unless there is a meter

which separately calculates the tenant's utility use.)

- A clause that says that immediately upon termination of your lease you must pay all rent due for the remainder of the term of the lease.¹³ (While you may have to pay some rent if you or your landlord terminate your lease before it is over, a landlord also has a duty to find a replacement tenant for the remainder of the lease.¹⁴)

But don't worry—if there is an illegal clause, a landlord cannot force you to comply with it.¹⁵ If you feel you will lose an apartment unless you sign a lease with an illegal clause, sign the lease and move in. Your lease will still be valid except for the illegal parts. In fact, you can sue your landlord for including an illegal term in your lease, even if she has never tried to enforce it.¹⁶ However, as a practical matter, few tenants actually take their landlord to court for this reason alone.

4. Advantages and Disadvantages of a Written Lease

There are two major advantages to having a written lease. The first advantage is that a lease offers you more security because a landlord cannot evict you until your lease ends, unless you violate (*breach*) your lease. The second advantage is that your landlord cannot raise your rent until the term of the lease is over.

For example, if you sign a one-year lease, your landlord cannot raise the rent for a year, except through a tax escalator clause. (For more about tax escalator clauses, see the **Common Lease Clauses** section in this chapter.) In fact, under the law, even if you and your landlord agree to a rent increase and put this agreement in writing, the landlord cannot legally raise your rent during the term of the lease.¹⁷

There are also several disadvantages of having a written lease. The first disadvantage is that if you move out before your lease ends, a landlord can

try to force you to pay the rent until your lease ends. But, depending on the circumstances, you may not have to pay rent after you leave. Under the law, a landlord has an obligation to look for another tenant as soon as you give her notice that you are leaving. In some situations, the law also allows you to break your lease. For more information about ending your lease early, see **Chapter 12: Moving Out**.

The second disadvantage of having a written lease is that it may impose restrictions on you that a landlord might not impose without a written lease. For example, standard leases often prohibit tenants from having pets. Standard leases may also limit the number of roommates you can have or whether you can sublet. You can try to renegotiate these and other terms of a written lease at any point during your *tenancy*.

5. Common Lease Clauses

Most leases are not written in plain English, and, in many cases, it is not clear what certain terms mean. For example, instead of using the words "landlord" and "tenant," leases usually refer to the landlord as the *lessor* and the tenant as the *lessee*. Below is a list of the most common lease terms and clauses and what you should watch out for.

Disturbance or Improper Use Clause

This is a clause that says a tenant or any person in her apartment is not allowed to disturb other tenants or use the apartment for illegal purposes. If you are involved in a dispute with your landlord, she may try to use this clause to threaten you with *eviction*. If she does, try to get signed statements from other tenants which say that you have not disturbed them.¹⁸ Also, under state law, a landlord does not have to give a tenant a *notice to quit* before evicting her if the tenant uses the premises for prostitution, gambling, lewdness, illegal sale of alcohol, or illegal possession or sale of drugs.¹⁹ If your landlord tries to evict you for improper use of your apartment, you should consult a lawyer as soon as possible.

Note: Your landlord has a duty not to disturb you, either.²⁰ If your landlord substantially interferes with your use of the apartment, a court may compensate you for the harm that you have suffered. For more information, see **Chapter 14: Taking Your Landlord to Court**.

Extension and Renewal Clauses

An extension clause says that if you or your landlord want to stop the tenancy at the end of the lease, you must give each other written notice. If you do not, the lease will automatically be extended for another year. If, on the other hand, your lease gives you an option to renew, you must give your landlord notice that you want to stay. Self-extending leases are more common than option-to-renew leases. For more information, see **Chapter 4: What Kind of Tenancy Do You Have**.

Late Payment Penalty and Discount Clauses

The late payment penalty clause says that you must pay the landlord more money if you do not pay your rent on time. "Late" may be defined as any time after the sixth of the month. If you pay only several days late and your landlord demands a \$5 or \$10 penalty, you do not immediately have to pay this penalty. A landlord has no right to a late penalty until a tenant is 30 days late paying the rent.²¹

If you do not have a lease, or if your lease does not have a penalty clause, you cannot be charged a penalty even after 30 days. A landlord may also disguise a late payment penalty clause by calling it a "discount clause." A discount clause is where a lease says that your rent is \$675, but that if you pay before the fifth of the month your rent will be "discounted" by \$50 and you will only have to pay \$625. This is illegal.²² If you have a discount clause and the landlord tries to collect what is really a \$50 late penalty, do not pay. If a landlord continues to ask you for the money, tell your landlord (in writing) that under Massachusetts law, this clause is illegal.²³

Lessee's Covenants in Event of Termination Clause

This is a clause that may make you responsible for paying the landlord for losses she may suffer as a result of your leaving early or her having to evict you. This may include the cost of getting the apartment in shape for leasing it to someone else, loss of rent for the time of your lease period the apartment remained vacant, and loss of rent if the new tenant is paying less than you were.²⁴ A landlord must, however, make reasonable efforts to find a new tenant and to keep her losses down.²⁵

Loss or Damage Clause

This is a clause that says you agree to pay back, or "indemnify," the landlord if you are responsible for an accident in the building that causes you or a guest to be hurt or your property to be damaged. This clause does not require you to pay the landlord if an injury or property damage occurs because of your landlord's negligence or misconduct.²⁶ It also does not stop you from being able to sue your landlord for injuries or damage to your property caused by an accident in your building. It is worth consulting a lawyer if anything of this nature happens.

Notice Clause

This is a clause that says when and how you and your landlord must send each other notices or information. For example, the landlord must give you notice in order to end or *terminate a tenancy*.²⁷ Often, leases require that notices be sent in writing in one of two ways: (1) by *certified* or *registered mail*, or (2) by hand delivery. The landlord must print an address on the lease to which the tenant is to send notices.²⁸ The landlord must also accept any notice delivered to that address.²⁹

Pet Clause

This is a clause that prohibits pets or requires the landlord's written permission before you can keep a pet. If a landlord tells you that you can keep your pet, make sure she crosses this clause out of the lease and writes her initials next to the clause. If you did not do this when you first moved in and you have a pet, you may be able to keep your pet if your landlord knows you have

one and still accepts rent without stating that you must get rid of the pet or move.³⁰

Pet owners in federally assisted elderly or handicapped housing developments have a right to keep pets under rules adopted by each development.³¹ If you have a disability and your pet is helpful to you with that disability, your landlord may have a duty to provide you with a *reasonable accommodation* by letting you keep your pet. Get a doctor's letter outlining the necessity of your having a particular kind of pet.

Repair Clause

This is a clause that says you agree to keep the premises in good repair, "reasonable wear and tear excepted." Remember, however, that the law requires your landlord to maintain and repair your apartment in safe and sanitary condition.³² You are required only to repair damages caused by you or your guests. For more information about repairs, see **Chapter 8: Getting Repairs Made**.

Redelivery Clause

This is a clause that says that at the end of your lease term you must leave your apartment in good, clean, and rentable condition, reasonable wear and tear excepted. The courts have always interpreted the redelivery clause, together with the repair clause, to mean that you do not have to keep your apartment in repair at all times, but that it must be in good condition when you move out.³³ If it is not, the landlord may deduct the cost of repairing the damage from your security deposit³⁴ and may be entitled to sue you for any remaining amount of money that it cost her to put the apartment back into the required condition if the security deposit is not enough to cover the damage.³⁵

Right of Entry Clause

This is a clause that says your landlord can enter your apartment only under the following circumstances: (1) to inspect the apartment, (2) to make repairs, or (3) to show the apartment to a prospective purchaser, tenant, or *mortgagee*. Any part of your lease that states other reasons that your landlord can enter your apartment is

illegal.³⁶ Also, the law does not require you to give your landlord a key.³⁷

Subletting Clause

This is a clause that requires the landlord's written consent for subletting your apartment. To comply with this provision, if you sublet, make sure to get your landlord's permission in writing.³⁸ For more information about subletting, see **Chapter 12: Moving Out**.

Tax Escalator Clause

This is a clause that says that if local property taxes go up, your landlord can increase your rent. Back when taxes were going up rapidly, these clauses were one way for landlords to raise the rent. If a tax escalator clause is not written in a certain form, it may be illegal and your landlord may not be able to raise your rent. For more information about tax escalator clauses and how you might save yourself some money, see **Chapter 5: Rents**.

Termination Clause

This is a clause that says how much notice a landlord must give you if she wants to evict you. A termination clause does not mean that the landlord can come into your apartment and physically throw you out. A landlord can never evict a tenant without a court's permission.³⁹ If your lease does not have a termination clause, your landlord probably cannot evict you until the lease expires. Under the law, there are specific rules that landlords must follow in order to evict a tenant. For more information about how much notice your landlord must give you, see **Chapter 13: Evictions**.

Get All Promises in Writing

If the landlord or rental agent⁴⁰ promises you anything that is not stated in the lease, or if you do not have a lease, make sure to get these promises in writing. If you don't and a dispute arises later, it will be the landlord's word against yours.⁴¹

If the landlord promises, for example, to make repairs or gives you the use of a parking space, get this in writing. If you make any changes or additions to the lease, make sure that you and the landlord put signatures or initials next to each of these changes. For example, if you have a dog and the lease says you are not allowed to have a pet, make sure your landlord crosses this clause out and that both of you then sign or write your initials next to this change.

Some landlords try to get out of putting their promises in writing by telling tenants that if anything extra is written on the lease or anything is crossed out, the whole lease will be no good. This is not true. As long as the change is readable and signed or initialed, the lease will be legal and all of the changes will be legal (unless the clause is illegal). In fact, when it is to their benefit, landlords do not hesitate to add their favorite clauses to the lease.

If you cannot get the landlord to put her promise in writing, the next best thing is to have one or more people with you when you talk with the landlord to witness what the landlord says.⁴² If you don't have someone with you when the landlord makes certain promises, arrange another time to talk with the landlord when you can bring someone you know. Tell the landlord you didn't completely understand what she said. When you and your friend meet with the landlord, get the landlord to repeat all of her promises. This friend should then write down the promises she heard the landlord make on a sheet of paper and sign and date it.

Note: If possible, your witness should not be a relative or roommate because their testimony might be considered biased because of their relationship to you.

If you receive a government housing subsidy, the lease between you and your landlord will usually be prepared by a local housing authority or a state or federal government housing agency. Subsidy leases have certain clauses that the government requires. If you and your landlord want to add anything to this lease, the

government agency administering the subsidy will have to approve the changes.

How Much Can a Landlord Charge

When you move in, the most your landlord can charge you is:

- The first month's rent,
- The last month's rent,
- A security deposit up to the amount of the first month's rent, and
- The cost of a new lock.⁴³

Whenever you pay the landlord any money, get a signed and dated receipt that says how much money you gave the landlord and what it was for.⁴⁴

If the landlord requires that you pay the last month's rent in advance or a security deposit, the law requires that the landlord give you a receipt. **You have a right to a receipt.** If your landlord does not give you a receipt, ask for one. Or, you can use the sample receipt (see **Form 4**). The receipt must have certain information in it. To find out exactly what information a landlord must include in this receipt, see **Chapter 3: Security Deposits and Last Month's Rent.**

Never give your landlord cash for rent or anything else without getting a written receipt. If a landlord won't give you a receipt for cash, don't give her the cash. Use a check or get a money order and write on it what the payment was for. Then put the cancelled check or stub for the money order in a safe place.

1. Illegal Fees

When landlords rent apartments to new tenants, they often try to get more money than just the rent. They may try to tack on extra fees such as "holding deposits," "rental fees," "pet fees," or "application fees." These extra charges are illegal.⁴⁵ The problem is, if you refuse to pay

these fees, a landlord may refuse to allow you to move in. Often, the best course is to pay the illegal fees or the illegally high rent and then take it out of your future rent payments after you have safely moved in.⁴⁶ Again, make sure to get a written, signed, dated receipt for any money you pay.

The only extra charge the law allows is for a rental agent to charge a "finder's fee." A rental agent can charge a finder's fee only if she is a licensed real estate broker or salesperson.⁴⁷ If the rental agent is also the landlord, the law may prohibit her from charging a finder's fee.⁴⁸ To find out if a rental agent is a licensed real estate broker, go to the internet at: www.state.ma.us/reg/boards/re/ and click on "Check a License."

2. Pet Deposits and Pet Rental Fees

If you have a pet, a landlord may demand that you pay a "pet deposit" to protect the landlord in the event that your pet causes damage to the unit. While such a deposit is clearly illegal if the landlord is also collecting a security deposit equal to the first month's rent, a landlord may not let you move in unless you agree to pay the additional deposit.

A new trend is that some landlords are also trying to charge what they are calling "pet rental fees," which take the form of an increased monthly rent if you have a pet (for example, \$20 extra each month if you have a cat]. There is a question as to whether pet rental fees are legal.⁴⁹

If a landlord demands that you pay a pet rental fee, ask the landlord what this money is for. If the landlord or a management company says that it is to protect the landlord against damage that a pet might cause, try to convince the landlord that this is what the security deposit is for and that you feel your rent should be the same as what another prospective tenant without a pet would be charged. You also could try to get a letter from your old landlord stating that your pet did not cause damage to your previous apartment.

3. Utility Payments

A lease may require you to pay for certain utilities, such as heat, water, electricity, and gas. It is important to be clear about what your rights and responsibilities are. Below is a chart that tells you when you are responsible for paying certain utilities and when your landlord is responsible.

Utility	Who Pays
Water	Landlord is required to pay unless there is a meter that separately calculates the tenant's water use, the unit has low flow fixtures, and there is a written agreement that says the tenant must pay. ⁵⁰
Fuel for Hot Water	Landlord must pay unless written agreement says the tenant must pay. ⁵¹
Fuel for Heat	Landlord must pay unless a written agreement says the tenant must pay. ⁵²
Electricity	Landlord must pay unless there is a meter that separately calculates the tenant's electricity use and a written agreement says the tenant must pay. ⁵³
Gas	Landlord must pay unless there is a meter that separately calculates the tenant's gas use and a written agreement says the tenant must pay. ⁵⁴

For more information about what your rights to utility services are, see **Chapter 6: Utilities**.

Keep Records Now, Avoid Problems Later

It is important from the moment that you begin your *tenancy* that you save and make copies of all communications you have with your landlord. When you send a letter to your landlord, make

sure you sign and date it. You never know if or when a problem may come up where you will need certain records. You should save:

- All receipts for rent and any deposits if you pay in cash,
- Copies of any money orders you use to pay rent or other deposits,
- All cancelled checks for rent and security deposits, and
- All letters or other written communication to or from the landlord.

The best thing to do is to put all of these documents together in an envelope or folder and keep them in a safe place.

Because it is easy to forget the details of conversations or events, it is a good idea to keep a written diary or log of when important events happen. For example, when something breaks or if the heat goes off, record dates and times of when it went off, when you contacted the landlord, when the landlord said she would make the repair, and when the landlord fixed the problem.

What If You Are Under the Age of 18

If you are under the age of 18, a landlord may not be able to enforce a rent agreement against you, even if you misrepresented your age.⁵⁵ However, you will probably be responsible for paying a reasonable amount of rent for your use of an apartment.⁵⁶

A landlord who refuses to rent to you solely because of your age may be illegally discriminating against you (see **Chapter 7: Discrimination**).⁵⁷

What If the Landlord Backs Out

Sometimes a landlord will promise an apartment to a tenant and then try to back out of the deal. If a landlord refuses to let you move in after she has taken money from you or has signed an agreement saying she will rent the apartment to you, the landlord may not be able to back out of the deal. If you want the apartment and you and the landlord cannot negotiate your moving in, you can go to court and tell a judge what has happened. Before you do this, tell the landlord

that you plan to go to court. The landlord may then decide to give you the apartment. If you go to court, there is a very good chance that the judge will order the landlord to let you move into that apartment.⁵⁸

If you feel that a landlord may be discriminating because of your race, national origin, sex, sexual orientation, age, religion, physical or mental disability, source of income, marital status, familial status, or status as a veteran, there are steps that you can take to protect your rights. For more information, see **Chapter 7: Discrimination**.

Endnotes

1. G.L. c. 93, §51(a)(3)(v) gives a consumer reporting agency the authority to give a "consumer report" to a person using the information in connection with the rental of residential property. While landlords can obtain what is defined as a "consumer report" without the consumer's permission, landlords cannot obtain what is defined as an "investigative consumer report" without the consumer's permission. See G.L. c. 93, §53. An "investigative consumer report" is a report that includes information about a "person's character, general reputation, personal characteristics, or mode of living" obtained through personal interviews. See G.L. c. 93, §50. A "consumer report" is limited to credit information and cannot include specific information listed in the law. See G.L. c. 93, §52. Note: There is also a federal law that regulates consumer reports and provides protections for consumers called the Federal Credit Reporting Act, 15 U.S.C. §1681 et seq. For more information about this law, see *Fair Credit Reporting*, published by the National Consumer Law Center and available for sale online at: <https://shop.consumerlaw.org/index.asp> under "Publications for Lawyers."
2. See 15 U.S.C. §1681m of the Fair Credit Reporting Act (also known as § 615(a) of the Act). For the full statute, go to the Federal Trade Commission's website at: www.ftc.gov/os/statutes/fcra.htm#615.
3. G.L. c. 93, §57(c).
4. G.L. c. 93, §56(b). To obtain a free copy, a consumer must ask for the information within 60 days of being denied housing.
5. G.L. c. 93, §58(a).
6. G.L. c. 93, §58(c).
7. G.L. c. 93, §58(d) and (f).
8. G.L. c. 93, §58(g). Note: You may request the reporting company to send the revised report to any person who received your report within two years if received for employment purposes.
9. G.L. c. 186, §15D. Violators can be fined up to \$300. See G.L. c. 93A, §1 et seq.; 940 C.M.R. §3.17(3)(c). Failure to comply with this provision may make the lease voidable by the tenant. A party's secret signature to a lease, unrevealed to the other party, is not valid or binding. *Henchey v. Rathbun*, 224 Mass. 209, 211 (1916). As noted by E. Schwartz, *Lease Drafting in Massachusetts* §1.9 (1961), the tenant's signature on a lease is an offer that dies if the landlord doesn't sign within a reasonable period, but the tenant is bound as a tenant at will by signing.
10. *Marchesi v. Brabant*, 338 Mass. 790, 790 (1959) (rescript); *Berman v. Shabean*, 273 Mass. 343, 344 (1930); *Murray v. Cherrington*, 99 Mass. 229, 230 (1868). Exceptions to the ending date rule are some subsidized housing leases, which are leases even though they continue indefinitely.
11. These rights are described in 940 C.M.R. §3.17(3)(b)(3); G.L. c. 186, §15B.
12. 940 C.M.R. §3.17(3)(b)(1) and (2); G.L. c. 143, §3S; and the state Sanitary Code, 105 C.M.R. §410.481, require absentee owners to post and maintain a sign at least 20 square inches in size near the mailboxes or elsewhere inside the building, which has on it the name, address, and phone number of the owner or her manager or agent. This is not required, however, if the manager or agent lives in the building. The name, address, and phone number of the managing trustee or partner of any realty trust and president of any corporation must also be posted. Failure to do so can result in a fine of up to \$50 per day.
13. 940 C.M.R. §3.17(3)(a)(3). This type of clause is known as a rent acceleration clause and is considered to be a penalty and therefore unenforceable. *Commissioner of Ins. v. Massachusetts Accident Co.*, 310 Mass. 769, 771 (1942).
14. For various statements of the landlord's duty to mitigate damages, see *Edmands v. Rust & Richardson Drug Co.*, 191 Mass. 123, 128 (1906); *Woodbury v. Sparrell Print*, 198 Mass. 1, 8 (1908) (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." *Loitherstein v. IBM*, 11 Mass. App. Ct. 91, 95 (1980). See also *Cantor v. Van Noorden Co.*, 4 Mass. App. Ct. 819, 819 (1976) (rescript); but see *Fifty Assocs. v. Berger Dry Goods Co.*, 275 Mass. 509, 514 (1931). Note that the Boston Housing Court has, at least twice, found a clear obligation to mitigate, in *Bridges v. Palmer*, Boston Housing Court 07326, p. 8 (Daher, C.J., May 24, 1979), and *Grumman v. Barres*, Boston Housing Court, 06334, p. 7 (Daher, C.J., March 1, 1979). See also

Gagne v. Kreinest, Hampden Housing Court, 92-SC1569 (December 6, 1991) (a landlord who did not advertise a vacant unit in the newspaper had not mitigated her damages).

15. Your landlord may be liable to you just for asking you to sign a lease with illegal terms. *Leardi v. Brown*, 394 Mass. 151, 160 (1985). See G.L. c. 93A, §9(3), and 940 C.M.R. §3.17(3)(a)(1).
16. 940 C.M.R. §3.17(3)(a)(1). A tenant need only show an invasion of a legally protected right, not actual damages, to recover nominal statutory damages (\$25) for illegal lease clauses. *Leardi v. Brown*, 394 Mass. 151, 160 (1985); G.L. c. 93A, §2(c).
17. *Torrey v. Adams*, 254 Mass. 22, 28 (1925).
18. Although these statements may not be admissible in court, judges will sometimes consider them, especially where the tenant is not represented by an attorney. Try to have the witnesses sign this statement as follows: "Signed under the penalties of perjury this ____ day of _____, 200 _."
19. G.L. c. 139, §19.
20. Landlord who owned a nearby cocktail lounge that disturbed tenants was found liable for breach of quiet enjoyment. *Blackett v. Olanoff*, 371 Mass. 714, 718 (1977). See also *Humphries v. Brown*, Hampden Housing Court, 90-SP1426 (July 17, 1992) (landlord violated the tenant's right to quiet enjoyment under G.L. c. 186, §14, by failing to take steps to prevent tenant's upstairs neighbor from disturbing him).
21. G.L. c. 186, §15B(1)(c). If a lease clause requires a penalty before you are more than 30 days late, it is void and your landlord cannot collect under it even if you are more than 30 days late in paying your rent. You may not be charged for service of a notice to quit based on non-payment of rent which is less than 30 days late under *Copley Management v. Andersen*, Boston Housing Court, 08517, p.3 (Smith, J., November 1990).
22. The Boston Housing Court has noted that such a discount clause "appears to be, in substance, a late fee charge which is prohibited by G.L. c. 186, §15B(1)(c)." *Patriquin v. Atamian*, Boston Housing Court, SP-19648-K, p.4 (King, J., August 27, 1981).
23. G.L. c. 186, §15B(1)(c), which says that "no lease . . . shall impose any interest or penalty for failure to pay rent until thirty days after such rent shall have been due."
24. This clause describes two types of obligations you may have to a landlord after you leave an apartment. One is called "damages." This means that as soon as you leave, the landlord may sue you for the difference between the rent you agreed to pay for the remainder of the lease and the "fair rental value" of the apartment. The other type of obligation is called "indemnification." This means that at the end of a lease, a landlord may be able to sue a tenant for the amount of money the landlord has lost because the tenant has left. Generally, the landlord cannot sue on both grounds—damages and indemnification. *Gardiner v. Parsons*, 224 Mass. 347, 350 (1916); *Cotting v. Hooper, Lewis and Co.*, 220 Mass. 273, 274 (1915). The landlord's choice in this matter is critical, for it determines when one can bring suit. *Commissioner of Ins. v. Massachusetts Accident Co.*, 310 Mass. 769, 772 (1942); *Hermitage Co. v. Levine*, 248 N.Y. 333, 337 (1928) (Cardozo, C. J.). A landlord must also use "reasonable efforts" to find a new tenant to keep down her losses due to having the apartment empty. Also, if a lease states that a landlord can recover attorney's fees if she sues a tenant for breaking a lease, state law says that a tenant can also recover attorney's fees if a tenant sues a landlord and wins the case, even if the lease does not provide for this. G.L. c. 186, §20. Public and subsidized housing tenants may not be charged court costs or attorney's fees unless there is an actual judgment from the court. *Springfield Housing Auth. v. Oldham-King*, 12 Mass. App. Ct. 935, 935 (1981) (rescript).
25. See endnote 14.
26. G.L. c. 186, §15.
27. G.L. c. 186, §12. Waiver of notice to terminate tenancy in a lease is void. G.L. c. 186, §15A. The landlord has the burden of showing that the tenant actually received the notice to quit, *Ryan v. Sylvester*, 358 Mass. 18, 19 (1970).
28. 940 C.M.R. §3.17(3)(b)(2).
29. 940 C.M.R. §3.17(2)(b).

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30. You have a legal argument that your landlord has waived this clause of the lease. You should check your lease, however, to see if there is a clause preventing waivers. You can also argue that having a pet is not a serious breach of the lease. See *Allen Park Assocs. v. Levandowski*, Hampden Housing Court, 89-SP9400, p. 7 (Abrashkin, J., May 8, 1989), where the judge found that management's employees knew that the tenant had a dog, and therefore management had acquiesced in the dog's presence and had waived its right to evict under the no-pet clause of the lease.
 31. 24 C.F.R. §5.300-5.380, and §960.701-960.707 set out rules for pet ownership in assisted rental housing for the elderly or handicapped, as required by 12 U.S.C. §1701r-1. Under these rules, a project owner cannot prohibit pets altogether, but must promulgate discretionary rules reasonably related to the keeping of household pets, including rules on number of pets, size and type, standards of care, and licensing.
 32. 105 C.M.R. §410.010(a); 940 C.M.R. §3.17(1).
 33. *Weeks v. Wilhelm-Dexter Co.*, 220 Mass. 589, 592 (1915). A reasonable wear and tear exception is implied in a repair clause where it was not expressly included (although the existence of a peculiar fire insurance clause makes *Ball* weaker precedent). *Ball v. Wjeth*, 90 Mass. (8 Allen) 275, 279 (1864). A redelivery clause alone implies no obligation on the tenant's part to maintain the premises in repair throughout the lease term. *Ryan v. Boston Housing Auth.*, 322 Mass. 299, 301 (1948).
 34. G.L. c. 186, §15B(4)(iii) and (6)(e).
 35. The measure of damages is stated as the reasonable cost to the landlord to put the premises in the required condition. *Corbett v. Derman Shoe Co.*, 338 Mass. 405, 414 (1958); *Ryan v. Boston Housing Auth.*, 322 Mass. 299, 302 (1948). See *Weeks v. Wilhelm-Dexter Co.*, 220 Mass. 589, 592 (1915). A landlord may be able to bring a separate court case for damages actually caused by the tenant, even if the landlord has violated the security deposit law. See also *Jinnala v. Bizzaro*, 24 Mass. App. Ct. 1, 7 (1987).
 36. G.L. c. 186, §15B(1)(a); 940 C.M.R. §3.17(6)(e).
 37. No statute or regulation gives the landlord a right to a key. At common law, the tenant had exclusive right to possession. *Young v. Garwacki*, 380 Mass. 162, 170 (1980); *Strycharski v. Spillane*, 320 Mass. 382, 385 (1946). According to the order of the Housing Court, a landlord must give reasonable notice (at least 24 hours) to the tenant in order to enter to make repairs.
 38. A landlord need not act reasonably in withholding assent where a tenant must obtain assent in writing to sublet under a lease. *Slavin v. Rent Control Board of Brookline*, 406 Mass. 458, 463 (1990). However, a landlord cannot unreasonably withhold consent if the lease says she can't. *Adams, Harkness, Hill, Inc. v. Northeast Realty Corp.*, 361 Mass. 552, 557 (1972).
 39. The landlord must bring a summary process action to evict you and is subject to civil and criminal penalties for failing to do so. G.L. c. 186, §§14, 15F; 940 C.M.R. §3.17(5). Summary process must be used to regain possession. G.L. c. 184, §18 and G.L. c. 266, §120. The primary summary process statute is G.L. c. 239, §1.
 40. In Massachusetts, the apparent powers of any agent are her real powers, and her actions are binding on her boss (i.e., the landlord). *Danforth v. Chandler*, 237 Mass. 518, 520 (1921); *Binkley Co. v. Eastern Tank, Inc.*, 831 F. 2d 333, 337 (1st Cir. 1987).
 41. Verbal, or oral, evidence (as opposed to written) is admissible to establish the terms of a tenancy at will agreement. *Walker Ice Co. v. American Steel & Wire Co.*, 185 Mass. 463, 473 (1904). This is an exception to what is called the parol evidence rule. Subsequent oral modification of a lease is admissible, but it must be supported by legal "consideration" (which means that each party must give up something in order for the agreement to be binding). *Coben v. Homonoff*, 311 Mass. 374, 376 (1942). A promise not to vacate premises is good consideration for an additional performance by the other party. Thus, if the tenant under a written lease threatens to move out, and the landlord, to please the tenant, agrees to reduce the rent or to provide additional services, such as heat, the landlord is bound by her agreement if the tenant agrees not to move out. *Commonwealth Investment Co. v. Fellsway Motor Mart*, 294 Mass. 306, 313-14 (1936). See also *Tashjian v. Karp*, 277 Mass. 42, 46 (1931). Even without "consideration," the refusal of the landlord to honor her promise is a violation of the Consumer Protection Act, G.L. c. 93A, §2. See 940 C.M.R. §§3.01, 3.05(1), 3.16.
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42. If a landlord promises a tenant something and then denies that she made this promise, this may be a violation of the Consumer Protection Act, G.L. c. 93A. Under G.L. c. 93A, it is against the law for a landlord or rental agent to engage in deceptive acts or practices. To enforce the law, tenants should try to find witnesses other than themselves to testify that the landlord made certain promises.
 43. G.L. c. 186, §15B(1)(b).
 44. For certain items, such as security deposits and last month's rent, the landlord is required to give such a receipt. G.L. c. 186, §15B(2)(a) and (3)(a).
 45. Under G.L. 186, §15B(1)(b), the law is clear that a landlord can charge only first month's rent, last month's rent, a security deposit, and the cost of a new lock.
 46. Tenants should be permitted to deduct overcharges from their rent. See *Bernashe v. Comtois*, Hampden Housing Court, 88-SP5595-S (Abrashkin, J, April 28, 1989), where the court held that "side payments" made by tenant above his Section 8 rent share were an illegal overcharge, and the court awarded the overcharge and trebled under G.L. c. 93A; but see also *Delgado v. Stefanik*, Hampden Housing Court, 89-LE3532-H, p. 13-14 (Abrashkin, J., November 1, 1989), where the court found that the landlord had illegally charged more than a month's rent for a security deposit and had illegally charged \$100.00 to hold the unit, but only awarded \$25.00 under G.L. c. 93A "in the absence of proof of greater actual damages." G.L. c. 239, §8A allows tenants to raise the landlord's "violation of any other law" as a defense to an eviction. However, many judges don't understand this statute and may think that only Sanitary Code violations are covered by it. But, even these judges may be unwilling to evict a tenant who merely withheld an illegal overcharge.
 47. G.L. c. 112, §87DDD½.
 48. See G.L. c. 186, §15B(1)(b).
 49. While there is no case law directly addressing this issue, if there is no reason for the pet rental fee other than to protect the landlord against damage caused by the pet, a court may conclude that such a fee is illegal. See Endnote 22 regarding discount clauses. See also *Madan v. Berrath*, Boston Housing Court, 97-03156, p. 3 (Winik, J, August 20, 1997) (holding that a pet deposit is a security deposit within the meaning of G.L. 186, §15B).
 50. See G.L. c. 186 §22 which lays out the requirements landlords must meet in order to be able to bill tenants for water usage. See also www.MassLegalHelp.org/housing/water-law for useful information about this law.
 51. 105 C.M.R. §§410.190, 410.201, 410.354. If no such written agreement exists, the landlord is legally responsible for the cost of heating the tenant's apartment even if the tenant has adopted the practice of paying for the heat herself. *Young v. Patukonis*, 24 Mass. App. Ct. 907, 908-09 (1987) (rescript). See also *Lezberg v. Rogers*, 27 Mass. App. Ct. 1158, 159 (1989).
 52. See previous endnote.
 53. 105 C.M.R. §410.354(A)-(C).
 54. See previous endnote.
 55. *Knudson v. General Motorcycle Co.*, 230 Mass. 54, 55 (1918); *Slayton v. Barry*, 175 Mass. 513, 515 (1908). The age of majority was lowered from 21 to 18 in 1973. G.L. c. 4, §7 (para. 51).
 56. G.L. c. 186, §10; *Gorin v. McGann*, 26 Mass. App. Dec. 150 (1963).
 57. For more on the legal rights of minors, see Abrashkin & Bowen, "The Legal Rights of Minors: Rental Housing in Massachusetts" (1984) and Massachusetts Office for Children, Advocacy Division Legal Office, "The Legal Rights of Adolescents" (1988).
 58. The Hampden County Housing Court has ruled that a landlord is contractually bound to rent an apartment for which she has signed a subsidy "Request for Lease Approval." *Blanks v. Gray*, Hampden Housing Court, LE-3001-S-87, p 5. (Abrashkin, J., April 4, 1988). That court has also ruled that someone who has been wrongfully denied an apartment after a contract to rent has been formed can sue the landlord under one of the "anti-lockout" statutes, G.L. c. 186, §15F. *Delgado v. Stefanik*, 89-LE-3532-H, p. 11 (Abrashkin, J., November 1, 1989).