

The Answer

Representing Yourself in an Eviction Case

As a tenant, you have many rights that you may use to defend yourself against an eviction. The **Answer** is the court document that helps you tell your story to the judge. This Answer form includes basic **Defenses** and **Counterclaims**.

Defenses are the legal reasons why you should not be evicted.

For example: The landlord is evicting you for not paying the rent and you paid the rent.

Counterclaims are your claims against your landlord for money or for a court order requiring him to do something. You may or may not be able to file counterclaims, depending on the reason for which you are being evicted. When you fill out the Answer form, it will guide you through whether you can file counterclaims.

For example: Bad conditions such as lack of heat or a broken stove make your home worth less than the rent the landlord is charging and entitle you to an order requiring the landlord to repair those conditions.

You may have other claims that are not listed on this form. This form does not take the place of a lawyer. If you can, you should try to get a lawyer.

Fill out this Answer form as soon as possible!

The court and the landlord (or the landlord's attorney) must receive your Answer by the first Monday after the **Entry Date** listed on your Summons. **Mailing this form on that Monday is not good enough.** If the Entry Date is not listed, contact the Court Clerk to find out exactly when your Answer is due.

How to Use This Answer Form

Try to Get Assistance

If you are eligible for free legal assistance, many Legal Services offices in Massachusetts have clinics that can help you fill out the attached Answer form. Contact your local legal services program to find out more about these clinics. To find a legal service program in your area go to: www.MassLegalHelp.org and click on “Find a Legal Aid.”

You also have a right to request **Discovery**. Discovery is the legal procedure you can use to get information from your landlord to help you prove your case. **If you request Discovery, this also postpones your eviction trial for two weeks.** If you want to request Discovery, use **Booklet 4: Discovery**. You can also contact your local legal services program and ask for **Booklet 4: Discovery**.

Complete the Top of the Answer Form

- a. Write the county you live in, if you know it.
- b. Write the **Original Trial Date**, which you will find in your Summons and Complaint.
If you are doing **Discovery**, check “Rescheduled” and put in the date exactly 2 weeks later than the **Original Trial Date**. If you are **not** doing Discovery, check “Original.” If, however, you request a jury trial, the Original or Rescheduled Trial Date may become your pre-trial conference date (at which time a jury trial date will usually be assigned). Check with the Clerk’s office to find out when the pre-trial conference is being scheduled.
- c. Write your landlord’s name as it is on the Summons and Complaint.
- d. Write your name as it is on the Summons and Complaint.
- e. Copy the name of the court from the upper-right-hand corner of the Summons and Complaint form.
- f. Fill in the Docket Number, if you know it. The Docket Number is the number the court has assigned to your case. You may ask the court for this number, or leave it blank.
- g. Check off “Counterclaims” if, after completing the form, you have checked any boxes in the Answer form under claims listed as both *Defenses and Counterclaims*. Think about whether you want a jury to hear your case. If you want to request a Jury Trial, you will need to check off the box “With Jury Trial Request” and on the last page of the form you will also need to check off “I claim my right to a trial by jury.”

Fill Out the Rest of the Answer Form as Appropriate for Your Case

This Answer form lists the most common *Defenses* and *Counterclaims* that tenants can use to prevent an eviction. When you fill out the Answer form do not be afraid to list all the defenses and counterclaims supported by the facts in your case.

You are allowed to file counterclaims where a tenancy has been terminated for non-payment of rent or for a reason that is not your fault. If you are being evicted for fault (which is something the landlord claims you did wrong, other than non-payment of rent), you may not be able to pursue counterclaims in this case.

Also, at the end of the Answer form check off **What You Want the Court to Do**.

Deliver the Answer Form

- Sign your full name and print your address and telephone number.
- Remove the Answer form from this booklet. **Make 2 copies.**
- Deliver the **original** Answer to the court.
- Deliver a **copy** of the Answer to your landlord (or his/her lawyer).
- Keep a copy to bring to court.

ANSWER FORM

Please print or type

COMMONWEALTH OF MASSACHUSETTS TRIAL COURT

a. _____, ss:
County

e. _____
Name of Court

f. _____
Docket No. Summary Process

- b. **Trial Date** Original Trial Date: _____ (No Discovery requested)
 Rescheduled Trial Date: _____ (Discovery requested)

c. _____
Plaintiff(s) – Landlord(s)

vs.

SUMMARY PROCESS ANSWER

COUNTERCLAIMS

WITH JURY TRIAL REQUEST

d. _____
Defendant(s) – Tenants(s)

Facts

1. My name is _____.
2. I live at _____. I moved in on _____.
3. I pay \$ _____ in rent per (month/week).
4. I receive a rent subsidy. The full contract rent is \$ _____.
5. I do ___/do not ___ have a written lease.
6. I deny that I live in my home unlawfully and against the right of the landlord.
7. I deny that I owe the amount of rent listed in the landlord's complaint.

Defense

Tenancy Not Properly Terminated and/or Case Not Properly Brought

Mass. Gen. Laws, c. 186, §§11-13, 17

8. I never received a Notice to Quit.
9. The landlord did not terminate my tenancy properly.
 - a. The Notice to Quit did not end my tenancy on the day my rent is due and/or give me the time provided by law.
 - b. The Notice to Quit was unclear and/or misleading.
10. The landlord started this case before the Notice to Quit expired.
11. The landlord is a corporation or other business entity and this case was not brought by an attorney.
12. The Summons and Complaint is defective and/or was not properly served/filed.

- 13. If I have ever owed the landlord rent, I paid or offered to pay it all within the time allowed by law.
 - a. I am a tenant at will and I paid or offered to pay the rent owed within 10 days of receiving the Notice to Quit.
 - b. I have a lease and I paid or offered to pay the rent owed and court costs on or before the date this Answer is due.
 - 14. Even if my tenancy was terminated, a new tenancy has been created by my landlord's conduct.
 - 15. The Complaint and the Notice to Quit state inconsistent reasons for eviction.
 - 16. The landlord's case should be dismissed because _____
-
-

Defense

**Failure to Comply with Rules for
Public and Subsidized Housing**

- 17. I am a tenant in public or subsidized housing and:
 - a. The landlord did not terminate my tenancy as required by the lease and/or program rules.
 - b. I am a tenant under the Section 8 Program and the landlord did not provide a copy of the Notice to Quit to the public housing agency in a timely manner.
 - c. I am a tenant in public or subsidized housing and the landlord does not have good cause to evict me as required by the lease and/or program rules.
 - d. I am a tenant in public or subsidized housing and the landlord did not give me my right to a grievance hearing or conference as required by the lease and/or program rules.

Defense and Counterclaim

Retaliation

Mass. Gen. Laws c. 239, §2A, c. 186, §18

- 18. The landlord is trying to evict me and/or retaliate against me because:
 - a. I withheld rent because of bad conditions, and/or told the landlord about bad conditions.
 - b. I reported bad conditions in writing to the landlord.
 - c. I reported bad conditions orally and/or in writing to a public agency.
 - d. I took part in a tenants' meeting or organization.
 - e. I brought a case/claim against the landlord.
 - f. Other:

This defense and counterclaim entitles me to possession and one to three times the rent (calculated at the full contract rent for tenants with subsidies) or my actual damages, whichever is greater.

- 19. I am entitled to a presumption of retaliation because the landlord took action against me within 6 months of any of the above (listed in 18b through 18f).

Defense and Counterclaim

Discrimination

Mass. Gen. Laws c. 239; c. 151B

20. My landlord has discriminated against me and/or a member of my household based on:
- | | | |
|--|---|--|
| <input type="checkbox"/> Family status (having children) | <input type="checkbox"/> Race | <input type="checkbox"/> National Origin |
| <input type="checkbox"/> Age | <input type="checkbox"/> Religion | <input type="checkbox"/> Disability |
| <input type="checkbox"/> Public or Rental Assistance | <input type="checkbox"/> Sexual Orientation | <input type="checkbox"/> Gender |
| <input type="checkbox"/> Marital Status | <input type="checkbox"/> Veteran's Status | <input type="checkbox"/> Other: _____ |
21. I and/or a member of my household have a mental and/or physical disability and the landlord has failed to make reasonable accommodation(s) for the disability.

Defense

Tenant Not Responsible for Alleged Behavior

22. I am a tenant in state public housing and the landlord is evicting me for the alleged behavior of a household member, guest, or someone over whom I had no control. I did not breach my tenancy agreement or breach any law because I had no way to control or no reason to know about the alleged behavior.

Defense

**Tenant Should Not Lose His/Her Apartment
(Avoidance of Forfeiture)**

23. Based on principles of equity and fairness, it is unfair to evict me.

STOP

If you are being evicted for "fault," which is something the landlord claims you did wrong (other than not paying your rent), skip questions #24-41, go directly to #42 and complete the rest of the form. Otherwise, continue completing #24 through to the end of the form.

Defense and Counterclaim

Bad Conditions in My Home and Other Claims

Mass. Gen. Laws c. 239, §8A; c. 93A; and/or Implied Warranty of Habitability

24. I have a defense and counterclaim because of past or present problems in or around my home that the landlord knew or should have known about, including but not limited to the following:
- | | |
|---|---|
| <input type="checkbox"/> cockroaches, other insects, mice or rats | <input type="checkbox"/> defective or leaky windows |
| <input type="checkbox"/> water entry or leakage | <input type="checkbox"/> defective ceilings, walls, or floors |
| <input type="checkbox"/> lead paint | <input type="checkbox"/> problems with heat and/or hot water |
| <input type="checkbox"/> defective locks or security problems | <input type="checkbox"/> other: _____ |
- _____
- _____
25. The landlord knew or should have known about the bad conditions because:
- I told the landlord orally.
 - I told the landlord in writing.
 - The landlord was notified by Inspectional Services, Board of Health, housing agency, or another entity or person(s).

- d. All or some of the conditions existed when I moved in.
- e. All or some of the conditions existed when the landlord purchased the property.
- f. Other: _____

I am entitled to damages for the reduced value of my home, calculated as the difference between: (a) the full market rental value of my apartment in good condition, and (b) the reduced value of my apartment in its bad condition. *(If the rent is subsidized, the damages are calculated based on the full rental value and not just the tenant's share.)* I am also entitled to damages for any other losses, injuries, or expenses resulting from bad conditions.

Defense & Counterclaim

Violation of the Security Deposit Law

Mass. Gen. Laws c. 239, §8A; c. 186, §15B; and/or c. 93A

- 26. I paid a security deposit of \$ _____ to my current/former (*circle which one*) landlord.
- 27. The landlord violated the security deposit law by:
 - a. Not putting it in a separate bank account, entitling me to three times the deposit and interest at the rate of 5%.
 - b. Not paying or deducting from my rent yearly interest, entitling me to three times the interest owed on the deposit.
 - c. Not giving me the required receipts and statements of conditions, entitling me to \$25 for each of these violations.
 - d. Not taking responsibility for the security deposit, which I paid to the prior landlord, entitling me to three times the deposit.

Defense & Counterclaim

Last Month's Rent

Mass. Gen. Laws c. 239, §8A; c. 186, §15B; and/or c. 93A

- 28. I paid last month's rent of \$ _____ to my current/former (*circle which one*) landlord and my landlord has not paid me yearly interest or given me rent credit for this interest, entitling me to three times the amount of interest owed.

Defense & Counterclaim

**Interference with Utilities and Use of Home
(or Breach of Quiet Enjoyment)**

Mass. Gen. Laws c. 239, §8A; c. 186, §14; and/or c. 93A

- 29. The landlord did the following:
 - a. Did not provide adequate heat.
 - b. Did not provide adequate hot water.
 - c. Did not pay for utilities that were the landlord's responsibility.
 - d. Shut off my utilities.
 - e. Locked me out of my apartment.
 - f. Put my possessions out without a court order.
 - g. Allowed bad conditions to exist in my apartment.
 - h. Entered my apartment without my permission and/or notice.
 - i. Interfered with my right to enjoy my home by: _____

- 30. I have been billed for heat and/or hot water and the landlord and I did not have a written agreement requiring that I would pay for these utilities. This defense and counterclaim entitles me to damages under G.L. c. 186, §14, and c. 93A.
- 31. I have been billed for gas, oil and/or electricity that go to other people's apartments or common areas (such as hallways, stairways, basements, or porches). This defense and counterclaim entitles me to damages under G.L. c. 186, §14, and/or c. 93A.

This defense and counterclaim entitles me to three times the rent (calculated at the full contract rent for tenants with subsidies) or my actual damages, whichever is greater.

Defense & Counterclaim

Rent Liability in Public and Subsidized Housing

- 32. The housing authority is responsible for rent.
- 33. The housing authority stopped payments to the landlord because repairs were not made.
- 34. The housing authority/owner failed to properly calculate rent or to adjust the rent, and therefore I am entitled to a recalculation of rent.
- 35. The landlord charged me rent in excess of the amount approved by the housing agency.

Defense & Counterclaim

Violation of the Consumer Protection Law

Mass. Gen. Laws c. 239, §8A, and/or c. 93A

- 36. The landlord is subject to G.L. c. 93A, and each of the acts stated in this Answer/Counterclaims was unfair and/or deceptive. This pleading is a demand for a reasonable settlement offer.
- 37. The landlord acted in the following additional unfair or deceptive ways:
 - a. The landlord charged me late fees before my rent was thirty days late.
 - b. The landlord charged a rent amount that I never agreed to pay.
 - c. The landlord charged me constable or court fees unlawfully.
 - d. There are unlawful terms in my lease.
 - e. Other: _____

Therefore, under G.L. c. 93A, I am entitled to statutory damages for each violation, or actual damages (doubled or trebled because the landlord's conduct was willful and knowing), whichever is greater.

Other Defenses & Counterclaims

- 38. My rent is paid by the Department of Transitional Assistance through vendor payments; therefore, I had no control over nonpayment of the rent.
- 39. I have exercised my rights under the repair and deduct statute (G.L. c. 111, §127L).
- 40. The landlord required me to pay for water in violation of G.L. c. 186, §22.
- 41. I have other defenses or counterclaims as follows:

WHAT I WANT THE COURT TO DO

42. On all claims and defenses, award me possession of my apartment.
43. On all claims and defenses, award me money damages, costs, attorney's fees (where applicable), and such other relief as is just and proper.
44. Other: _____

The Court Should Allow Me to Stay in My Home

Mass. Gen. Laws c. 239, §8A (5th para.)

45. The money owed to me on the counterclaims listed above is greater than the amount of rent owed, thereby entitling me to keep possession of my home. This applies to both nonpayment and no-fault evictions.
46. I request that the court tell me how much I owe for purposes of cure. If the court finds that I owe the landlord more rent than he/she owes me for my counterclaims, I claim my right to keep possession of my home by paying the court clerk this amount within one week of receiving notice of the amount due from the court.

The Court Should Order the Landlord to Make Repairs

Mass. Gen. Laws c. 239, §8A (4th para.), and/or c. 111, §127I

47. I request the court to order the landlord to correct the defective conditions in my home.

The Court Should Find That I Was Not at Fault

48. The court should find that the landlord has not proved that I was at fault. This is a fault eviction case in which the landlord claimed I did something wrong, other than nonpayment of rent. The landlord did not prove that I did anything serious enough to justify eviction; therefore, the court should award me possession of my home.

The Court Should Allow Me More Time to Move

Mass. Gen. Laws c. 239, §9

49. If the court awards possession to the landlord, I need time to move. (The court may award up to one year for a household with an elderly or disabled person, or up to six months for any other tenant.)
- a. I have an elderly (over 60) or disabled household member.
- b. The court should also consider my situation as follows: _____

Request for a Jury Trial

Part I, Article XV of the Mass. Constitution; USPR 8;
and Mass. Gen. Laws c. 218, §19B

I claim my right to a trial by jury. (Jury trials are available in all courts.)

I hereby certify that I delivered or mailed (*circle which one*) a copy of this Answer to the landlord or his/her lawyer on _____ (*date*).

Note to Tenants: This Answer must be filed in court **AND** a copy received by your landlord, or by his/her lawyer if represented, **ON OR BEFORE** the first Monday after the Entry Date listed on the Summons and Complaint.

Signature of Tenant(s)

Signature of Tenant(s)

Tenant(s)' Name(s) (*print*)

Tenant(s)' Name(s) (*print*)

Note to Tenants: Each Tenant named as a Defendant in the Complaint **MUST** sign this Answer or file a separate Answer in order to protect his/her own rights.

Address

Apt. No.

City

State

Zip

Telephone Number

Date