

# Chapter 8

## Getting Repairs Made

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*Legal Tactics: Tenants' Rights in Massachusetts*  
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<b>Your Right to a Decent Place to Live.....</b>	<b>109</b>
1. State Sanitary Code	
2. Local Health Ordinances	
3. Warranty of Habitability	
4. The Law of Quiet Enjoyment	
<b>Establishing That Your Landlord Had Knowledge of Illegal Conditions .....</b>	<b>111</b>
<b>Documenting the Problem .....</b>	<b>111</b>
1. Notify Your Landlord	
2. Put It in Writing	
3. Landlord's Right to Enter Your Home	
<b>Getting an Inspection .....</b>	<b>112</b>
1. How to Contact the Housing Inspector	
2. Be Prepared	
3. What Should the Inspector Inspect	
<b>Options If Your Landlord Refuses to Make Repairs .....</b>	<b>115</b>
1. Withhold Rent	
2. Repair and Deduct	
3. Organize	
4. Break Your Lease	
5. Go to Court	
<b>What If Your Building Is Condemned.....</b>	<b>122</b>
1. Right to a Hearing	
2. Challenging an Order to Condemn	
3. Moving Expenses	



# Getting Repairs Made

by Jennifer Dieringer

*Italicized words are in the Glossary*

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

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

## Your Right to a Decent Place to Live

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

1. The state Sanitary Code,
2. Local health ordinances,
3. *A warranty of habitability*, and
4. The law of *quiet enjoyment*.

### 1. State Sanitary Code

In Massachusetts, the state Sanitary Code is the primary source of law that gives tenants a right to decent housing.<sup>1</sup> The purpose of the state Sanitary Code is to protect people's health, safety, and well-being.<sup>2</sup> It sets the minimum legal standards that all landlords must meet,

and it applies to you whether you have a *lease* or not. For example, all rental housing must have heat, hot water, and electricity. Kitchens and bathrooms must have sinks with running water. Doors and windows must have locks.

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

If you need to know exactly what the state Sanitary Code says, key portions of it are reprinted in the **Laws** section at the end of this book. Copies of the state Sanitary Code are available online at:

[www.mass.gov/Eeohhs2/docs/dph/regs/105cmr410.pdf](http://www.mass.gov/Eeohhs2/docs/dph/regs/105cmr410.pdf).

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

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

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

## 2. Local Health Ordinances

Cities and towns have the right to pass local health ordinances that are stricter than the state Sanitary Code.<sup>4</sup> For example, in some cities and towns, local health ordinances require landlords to obtain a certificate of occupancy from a local Board of Health before renting. The reason for this requirement is to make sure that rental housing is safe. If a city or town requires a certificate of occupancy and a landlord has not obtained one, the landlord is in violation of both the local health ordinance and the state Sanitary Code. If a landlord rents an apartment without getting a certificate of occupancy where it is required, she may be prohibited by a court from collecting rent that a tenant withholds for conditions that violate the state Sanitary Code.<sup>5</sup>

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

## 3. Warranty of Habitability

Like businesses which must guarantee the safety of products they sell, landlords in the business of renting property must guarantee that the apartments they rent are safe and habitable. This is called a *warranty of habitability*.<sup>6</sup> Basically, this warranty recognizes that in return for your promise to pay rent, your landlord promises to keep your apartment in good condition.

The warranty of habitability applies whether you have a written lease or not. It is a right your landlord cannot ignore or take away from you.<sup>7</sup> For example, it is illegal for a landlord to put a clause in your lease that denies you a warranty of habitability or that states that you are responsible for making all repairs.<sup>8</sup> Also, a landlord cannot claim that she lowered the

rent you were charged because of the bad conditions.

A landlord violates the warranty of habitability from the time she has knowledge of conditions that may endanger or impair your health, safety, or well-being.<sup>9</sup> When a landlord breaches the warranty of habitability, you have several options. You may be able to withhold your rent or deduct the cost of repairs from your rent. You can go to court and ask a judge to order your landlord to make repairs and reduce your rent until repairs are made. You can choose to cancel your lease or rental agreement and move out. You can go to court and ask a judge to cancel your lease or rental agreement and give you a full or partial refund of the rent money you have already paid.<sup>10</sup> For more about your options, see the section in this chapter called **Options If Your Landlord Refuses to Make Repairs**.

Note: Where a tenant claims that a landlord has breached the warranty of habitability, the courts have established a formula to calculate the *damages*. This amount is called the *fair rental value*. It is the value of your apartment with all its problems and code violations.<sup>11</sup> Not every violation of the state Sanitary Code, however, violates the warranty of habitability.

## 4. The Law of Quiet Enjoyment

Some conditions are so serious that they may violate a state law that gives tenants a right to *quiet enjoyment*—the right to be free from unreasonable interference with the use of your home.<sup>12</sup> Your landlord violates your right to quiet enjoyment if she:

- Is required to furnish utilities or other services and she intentionally fails to provide them,
- Is required to provide utilities or other services and she directly or indirectly interferes with your getting them,

- Transfers the responsibility for payment for utilities to you without your consent or knowledge, or
- Intentionally interferes, in any way, with your quiet enjoyment of your apartment, including trying to evict you from your apartment without getting the court's permission (lock out).<sup>13</sup>

Under the right to quiet enjoyment law, if a landlord is in violation, you may sue her for money *damages*, which is your actual damages or three times your rent, whichever is more.<sup>14</sup> A judge may also fine the landlord between \$25-\$300 per violation and put the landlord in jail for up to six months. For more information about your rights under this law, see **Chapter 14: Taking Your Landlord to Court** under **Breach of Quiet Enjoyment**.

## Establishing That Your Landlord Had Knowledge of Illegal Conditions

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

- If the problem existed before you moved into your apartment,
- If your landlord actually sees the problem,
- If you tell or write your landlord about the problem (it is always best to notify your landlord in writing),
- If the Board of Health notifies your landlord about a problem,<sup>15</sup>
- If another tenant has notified the landlord about a problem that affects you, too, or
- If the problem existed at the time a new landlord bought your building.

## Documenting the Problem

### 1. Notify Your Landlord

Most tenants, and many landlords, do not know what minimum conditions the state Sanitary Code requires. The **Housing Code Checklist** (see **Booklet 2**) summarizes the state Sanitary Code. Use it to evaluate the condition of your home.

If something needs to be repaired after you move in, tell your landlord about the problem right away. If there is an emergency—for example, a burst water pipe—contact your landlord immediately. Once a landlord has knowledge of conditions that violate the law, the law requires her to make repairs. In most cases, landlords make repairs after tenants notify them about problems.

When you contact your landlord about making repairs, ask the landlord to let you know when a repair person will be coming to fix the problem. This is a good idea because one of the most common excuses landlords use when they don't make repairs is that a repair person could not get into a tenant's apartment. **Make sure you know when the repair person is coming so that your landlord cannot use this excuse.**

### 2. Put It in Writing

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

If your landlord does not respond to this letter, you should send an identical copy of the letter by *certified mail*. Request a return receipt so that

you can prove that you sent your landlord notice and it was delivered.

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

### 3. Landlord's Right to Enter Your Home

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

Your landlord must have your permission to enter. While housing courts have generally required landlords to give tenants at least 24 hours' notice before entering the tenant's apartment (unless there is an emergency, such as a water leak into another apartment), there are times when 24 hours is not enough notice. If you work or have other scheduling problems, ask the landlord to give you at least two days' notice so that you can make arrangements to be in the apartment.

Under the law, you are required to provide a landlord with reasonable access to your apartment so that the landlord can:

1. Inspect the apartment,
2. Make repairs as required by law, or
3. Show the apartment to prospective purchasers or tenants.<sup>16</sup>

If you have a lease and it states other reasons that your landlord can enter your apartment, that part of your lease is illegal.<sup>17</sup> The law also does not require you to give a landlord a key to your apartment.<sup>18</sup>

## Getting an Inspection

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

### 1. How to Contact the Housing Inspector

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

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

When you call to make an appointment, try to schedule a definite appointment for the inspection. Housing inspectors are required to use their best efforts to inspect at a time mutually satisfactory to you and to them. An inspection should be done within five days of your request.<sup>19</sup> **If there are serious problems, such as lack of heat or water, tell the inspector. By law, she must come within 24 hours of such a request.**<sup>20</sup>

An inspector may tell you that she will just call the landlord and get the landlord to fix the problem. There is no rule that prohibits an

inspector from calling a landlord. However, the law still requires a housing inspector to inspect your property. The law also requires a housing inspector to inspect your home after a request regardless of whether you have notified your landlord about bad conditions.<sup>21</sup>

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

In some housing courts, you can also file papers requesting that the judge order a "housing court specialist" to inspect your apartment.<sup>22</sup> If you do that, you will need to give the landlord notice that you are filing such a request. If there is already a lawsuit or an eviction filed, you can file a motion requesting the inspection. If nothing has been filed in court yet, you may file your own lawsuit. See the section entitled **Go to Court** in this chapter for more information.

## 2. Be Prepared

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

1. *Retaliation* by your landlord is illegal, and
2. Be prepared for inspectors.

### a. Retaliation Is Illegal

Contacting your local housing inspector may cause your landlord to become angry and retaliate against you by raising your rent, sending you an *eviction* notice, or harassing you in other ways. **Retaliation is illegal.** You have a right to tell the landlord of code violations, request an inspection from the Board of Health,

and take legal action against your landlord if she refuses to make repairs.<sup>23</sup>

If your landlord attempts to retaliate against you, you can bring a lawsuit against her. The law seeks to protect tenants against being harassed or evicted for trying to enforce their rights. See **Chapter 13: Evictions** and **Chapter 14: Taking Your Landlord to Court** for more on retaliation.

### b. Be Prepared for Inspectors

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

## 3. What Should the Inspector Inspect

Someone must be present on your behalf during any inspection inside your apartment.<sup>24</sup> If a neighbor is going to let an inspector in, prepare a written note that will tell the inspector that the neighbor has your permission to take the inspector through the apartment.

When an inspector comes to your apartment, you have a right to request a full inspection, called a "comprehensive" inspection, which includes the interior of your apartment and exterior of the building and all common areas.<sup>25</sup> If you do not request a comprehensive or complete inspection, a housing inspector is required only to check for serious violations and the conditions you specifically ask to be checked. For example, if you report a problem with the heat, the inspector only has to check the heat.

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

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

At the end of the inspection, the inspector must give you or whoever is authorized to be there a copy of her report.<sup>26</sup> If she doesn't, ask for a copy. The inspector must also send your landlord an original, signed copy of the report and mail you a copy within seven days of the inspection.<sup>27</sup> The inspector's report should include:<sup>28</sup>

- The inspector's name,
- The date and time of the inspection,
- A list and description of the conditions that violate the state Sanitary Code or local health ordinances,
- Whether any violations "may endanger or materially impair" the health, safety or well-being of you or anyone else in the apartment,
- The date when the inspector will make a follow-up visit,
- A summary of the legal remedies available to you,
- The name and telephone number of the nearest legal services office, and
- The inspector's signature after the statement: "This inspection report is signed and certified under the pains and penalties of perjury."

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

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

The state Sanitary Code lists 14 specific conditions that are considered so serious that they "may endanger or materially impair" your health, safety or well-being.<sup>29</sup> These are listed in the **Housing Code Checklist** (see **Booklet 2**). If an inspection finds any of these violations, the inspector must send your landlord a repair order within 12 hours of the inspection.<sup>30</sup> This report should include a notice to the landlord to make a "good-faith effort" to correct these violations within 24 hours of receiving the notice.

If the repairs are not serious, the inspector should send a repair order to the landlord within seven days of your inspection. The order should state that the landlord must begin to make these repairs or contract with a repair person (in writing) within five days of receiving the order. The landlord must complete less serious repairs within 30 days of receiving the order or sooner if the board so orders.<sup>31</sup>

You should receive copies of all repair orders or notices that inspectors send to your landlord.<sup>32</sup>

#### **Save these notices.**

If your landlord fails to correct any problem within the time ordered by the Board of Health, contact the inspector and request a reinspect.<sup>33</sup> You may also consider whether you want to withhold your rent, organize with other tenants, make repairs and deduct their cost from your rent, break your lease, or take your landlord to court. Each of these options is discussed in this chapter.

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

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

1. You have the right to complain to the Board of Health if an inspector fails to do the following:<sup>34</sup>
  - Inspect your apartment,
  - Inspect within the required time,
  - Certify violations as serious, when appropriate,
  - Issue a report, or
  - Issue an order to the landlord to make repairs.

To file a complaint with the Board, submit a written letter to the Board within 30 days of receiving an inadequate inspection report or requesting an inspection.<sup>35</sup> A hearing will then be scheduled before the Board. You can bring witnesses, pictures, or any other evidence to the hearing to show what the inspector failed to do. The Board must then inform you, in writing, of its decision within seven days of the hearing.<sup>36</sup> If you do not agree with its decision, you can challenge the decision in court.<sup>37</sup>

2. You can also contact state inspectors at the Massachusetts Department of Public Health (DPH) Community Sanitation Division at 617-624-5757 and request that they do an inspection.<sup>38</sup> See the **Directory** for a list of **Public Health regional offices**.
3. If there is a serious backlog of requests for inspections in your town or city, you may want to contact a local or state tenant group and ask them to help you develop a plan to put pressure on the Board of Health. For example, the local paper could do a story about the need for more inspectors. Tenants could ask a mayor or local government official to appoint a special prosecutor to help code inspectors enforce orders.

## Options If Your Landlord Refuses to Make Repairs

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

### 1. Withhold Rent

One way to get your landlord to fix bad conditions is to withhold all or some of your rent until the landlord actually makes the repairs. This is called "rent withholding."<sup>39</sup>

Tenants have a right to withhold rent because landlords are obligated to provide safe and habitable housing under the *warranty of habitability*. If a landlord breaks this obligation, a tenant's obligation to pay the full amount of rent stops until repairs are made.<sup>40</sup> A tenant may want to withhold all or part of the rent, depending on the seriousness of the violations.<sup>41</sup> The law does not state how much or for how long you can withhold.

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

Note: If you are living in a hotel or motel or have lived in a boarding house for less than three consecutive months, you do not have the right to withhold your rent to get the landlord to make repairs. For more information about the rights of rooming

house tenants, see **Chapter 18: Rooming Houses**.

**a. When Can You Withhold Rent**

Before you can withhold rent, you must meet certain requirements.<sup>42</sup> If you can answer yes to all five of the questions below, you have met these requirements and can legally withhold your rent.

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

If you answer yes to all five questions, you can legally withhold your rent and your landlord cannot evict you—although she may try. If a landlord tries to evict you and you have properly withheld your rent, your landlord may be violating other laws. See the section in **Chapter 13: Evictions** called **Retaliatory Evictions**.

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

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

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

- The date when the landlord will start and complete repairs,
- How much rent you will pay (or withhold) while repairs are completed, and
- How much of the withheld rent you will return (if any) once repairs are properly completed.

**c. Protect Yourself When You Withhold**

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

The best way to protect yourself while you are withholding rent is to take your rent money and set it aside in a bank account separate from any other bank account that you have. (Do not keep cash in your apartment.) Although the law does not require you to put your rent in a bank, there are several reasons why this is important. First, if your landlord tries to evict you, you can show the court that you had the money to pay rent and you did not simply stop paying because you were unable to pay. Setting up a separate bank account will also strengthen your case and give you more credibility in the eyes of a judge if you take the landlord to court or the landlord attempts to evict you. Second, if a judge

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

Note: Legally, once your landlord makes repairs, you do not automatically have to give the landlord back any of the rent you have withheld. Only a judge can order you to do this. You may decide to keep some or all of the rent you withheld because of the impact these conditions had on your use of the apartment. If your landlord decides to take you to court to get back the withheld rent, explain to the judge how the conditions affected you and your family. Depending on the situation, a judge may decide you can keep part or all of the withheld rent.<sup>43</sup>

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

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

- Document the bad conditions,
- Meet all the requirements for withholding rent,
- Deposit your rent in a bank, and
- Use the sample **Rent Withholding Letter (Form 12)** to notify your landlord about the bad conditions.

A copy of a housing inspection report that accurately describes code violations is the best way to document violations of the state Sanitary Code. It is also proof that the landlord knew about the conditions.<sup>44</sup> If you have a camera or video camera (or can borrow one), take pictures of the bad conditions. A good picture will be worth a thousand words if you need to prove that bad conditions exist.

If a landlord wants to evict you, she must go to court and get permission from a judge. If a judge finds that you have followed all the requirements under the rent-withholding law, you will have a legal *defense* to the eviction.<sup>45</sup> This means a judge should not give the landlord permission to evict you and you can stay in your home. You may also have a legal *claim* against her for money *damages*. See **Chapter 13: Evictions** for more about evictions and **Chapter 14: Taking Your Landlord to Court** for more information about other legal claims.

A judge may also order you to pay an amount called the *fair rental value* to the court. The fair rental value is the value of your apartment with all its problems and code violations<sup>46</sup> (see box following this section). If a judge orders you to pay money to the court, ask the judge also to order the landlord to fix all defective conditions. Ideally, you want the court to hold onto your rent money until a landlord has made repairs. Although a court can decide to give your landlord permission to use the money you pay to the court to make repairs, you can ask the judge to hold a *hearing before* returning this money to the landlord.<sup>47</sup> This will give you a chance to tell the judge if the landlord has fixed any of the problems.

At the end of an eviction case, if a judge finds that, because of code violations, your landlord owes you the same amount as or more money than you owe her, you win the case and can stay in your apartment. If, on the other hand, the court finds that you owe the landlord money, you can stay in your apartment only if you pay the amount you owe to the court. (This is why it is important to set aside your rent money—so if a judge says you owe money, you can pay and stay.) You must pay this amount to the court within seven days of receiving a notice from the court about the amount due.<sup>48</sup> If you do not, you can be evicted. The court may also require you to pay certain court costs.

## Determining Fair Rental Value: An Example

Because your stove doesn't work, your toilet is broken, water leaks through the ceiling, and the landlord refuses to give you a smoke detector, you withhold all of your rent. (Your rent is \$900 per month.)

Before you start to withhold, you notify your landlord in writing about all of these conditions and get a housing inspection report. You also put your rent money aside in the bank.

After three months of withholding rent (a total of \$2,700), your landlord decides to try to evict you instead of making repairs. She files an eviction case in court. After hearing both sides of the case, a judge finds that you properly withheld your rent. The judge also finds that during the three months you withheld your rent, the fair rental value of your apartment with all of the code violations was \$450 per month, as opposed to the \$900 per month that you were being charged.

The court will then send you a notice saying you owe \$1,350 for the three months you withheld rent. If you pay this amount to the court within seven days of receiving this notice, you can stay in your home. You also get to keep the other \$1,350 you withheld.

If you do not pay the \$1,350 within the seven days, the landlord is entitled to evict you. **This is why it is so important to set the rent aside in a separate bank account.**

## 2. Repair and Deduct

Under certain conditions, tenants in Massachusetts have the legal right to make repairs and deduct up to four months' rent to pay for them.<sup>49</sup> This is referred to as "repair and deduct." The advantage of choosing to repair and deduct is that the repairs get done. The disadvantage is that you are taking responsibility for making sure that the repairs are done well. See the sample **Repair and Deduct Letter at Form 13.**

### a. When Can You Repair and Deduct

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

	YES	NO
Are there violations that "endanger or materially impair" the health, safety, or well-being of a tenant that have been certified by a housing inspector or that a court finds exist? <sup>50</sup>	<input type="checkbox"/>	<input type="checkbox"/>
Have you given the landlord or her agent written notice of the violations?	<input type="checkbox"/>	<input type="checkbox"/>
Did the landlord fail to substantially complete repairs within 14 days after this notice, or within a shorter time if the housing inspector or court ordered this?	<input type="checkbox"/>	<input type="checkbox"/>
Were the conditions caused by someone or something other than yourself or someone under your control (such as a guest or a member of the household)?	<input type="checkbox"/>	<input type="checkbox"/>
Have you given your landlord access to your home to make repairs?	<input type="checkbox"/>	<input type="checkbox"/>

## **b. What Can You Repair**

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

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

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

Under the law, you may deduct only a total of four months' rent in any 12-month period. You cannot store up months of withheld rent over several years and then deduct more than four months' rent in a single year. If you decide to repair and deduct, save all bills and receipts for materials and labor as proof of your costs.

Remember: When you make the repair, you are taking responsibility for making sure it's done right. When you hire someone to do the repairs, ask what complications or risks there may be in doing the repair. It is also a good idea to get a reference for anyone you hire.

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

If a landlord feels that you deducted too much for repairs, she is allowed to go to court to try and get back some of this money. The law does not, however, allow your landlord to evict you if the court believes that you have deducted too much rent.<sup>51</sup> It is also illegal for landlords to raise your rent for repairs you legally made under the repair and deduct statute, unless there is a court order permitting a rent increase.<sup>52</sup>

If your landlord does take you to court to try to get back possible excess rent deductions, do not ignore the court notice. To show that the deductions were excessive, the landlord will have to show that the deductions were for more than four months' rent during a 12-month period, or were unreasonable given the circumstances. In deciding if deductions were unreasonable, a judge will look to see what alternatives the tenant had at the time the violations were first reported, how urgent the repairs were, and the quality and cost of the work done.<sup>53</sup>

Repairs for minor code violations, such as screens, small leaks, or small holes in the walls, will probably not be found reasonable by the court unless there are so many of them that you can prove that the overall effect is dangerous.<sup>54</sup> This is difficult to do.

## **3. Organize**

If other tenants in your building or community face bad conditions, there are ways to work together to improve everyone's living conditions. Tenants can all agree to withhold rent until the landlord makes repairs. A group of tenants can ask a judge to order the landlord to make repairs. If the landlord absolutely refuses to fix the bad conditions, tenants can ask a court to appoint a temporary landlord called a *receiver* in order to make repairs (see **Chapter 11: Receiverships**). Tenants can also organize and together put pressure on the local Board of Health to inspect their apartments and enforce the state Sanitary Code and local health ordinances.

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

## 4. Break Your Lease

When there are very serious violations of the Sanitary Code in your apartment and you feel you must move, the law allows you to break your lease. If you do not have a lease, you can leave without giving the usual 30-day notice (or whatever notice may be required in your situation) to the landlord. You are allowed to break your lease or move out without giving the usual notice because the landlord has violated her obligation to provide a habitable apartment under the warranty of habitability.<sup>55</sup>

If you move out early, your landlord may try to sue you for breaking your lease. For this reason, before you move out, it is wise to obtain a Board of Health report as proof of the violations in your apartment.

Keep in mind: If violations are **not serious**, you may be held responsible for paying the rent if you leave without proper notice.

When you move out because of serious violations, you are entitled to get back your security deposit. If you have to go to court to get your deposit back, you might have to prove that the conditions in your apartment were severe enough to permit your leaving. For more information about getting security deposits back and moving out, see **Chapter 3: Security Deposits and Last Month's Rent** and **Chapter 12: Moving Out**.

## 5. Go to Court

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

- Order your landlord to make repairs,
- Order your landlord to pay you money for the harm that you have suffered,
- Appoint a *receiver*: a person or organization appointed by the court to manage and fix up the property (see **Chapter 11: Receiverships**),<sup>56</sup>

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

There are primarily four types of *complaints* that you can file with the court to demand that a landlord make repairs:

- Tenant Petition;
- Emergency Injunction, also called a *Temporary Restraining Order*;
- Criminal Complaint;
- Civil Lawsuit.

### a. Tenant Petition

Tenants can ask a judge to order their landlord to repair conditions that violate the state Sanitary Code (or local health ordinance, if it is stricter). This is called a tenant petition.<sup>57</sup> See the sample **Tenant Petition for Enforcement of the State Sanitary Code (Form 14)**. When you file a tenant petition, a judge can:

- Order the landlord to make repairs, or
- Appoint a temporary landlord called a *receiver* to make repairs.

The benefit of bringing a tenant petition is that it may be a safe way for you to get repairs made without having to withhold rent. If you withhold your rent, you may have to go to court to defend yourself against an *eviction*. If you file a tenant petition, you—not your landlord—are bringing the matter before a judge. A tenant petition also puts you in a better position to negotiate what you want with the landlord.

For more about negotiating, see **Negotiating a Good Settlement** in **Chapter 15: Using the Court System** and **Negotiating a Solution with the Landlord** in **Chapter 10: Getting Organized**.

When you file a tenant petition, a judge also has the power to make certain other decisions. A judge may decide that until your landlord makes repairs, your rent should be lowered to the *fair rental value* of your apartment. The fair rental value is the value of your home with all of its

problems. A judge can require you to pay this amount to the court clerk (in addition to any past rent you have withheld or owe) while the landlord makes repairs.<sup>58</sup> Ideally, you want the court to hold onto this money until the landlord makes repairs, so that the landlord has some incentive to get them done. A judge can, however, release this money to your landlord for purposes of making repairs.<sup>59</sup>

Note: A judge also has the power in a tenant petition to order the Board of Health to condemn a very dangerous building. This could lead to tenants' evictions.<sup>60</sup> (For more about condemnations, see **What If Your Building Is Condemned** in this chapter.)

### b. Emergency Injunction

If you want a judge to order your landlord to make emergency repairs, you can ask a court to issue an *injunction*, also called a *temporary restraining order*.<sup>61</sup> An injunction is an order from the court that tells your landlord to take immediate action to correct a problem or to stop doing something that is illegal. For example, a judge can order your landlord to immediately fix the heating system.

In most cases, tenants request an emergency injunction called a *temporary restraining order* or TRO. See a **Temporary Restraining Order at Form 15**.

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

If you get a TRO from the judge, take a copy of it to a sheriff's or constable's office immediately. A sheriff or constable must *serve* it on your landlord. A TRO is not good unless your

landlord has knowledge of it. If your landlord refuses to obey a TRO, you should go back to court and tell the judge. If a judge finds that your landlord has not obeyed the TRO, the landlord may be held in *contempt* and can be arrested and fined.

### c. Criminal Complaint

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

- It may put more pressure on the landlord to make repairs.
- If the Board of Health brings the criminal complaint, you may not have to go to court because the inspector can present all the necessary evidence.

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

There are two kinds of criminal cases that tenants can bring against landlords who fail to repair Sanitary Code violations. The first is where the landlord fails to comply with the Sanitary Code.<sup>62</sup> You or the Board of Health may bring this kind of complaint.<sup>63</sup> Fines for violations of the state Sanitary Code can range from \$10 to \$500 a day.<sup>64</sup>

The second type of case is where the landlord fails to provide heat, hot water, or other utilities or interferes with your *quiet enjoyment*. Only tenants who are affected by the landlord's illegal behavior can file this type of criminal complaint. To bring this type of complaint, you do not need a Board of Health inspection, although it is very helpful. In addition to fining your landlord, a judge can also sentence a landlord to serve up to six months in jail for violation of the law of quiet enjoyment and award you money *damages* in the amount of your actual damages or three times your rent, whichever is more.<sup>65</sup>

#### **d. Civil Lawsuit**

If a landlord refuses to repair code violations, tenants can file a civil lawsuit or a small claims lawsuit. A small claims case is a civil lawsuit that involves less than \$2,000.<sup>66</sup> In a civil complaint, you bring a lawsuit against your landlord for money for the harm that you have suffered or are suffering because of code violations. You can also ask the court to issue an *injunction* (see section above called **Emergency Injunction**).

If you bring a civil lawsuit against your landlord because she has failed to make repairs, there are primarily six types of legal *claims* you can include:

- Breach of *Warranty of Habitability*,
- Breach of *Quiet Enjoyment*,
- Unfair and Deceptive Practices,
- Negligence,
- Infliction of Emotional Distress,
- Nuisance.

Each of these legal claims is described in **Chapter 14: Taking Your Landlord to Court**. As you read through Chapter 14, you may discover that your landlord has violated other laws. Before you decide to bring a lawsuit against your landlord, you need to carefully evaluate the strength of your case.

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

If a housing inspector finds that all or a part of the building you live in is "unfit" to live in and that repairs cannot be made while you are living in the property, the Board of Health may issue a finding that the dwelling or a portion of the dwelling is unfit for human habitation.<sup>67</sup> This finding may lead to the Board of Health's ordering that the building be condemned, that the landlord close up the property, and that the occupants vacate the portion that is unfit. If the Board of Health condemns your building, legally, you do not have to move until after a judge orders you to move.

If you want to fight the condemnation, you must appear in court for the condemnation hearing. You will get notice of it from the Board of Health, not your landlord. Because these are considered emergency situations, you will often not have very much notice in advance of the hearing.

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

If a Board of Health intends to condemn a building, it must first send all occupants a written notice. This notice must tell tenants that the Board of Health will hold a *hearing* to consider whether the property or a specific part of the property should be condemned. The notice must also include a copy of the inspection report and tell you when a hearing is scheduled.<sup>68</sup>

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

Note: If an inspector determines that the conditions are so dangerous that the tenants must immediately vacate the building, the tenants may be denied a hearing before the Board of Health.<sup>69</sup> The inspector must put this determination in writing.

## 2. Challenging an Order to Condemn

At the same time or any time after a Board of Health determines that a building is unfit for human habitation, it may issue an order to condemn. This order will state that the building must be vacated and that the landlord must close it up.<sup>70</sup>

As a tenant, you may challenge the Board of Health's order to condemn by going to court.<sup>71</sup> There are several things you can do at court.

- If the conditions are not too severe, and your landlord has adequate funds, you can ask the judge to order the landlord to make the repairs necessary to avoid condemnation.
- If the conditions are not too severe, but the landlord does not have adequate funds, you can ask the judge to appoint a *receiver* to manage and repair the property (see **Chapter 11: Receiverships**).
- If you are able to get an order that the repairs get made and the apartment not be condemned, you will probably need to leave your apartment for a period of time in order for the repairs to be made. You may ask the judge to order your landlord or the town or city that is condemning the property to pay for a hotel room for you and your family. You may also ask the judge to make an order for a daily allowance to help you pay for food while you are displaced from your apartment.

If you have not already sought the help of an attorney, you should do so at this point. If, within one year of the order to condemn, an owner has not made the necessary repairs, the Board of Health may order the building to be demolished.

## 3. Moving Expenses

If the Board of Health condemns your building and orders you and to vacate it, the city or town in which the building is located is required to provide occupants with relocation assistance and a relocation payment for their moving expenses.<sup>72</sup> Tenants forced to leave their apartments due to violations of the state Sanitary Code may apply for Emergency Assistance shelter from your local Department of Transitional Assistance office (see **Chapter 17: Emergency Assistance**). You can also apply for emergency housing from your local housing authority.

## Endnotes

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1. The state Sanitary Code is a regulation that applies to the whole state. It has two chapters: Chapter I: General Administrative Procedures, and Chapter II: Minimum Standards of Fitness for Human Habitation. The Massachusetts Department of Public Health, the state agency which is responsible for enforcing the state Sanitary Code, may from time to time change or amend these regulations. Chapter I is printed in 105 C.M.R. §400.000; Chapter II is printed in 105 C.M.R. §410.000.
2. 105 C.M.R. §410.001.
3. See Building Code (780 C.M.R.), Fire Prevention Code (527 C.M.R.), Electrical Code (527 C.M.R. §12), and Plumbing Code (248 C.M.R. §1.00 et seq.). All of these codes are available from the State House Bookstore and online at: [www.lawlib.state.ma.us/cmr.html](http://www.lawlib.state.ma.us/cmr.html).
4. 105 C.M.R. §400.015.
5. See *Coder v. Lauer*, Gloucester District Court, 870236 (1987), where court found that a rental agreement made without the benefit of a certificate of occupancy was illegal. The landlord was precluded from recovering rent which had been withheld by the tenant. Also see "The Certificate of Occupancy as a Code Enforcement Tool," in *National Housing Law Bulletin* (August/September 1978, p. 4), and "Rental of Unlicensed Apartment is UDAP Violation," in *National Consumer Law (NCLC) Reports* (November/December 1986, Volume 5, p. 9).
6. *Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973).
7. *Boston Housing Auth. v. Hemingway*, 363 Mass. 184, 218 (1973). See also *Crowell v. McCaffery*, 377 Mass. 443 (1979).
8. This would be a violation of G.L. c. 93A (the Consumer Protection Law). See *Leardi v. Brown*, 394 Mass. 151, 156-67 (1985).
9. 105 C.M.R. §410.750 sets out the conditions that may endanger or impair the health, safety, or well-being of tenants. Any violation not included in this list has the potential to fall within this category, given the specific conditions.
10. *Boston Housing Auth. v. Hemingway*, 363 Mass. 184, 200-01 (1973). If a tenant goes to court, a judge will use several factors to decide whether the lease should be rescinded. These factors include: (1) the seriousness of the defective conditions and the effect on the habitability of the residence; (2) how long a tenant has had to live with the defective conditions; (3) whether or not the defects could be fixed within a reasonable amount of time; and (4) whether or not the tenant is responsible for the defective conditions.
11. *Cruz Mgmt. Co. v. Wideman*, 417 Mass. 771, 775 (1994); *Darmetko v. Boston Housing Auth.*, 378 Mass. 758 (1979); *McKenna v. Begin*, 5 Mass. App. Ct. 304 (1977). Specifically, a judge computes damages by assessing what major code violations there are in your apartment and determining the percentage by which your use and enjoyment of the apartment have been diminished by the existence of these violations. After the court determines the percentage reduction factor applicable to each major violation, the various percentages are totaled to arrive at an aggregate percentage reduction factor. The "reduced" rent is applied to the period during which your landlord knew of the defective conditions. See *McKenna v. Begin*, 5 Mass. App. Ct. 304 (1977). Tenants with subsidies are entitled to damages calculated on the basis of the full contract rent, not just the tenant's portion of the rent. *Cruz Mgmt. Co. v. Wideman*, 417 Mass. 771, 774-775 (1994).
12. G.L. c. 186, §14.
13. G.L. c. 186, §14. In order for you to recover under G.L. c. 186, §14, the landlord does not have to intentionally try to disturb you; it is her conduct and not her intentions that is controlling. *Blackett v. Olanoff*, 371 Mass. 714 (1977). For example, the fact that an owner failed to provide heat because she could not afford to buy heating oil does not diminish the tenant's right to recover for the loss of "quiet enjoyment" that occurred during the time the apartment was unheated. *Lowery v. Robinson*, 13 Mass. App. Ct. 982 (1982).
14. G.L. c. 186, §14; *Charles E. Burt, Inc. v. Seven Grand Corp.*, 340 Mass. 124 (1959), and *Homesavers Council of Greenfield Gardens, Inc. v. Sanchez*, 70 Mass. App. Ct. 453 (2007), which provides that actual and consequential damages can include emotional distress.

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15. G.L. c. 239, §8A.
  16. G.L. c. 186, §15B(1). A landlord may also enter your apartment if your apartment appears to have been abandoned or to inspect it during the last 30 days of your tenancy to determine if there are damages that would lead to a reduction in the return of your security deposit. 940 C.M.R. §3.17(6)(e).
  17. G.L. c. 186, §15B(1)(a); 940 C.M.R. §3.17(6)(e).
  18. No statute or regulation gives the landlord a right to a key. Under case law, the tenant has exclusive right to possession. *Strycharski v. Spillane*, 320 Mass. 382 (1946); *Young v. Garwacki*, 380 Mass. 162, 170 (1980).
  19. 105 C.M.R. §410.820(A)(2).
  20. 105 C.M.R. §410.820(A)(1). There is a list of serious problems which require a 24-hour response from the Board of Health.
  21. 105 C.M.R. §410.820.
  22. G.L. c. 185C, §16; Western Division Housing Court Rule 5.
  23. A landlord may not retaliate against you for doing these things. G.L. c. 186, §18.
  24. 105 C.M.R. §410.820.
  25. 105 C.M.R. §410.822(B)(1).
  26. 105 C.M.R. §410.822(C).
  27. G.L. c. 111, §127B (¶6).
  28. 105 C.M.R. §410.821.
  29. 105 C.M.R. §410.750.
  30. 105 C.M.R. §410.830(A).
  31. 105 C.M.R. §410.830(B).
  32. 105 CMR 410.833(D); G.L. c. 111, §127B.
  33. 105 C.M.R. §410.822(B)(4). If your landlord fails to respond to an order of the Board of Health involving a very serious condition, you can request that the Board of Health repair the property. The Board is permitted by law to repair or clean the property and then charge the landlord for any and all expenses incurred. G.L. c. 111, §127B; 105 C.M.R. §410.960.
  34. G.L. c. 111, §127B; 105 C.M.R. §410.850(B); 105 C.M.R. §400.500 describing hearing rights. It is unclear which rules apply if there is conflict.
  35. 105 C.M.R. §410.850(B).
  36. 105 C.M.R. §410.854(A).
  37. G.L. c. 30A; 105 C.M.R. §410.860.
  38. G.L. c. 111, §127A; 105 C.M.R. §400.300(C).
  39. G.L. c. 239, §8A. Because this law has been amended many times, be sure you have the current version.
  40. *Boston Housing Auth. v. Hemingway*, 363 Mass. 184, (1973); *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196 (1979).

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41. See *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196 (1979).
  42. G.L. c. 239, §8A.
  43. G.L. c. 239, §8A.
  44. G.L. c. 239, §8A.
  45. G.L. c. 239, §8A.
  46. *Darmetko v. Boston Housing Auth.*, 378 Mass. 758 (1979); *McKenna v. Begin*, 5 Mass. App. Ct. 304 (1977).
  47. G.L. c. 239, §8A.
  48. G.L. c. 239, §8A.
  49. G.L. c. 111, §127L is the basis for the entire repair and deduct section. See also 940 C.M.R. §3.17(1)(h).
  50. The state Sanitary Code, 105 C.M.R. §410.750, sets out those conditions which are automatically considered to "endanger or materially impair the health or safety, and well-being" of the tenant.
  51. G.L. c. 111, §127L (¶3).
  52. G.L. c. 111, §127L (¶3).
  53. G.L. c. 111, §127L (¶3).
  54. See *McKenna v. Begin*, 5 Mass. App. Ct. 304, (1977).
  55. *Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). Under the repair and deduct statute, G.L. c. 111, §127L (¶1, last sentence), tenants may break the tenancy or lease agreement, pay only the fair rental value, and vacate the premises in a reasonable period of time.
  56. The superior, housing, and district courts are explicitly given the power to appoint receivers under G.L. c. 111, §127I. Housing courts jurisdiction is reaffirmed by G.L. c. 185C, §3. District courts have authority under G.L. c. 218, §19C.
  57. G.L. c. 111, §§127C.
  58. G.L. c. 111, §§127F.
  59. G.L. c. 111, §127F.
  60. G.L. c. 111, §127B.
  61. G.L. c. 111, §127I explicitly gives the power to grant injunctions and temporary restraining orders to the superior courts, housing courts, and district courts. Housing courts also have the power under G.L. c. 185C, §3. District courts likewise have the power to grant injunctive relief necessary to enforce G.L. c. 111, §§127A-127K under G.L. c. 218, §19C.
  62. *Commonwealth v. Haddad*, 364 Mass. 795 (1974).
  63. *Commonwealth v. Haddad*, 364 Mass. 795 (1974), explains the legal basis for a citizen's complaint for code violations.
  64. 105 C.M.R. §400.700.
  65. G.L. c. 186, §14. *Homesavers Council of Greenfield Gardens, Inc. v. Sanchez*, 70 Mass. App. Ct. 453 (2007), which provides that consequential damages can include emotional distress. The award may also include court fees and attorney's fees. G.L. c. 186, §14.
  66. G.L. c. 218, §21. You can, however, sue for treble damages in small claims court, even though the trebled amount may be more than \$2,000.

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67. 105 C.M.R. §410.831.
  68. 105 C.M.R. §410.831(B). Notice and Hearing Requirements: Tenants must receive notice of the hearing at least five days before it is to be held. 105 C.M.R. §410.831(C). It must also include a copy of the inspection report.
  69. 105 C.M.R. §410.831(D).
  70. If a building is not occupied, the owner and any affected person at this point has a right to a public hearing before the Board of Health.
  71. 105 C.M.R. §410.860.
  72. G.L. c. 79A, §13. The state housing agency, Department of Housing and Community Development (DHCD), then pays for half of the cost of moving by reimbursing the local Board of Health. The Bureau of Relocation (BOR) administers the state relocation assistance reimbursements.

