

Chapter 15

Rooming Houses

Legal Tactics: Tenants' Rights in Massachusetts
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Your Rights in a Rooming House

Tenants' Rights in Massachusetts

What Is a Rooming House?

A rooming house is a business that rents out 4 individual rooms or more in the same building.

They are sometimes called boarding houses, lodging houses, or single room occupancy units (SROs).

Individual renters usually have their own separate room and their own agreement with the landlord. For example, you may stay for just a few days, but another renter may stay for 3 months.

Rooming houses with 4 or more renters at the same time must be licensed.

Some cities and towns have local protections for renters in rooming houses.

Protect Yourself Know Your Rights

People who live in rooming houses have legal rights.

Like all other tenants, you have the right to a safe, decent place to live with heat, hot water, and electricity.

If you have lived in a rooming house for one day, one week, or one month, an owner cannot lock you out of your room without permission from a judge.

Rooming House Landlords Must

Provide one bathroom with a toilet, sink and shower or bathtub for every 8 rooming house renters.

Clean the bathroom every 24 hours if you share a bathroom with other renters.

Provide automatic smoke or heat detectors.

Provide sprinklers, if there are 6 renters or more.

Provide you a room that is at least 80 square feet or 60 square feet per person if you share the room with another person.

Correct unhealthy conditions, like mice, rats, bedbugs, or cockroaches.

Make needed repairs without charge, unless you caused the damage.

Get your permission to enter your room to make repairs – unless it is an emergency.

Give you privacy. The landlord is only allowed to enter your room if you give them permission, if it is an emergency, or if they have a court order.

Not lock you out of your room.

Get a court order to evict you. Important! Even if you get evicted the landlord is not allowed to keep your belongings.

Cooking Area Rules

The landlord does **not** have to provide a common kitchen area for renters. But if they do, the kitchen must have a sink, stove, oven, storage space, and refrigerator.

Where there are between 6-19 renters, the landlord **may** provide a kitchenette in your room. But your landlord can only provide a kitchenette if your room is 150 square feet or larger. Individual kitchenettes must have:

1. Hot plate.
2. Refrigerator.
3. Sink with hot and cold running water.

If your room connects to another renter's room, the kitchenette must also have a food storage area.

Landlords may provide you with a microwave in your room or common areas.

Repairs

Your room and the common areas must be safe and sanitary. If there is a problem, ask your landlord to fix it. A landlord cannot evict you for asking to make a repair. If they try to do that, it is retaliation and illegal.

If you ask the landlord to fix a problem and they refuse, put your request in writing. You can also report the problem to the local Board of Health. They should come inspect the problem and give the landlord a report that orders them to make the repair.

If the landlord still does not fix the problem, you have other options that are more complicated and depend on the length of time you have lived there.

Evictions

If you have lived at the rooming house for **30 days or less**, the landlord may file an eviction case against you without any notice.

If you have lived there more than **30 days**, the landlord must give you a **7-day** eviction notice if they want to evict you.

If you have lived there **3 months** or more, the type of eviction notice depends on the reason for the eviction:

- **7-day Notice** for damaging property or causing a nuisance.
- **14-day Notice** if you owe rent.
- **30-day Notice** for any other or no reason.

If a judge makes an order to evict you:

- You may ask the court for a *reasonable accommodation to stay if you have a disability that relates to the eviction*.
- You may ask the court for more time so you can find another place to live.
- You may appeal the court's decision.

Department of Mental Health Housing

If you are in a Department of Mental Health (DMH) program, you have extra legal protections against eviction. You have the right to a hearing. It may be in court or at the DMH. DMH must make sure you have another place to live before you are evicted.



[MassLegalHelp.org/Rooming-Houses](https://www.masslegalhelp.org/Rooming-Houses)

Legal Tactics: Tenants Rights in Massachusetts May 2017

Rooming Houses

by David Brown and Geoff Ketcham

Italicized words are in the Glossary

If you live in a rooming house, you have rights—despite what your landlord or others may tell you. For example, if you have lived in a rooming house for one day, one week, or one month, an owner cannot lock you out of your room without permission from a judge.

What rights you have depend on how long you have lived in your rooming house. In some cases, they will be the same as those of other tenants. In other cases, they will be different.

This chapter will tell you what your rights are and what steps you can take to protect yourself if you live in a rooming house. In addition, you may need to learn about laws that protect tenants in general and to read other chapters in this book.

As you read, keep in mind that the rights of rooming house residents are not cast in stone and continue to change.¹

What Is a Rooming House?

First, you need to figure out whether you are living in a rooming house, also sometimes called a lodging house, boarding house, or single-room-occupancy dwelling (SRO). The most important features of a rooming house are:

- You rent a single room (as opposed to an entire apartment), and
- There are 4 or more renters living there who are not related to the person operating the rooming house.²

The person operating or "conducting" the rooming house could be the landlord (or owner), the manager of the dwelling, or could be a primary tenant who sublets rooms to 4 or more unrelated people.³

Other features that commonly, **but do not always**, characterize a rooming house are:

- You share a kitchen with other residents or have no kitchen;
- You share a bathroom with other residents;
- You pay your rent daily or weekly.

Licensing Requirements

It is illegal to run a rooming house without a license.⁴ Having a license gives someone official permission to operate a dwelling as a rooming house.

Typically, a license shows that a rooming or lodging house has complied with certain building codes and other requirements. For example, all lodging houses in Massachusetts must have automatic smoke or heat detectors.⁵ Some cities and towns also require lodging houses with 6 or more lodgers to have automatic sprinkler systems.⁶

Sometimes, a person operating a lodging house may try to avoid the licensing process because it can be expensive to meet the requirements. If a landlord is cited for running a rooming house without a license, it does not necessarily mean that the landlord must obtain a license or that all tenants have to move out. Instead, a landlord could comply with the law by renting rooms to 3 or fewer lodgers so as not to need a license.⁷

On the other hand, some local enforcement agencies have tried to use the state law to require a lodging house license when 4 or more unrelated roommates rent a whole place together (as opposed to 4 people each renting a room individually). This is **not** correct. Tenants living together as a single housekeeping unit should not be considered lodgers.⁸ Some cities and towns may have their own local definition of a "lodging house,"⁹ and there may also be local restrictions on certain living arrangements in areas zoned for family dwellings.¹⁰ For example, the Boston Zoning Code prohibits more than five undergraduate students from sharing rental housing in family-zoned areas.¹¹

Check with your local Board of Health to see if your community has local ordinances or orders that apply to rooming houses. It is important to understand, as a renter, whether there are any local ordinances that may affect your rights if any action is taken against your landlord for not having a lodging house license.¹²

Also, as a renter in a lodging house it is important to know that licensed lodging houses can be inspected by licensing authorities and by the police upon request by the licensing authorities.¹³ An operator of a lodging house can be required to keep a register of the names of all lodgers. Such a register may also be inspected by licensing authorities and the police.¹⁴

Special Housing Conditions for Rooming Houses

The requirements of the state Sanitary Code generally apply to rooming houses just as they apply to apartments. For example, in a rooming house—just as in an apartment—the owner is responsible for providing heat and hot water, exterminating, and making repairs.¹⁵ For more information about what the state Sanitary Code requires, see **Housing Code Checklist (Booklet 2)**.

There are 3 situations where the state Sanitary Code has different requirements for rooming houses. They involve:

- Cooking,
- Bathrooms, and
- Floor space.

1. Cooking

A rooming house owner is not required under state law to provide cooking facilities in a rooming house. However, if the owner chooses to provide **common** cooking facilities, they must include a sink, a stove, an oven in good repair (unless you agree to provide the stove and oven in a written lease agreement), space for food storage, and a refrigerator.¹⁶

A rooming house owner can provide **individual** cooking facilities only in individual rooms that have a floor space of at least 150 square feet.¹⁷ If an owner provides individual cooking facilities, then they must include a gas or electric plate, a refrigerator, and a sink with hot and cold running water.

If the space you rent has cooking facilities and **2 adjoining** rooms, then the landlord must provide a gas or electric range, a refrigerator, a sink with hot and cold running water, and storage area for your food.¹⁸

Microwave ovens are permitted in lodging house rooms or common areas.¹⁹

2. Bathroom

A landlord must provide a toilet, washbasin, and a shower or a bathtub for every 8 rooming house occupants. If the bathroom facilities are shared, the landlord is responsible for cleaning them **every 24 hours**.²⁰ A landlord may choose to provide separate bathroom facilities for each room, but is not required to do so.

3. Floor Space

A rooming house room used for sleeping only (no individual cooking facilities) must have at least 80 square feet of space for a single person and 60 square feet for each person when 2 or more share a room.²¹ As stated above in the section on **Cooking**, if your room has individual cooking facilities, it must be at least 150 square feet.

What Rights Do You Have?

1. Rights of All Rooming House Residents

No matter how long you have lived in a rooming house, you have the following rights:

- The right to report bad housing conditions (see **Chapter 8: Getting Repairs Made**).
- The right to a hearing in front of a judge before the owner can evict you.²² **You do not have to move out until a judge says you do**, and only a constable can physically remove you.
- The right to ask a judge to hold off on evicting you until you find another place to live (see **Chapter 12: Evictions**). Although a judge is not required to give you extra time, it is within their *discretion*. It will be harder to get more time if your eviction is for non-payment of rent or a reason that is your fault, or if you have lived in the rooming house for less than 3 months.²³ However, if you need more time, ask for it.
- The right to *appeal* a judge's decision against you in eviction case (see **Chapter 12: Evictions**).

In addition, all rooming house residents have the following protections:

a. You Cannot Be Locked Out

If you legally occupy your room—which means you moved in with the permission of the owner—the owner cannot lock you out of your room or the rooming house. If the owner asks you to leave or gives you an eviction notice (*notice to quit*), you do not have to move out. After an owner gives you a notice to quit, she must file a court case and get a judge's permission to evict you.²⁴

If the owner locks you out or attempts to lock you out of your room or the rooming house, the owner has violated the law. If you have to go to court to get back in, a judge can order the owner to allow you back in and can order the owner to pay you money (*damages*) equal to 3 months rent or more.²⁵ To find out how you can get back into your room, see **Chapter 12: Evictions - Lockouts and Utility Shut-offs**.

It is also illegal for an owner of a rooming house to keep your belongings for any reason.²⁶ You can go to court and ask a judge to order the landlord to give you back your things. For help, see **Temporary Restraining Order (Form 15)**.

b. Report Bad Conditions

You have the right to report bad conditions to the owner or a Board of Health inspector. You also have the right to take legal action against the rooming house owner for conditions that violate the state Sanitary Code.²⁷ For more information about how to notify the rooming house owner about bad conditions, how to contact a housing inspector, or what your options are if you have bad conditions, see **Chapter 8: Getting Repairs Made**.

While reporting bad conditions to the authorities is your right, and in most cases is encouraged, you should first check to see if your landlord has a lodging house license. If your landlord does not have a proper license, an enforcement agency (such as the Board of Health) may order your landlord to make repairs, and could require the landlord to stop any illegal occupancy (which could put you and other roomers at risk of being

required to leave), or to obtain a lodging house license.

You may want to write to your landlord to request that repairs be made, or seek legal advice before deciding whether to request an official inspection.

c. Retaliation Is Illegal

Retaliatory evictions are illegal.²⁸ An example of a retaliatory eviction would be if a rooming house owner attempts to evict you because you have complained to the Board of Health about conditions in your building. For more information, see **Chapter 12: Evictions - Retaliatory Evictions**.

d. Repair and Deduct

If your landlord refuses to make repairs after you notify them in writing about conditions that violate the state Sanitary Code, you have the right to make repairs and deduct the cost of repairs from your rent. If you have lived in your rooming house for less than 3 months, this may involve complex legal arguments for which you may need to consult a lawyer.²⁹

In order to be eligible for rent deduction for repairs, you must first notify the landlord in writing about the existence of the violations.³⁰ See **Chapter 8: Getting Repairs Made** for more about repair and deduct.

e. Right to Privacy

You have the same right to privacy as other tenants. A landlord is not allowed to just enter your apartment. But you must allow a landlord access to the apartment after the landlord gives you reasonable notice that she wants to enter the apartment to make repairs.³¹

While a licensed rooming house is subject to inspection, this does not mean that anyone (a government official or your landlord) can enter your room without your permission (except with a court order, or in case of emergency).³²

f. Reasonable Accommodation

If you are a person with a disability and your disability is related to the reason for your eviction, you may be entitled to a *reasonable accommodation* that might allow you to resolve occupancy problems and stay as a resident in the rooming house.³³ For more information about reasonable accommodation, see **Chapter 12: Evictions – Discrimination**.

2. Rights Based on Your Length of Occupancy

Not all rooming house residents have the same rights. The rights you have in addition to those already described in this chapter depend upon how long you have lived in the rooming house. Have you lived there:

- More than 3 months in a row (3 consecutive months)?
- Between 30 days and 3 months?
- 30 days or less?

Your answer will determine which laws protect you.

a. More Than 3 Months

If you have lived in the same rooming house for more than 3 consecutive months (3 months in a row), you are a *tenant at will*.³⁴ A tenant at will is a person who rents a place with permission of the owner of the rooming house, but most likely without a written agreement. As a *tenant at will*, you have the right to:

- Withhold your rent if the room or rooming house is in poor or unhealthy condition.³⁵ Before you do this, read **Chapter 8: Getting Repairs Made** to make sure that you follow the proper procedures.
- Make repairs and deduct the cost of repairs from your rent.³⁶ If you choose to do this, there are strict rules to be followed. Make sure that you read **Chapter 8**.

- Advance notice in writing (*notice to quit*) from the owner if she decides to evict you.³⁷
 - If you are up to date on your rent and you are not being evicted for fault, the owner must provide 30 days notice.
 - If the owner is evicting you for non-payment of rent, you are entitled to 14 days' notice to quit.
 - If, however, you pay your rent on a daily or weekly basis **and** you are being evicted for nuisance, substantial damage, or serious interference with the rights of the owner or other roomers, then you are only entitled to a 7-day notice.³⁸
- Receive at least 1 year's advance notice if your rooming house is being converted to a condominium. Low- and moderate-income people, elderly, and people with handicaps are entitled to a 2-year advance notice. Check to see if there is a local ordinance that provides longer notice periods. For more information see **Chapter 17: Condominium Control**.

b. Between 30 Days and 3 Months

If you have lived in a rooming house for less than 3 consecutive months but more than 30 days, the following is a breakdown of what rights you do and do not have under current law.

Rights you do have:

- You **may** have the right to make repairs and deduct the cost of repairs from your rent.³⁹
- You have the right to receive **only** a 7-day (not a 14- or 30-day) written notice (*notice to quit*) from the owner prior to an *eviction* hearing in court.⁴⁰

Rights you do not have:

- You **do not** have the right to withhold your rent.⁴¹

In addition, a judge is **not** likely to hold off on evicting you until you have found another place to live.⁴²

c. 30 Days or Less

If you have lived in a rooming house for 30 days or less, these are the rights you do and do not have under current law.

Rights you do have:

- You **may** have the right to make repairs and deduct the cost of the repairs from your rent.⁴³

Rights you do not have:

- You **do not** have the right to withhold your rent.⁴⁴
- You **do not** have the right to any advance written notice (*notice to quit*) from the owner prior to a court *hearing* to evict you. An owner can go directly to court and serve you with a *summons and complaint*.⁴⁵ In addition, the judge is not likely to hold off on evicting you until you find another place to live.⁴⁶

How Much Notice Rooming House Occupants Are Entitled to Before an Eviction Hearing in Court

Length of stay in rooming house ⁴⁷	Owner's reason for evicting	Amount of notice you have a right to
3 months or more	Reasons other than non-payment	30 days
	Non-payment of rent	14 days
	Nuisance, damage, or interfering with safety of others	7 days
	Condominium conversion	Minimum of 1 year; 2 years if disabled, elderly, or low- or moderate-income ⁴⁸
Less than 3 months, but more than 30 days	Any reason, including non-payment of rent	7 days
30 days or less	Any reason	None

Department of Mental Health Residential Housing

If you live in a residential housing program licensed, funded, or operated by the Massachusetts Department of Mental Health (DMH), there are certain procedures that your program must follow to legally evict you.⁴⁹ These procedures provide you with some legal protections. The program must post in each residence a clearly visible notice that explains, in plain and simple language, your rights under the law.⁵⁰

You are entitled to all of the eviction notice protections for rooming house occupants described in this chapter based on your length of occupancy and regular eviction protections for tenants described in **Chapter 12: Evictions**, if your residency in the DMH program meets the following 3 requirements:⁵¹

- You have paid the program for residential services or care (this can include fees, charges for rent, or payments for other services provided by the program);⁵²
- The program provides you with care and services in a housing unit that has its own kitchen and bathroom;⁵³ and
- You occupy the unit either by yourself or with your family.⁵⁴

If these 3 conditions are not met—for example, you share kitchen or bathroom facilities with other residents, or you do not pay for the program—then the program has a choice: it must either evict you through the regular court *eviction* process (known as *summary process*, see **Chapter 12: Evictions**) or through an out-of-court *hearing* process with DMH that follows certain regulations.⁵⁵ In either case, you cannot just simply be told to leave.

If you are not sure if your program is licensed, funded, or operated by DMH, you should either ask a staff person at the program or contact

DMH's central office at 617-626-8000. DMH is required to keep records of any programs that it licenses, funds, or operates.

1. Eviction Protections for DMH Hearing

To evict you using the out-of-court *hearing* process, the residential program must provide you and DMH with a written notice stating the reasons (*grounds*) for the eviction. This notice must also include all the relevant facts relating to the eviction and the sources of those facts.⁵⁶ For example, the notice might describe certain incidents you were involved in on certain days and list the persons who witnessed those incidents. The notice you receive from the provider must also refer to your rights under the law, and tell you that:

- You have a right to a hearing;
- You have a right to be represented by a lawyer or any person of your choice at the hearing; and
- You or your representative have the right to reasonable access to review and copy your file, including any documents the program intends to use against you, prior to the hearing.⁵⁷

2. Eviction Hearing

You do not have to request a *hearing* at DMH in order to get one—under the law, this occurs automatically. Once DMH has received the written notice from the program, it must immediately assign an impartial hearing officer to conduct a hearing. The purpose of the hearing is to determine if sufficient *grounds* exist for your eviction.⁵⁸

The hearing officer must hold the hearing between 4 and 14 business days after DMH receives the notice, **unless you and the provider jointly request another date**. This request must be in writing. The hearing officer

also selects the place for the hearing, and it must be convenient to both you and the program.⁵⁹

You and the program each have a right to have a lawyer or other person represent you at the hearing. You must also be given the opportunity to present evidence, question the program's evidence, have witnesses, and question the program's witnesses.⁶⁰

Under the law, the program has the burden of proving that the reason for the eviction is valid and justified.⁶¹ The program must also prove that you **substantially** violated an **essential term** of any written occupancy agreement. That means that you cannot be evicted for a minor reason.

If you are a person with a disability, you may be entitled to a *reasonable accommodation* that might allow you to resolve past problems and continue as a resident with the program. The reasonable accommodation should ordinarily be considered as a solution, unless the program can show that, even if you are provided with the accommodation, it is likely that your continued occupancy would impair the emotional or physical well-being of other occupants, program staff, or neighbors.⁶² For more information about reasonable accommodation see **Chapter 12: Evictions - Discrimination**.

It is very important at the hearing to speak about all of the reasons that you should not be evicted even if you do not think they are important. This is because the hearing record needs to show that you raised these concerns. Otherwise, you will usually not be permitted to raise any new issues if you need to *appeal* your case to a court.⁶³

Within 10 days after the hearing, the hearing officer must make a decision and give you and the provider a copy of the decision.⁶⁴ The decision must be in writing and must state the hearing officer's findings of fact and conclusions of law, and must notify you of your appeal rights.⁶⁵ Both sides have the right to appeal the hearing officer's decision to the superior court, housing court, or district court.⁶⁶ If the hearing officer determines you should be evicted, DMH must take steps to assure that you will not become homeless and

help you secure alternative housing in the least restrictive setting that is appropriate and available.⁶⁷ For example, if DMH has another residential program which provides services not available in the current program that would help you become stabilized, DMH should consider placing you there.

If DMH does not immediately have alternative housing appropriate for your needs with an opening right away, then at a minimum DMH must help refer you to a homeless shelter, one of its shelter programs (called DMH transitional housing programs), or help you make other temporary housing arrangements.⁶⁸

Endnotes

1. For current definition of lodging house see [G.L. c 140, §22](#). For discussion of the definition of “lodging house” by the Massachusetts Supreme Judicial Court, see *City of Worcester v. College Hill Properties*, 465 Mass. 134 (Mass. 2013).
2. [G.L. c. 140, §22](#). Fraternities and dormitories of educational institutions are included in this definition, but the definition of a lodging house excludes: (1) licensed dormitories of charitable or philanthropic institutions; (2) convalescent or nursing homes or group homes licensed under [G.L. c. 111, §71](#); and (3) rest homes or group residences **licensed by the state**.

Residents of these excluded dwellings, while not legally “lodgers,” may still be considered “tenants” in certain situations. For example, residents in a Y.M.C.A. are usually not “lodgers” under [G.L. c. 140, §22](#) because they are living in “dormitories of charitable or philanthropic institutions.” These residents could, however, be considered “tenants” if they have lived there on a long-term basis. “The differences between a rooming house or a lodging house and the Y.M.C.A. are not sufficiently material to deprive long-term residents of tenancy status.” *Hain v. Turpin*, Boston Housing Court, 15586 (Daher, C.J., Aug. 4, 1983); see also *Barry v. Greater Boston Y.M.C.A.*, Boston Housing Court, 10286 (Daher, C.J., Mar. 28, 1980) (“a tenancy can be established by the parties, no matter what the premises are called; the parties, by their actions, rather than by nomenclature, define whether their relationship is that of a licensee or tenant”).

A resident in a community residence operated by the state may also be able to establish a tenancy. *Ballassare v. Erich Lindemann Center*, Boston Housing Court, 12446 (Daher, C.J., Aug. 11, 1981). If a tenancy cannot be established, a resident of a community program licensed, operated, or funded by the Department of Mental Health (see the section on Department of Mental Health Residential Housing at the end of this chapter) who has been asked to leave has a right to either a regular court eviction hearing or a hearing before a DMH hearing officer to determine if the eviction is justified. The legal status of homeless shelters, transitional housing programs, and battered women’s shelters has not been definitively established. If you are seeking information as to your rights under these non-traditional housing situations, you should seek legal advice, as the analysis is complex.

3. *Hall v. Zoning Board of Appeals of Edgartown*, 28 Mass. App. Ct. 249, 255 (1990) (permitting “owners, or tenants who reside on the premises ... to have up to 4 boarders”); see also *Sang Vo v. City of Boston*, U.S. Dist. Ct. Civil Action 01-11338-RWZ (Memorandum of Decision and Order), 2003 WL 22174432 (D. Mass., Sept. 22, 2003); Consent Decree applicable to the City of Boston, 2005 WL 3627054 (D. Mass., Jan. 24, 2005).
4. “Whoever conducts a lodging house without a license shall be punished by a fine of not less than one hundred or more than five hundred dollars or by imprisonment for not more than 3 months, or both.” [G.L. c. 140, §24](#). See also *Ali v. Goyteche*, Western Housing Court, 13-SP-4648 (Fields, J., January 28, 2014) (A landlord’s use of a premises as an illegal rooming house without compliance with city rooming house ordinance is a *per se* violation of the tenant’s covenant of quiet enjoyment).
5. Lodging houses must be equipped with automatic smoke or heat detectors in accordance with board of fire prevention regulations. [G.L. c. 148, §26C](#).
6. [G.L. c. 148, §26H](#) provides that “in any city or town which accepts the provisions of this section, every lodging house or boarding house shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code.” See *Massachusetts Sober Housing Corp. v. Automatic Sprinkler Appeals Board*, 66 Mass. App. Ct. 701 (2006) (upholding sprinkler requirement for a sober house for up to ten veterans in Chelsea where the City of Chelsea had adopted the provisions of [G.L. c. 148, §26H](#), in 1989, but nonprofit landlord was trying to distinguish itself from a “lodging house” to avoid cost of \$25,000 to install automatic sprinkler system).

In addition, any building of more than 70 feet in height must “be protected with an adequate system of automatic sprinklers in accordance with state building code requirements.” [G.L. c. 148, §26A](#); see also [G.L. c. 148, §26A½](#) (requirements may vary depending on date of construction). See 780 C.M.R. §900 for state building code regulations about automatic sprinkler systems.

7. In Boston, pursuant to the Consent Decree in *Sang Vo v. City of Boston*, 2005 WL 3627054 (D. Mass., Jan. 24, 2005), a family counts as one person. This means that a landlord could rent one room to 2 brothers, a second room to a single man, and a third room to a mother and 2 children, and not be required to obtain a lodging house license (because when you count each family as only one person, the total number of lodgers would be counted at 3, even though in this case

there would be 6 people). Occupancy requirements still apply, however, in terms of the square footage needed per occupant. See **Floor Space** section in this chapter.

8. [Sang Vo, v. City of Boston](#), U.S. Dist. Ct. Civil Action 01-11338-RWZ (Memorandum of Decision and Order), 2003 WL 22174432 (D. Mass., Sept. 22, 2003); *see also* [Hall v. Zoning Board of Appeals of Edgartown](#), 28 Mass. App. Ct. 249, 256 n.9 (1990) (holding that should more than 4 tenants sign a lease, "whether a zoning violation exists will depend upon whether the tenants live together as a single housekeeping unit in a family-like situation. We acknowledge that the test is not easy to apply").
9. The City of Boston's Zoning Code has a more permissive definition of lodging house: "five or more persons...." See Boston Zoning Code, [Article 2 – Definitions](#)..
10. [Hall v. Zoning Board of Appeals of Edgartown](#), 28 Mass. App. Ct. at 256 n.9) (should more than 4 tenants sign a lease, "whether a zoning violation exists will depend upon whether the tenants live together as a single housekeeping unit in a family-like situation. We acknowledge that the test is not easy to apply"). As summarized by the Appeals Court in [Hall](#), 28 Mass. App. Ct. at 256, fn 8, a zoning ordinance limiting the number of unrelated persons living together in residential districts survived a federal equal protection and First Amendment challenge in [Belle Terre v. Boraas](#), 416 U.S. 1 (1974). However, in a later case the Supreme Court required that municipalities not unduly restrict the meaning of "family." *See Moore v. East Cleveland*, 431 U.S. 494 (1977). State courts are split on the validity of such restrictions. Some interpret their state law in accord with Belle Terre. Others, construing regulations under state constitutions, view such restrictions unfavorably.

In [City of Worcester v. Bonaventura](#), 56 Mass. App. Ct. 166 (2002), the Appeals Court interpreted a Worcester zoning ordinance defining "lodging house," "[t]aken together" with definitions of "dwelling" and "family," to hold that "a lodging house is clearly defined [by the City of Worcester] as a dwelling unit that is rented to 4 or more persons not constituting a family." In Worcester, a local zoning ordinance defines "family" for purposes of single- and multi-family dwellings as one or more persons occupying a dwelling unit "and living together as a single housekeeping unit, not including a group of more than 3 persons who are not within the second degree of kinship."
11. Boston Zoning Code, art. 2, §2-1 (2008), amended by Text Amendment No. 346 (Mar. 13, 2008).
12. [Sang Vo, v. City of Boston](#), U.S. Dist. Ct. Civil Action 01-11338-RWZ (Memorandum of Decision and Order), 2003 WL 22174432 (D. Mass., Sept. 22, 2003). The U.S. District Court ruled in the *Sang Vo* case that the tenant families, whose landlord had commenced eviction proceedings against them as a result of city enforcement action against him, had a "manifest interest in maintaining a home and a landlord-tenant relationship." Therefore, the "government cannot deprive [the tenants] of this interest without affording them [i.e., the tenants, not just the owner] due process of law."
13. [G.L. c. 140, §25](#).
14. [G.L. c. 140, §§27-29](#).
15. [South Middlesex Opportunity Council, Inc. v. Brown](#), Western Housing Court, 13-CV-938 (Fields, J., June 26, 2014) .
16. [G.L. c. 140, §22A](#).
17. [G.L. c. 140, §22A](#). "[A] lodging house where lodgings are let to more than five but less than twenty persons may furnish individual cooking facilities for the preparation, serving, eating and storage of food; provided that no such facility shall be furnished in a room having an area of less than one hundred fifty square feet." Note that where a unit consists of 2 adjoining rooms, where cooking facilities are provided, a gas or electric range (as opposed to a hot plate for a single room), sink with hot and cold running water, and storage area for food must be included in addition to a refrigerator.
18. [G.L. c. 140, §22A](#).
19. [G.L. c. 140, §22B](#).
20. [105 C.M.R. §§410.150\(B\), 410.151](#); [Bonditch LLC v. Fondakowski](#), Western Housing Court, 12-SP-3465, (Fields, J., March 14, 2013) (discussing owner obligation and liability for failure to keep facilities clean).
21. [105 C.M.R. §410.400\(C\)](#).

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22. [G.L. c. 184, §18](#); [c. 186, §§14 and 15F](#); *Serreze v. Y.W.C.A. of Western Massachusetts, Inc.*, 30 Mass. App. Ct. 639, (1991); *Carr v. Friends of the Homeless, Inc.*, Hampden Housing Court, 89-LE-3492-S (Apr. 3, 1990); *Eaton v. Plowshares, Inc.*, Northeast Housing Court, 92-CV-00141 (Aug. 18, 1992).
 23. [G.L. c. 239, §9](#), as amended by [Chapter 452 of the Acts of 1986 \(approved October 16, 1986\)](#). This statute permits judges to postpone evictions for up to a year for disabled or elder tenants and up to 6 months for all other tenants, if the eviction is not the tenant's fault. However, many judges give additional time even where the tenant is at fault under their "inherent" authority to decide cases. Note: The stay authorized by [G.L. c. 239, §9](#) does not apply to roomers who have occupied their rooms less than 3 consecutive months.
 24. [G.L. c. 186, §14](#); [G.L. c. §184 §18](#); [G.L. c. 239](#).
 25. [G.L. c. 186, §§14 and 15F](#); [c.184, §18](#); *Serreze v. Y.W.C.A. of Western Massachusetts, Inc.*, 30 Mass. App. Ct. 639 (1991); *Carr v. Friends of the Homeless, Inc.*, Hampden Housing Court, 89-LE-3492-S (Apr. 3, 1990); *Eaton v. Plowshares, Inc.*, Northeast Housing Court, 92-CV-00141 (Aug. 18, 1992).
 26. [G.L. c. 186, §14](#); [Chapter 284 of the Acts of 1977, Section 1 \(approved 1977\)](#), amending [G.L. c. 140, §12](#), to remove boarding houses and lodging houses from the language which had previously granted what has been traditionally known as the "innkeeper's lien"; and [Chapter 284 of the Acts of 1977, Section 2 \(approved 1977\)](#), repealing [G.L. c. 255, §23](#). Note, however, that both the owner's lien and the criminal sanction against a tenant still exist for properties licensed as hotels, motels, and inns. Check with the city or town clerk to find out how your building is licensed.
 27. [G.L. c. 111, §127](#); [105 C.M.R. §410.001-960](#); [G.L. c. 239, §2A](#); [G.L. c. 186, §18](#).
 28. [G.L. c. 239, §2 A](#); [G.L. c. 186, §18](#). The retaliatory eviction defense is available to all roomers regardless of length of occupancy. This conclusion is based on the retaliation statute being "remedial" in nature, so as to protect individuals who exercise their rights, which include a tenant's First Amendment right to petition for redress of a wrong. *See Edward v. Habib*, 397 F.2d 687 (1968), cert. denied, 393 U.S. 1016 (1969); *Hosey v. Club Van Cortlandt*, 299 F. Supp. 501 (S.D.N.Y. 1969).
 29. [G.L. c. 111, §127L](#).
 30. [G.L. c. 111, §127L](#).
 31. [105 C.M.R. §410.810](#). Under this regulation, the owner or landlord should, if possible, try to make an appointment for access to inspect or make repairs.
 32. A [Consent Decree](#) is in effect from the case of *Sang Vo v. City of Boston*, 2005 WL 3627054 (D. Mass., Jan. 24, 2005), which requires, in Boston, that the City obtain a signed, court-approved consent form from the occupant in order for a city official to enter private dwelling space.
 33. *South Middlesex Opportunity Council, Inc. (SMOC) v. Goldman*, Western Housing Court, 12-SP-1899 (Fields, J. September 20, 2012).
 34. [G.L. c. 186, §17](#). While residents of fraternity houses and dormitories in educational institutions are defined as "lodgers" under [G.L. c. 140, §22](#), such residents do not automatically become tenants at will after 3 months. Any person living in a fraternity house or dormitory is, however, entitled to a 7-day written notice prior to eviction.
 35. [G.L. c. 239, §8A](#).
 36. [G.L. c. 111, §127L](#).
 37. [G.L. c. 186, §§12 and 17](#). Note: If you are committing a nuisance, causing damage, or interfering with the safety of the owner or other tenants, the owner may use a 7-day notice to terminate your tenancy. *See G.L. c. 186, §17*.
 38. [G.L. c. 186, §17](#).
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39. Under both the repair and deduct statute, [G.L. c. 111, §127L](#), and the retaliatory eviction statute, [G.L. c. 186, §18](#), "tenants of residential premises" are covered. Both statutes were enacted to promote the enforcement of the state Sanitary Code in residential housing: the retaliatory eviction statute, by barring eviction of the tenant who reports violations; and the repair and deduct statute, by allowing tenants to fix violations themselves. Although rooming houses are clearly "residential premises," it is unclear whether the word "tenant" applies to a lodger of less than 3 months.
- Because the word "tenant" has different meanings in different contexts, there is a good argument that these statutes apply to all rooming house occupants. For example, in *Brown v. Guerrier*, 390 Mass. 631 (1983), the Court held that tenants at sufferance are tenants for purposes of [G.L. c. 111, §127H](#) (authorizing petitions to enforce the state Sanitary Code). Similarly, in *Hodge v. Klug*, 33 Mass. App. Ct. 746, 754-55 (1992), the Court held that the protections of [G.L. c. 239, §8A](#), apply for "tenants at sufferance." Both courts relied upon public policy considerations to reach these results.
- The Boston Housing Court has suggested that retaliation laws apply to boarding house occupants of less than 3 months. In *Koen & Nash v. Onnessimo*, Boston Housing Court, 19673 and 19674 (Daher, C.J., Oct. 30, 1985), the Court said: "If the Defendant [owner] threw out the Plaintiffs [the boarding house occupants of less than 3 months] because they complained of code violations, this Court would rule that an act of retaliation and would itself confer a tenancy upon the Plaintiffs."
40. [G.L. c. 186, §17](#).
41. [G.L. c. 239, §8A, ¶2](#).
42. [G.L. c. 239, §9](#) as amended by [Chapter 452 of the Acts of 1986 \(approved Oct. 16, 1986\)](#); *see* endnote 23.
43. [G.L. c. 111 § 127L](#).
44. [G.L. c. 239, §8A](#).
45. [G.L. c. 186, §17](#).
46. [G.L. c. 239, §9](#), as amended by [Chapter 452 of the Acts of 1986 \(approved 16, 1986\)](#). *But see* endnote 23.
47. If you live in a rooming house with a written tenancy agreement, the agreement may contain a list of reasons for eviction and information about required notices. This may mean you can only be evicted for one of the reasons in the agreement and the notice to quit must be legally sufficient. *Community Action for Better Housing v. Mathews*, Southeast Housing Court, 08-SP-3069, (Chaplin, J., May 12, 2009) (Court dismissed eviction case because the notice to quit did not contain language required by the lease).
48. Be sure to check for any local ordinances giving more protection. See **Chapter 17: Condominium Control**. For example, in the City of Boston, elderly/disabled residents are entitled to **5 years' notice** in the event of condominium conversion.
49. [G.L. c. 186, §17A\(d\)\(2\)](#), as amended by [Chapter 237 of the Acts of 2002, Section 1 \(approved August 9, 2002\)](#) This law, called the Community Residency Tenancy Protections Act, does not: (1) apply to any facility for the care and treatment of people who are mentally ill or mentally retarded; (2) restrict the temporary removal of an occupant under the involuntary commitment provisions of [G.L. c. 123, §12](#); (3) apply to a continuing care facility as defined by [G.L. c. 40D, §1\(u\)](#) or a facility licensed under [G.L. c. 111, §71](#) (such as an infirmary, a convalescent or nursing home, a rest home, a charitable home for the aged, or an intermediate care facility for the mentally retarded); (4) diminish the rights of a lawful occupant of an assisted living facility; or (5) diminish or alter any other occupant rights or privileges not specifically set forth in this section.
50. [G.L. c. 186, §17A\(c\)\(1\)](#).
51. [G.L. c. 186, §17A\(a\)](#). The statute states that these requirements are as defined in DMH's regulations, but as of the writing of these materials, no regulations have been adopted. The specific statutory requirements that apply are [G.L. c. 184, §18](#) (no eviction except through judicial process), [G.L. c. 186, §17](#) (notice requirements for rooming house tenants), and [G.L. c. 239](#) (use of *summary process*).
52. [G.L. c. 186, §17A\(a\)\(1\)](#).
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53. G.L. c. 186, §17A(a)(2).
 54. G.L. c. 186, §17A(a)(3).
 55. G.L. c. 186, §17A(b). This is an adjudicatory hearing under G.L. c. 30A, §11, and is governed by the informal hearing regulations found at 801 C.M.R. §1.02.
 56. G.L. c. 186, §17A(c)(2).
 57. G.L. c. 186, §17A(c)(2).
 58. G.L. c. 186, §17A(c)(3).
 59. G.L. c. 186, §17A(c)(3).
 60. G.L. c. 186, §17A(c)(3).
 61. G.L. c. 186, §17A(c)(4). This is by a preponderance of the evidence. All such evidence must be limited to the reasons stated in the notice.
 62. G.L. c. 186, §17A(c)(4).
 63. G.L. c. 30A, §14 (scope of review of an adjudicatory decision by a state agency).
 64. G.L. c. 186, §17A(c)(5).
 65. G.L. c. 186, §17A(c)(5).
 66. G.L. c. 186, §17A(c)(5) and (e); G.L. c. 30A, §14.
 67. G.L. c. 186, §17A(c)(7).
 68. G.L. c. 186, §17A(c)(7).

