

# **HOUSING ASSISTANCE TRAINING**

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- DO I HAVE TO LEAVE BECAUSE I RECEIVED A NOTICE (TO QUIT) TERMINATING MY TENANCY?



# GENERAL INFORMATION

- A landlord cannot lock a tenant out
- Only a judge can evict someone
- An eviction is a civil court matter
- The judge decides:
  - Who gets possession
  - Money matters
- Types of evictions
  - Non-payment
  - No-fault
  - Fault

# EVICTIION MYTHS

- A judge cannot evict a family with children
- Evictions cannot happen during winter or during the holidays
- It takes a long time to evict someone
- If the tenant owes rent, the landlord has to take a repayment plan if the tenant offers one



# TYPES OF TENANCIES

- With a lease
  - Tenancy will last, usually one year
  - Landlord cannot evict, unless the tenant does not keep up his/her end of the bargain
    - BUT, the landlord CAN decide not to renew the lease
  - Rent stays the same
- Without a lease
  - Tenancy-at-will; also called a month-to-month tenancy
  - For an indefinite period of time, but rent may go up (with proper written notice)
  - Either party may end the tenancy by giving written notice
    - Usually one month ahead of time

# TERMINATING A TENANCY

- Non-payment
- Fault
  - Substantial lease violation
  - Serious or repeated misconduct
    - Criminal activity
    - Unauthorized occupants
    - Excessive Noise
- No-fault
  - Non-renewal
  - Economic or business reason
  - Family or personal use



- IF I WERE EVICTED, HOW MUCH TIME DO I HAVE?

# EVICTIION TIMELINE

- Notice to quit
  - 14-day notice for nonpayment
  - One month ahead of time for a tenancy-at-will
  - Right to cure (in a non-payment case)
- Summons and Complaint
  - Can only be commenced after NTQ has expired
  - Tenant served with a copy of summons and complaint first, then (entered) filed at the courthouse. Known as the Entry Date.
- Tenant's Response
  - Answer (i.e. defenses and counterclaims)
  - Discovery ( interrogatories and document requests)
  - Due 3 business days before the first court event
- Entry of Judgement
  - Judge's written decision
  - Usually entered the day after the Trial Date



# MASSACHUSETTS DEFENSE FOR EVICTIION (MADE)

- Greater Boston Legal Services has created a free self-guided interview for tenants facing eviction.
- The program allows a tenant and/or their lawyer/helper to electronically complete answer and discovery forms which are crucial to tenants' defenses.
- The program and an accompanying training can be accessed through the GBLS web portal at <https://gbls.org/MADE>

# TWO-TIERED COURT PROCESS

- Specific to Housing Court
- First court event is a housing specialist status conference
  - Answer is due three business days before this event
  - Mediating the dispute
- Second court event is a trial
  - Occurs if no resolution is reached at the mediation (first tier)
  - Takes place before a judge
  - Right to demand a jury
- Court sends notice in the mail to all parties before each event



# APPEAL PERIOD

- 10 days after the judgment is entered by the court
  - Error of law
  - Abuse of discretion

# EXECUTION FOR POSSESSION

- Issued after the appeal period ends
- Used to take back possession of the premises
  - Remove the tenant's belongings from the premises
  - Change the locks
- Must give at least 48 hours written notice prior to using the execution for possession
- Landlord must use within a three-month period
- Restrictions
  - Can't use on weekends or holidays
  - Only between 9:00 AM and 5:00 PM



# WHAT THE EVICTION TIMELINE MEANS

- The eviction process moves quickly
- Judgments enter the day after trial generally
- The 10-day appeal period must expire before the execution for possession is issued
- Using an execution for possession requires 48 hours advance notice

# ADVICE TO TENANTS AND FAMILIES

- Attend all court events!!!! More than 25% of Tenants fail to show for court hearings. Default judgments and bad outcomes happen when tenants fail to show.
- File an Answer (the tenant's written response to the eviction complaint) and ask for Discovery (written request that the Landlord answer questions and provide documents).
- If the case was filed in a District Court, transfer the case to Housing Court. Housing Courts have more resources available to tenants and more experience with housing issues.
- Seek legal assistance by contacting our office or by seeking help from a Lawyer for the Day program.
- Seek grant assistance (RAFT/Municipality Grants/Community Help) as early as possible and preferably before a court action is even filed.



- THE COURT NOTICE FOR THE FIRST TIER EVENT STATES YOU MUST FILE AN ANSWER. WHAT IS AN ANSWER?

# TENANTS' RIGHTS

- How to prevent an eviction in a non-payment case
- Security Deposits
- Getting Repairs Made
- Rent Withholding
- Repair and Deduct
- Getting More Time to Move
- Satisfying the Execution
- Retaliation



# CURE RIGHTS

- Paying the rent owed
  - Tenants with leases
    - On or before the Answer Date
    - All the rent owed
    - Plus costs (service and filing fees)
  - Tenants without leases
    - Within 10 days after receiving the notice to quit (if tenant has not received another 14-day notice to quit for non-payment within the previous 12 months)
    - All the rent owed
    - Notice must explain these cure rights or else the deadline to revive the tenancy by paying all the rent owed is extended to the Answer Date

# RAFT

- The RAFT program helps keep households in stable housing situations when facing eviction, foreclosure, loss of utilities, and other housing emergencies caused by loss of income, increase in expenses, or both.
- Applicants are eligible for up to \$10,000 in assistance, up from \$4,000 pre-COVID.
- Households with incomes up to 50% of Area Median Income (AMI), or 60% of AMI for people who are at risk of homelessness because of domestic violence, are eligible for assistance.
- This program is available for households within the 50-80% range of Area Median Income (AMI).



# SECURITY DEPOSITS

- Landlord must deposit SD in a Massachusetts bank, in an account that collects interest
- Landlord must give the tenant a receipt with name and address of bank plus the account number (within 30 days of receiving it)
- Each year the landlord must pay the tenant interest (or let the tenant deduct it from rent)
- When the tenancy ends, the landlord must return the SD within 30 days, plus interest
- Statement of Conditions protects SD
  - Landlord must give tenant a statement of the present condition of the premises (within 10 days after the tenancy begins)
  - Tenant then has 15 days to dispute the statement and return a corrected version
  - If the landlord fails to provide such a statement, the tenant should write one

# SECURITY DEPOSIT DEDUCTIONS

- Unpaid rent
- Reasonable amount for damage
  - Caused by tenant
  - Not reasonable wear and tear associated with normal use
- Landlord must provide the tenant with a detailed list of damages with evidence of the costs for repairs



# SANITARY CODE VIOLATIONS

- Entitled to safe and habitable apartment
  - Landlord must provide water
  - System in good working order for heat and hot water
  - Landlord must pay for heat and (fuel for) hot water unless lease requires tenant to pay for it
- If violation, tenant must report problem to landlord
  - Verbal request
  - Write a letter
- Full inspection by the local housing code inspection office (Board of Health)
  - Written report to landlord, copy to tenant
  - BOH is able to enforce its repair order

# RENT WITHHOLDING

- When allowed
  - Defective condition
  - Endanger or impair health and safety (BOH has inspected and found serious violations)
  - Landlord on notice (and tenant is current on rent up until the time the landlord learns of the problem)
  - Not caused by tenant
- Escrow rent (recommended)
  - Unable to pay?
  - Landlord may try to evict the tenant for non-payment
  - Pay the fair rent for the unit
- Notify the landlord in writing



# REPAIR AND DEDUCT

- Tenant makes repairs and then deducts the cost of them from the rent
  - Limited to an amount equal to 4 months' rent
  - Serious condition problem that materially endangers the tenant's health or safety (BOH inspection)
  - Landlord ignores BOH order (time frame to make repairs)
  - May also have right to move out (treat lease as void) if tenant decides not to make repairs

# STAYS OF EXECUTION

- Request for more time to move
- Parties can agree on a stay (no limit)
- Court can order one
  - Judge's discretion
    - Up to six months
      - No-fault eviction
      - Best efforts
      - Money for use
      - Mitigating circumstances (sickness, children, elderly)
    - Up to 12 months
      - Same as above, plus
      - 60 years or older
        - AND/OR
      - Disabled



# SATISFYING THE EXECUTION

- If evicted for non-payment and
  - Landlord accepts the entire amount the judge decided the tenant owed
  - Plus the current rent
- Landlord cannot use the execution and must return it to the court
- Landlord does not have to accept this money (and may use the execution to evict the tenant instead)

# RETALIATION

- Landlord cannot terminate a tenancy in response to a tenant exercising his/her legal rights
  - Contact the BOH
  - Join a tenants' organization
- Presumption of retaliation if landlord changes a tenancy within 6 months of tenant exercising his/her legal rights
  - Landlord will have the burden to prove that the tenancy was changed for reasons other than the tenant having exercised his/her rights



- WHAT IF I HAVE A MOBILE  
SECTION 8 HOUSING SUBSIDY?

# SECTION 8 TERMINATION

- Termination of assistance
  - Between PHA and program participant
    - Drug use
    - Other criminal activity
    - Alcohol abuse that would threaten other residents
    - Threats or violent behavior towards PHA personnel
    - Program violations (e.g., unauthorized occupant)
- PHA **must** terminate program assistance for a family evicted for serious violation of the lease
- PHA **may** consider mitigating circumstances
  - Seriousness
  - Family involvement
  - Mitigating circumstances
  - Effect of termination
  - Culpable party will not longer reside in unit



- WHAT IS A REASONABLE  
ACCOMMODATION?

# REASONABLE ACCOMMODATION RELATED TO HOUSING

- What is the notion of reasonable accommodation?
  - Individualized adjustments to individual problems, on a case-by-case basis
  - Change that is necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling



# PERSON WITH A DISABILITY

- Physical or mental impairment (or regarded or recorded as having such an impairment) that substantially limits a major life activity
  - Working
  - Learning
  - Caring for one's self

# **“REASONABLE” ACCOMMODATION**

- Disabled tenants are only entitled to “reasonable” accommodations
  - The provider not required to suffer
    - Undue financial hardship
    - Undue administrative burden
    - Fundamental alteration in the nature of its programs
    - Significant risk of substantial interference with the safety of others



# CONNECTING THE ACCOMMODATION REQUEST

- Disability-related behaviors receive reasonable accommodation (distinguished from independent conduct)
- Need a connection between the requested accommodation and the person's disability
- Example: Relaxing policy against pets in cases where tenants are emotionally dependent on them

# OTHERWISE QUALIFIED

- Qualified in spite of one's disability (as opposed to qualified except for one's handicap)
- With a reasonable accommodation, person will be able to comply with his/her tenant responsibilities
  - Timely rent payments
  - Respect for the rights of others
  - Care for premises
  - Avoiding criminal activity



# EXAMPLE 1 WHEEL CHAIR RAMP

- A tenant in public housing has a mobility impairment, and requires the use of a wheel chair. The LHA installed a metal ramp, but it is inadequate and dangerous. The tenant requests various alterations, including a ramp with a platform, a curb cut, and an assigned accessible parking space. The LHA must meet these disability-related needs because the requests are reasonable and necessary.

# MENTAL IMPAIRMENTS (AND LEASE-VIOLATING BEHAVIORS)

- Triggered by a pre-termination notice, NTQ or eviction
  - Disturbances
  - Problems with neighbors
- Proposed plan designed to eliminate the lease-violating behaviors
  - Medical evaluation (diagnosis, connection between disability and bad behavior)
  - Treatment (medication, therapy, supportive services)
  - Control
  - Prognosis
- Written request (formal procedure)



## EXAMPLE 2

- Public housing tenant suffers from obsessive traits brought on by depression, anxiety and panic attacks. Tenant disturbs neighbors by frequent cleaning (vacuuming and laundry) at night. The tenant requests that the LHA forbear from evicting her to permit appropriate course of treatment through new medication and therapies. The treatment plan included new individual therapy to identify the psychological source of her compulsive traits and develop strategies to replace this behavior with more adaptive functioning, especially as they relate to her tenancy. Tenant also requests a transfer to a first floor unit. Tenant submits medical information on her proposed treatment plan from her psychiatrist and therapist. The LHA allowed the request as reasonable.

# CHALLENGE DENIAL

- Administrative remedies
- File complaint
  - HUD ([www.hud.gov](http://www.hud.gov))
  - MCAD ([www.mass.gov/mcad](http://www.mass.gov/mcad))
- Raise as defense to eviction
- Private lawsuit