

TENANT'S RIGHTS

When you rent an apartment, in most cases you are entering into a legal agreement with the owner of the property. The document that lays out your rights as a tenant, and the responsibilities of your landlord, is called a **lease**.

There are two basic types of tenancy: tenancy for a specified period of time and tenancy-at-will. Tenancy-at-will is an unusual type of tenancy, where the renter pays the landlord to live in an apartment on a month-to-month basis. This type of tenancy offers a lot of flexibility, but not a lot of security. Most tenants in the city of Boston are tenants for a specific period of time, and the amount of time they will live in the apartment and how much they will pay for it is covered in the lease.

Leases

A lease is a formal agreement between a landlord and a tenant that enables the tenant to live in a rental unit at a set price, with certain restrictions for a specified amount of time. A lease is legally binding and recognized by the city and state. Most leases in Boston run for one year, although sometimes they are longer or shorter, depending on the specific agreement between the landlord and the tenant. A lease is not a way to 'hold' or 'reserve' an apartment. Once you have signed a lease, you have legally agreed to reside in that particular apartment. Do not sign more than one lease! You will be responsible for paying the rents in all apartments for which you sign a lease.

Leases are by far the most secure way to rent. During your lease term, your landlord cannot raise your rent, rent the apartment to

anyone else, or ask you to leave (unless he/she is trying to evict you for some reason).

When you decide you've found an apartment that you are ready to rent and the landlord, property owner or realtor has accepted your application, the next step is to get and sign a lease. Do not feel pressured into signing your lease immediately when you receive it; take the time necessary to read the whole document. Most landlords and property owners use a fairly standard lease from the Rental Housing Association (RHA), although special provisions are often included separately.

Despite any other provisions it may include, a lease in Massachusetts must include the following information for it to be valid:

- The address of the apartment you are renting
- The amount of your rent
- The *term* of your lease (i.e., how long it is), and when it starts and ends
- The amount you paid to move in (security deposit, last month's rent, etc.)
- The names, addresses, and phone numbers of your landlord, and whoever is directly responsible for maintaining the property

After reading the lease, if there are clauses in it that you do not understand or do not agree with, ask the landlord to either explain the section, or to remove it. You are perfectly within your rights to request some alterations to the lease if you feel they are unfair. Any changes that are made to the lease should be written in and initialed by both you and the landlord. Make sure any changes in provisions that are made are captured in writing. Verbal agreements do not hold up well if you are required to go to housing court in the future.

Unless the provisions in a lease are illegal because they contradict city or state regulations, all the stipulations in a lease are legally binding. Keep this in mind as you look through your lease. If your landlord has promised to fix or repair certain sections of the apartment before you move in, make sure those repairs are mentioned your lease. If they have agreed to provide a refrigerator, check to ensure it is in the lease. If they are not, ask your landlord to include them.

Once you sign a lease for an apartment, you have secured that unit for the duration of time specified in the document. Your landlord must give you (and each roommate) a copy of the lease within 30 days of it being signed, or else they could be subject to fines and penalties.

Reading Your Lease

www.bumc.bu.edu/ohr/lease/

Leases are made up of a number of different sections, referred to often as **provisions** or **clauses**. While each individual provision has its own very specific meaning, you will want to be on the look-out for three general types of clauses: standard clauses used by most leases, illegal clauses that can't be enforced, and legal, but dubious, clauses that you might want to negotiate with your landlord. Most landlords will use a standard lease form from the RHA, but will attach their own requirements to the end of that form. The RHA lease does not include any illegal clauses, but a landlord's rider might.

Since so many landlords use a standard lease, it's a good idea to know what some of the basic provisions are. You can find a breakdown of most of the common provisions in the RHA lease at the OHR website, complete with the actual text of the clause. You will find links to sample leases in the appendix of this guide, as well.

Tenancy-At-Will

A much less common type of tenancy in Boston, a tenant-at-will generally has no lease and rents a unit from month-to-month. The landlord or tenant can end the tenancy at any time with 30 days notice, and the landlord can raise rent at any time with 30 days notice. This type of tenancy offers far fewer protections against changes in the rental market than a standard lease does. The advantage is that it's also a lot more flexible - if you need to leave your apartment quickly, and don't want to have to worry about breaking a lease, being a tenant-at-will gives you that option.

In the OHR's experience, tenancy-at-will is uncommon in Boston. Some of the landlords who offer tenancy-at-will will require a lease, which looks fairly similar to a long-term lease, except that the term is one month.

TENANT'S RIGHTS RESOURCES

When you rent an apartment, you are entering into a legal arrangement with a landlord. You are paying for a service - housing. Renting an apartment is a little bit different than buying a soda though, so both Boston and Massachusetts have a number of statutes, laws, and policies that specify what you as the tenant are entitled to, and what your landlord is entitled to as well.

In any housing situation, it is important to know your rights and responsibilities as a tenant. The organizations listed below have many more resources about housing rights and responsibilities.

Legal Tactics: Tenants' Rights in Massachusetts

www.masslegalhelp.org/housing/legal-tactics1

Dealing with actual people (like your landlord) while renting an apartment is quite different than reading basic information about tenants' rights. You may find as you go about your housing search that you do not feel comfortable bringing up issues you have with leases or applications or what your landlord is doing, because you do not think you have any leverage to negotiate with them. Telling your landlord that you intend to repair and deduct rent, or that you are going to withhold rent, are often difficult things to do because reality is more difficult to navigate than basic scenarios online.

Luckily, the Massachusetts Law Reform Institute and Massachusetts Continuing Legal Education, Inc. produce a fantastic resource for renters in Boston called *Legal Tactics: Tenants' Rights in Massachusetts*. *Legal Tactics* provides suggestions on how to protect your own housing interests when situations come up that you feel you have no power to change. The .PDF booklet has a number of practical solutions for students in awkward renting situations.

The Rental Housing Resource Center

www.cityofboston.gov/rentalhousing

Room 709

1 City Hall Square

Boston, MA 02201

617-635-RENT

The Rental Housing Resource Center, created thirteen years ago, is a department at the city of Boston designed to assist landlords and tenants in Boston with information about housing rights and city or state policy. In addition to being able to answer almost any question students might have about living in Boston, the RHRC also puts together one of the best and easiest to read resources on Boston housing law. The *Good Neighbors Handbook* is available on the RHRC website for free as a .PDF file.

Office of Consumer Affairs & Business Regulations

www.mass.gov/ocabr

Consumer Hotline: 617-973-8787

The Office of Consumer Affairs and Business Regulation has a website with an extraordinarily lengthy description of the state laws protecting tenants. You can find it at the website above, under the 'For Consumers' tab.

The office's pamphlet is a good summary of housing rights:

www.mass.gov/Eoca/docs/TenantsRights.pdf

Legal Representation

For students who are experiencing issues with their landlords that they do not know how to approach, or who have been served with a Notice to Quit for an eviction, there are a few easy-to-use services in Boston to find a lawyer.

Both the Boston Bar Association and the Massachusetts Bar Association host web- and phone-based lawyer referral programs where members of the public can contact the Bars and find a lawyer capable of taking their case. If you find yourself in a situation where you must have legal representation, this service can help you find a legal professional who can represent you, and give you an idea of what the fees might be.

Massachusetts Bar

www.massbar.org/for-the-public/need-a-lawyer

617-654-0400

Boston Bar

www.bostonbar.org/lrs/index.htm

617-742-0625

In any housing situation, it is important to know your rights and responsibilities as a tenant. The following information is a summary of some of your basic rights as a tenant in Massachusetts. Students requiring legal advice should contact a qualified attorney.

Unlawful Entry

As a tenant you have the right to lawful and exclusive possession of your apartment. Your landlord must give you reasonable notice before entering your apartment. Generally, this means a 24-hour notice to determine a mutually convenient time. A landlord that unreasonably enters your apartment may be guilty of criminal trespassing.

By law, you are required to provide a landlord with reasonable access to your apartment for the following reasons:

- To inspect the premises
- To make repairs
- To show the apartment to prospective purchasers or tenants
- In accordance with a court order
- If the premises appears to have been abandoned
- To inspect the premises within the last 30 days of tenancy if you have paid a security deposit in order to determine the amount of damage

Rent Increase

A rental increase may be any amount the landlord wishes to charge. Rent for a tenant with a lease can be increased only when the lease term expires. Tenants at will may face a rent increase at any time, as long as notice is received at least one full rental period, but not less than 30 days, before it becomes effective.

You do not have to accept an increase in rent. As long as you continue to pay the old rent, you cannot be evicted for non-payment of rent. The landlord can still take you to court on this issue, but not for non-payment. If you are unhappy with a proposed rent increase, but would like to stay in your apartment, you should try to negotiate with the landlord rather than battle it out in court. The landlord may be willing to accept a smaller increase or agree to do repairs or make improvements in the apartment. Once you work out an acceptable agreement, get the landlord to put it in writing.

Eviction

Eviction is the process by which a landlord or property owner removes a tenant from his or her property due to breach of contract or other legal dispute. Evictions are time consuming, costly, and exceptionally unpleasant affairs. Evictions can show up on your credit report and increase the interest rate on school loans, credit cards, and mortgages. Most landlords try to avoid evictions in many situations, because of the expense

and inconvenience of having to initiate the process. However, being a bad tenant can make your landlord more likely to try and evict you.

The only person who can evict you from your apartment is a judge. All landlords must go to court and obtain permission from a judge in order to evict a tenant. Eviction is a long and expensive process. If there is a chance that mediation can solve the problem before it has to go to court, then you should strongly consider that option.

If you have a lease, you cannot be evicted unless:

- Your lease has expired and you are living in the property without a lease (squatting, essentially).
- You are not paying your rent.
- You are in violation of your lease, and the lease states that such violations may be cause for eviction (like you are subletting without your landlord's permission).
- You use the apartment for illegal purposes (like selling drugs).

If you do not have a lease, or are a tenant-at-will, a landlord can start an eviction proceeding much easier.

During an eviction proceeding, a landlord or property owner must serve the tenant a Notice to Quit. State statutes mandate how this notice must be served to the tenant to ensure that he or she is properly notified. A Notice to Quit is a request from the landlord for the tenant to vacate the apartment unit by a particular date.

If the notice was served because the tenant did not pay rent, he or she has 14 days to revive the lease by paying all back rent owed. If this is paid, the tenant cannot be evicted. If the tenant does not pay the back rent owed, and is served a subsequent Notice to Quit, the landlord no longer has to accept payment. Notices to Quit for other lease violations aside from non-payment of rent have different time requirements; many leases include provisions for 7 day notices. Non-payment of rent is the most common cause for evictions in Boston.

If the tenant has not moved out by within the time frame stipulated in the Notice to Quit, the landlord can file a Summary Process with the district or housing courts of Boston. The courts will set a date for a hearing, and the landlord must inform the tenant of that date. Both sides may present their case in court. If the tenant is found to be at fault, the judge can order the tenant to leave the unit.

The Nuisance Statute

Landlords who have proof of tenant activity that is illegal are required by law to attempt to evict the tenants. If they do not, they can face fines and jail time.

The activities include using an apartment unit for:

- Prostitution
- Lewdness
- Illegal Gambling
- The sale of alcohol
- The sale of controlled substances
- Illegal possession of a weapon/firearm
- Use of an explosive or incendiary device

Landlords attempting to evict a tenant under the Nuisance Statute do not have to serve them with a Notice to Quit, and can proceed directly to court. Landlords need to have copies of a police report indicating that such activities were taking place in the apartment.

HABITABILITY RIGHTS

All tenants are entitled to a safe and habitable living environment throughout their entire tenancy. The State Sanitary Code protects the health, safety and well-being of tenants and the general public. A brief description of the state sanitary code is summarized in the appendix of this guide, and on the ISD website. If you can, it's a good idea to understand the basics of the sanitary code when evaluating apartments.

Remedies

If you feel conditions exist that may violate the State Sanitary Code call your landlord and advise him/her of the problem and request repair. In addition, put your request in writing so you have documented evidence of your request.

Some violations are considered emergency violations of the sanitary code. Your landlord has to take immediate actions to fix problems of this sort, which include:

- No heat
- No water
- No waste removal/drainage
- Flooding

If the landlord does not take action to fix these violations of code, contact them and let them know that you are going to get in touch with ISD. If they still do not reply, call ISD and let them know about the issues. They will send out an inspector who will investigate the situation. Be sure to point out to the inspector what the issues are, and ask for a copy of their report before leaving your apartment. A few days later, you should receive another copy of the report and repair order in the mail stating that the landlord has been notified of the code violations and must fix them within a specified amount of time. If the landlord has not solved the problem within the time frame that the ISD gives them, the city can take them to court.

For most maintenance issues, though, calling the ISD is not necessary. For other breaches of the code, or issues that require

fixing, call your landlord and ask them to repair the damage. Your lease should stipulate who is responsible for the physical maintenance of your apartment. If the landlord has an outside company or contractor doing repairs, you may need to contact that company directly. If your landlord is unresponsive to your requests, send him or her a request for the repairs in writing, and send it certified mail (so you get a dated receipt of when it was delivered). If, after receiving the receipt, you still don't get any response from your landlord, or the problem is still not fixed, call him or her one final time to indicate that you will be contacting the ISD.

Tenants dealing with maintenance issues, especially those that threaten their health, have several options available:

Withhold Rent

If repairs are not fixed within a reasonable amount of time you may withhold a portion of your rent as a means of forcing repairs. This is a serious step and should be dealt with carefully. You may want to get some legal advice before proceeding since the landlord could try and evict you for non-payment of rent.

Repair and Deduct

To repair and deduct may be another option. In this case you would make emergency repairs and be entitled to deduct up to four months future rent to pay for the work. At this stage of remedy, if you qualify under "repair and deduct" you may also choose to treat the lease as broken, and move rather than undertake the necessary repairs. Again, this is a serious step. It is wise to seek legal council before proceeding with this type of action.

Retaliation

The state of Massachusetts provides some security for a tenant who has had to report his or her landlord to the ISD, or make use of one of the above remedies for a major issue of habitability.

A tenant cannot be legally evicted for:

- Informing the landlord about violations in the sanitary code.
- Contacting Inspectional Services
- Joining/organizing a tenant's group in the building
- Legally withholding rent
- Repair-and-deducting rent
- Pursuing legal action against the landlord for violations.

Any eviction actions undertaken by a landlord within six months of a tenant performing one of the above actions is considered by law to be "retaliatory," and the landlord will have to prove that they are not or else the claim is dismissed.