

**Tenants' Rights in Massachusetts  
MCLE Basic Benefits Training Series**

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# **Facing Eviction Part I**

Laura Camara

*Justice Center of Southeast Massachusetts*

Pattie Whiting

*Harvard Legal Aid Bureau*

# Key Takeaways

- Only the court can evict a tenant.
- A tenant can win an eviction trial.
- Some of the changes to the eviction process during COVID-19 are still in effect.

# Evictions – In Court Only

- A landlord must get an “Execution” from the court in order to evict a tenant.
- A lease which says that a landlord can evict a tenant without going to court is illegal.
- It is illegal for a landlord to try to threaten or intimidate a tenant to leave.
  - Call the police.
  - File a Temporary Restraining Order:  
[https://apps.suffolklitlab.org/run/housing\\_tro](https://apps.suffolklitlab.org/run/housing_tro)

# The Eviction Process

1. Notice to Quit
2. Summons and Complaint
3. Answer, Discovery, and Jury Claim
4. Tier-1/Mediation
5. Motions/Trial
6. Judgment
7. Appeal
8. Execution

# Notice to Quit

- **Before** filing an eviction case in court, the landlord must terminate the landlord-tenant relationship (the “tenancy”) by a written notice.
- Termination of the tenancy must be both
  - (1) according to the law; and
  - (2) according to the lease.
- The notice terminating the tenancy is called a Notice to Quit (NTQ) (sometimes the notice is titled “Notice Terminating Tenancy/Occupancy”).

# Notice to Quit – Common Types

- **14-day NTQ** for non-payment of rent
  - For tenants with or without a lease.
  - If no federal subsidy is involved (CARES Act).
- **30-day NTQ** for non-payment of rent
  - For federally-assisted units covered by the CARES Act.
  - CARES Act protections apply to the entire property, even if only one unit is federally assisted.
- **Rental Period NTQ / 30-day NTQ**
  - For tenants without a lease / “tenants at will.”
  - Must be at least a 30-day period.
- **Other term:** for lease violation (not non-payment)
  - Depends on the lease, can be longer or shorter than 30 days.

# Notice to Quit

- The notice must be clear: date of termination, reason for termination (if required), names of tenants and landlord, property address.
- Per G.L. c. 239, Section 15, an “attestation” form and informational sheet must accompany a notice to quit for non-payment of rent.

# Right to Cure Non-Payment of Rent

- If the reason for eviction is non-payment of rent, the tenant has a right to “cure” the non-payment by *timely* paying what they owe *in full*.
  - **Tenant at Will:** right to cure within 10 days after the notice; once every 12 months.
  - **Tenant with a lease:** right to cure until the Answer Date; must also pay court filing costs and service fee, if case was entered in court.
- If the tenant cured the non-payment BEFORE the filing of the eviction case, the landlord should not enter the case.
- If the tenant cured the non-payment AFTER the case was entered, the case should be dismissed.



# Rental Assistance

- In nonpayment eviction cases, while tenants have a pending rental assistance application:
  - The court must continue (reschedule) any hearing.
  - The tenants should not be evicted.
- Landlord's refusal to accept rental assistance could be a violation of the state anti-discrimination law.
- Rental Assistance rules and regulations may require the landlord to dismiss the eviction case upon payment of the back rent.

# When the NTQ Expires

*“Receipt of a notice to quit, however, does not legally require the tenant to move out of his or her home ... Rather, it simply declares the landlord's intent to go to court to seek an eviction order if the tenant does not move out voluntarily before the stated deadline. Nevertheless, a tenant may reasonably – but incorrectly – believe the notice to quit to mean that he or she must move out before the deadline.”*

Adjartey v. Cent. Div. of Hous. Court Dep't, 481 Mass. 830, 850 (2019)

# Summary Process

- Eviction cases in Mass. have special rules of procedure and are called Summary Process actions.
- Generally, the outcome of the case will include:
  1. Possession
  2. Time
  3. Money
  4. Court may also order the landlord to make repairs or to accommodate a disability

# Summary Process

## Tenants can win eviction cases!

- If the landlord did not follow the proper process, the case may be dismissed.
- The tenant and the landlord can agree on a resolution that is acceptable for both sides.
- If the landlord was found to be breaking laws protecting tenants, the tenant may win possession and/or money.

# Summary Process

- Begins with Summons and Complaint.
  - Typically, a document of one double-sided printed paper which includes a **Complaint** detailing the allegations; and a **Summons** to go to court.
- Must be served by the sheriff or a constable.
  - Service in hand not required (can be “mailed and nailed”).
- Under current Standing Order, the Summons only tells the tenant that the case was entered in court; notice of the exact date of the first court event (remote mediation) will be mailed separately.

**Housing Court Department**

Division:  
Address:  
Telephone Number:  
Hours of Operations:

For Court Use Only:  
Docket No: \_\_\_\_\_

**Commonwealth of Massachusetts  
SUMMARY PROCESS (EVICTIION) SUMMONS AND COMPLAINT**

**IMPORTANT: NOTICE OF A COURT CASE TO EVICT YOU - PLEASE READ IT CAREFULLY**

**IMPORTANTE: ESTA ES UNA NOTIFICACION  
PROCEDIMIENTOS DE DESALOJO - POR**

Name and Address of the court

TO: DEFENDANT(S)/TENANT(S)/OCCUPANT(S): \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ CITY/TOWN: \_\_\_\_\_ ZIP: \_\_\_\_\_  
EMAIL: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

**THE COURT WILL SEND YOU A NOTICE OF THE DATE, TIME, AND MANNER OF YOUR COURT EVENT.**

You are hereby summonsed to appear at a hearing before a Judge of the Court to defend against the complaint of:  
**PLAINTIFF/LANDLORD/LESSOR/OWNER:**

of STREET: \_\_\_\_\_ CITY/TOWN: \_\_\_\_\_ ZIP: \_\_\_\_\_

that you occupy the premises at \_\_\_\_\_  
being within the judicial district of this Court, unlawfully and against the right of said Plaintiff/Landlord/Owner  
because: \_\_\_\_\_

and further, that \$ \_\_\_\_\_ rent is owed according to the following account:

ACCOUNT ANNEXED (itemize)  
\_\_\_\_\_  
\_\_\_\_\_

Printed Name of Plaintiff or Attorney

Signature of Plaintiff or Attorney

Address of Plaintiff or Attorney

Email of Plaintiff or Attorney

**NOTICE TO EACH DEFENDANT/TENANT/OCCUPANT**  
If you do not file and serve an answer, or if you do not defend at the time of the trial, Judgment may be entered against you for possession and the rent as requested in the complaint. See the **Notice to Defendant** section on the back side of this summons.

Reason for the eviction

BBO# \_\_\_\_\_

**FOR INFORMATION ABOUT EMERGENCY RENTAL AND MORTGAGE ASSISTANCE:**  
Please visit: [www.mass.gov/CovidHousingHelp](http://www.mass.gov/CovidHousingHelp) or call 311 for assistance.

To the Sheriff or our several counties, or their Deputies, or any constable of any City or Town within said Commonwealth, Greetings: We command you to summon the within named defendant(s)/tenant(s)/occupant(s) to appear as herein ordered.

**WITNESS:**  
/s/ \_\_\_\_\_  
First Justice  
/s/ \_\_\_\_\_  
Clerk Magistrate

Service by: \_\_\_\_\_  
Entry Date by: \_\_\_\_\_  
Trial Date: To Be Determined by the Court

of STREET: \_\_\_\_\_ CITY/TOWN: \_\_\_\_\_ ZIP: \_\_\_\_\_

that you occupy the premises at \_\_\_\_\_  
being within the judicial district of this Court, unlawfully  
because: \_\_\_\_\_

**Who tenant should serve papers to**

and further, that \$ \_\_\_\_\_ rent is owed according to the following account:

ACCOUNT ANNEXED (itemize)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Plaintiff or Attorney  
\_\_\_\_\_  
Signature of Plaintiff or Attorney  
\_\_\_\_\_  
Address of Plaintiff or Attorney

**NOTICE TO EACH DEFENDANT/TENANT/OCCUPANT**  
If you do not file and serve an answer, or if you do not defend at the time of the trial, Judgment may be entered against you for possession and the rent as requested in the complaint. Please see the **Notice to Defendant** section on the back side of this page.

\_\_\_\_\_  
Email of Plaintiff or Attorney

\_\_\_\_\_  
Telephone Number                      BBO#

**FOR INFORMATION ABOUT EMERGENCY RENTAL AND MORTGAGE ASSISTANCE:**  
Please visit: [www.mass.gov/CovidHousingHelp](http://www.mass.gov/CovidHousingHelp) or call 211 for assistance.

**To the Sheriff of our several counties, or their Deputies, or any constable of any City or Town within said Commonwealth, Greetings: We command you to summon the within named defendant(s)/tenant(s)/occupant(s) to appear as herein ordered.**

**WITNESS:**

/s/ \_\_\_\_\_  
First Justice  
/s/ \_\_\_\_\_  
Clerk Magistrate

**Service by:** \_\_\_\_\_  
**Entry Date by:** \_\_\_\_\_  
**Trial Date:** To Be Determined by the Court

# Prepare for Trial

- When assisting a tenant facing eviction make sure to act promptly.
- Apply for rental assistance, if applicable.
  - And keep a proof of application.
- To find legal help in your area go to:  
[masslrf.org/en/home](https://masslrf.org/en/home)



# Types of Evictions

<u>No-fault</u> (or No-Cause)	Tenant can raise counterclaims	If tenant loses, the court should consider a stay of the Execution to give tenant time to relocate
<u>Non-payment of rent</u>	Tenant can raise counterclaims	No law saying court should consider stay of execution.
<u>Fault</u> (or Cause)	Generally, no counterclaims	No law saying court should consider stay of the Execution

# Answer and Discovery

- Currently, Answer and Discovery are due **three business days prior** to the first event in the eviction case (Tier-1 mediation).
- **Answer:** Tenant's opportunity to tell their side of the story, raise Defenses and Counterclaims, and claim trial by jury.
- **Discovery:** Tenant's opportunity to ask the landlord questions and demand relevant documents.

# Answer and Discovery

- Helping a tenant get an Answer and Discovery filed (and served!) is one of the most important things you can do as an advocate.
- Call Legal Services ASAP. Especially if the case involves cause allegations or criminal activity.
- Fill out your own Answer and Discovery using MADE – an online form for unrepresented tenants and advocates : <https://www.gbls.org/MADE>
- Or download Answer and Discovery forms from [masslegalhelp.org/legal-tactics](http://masslegalhelp.org/legal-tactics).

# Answer and Discovery

- All forms must be filed in the court AND served on the landlord no later than **3 business days** before first mediation.
- Electronic filing is recommended; in-person filing is available for self-represented tenants.
- Video instructions for e-filing:  
<https://www.masslegalhelp.org/housing/evictions-efilema>
- Late Answer will only be accepted with permission from the court. Motion for late filing is available through MADE or at:  
[masslegalhelp.org/housing/lt1-booklet-3a-late-answer-and-discovery.pdf](https://www.masslegalhelp.org/housing/lt1-booklet-3a-late-answer-and-discovery.pdf)

# Answer

## Defenses:

1. Denial of landlord's claims
2. Procedural Defenses
3. Retaliation
4. No Significant Lease Violation
5. Avoidance of Forfeiture

# Answer

## Counterclaims:

Also serve as Defenses that can prevent eviction; not always allowed in fault evictions:

1. Bad Housing Conditions
2. Breach of Quiet Enjoyment
3. Discrimination/Reasonable Accommodation
4. Utilities violation
5. Security Deposit or Last Month's Rent violations
6. Unfair and Deceptive Business Practices

# Jury Trial

- Jury claim must be filed by the Answer date.  
No second Chance!
- The parties can later agree to have a trial in front of a judge without jury (bench trial).
- A request for jury may postpone trial date.

# Transferring Case to Housing Court

- The landlord can choose to file a Summary Process action in either a District Court or the Housing Court.
- The Tenant can transfer the case to Housing Court anytime before the date of trial.
- Housing Courts often have more expertise on the issues.
- Housing Courts have more resources to serve unrepresented tenants: Housing Specialists, Tenancy Preservation Program, Lawyer for the Day.



# Resources

- **Massachusetts Legal Resource Finder**  
[masslrf.org/en/home](http://masslrf.org/en/home)
- **MADE Online Forms**  
[gbls.org/MADE](http://gbls.org/MADE)
- **Housing Court Forms at MassAccess**  
[courtformsonline.org/housing/](http://courtformsonline.org/housing/)
- **Know Your Rights Information**  
[MassLegalHelp.org](http://MassLegalHelp.org)
- **Common Questions about Evictions**  
[masslegalhelp.org/housing/common-questions](http://masslegalhelp.org/housing/common-questions)
- **Rental Assistance**  
[www.mass.gov/how-to/how-to-apply-for-emergency-housing-payment-assistance](http://www.mass.gov/how-to/how-to-apply-for-emergency-housing-payment-assistance)
- **Tenancy Preservation Program, Lawyer for the Day,  
& Other Housing Court Resources**  
[www.mass.gov/guides/housing-court-resources](http://www.mass.gov/guides/housing-court-resources)
- **Volunteers Lawyers' Project Appeals Clinic**  
[vlpnet.org/civil-appeals-clinic/](http://vlpnet.org/civil-appeals-clinic/)