Chapter 13
When to Take Your Landlord to Court

Legal Tactics: Tenants' Rights in Massachusetts
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When to Take Your Landlord to Court

Tenants' Rights in Massachusetts

If you tried to resolve a problem with your landlord but they refuse to obey the law, you may decide the only way to fix the problem is to take them to court.

Fix Problems Outside of Court

Try to solve the problem outside of court:

- If your landlord refuses to make repairs, ask your local housing inspector to inspect your apartment or building and send the landlord a repair order.
- If your landlord owes you your security deposit, send them a Consumer Protection Law demand letter.
- If you are having a dispute with your landlord, community mediation programs can help solve the problem. www.mass.gov/ago/ftf
- If other tenants have the same problem, organize together for a solution.

What a Court Can Do

If you have a good case and you can prove your landlord broke a law, the judge may order your landlord to do things like:

- Quickly address emergencies, like no heat.
- Make a necessary repair, like fix the plumbing.
- Let you back into your apartment, if your landlord they locked you out.
- Pay you money to compensate you for harm you suffered.
- Order a temporary landlord called a "receiver" to make repairs and manage the property.
- Pay a fine or go to jail, but only if your landlord broke a criminal law.

Protect Yourself
Deciding to Go to Court

Going to court is stressful, and you may not win. Before you go to court, ask yourself:

Can you fix the problem outside of court?

What do you want the court to do?

Do you have a case that you can prove?

Do you need legal help and can you get it?

What Kind of Case Do You Have

Criminal Cases

If your landlord commits a crime, contact the police right away. Crimes include entering your apartment without your permission, cutting off your utilities, locking you out, or attacking you. Ask the police to file a criminal complaint.

Civil Cases

Most cases against landlords are civil. The most common types of civil cases are:

Small Claims

If you have a case for less than $7,000, you can file a Small Claims case in Housing Court, District Court or the Boston Municipal Court. If your case is for more than $7,000, talk to a lawyer.

Tenant Petition

A Tenant Petition to Enforce the Sanitary Code is a quick way to ask the court to order your landlord to make repairs, especially emergency repairs. You can also use it to ask a court to lower your rent to reflect the value of your apartment with all its problems. It cost $2 to file a petition.

Bad or Unsanitary Conditions

Landlords must provide "habitable" or decent living conditions. You can ask the court to order them to make repairs and return part of your rent.

Interference with "Quiet Enjoyment"

Sometimes landlords are responsible for conditions that interfere with you using your apartment. This is called a "breach of quiet enjoyment." For example, cutting off your utilities if your landlord is supposed to pay them is a violation of this law.

Retaliation

It is illegal for a landlord to punish you by trying to evict you, raising your rent, or making a major change in your rental agreement because you:

- Ask for needed repairs,
- Report bad conditions in your apartment or building to the Board of Health or other local officials,
- Join a tenants' organization, or
- Withhold rent because of bad conditions.

Unfair or Deceptive Practices

It is illegal for landlords to use unfair or deceptive practices. This law does not protect tenants in public housing or tenants who live in 2 or 3-family buildings if the landlord lives in the building. To use this law, you must follow specific rules, including sending the landlord a "demand letter."

Security Deposits

Landlords must account for security deposits and last month's rents properly. If your landlord violates the security deposit law, send them a "demand letter" for violating the Consumer Protection Law. See sample security deposit demand letters: **Form 5: For Tenants in an Apartment** and **Form 6: For Tenants Moving Out**. If your landlord does not give you a reasonable response, you can take them to court.

Housing Discrimination

Discrimination is illegal. Laws protect certain groups of people, cover different types of housing, and provide different protections.

MassLegalHelp.org/Taking-Landlord-To-Court
Legal Tactics: Tenants Rights in Massachusetts May 2017

When to Take Your Landlord to Court

by Gary Allen

Italicized words are in the Glossary

There are ways to solve problems with landlords without going to court. But if you have tried different approaches and your landlord refuses to obey the law, you may decide that the best or only way to resolve your problem is to take your landlord to court.

This chapter tells you what a court can do for you and the legal reasons you may have to sue your landlord. If you decide to take your landlord to court **Chapter 14: Using the Court System** will tell you how you can file a court case.

Deciding Whether to Go to Court

Before you decide to go to court, think carefully about the following:

- Are there other ways to resolve your problem without going to court?
- What can the court do?
- What do you want the court to do?
- Do you have a good case?
- Whether the other side may sue you in the same action?
- Do you need and can you get an attorney?

1. Resolving Your Problem Outside the Court System

Court cases can be lengthy, expensive, time-consuming, and emotionally draining. Many issues can be resolved outside the court system. When evaluating your case, you should consider whether you have tried all the reasonable alternatives. For example:

- Have you contacted your landlord in writing more than once about making repairs, without results?
- Have you contacted your city or town's Board of Health or Inspectional Services?
- Do other tenants have similar problems, and have you met with them to discuss taking action as a group?
- Should you withhold rent or use the "repair and deduct" law?
- Are there community groups in your area that work with tenants needing assistance?
- If you owe rent, can you work out a payment plan for back rent that is realistic?

Court Remedies - What a Court Can Do

If your landlord violates the law, there are a number of ways that a court may be able to help you. These are called remedies. You may ask the court for any or all of the following remedies, depending on the circumstances in your case.

- **Money Damages:** A judge can award you money or damages to compensate you for the harm that you have suffered. The law calls money awards damages.

- **Injunction or Restraining Order:** A judge can order your landlord to do something to correct a problem or to stop doing something that is illegal. This order is called an injunction. The most common type of injunction that tenants use is called a temporary restraining order, or TRO. A TRO is the fastest type of order that you can get from a court, but it also ends quickly. You can get a TRO to order your landlord to let you back into your apartment if she locked you out, to fix the heat if she refuses to repair it, or to prevent very serious conditions from getting worse. When a TRO ends, you can ask the judge to keep the injunction active for a longer period of time.

- **Judgment:** A judgment is the court's final decision. It resolves the disagreements the parties had and declares who won the case. A judgment gives you the right to pursue certain remedies. For example, in a civil case, the judgment typically tells one party to pay money to the other, or in a summary process (eviction) case, there could be an order instructing the tenant to vacate the premises.

- **Criminal Sanction:** A judge can fine or jail your landlord for a violation of criminal law.

- **Appoint a receiver:** A judge can appoint another person to take over the management of your building. This is usually a remedy of last resort. For more information, see **Chapter 8: Getting Repairs Made – Receivership**.

In addition to the remedies listed above, a court may provide staff to help you resolve your problem through voluntary *mediation*. For more about mediation, see **Chapter 12: Evictions – Settling Your Case** and **Chapter 14: Using the Court System - Mediation.**

2. What Do You Want the Court to Do

If you feel that one or more of the *remedies* listed above would help you, going to court and asking a judge for help may be a good approach to solving certain problems. For example:

- Do you want a court to order your landlord to make repairs?

- Do want a court to order the landlord to rent to you because a landlord made a decision not to rent to you based on illegal discrimination?

- Do you want your security deposit back?

- Do you want to be compensated for living with bad conditions and not receiving the full value of your apartment?

These are all reasons to seek help from a court. Note: Tenants and landlords must not use the court system to intentionally harass, intimidate, frustrate, or hurt someone.

Who Should You Take to Court

When you file a *complaint* in court, you must be able to tell the court who the complaint is against. Most of the time, this will be easy. If the landlord has violated the law, you will want to file a complaint against the landlord.

However, sometimes the owner and the manager of your apartment are not the same, so it is not clear who the landlord actually is. If you have been dealing with a private management company and have never met the owner or do not know who the owner is, you can file a complaint against the management company. Although it is not absolutely necessary, if a management company is involved, it is best to file a complaint against both the management company and the owner.[1]

Who Owns Your Building

If you want to take your landlord to court, you will need to get the building owner's full legal name and address. Your landlord could be an individual, a corporation, or another type of company. If you don't know who owns your building, you may be able to find out by:

- Checking your lease.
- Checking your rent or security deposit receipts.
- Asking your property manager or people at the management office.
- Looking for a sign in your building (landlords of buildings with 3 or more apartments must post the landlord's name, address, and phone number).[2]
- Going to the tax assessor's office in your city or town hall, which has information about who owns property organized by address.
- Going to the county Registry of Deeds office (which may have telephone staff who can help you) or looking at the Registry's website. To locate the right Registry of Deeds office for your county go to: www.sec.state.ma.us/rod/rodgde/gdeidx.htm.

If your landlord has had the building taken away by a bank because she did not pay her mortgage, there may be a new landlord that you do not know about. Or a bank may own your building. You must find out whether there is a new landlord before filing a lawsuit. You also have to figure out if the problem is the former owner's responsibility or the new landlord's responsibility.

If you cannot find anything that shows that your landlord has been *foreclosed* upon, you can file the lawsuit against your landlord. But if the judge finds that the landlord has lost the property or has been foreclosed upon, or if the problems you are complaining about are the responsibility of the new owner, your lawsuit may be *dismissed*. For more about foreclosures, see **Chapter 18: Tenants and Foreclosure**.

If your landlord is in the middle of a bankruptcy action, you cannot bring a lawsuit or *counterclaim* against her in housing or district court.[3] If you want your complaint heard by a judge, you must go before the bankruptcy court. You can ask the bankruptcy court to hear your complaint. Or you can ask the bankruptcy court for permission to have your case heard in housing or district court.

To see if your landlord has declared bankruptcy. you can call the bankruptcy court in Boston (617-748-5300), Worcester (508-770-8900) or Springfield (413-785-6900) The U.S. Bankruptcy Court is part of the federal court system. For more see www.mab.uscourts.gov. When you call, make sure you know exactly who owns your building.

Grounds for Filing a Civil Lawsuit

A civil lawsuit is any case that is not a criminal case. Most cases are civil lawsuits. If you want a judge to issue an order, you can file a civil suit asking for an *injunction*. You can file a lawsuit seeking money to compensate you for harm that you have suffered. If your case involves less than $7,000, you can file a small claims case. A small claims case is also a civil lawsuit.

If your case involves a lot of money or is complex, you will probably need the help of a lawyer to file a civil lawsuit. The purpose of this section is to explain the most common legal *claims* tenants have.

1. Bad Conditions and Breach of Warranty of Habitability

Under Massachusetts law, all landlords owe tenants what is called a "*warranty of habitability*." This means that a landlord is obligated to keep your apartment in good condition from the time you first move in until you leave.[4]

It is very important to understand that a landlord cannot get out of her obligation to provide a habitable apartment by claiming that the rent she charged you was discounted because of the bad conditions.[5]

If your landlord does not keep your apartment in good condition, she has broken or "breached" her *warranty of habitability*. You then may have a claim that the value of your apartment has decreased and that it is not worth all of the rent that your landlord is charging you. You can make this claim in some *eviction* cases to reduce the amount of rent you owe or to win the right to stay in your apartment. You may also use it to sue the landlord for return of rent money. This warranty covers all *tenancy* agreements, whether in writing or not. Your landlord cannot ignore this requirement or require you to give up your right to live in a habitable apartment.[6]

The landlord is in violation of the *warranty of habitability* from the moment she has actual knowledge of conditions that may endanger or impair your health, safety, or well-being.[7] Under the law, the landlord is assumed to have actual knowledge of violations if they existed at the time you moved into your apartment.[8] You do not need to tell her about them, although it's much better to do so, and **always better to do so in writing.**

If problems occur after you have moved in, the landlord has actual knowledge that they exist:

- If she sees them,
- When you tell her about them (either orally or in writing), or
- When a Board of Health or Inspectional Services Department sends her a notice that problems exist.[9]

Also, when one tenant gives notice of a defect that affects other tenants, the landlord has received notice upon which other tenants may rely.

Not every defect will be enough for a court to say that there has been a lessening of the value of your apartment.[10] A court has broad power to decide what is a *breach* of the warranty and what is not. If you want to sue your landlord for breach of the *warranty of habitability*, you should get a report from the Board of Health documenting all code violations.

When the landlord violates the *warranty of habitability*, you have several options. You can ask a court to reduce your rent for the time period when you lived with bad conditions. Your right to reduced rent begins from the time that your landlord has actual knowledge of the bad condition in your apartment.[11] If the court finds that the landlord has breached the warranty of habitability, a judge then calculates money *damages* that the landlord may owe you. The measure of damages for a tenant is the difference between the *fair market value* of the apartment in good condition (usually the amount of rent you originally agreed to pay) and the *fair rental value*, which is the value of the apartment with all of the problems.[12] Even with numerous code violations, however, a judge may find that the fair rental value of your apartment with the defects is not significantly lower than your original rent.[13]

If your landlord has seriously breached the warranty of habitability, you can choose to cancel your *lease* and move out[14] or you can ask a court to cancel your lease and give a full or partial refund of rent money you have already paid.[15] If you do this, the court will use several factors to decide if you will be allowed to break your lease:

- The seriousness of the defective conditions and their effect on the habitability of the apartment,

- How long you have had to live with the defects,
- Whether the defects could be fixed within a reasonable amount of time and your apartment made livable again, and
- Whether you are responsible for the defects.

If the court finds that the landlord has breached the *warranty of habitability* and allows you to end the lease, you may still be responsible for paying the *fair rental value*, if any, of the apartment during the time you lived there with bad conditions.[16] Note: You don't need to get a court to give you permission to move out because of bad conditions. But there is a chance, if you move out before your lease is over without a court's permission, the landlord may sue you for the rent they lost until they could find another tenant. But, if you have a good reason for moving out, the court may not hold you responsible if the landlord does sue you.

You can also file a *petition* to enforce the state Sanitary Code, which is different from filing a civil lawsuit. With a petition, you would be asking the court to order the owner to make necessary repairs and reduce your rent (including rent already paid) until repairs are made. You can also ask for money *damages*. The cost to file this petition is set by law at $2 and is the quickest way to bring your request for repairs to a judge.[17] For more information about other ways to deal with bad conditions and more information about this warranty, see **Chapter 8: Getting Repairs Made**. For a petition form, see **Tenant Petition for Enforcement of the State Sanitary Code (Form 14)**.

2. Breach of Quiet Enjoyment

In Massachusetts, if a landlord interferes or fails to make repairs which result in your inability to use and enjoy your apartment, this may be a breach of quiet enjoyment. You may sue her for money *damages* or court orders in the following situations:

- If your landlord is required to furnish utilities or other services and she intentionally fails to provide them. Common situations include failure to provide hot water or heat, or failure to fix the furnace or boiler.
- If your landlord is required to provide utilities or other services and she directly or indirectly interferes with the furnishing of them.
- If your landlord transfers the responsibility for payment for the utility to you without your consent.
- If your landlord attempts to lock you out or move you out of your apartment without first taking you to court.
- If the landlord in any way intentionally interferes with your "quiet enjoyment" of your apartment[18]

It is very important to understand that the fact that you might owe rent does not prevent you from bringing this type of lawsuit.

The money damages the court awards you will be equal to either 3 months' rent or your actual loss, whichever is greater (minus any rent you may owe). Your actual loss might include the money you had to pay to eat in a restaurant while you were unable to get into your apartment, damage to your property from a leaky roof, or the difference in value between your apartment with a weathertight roof and your apartment with a leaky roof (in other words, your breach of warranty damages).[19]

If you win your lawsuit, you are also entitled to the costs of filing the lawsuit and your lawyer's fees. A court may award you attorney's fees even if you are not paying the lawyer because she is a legal services lawyer.[20] Some lawyers will take these kinds of cases even if you can't pay them until the case is won or settled.

Some examples that violate your right to the quiet enjoyment of your apartment are:

- Repeated flooding of your apartment because of a plumbing problem that is not adequately repaired.[21]
- The landlord's failure to provide adequate heat during the heating season even if she could not afford to buy heating oil.[22]
- The landlord's failure or refusal to fix the furnace or boiler, even when the tenant is responsible for paying the fuel.
- The landlord converts your private space into a common space, like a porch or basement that used to be accessible only to you.[23]
- Excessive noise from other tenants under the landlord's control.[24]
- Emotional distress caused by the landlord's miscalculation of rent and attempt to evict the tenant for non-payment.[25]
- A ringing fire alarm that continues for a 24-hour period.[26]

If the landlord's actions have so interfered with your use of the apartment that you have to move immediately, you may be able to do so without having to pay the rent you are obligated to pay.[27] But the situation has to be extremely serious for you to be able to break your lease or rental agreement. If a court finds that the situation was not so serious that you had to leave, a court may order you to pay the rent after you move out. For more about breaking your lease, see **Chapter 11: Moving Out**.

> Note: If your lease contains a clause that the owner will provide heat and hot water, but is not *liable* for damages if she fails to do so, this lease clause is illegal.[28]

3. Retaliation

State law makes it illegal for the landlord or her agent to take action against you for doing the following things:[29]

- Notifying your landlord, in writing, of violations of the state Sanitary Code;
- Reporting your landlord to health inspectors, local boards, or other officials for violations of law;
- Withholding rent because of bad conditions;[30]
- Taking legal action against your landlord to enforce your rights; or
- Organizing or joining a tenants organization.

If, within 6 months after you have engaged in any of the above activities, a landlord sends you a *notice to quit*, a notice of increase in rent, or a notice of any substantial change in the terms of your lease or *tenancy*, the law requires a judge to assume that the landlord's action was *retaliatory*. If challenged, the landlord must prove "by clear and convincing evidence" that her action would have occurred regardless of your involvement in these protected activities.[31] If your landlord fails to prove this, you may be entitled to between 1-3 months rent or money *damages* for your actual loss, whichever is greater, plus the costs of your bringing the lawsuit and your attorney's fees.[32]

4. Unfair or Deceptive Practices

The Massachusetts legislature has recognized that tenants are consumers of one of the most significant consumer products—housing.[33] Under the state Consumer Protection Act, called "Chapter 93A," it is illegal for a landlord to threaten, attempt, or actually use any unfair or deceptive acts against you or anyone in your house.[34]

For example, if your landlord intentionally shuts off your heat, this would be an unfair or deceptive act that violates the Consumer Protection Act. If your landlord acts in an unfair or deceptive way and this causes you to be "injured,"[35] you can take her to court, and possibly get money *damages* or an *injunction* against her. An injury can include not only actual out of pocket loss, but other types of harm, such as emotional distress,[36] and even loss of time at work. You may also be entitled to reasonable attorney's fees and the amount of your actual loss.[37] If you can show that your landlord should have known her acts were unfair or deceptive, you can sometimes get double or triple the amount of your money damages.[38]

Not all landlords, however, are covered by the Consumer Protection Act. If you live in a 2- or 3-family building and the landlord lives in the building with you, the Consumer Protection Act may not apply.[39] If you live in a 2- or 3-family building and the landlord lives in the building and uses the rent money to pay the bills, then the Consumer Protection Act does not apply.[40] Public housing tenants cannot recover damages under the Consumer Protection Act for a housing authority's breach of the *warranty of habitability*.[41] If, however, you live in any other situation, you can use this law to enforce your rights.

a. What Is an Unfair or Deceptive Act

An unfair or deceptive act can be any action that violates existing laws or regulations that protect your health, safety, or welfare.[42] This can include:

- Violations of the local building codes, housing codes, and state Sanitary Code;
- Violations of the Attorney General's consumer protection regulations;[43]
- Retaliation;
- Unfair debt collection practices;
- Refusing to make repairs after the landlord has notice;
- Violating your right to quiet enjoyment;
- Breaching the warranty of habitability;
- Not obeying the security deposit law;
- Sending you documents that look like court papers, but are not;
- Refusing to accept court papers from you;
- Using illegal terms in your lease;
- Omitting from your lease the name, address, or phone number of the landlord or manager for your building; or
- Failure to give you a copy of your lease within 30 days after you signed it.

Many of the other claims listed in this chapter are also violations of the Consumer Protection Act.

Finally, the law prohibits any other conduct by the landlord that you can convince a judge was unfair or deceptive.[44] To make sure you claim all possible violations of the Consumer Protection Act (Chapter 93A), it is best to state at the end of your complaint: "All of my claims are **also** violations of Chapter 93A of the Massachusetts General Laws. This entitles me to double or triple all actual damages given to me."

b. You Must Send a Demand Letter

To recover damages under the Consumer Protection Act, the law requires that you first send your landlord a written *demand letter at least 30 days **before** you file a law suit*.[45] The purpose of a demand letter is to tell your landlord how she has violated the law and what you want her to do. This letter must describe the landlord's deceptive act, how it is injuring you, what you want done, and a request for a reasonable settlement.[46] See the sample demand letters (**Forms 5, 6, 10**, and **18**). This letter is not required if your consumer protection claim is raised as a *counterclaim* in an eviction case.[47] You should also refer to the information about demand letters on the Attorney General's

website at: www.mass.gov, then type in "demand letter" in the search box.

If the landlord does not respond to your letter in writing after 30 days, you can sue her.[48] If the landlord does respond to your letter, but you do not think the offer is reasonable, you may still sue. But the court may not award damages greater than what the landlord already offered.[49] If the landlord's refusal to settle was willful or in bad faith, you can collect as much as two or three times the amount you are demanding, plus reasonable attorney's fees and court costs.[50] To bring a lawsuit under the Consumer Protection Act, you must sue the landlord within 4 years of when the landlord's unfair or deceptive act occurred.[51]

If other tenants are also affected or injured by the landlord's unfair or deceptive acts, you can bring a class action lawsuit against her.[52]

5. Security Deposits

If your landlord violates the security deposit law, you can sue her as described in **Chapter 3: Security Deposits and Last Month's Rent**. Any violation of the security deposit law by your landlord may also be a violation of the Consumer Protection Act.[53]

6. Negligence

As a general rule, a landlord must exercise reasonable care in the use and maintenance of her property so people are not injured.[54] If a tenant or a tenant's guest is injured because of a landlord's negligence in keeping her property in good condition, that person may sue the landlord or the landlord's agent for money damages.[55]

> **Note**: Personal injury or negligence cases are complex and may involve large money damages. This type of case may be best handled by a lawyer who specializes in "personal injury" law. In these types of cases, lawyers often take their fees from the final amount you win.

A person may sue for negligence for injuries caused by a dangerous condition that a landlord knew needed correction, but did not correct. The owner is *liable* to all lawful occupants and to all lawful visitors and, in some instances, to children who were not invited onto the property.[56] No matter what your lease says, your landlord is liable to you for injuries resulting from the following defective housing conditions:[57]

- **Hidden Defects**
  A landlord is liable for injuries caused by hidden defects or bad conditions in your apartment that existed at the beginning of your tenancy.[58]

- **Areas under the Landlord's Control**
  A landlord is liable for injuries caused by defects or problems she knew about in common areas, such as hallways, sidewalks, and stairways.[59] Whether these defects existed at the beginning of your tenancy or occurred later, she is liable for any injury that happens to you.[60] She is also liable for injuries caused in areas within her exclusive control if there were sanitary or building code violations.[61]

- **Failure to Make Repairs**
  There are three situations in which you can bring a lawsuit against your landlord if you are injured by a condition that she has failed to repair.

  - If your landlord has agreed in the lease to make repairs, she is liable to you for injuries caused by a hazardous condition that she knew about, but has failed to repair or has not repaired correctly.[62]
  - Your landlord is liable to you for injuries caused by a defect that she, on her own initiative, has undertaken to repair, but has done in a grossly negligent manner.[63]
  - A landlord is liable to you for an injury caused by any unsafe condition, not of your own making, of which she has been notified.[64] This applies to all landlords except homeowners in 2- and 3-family owner-occupied homes.

A court may find your landlord negligent for any of the above injuries, even if you have violated a provision of your lease, such as you have sublet your apartment without consent or you have not paid all the rent. A landlord can reduce, but cannot avoid, her liability if your own negligence contributed to your injury.[65]

7. Loss or Injury from Burglary or Other Criminal Acts

If you were the victim of a criminal act, such as a burglary, rape, or assault, in your building or apartment, and the landlord's negligence created an opportunity for the criminal to act, you may be able to sue the landlord for money damages.[66] The landlord must have known, or should have known, that her act or failure to act created a situation that allowed someone else to commit a crime.[67] In addition, the criminal act must be the type of act that must have been foreseeable.[68]

> If you face the situation described above, you may also be able to claim damages for a breach of warranty of habitability.[69]

Emotional Distress

There are a number of situations in which you may now recover money damages for emotional distress and any physical injuries caused by your landlord's actions or failure to act[70] Emotional distress is severe emotional or mental upset.[71] Emotional distress is not found in every case. Your landlord may be liable for infliction of emotional distress in the following situations:

- **Emotional Harm That Results in Physical Harm**
  If a landlord causes you severe emotional distress that results in bodily harm (heart trouble, for example), you may recover for the physical and emotional injuries done to you, whether your landlord's actions were negligent, reckless, or intentional.[72]

- **Emotional Harm by Itself**
  If a landlord causes you severe emotional distress that does not result in physical harm, you can recover for this purely emotional injury if your landlord's actions were reckless or intentional.[73] The money damages may be doubled or tripled if you also claim that the action was an unfair or deceptive practice.

- **Physical or Emotional Harm to Another Person**
  In certain cases, the law in Massachusetts now makes your landlord liable to other people who are closely related to you and who themselves suffer by your distress.

If a landlord causes you emotional and physical injuries, a third party whose physical health deteriorates due to her concern for you may recover for her own physical and emotional injuries, if your landlord's conduct was negligent, reckless, or intentional.[74] A third party who suffers purely emotional injury can recover for this injury only if the owner's conduct was reckless or intentional.[75] Where the landlord's conduct was simply negligent and the injury was purely emotional, damages cannot be recovered.[76] If you have been hurt on the landlord's property, you should contact a personal injury lawyer.

8. Invasion of Privacy

You are entitled to sue for an *injunction* and money *damages* in response to any "unreasonable, substantial, or serious interference" with your physical privacy.[77] A landlord is not allowed to disturb your privacy in your apartment. Most likely, this right to privacy includes the right to have closed tenants' meetings.[78] Certainly, the owner cannot secretly tape your private conversations, or "invade your space" in any similar way.[79]

9. Paying for Utilities Without a Written Agreement

Under the state Sanitary Code, unless there is a written agreement that specifically states that you, the tenant, are required to pay for the heat, hot water, gas, or electricity, the landlord must pay for these utilities.[80] Most tenants without leases will move into an apartment without signing any kind of rental agreement. At the same time, the landlord may tell them to put the utilities in their name. Under the state Sanitary Code, this is improper. If a landlord puts any utilities in your name without a written agreement, this is considered a breach of your right to *quiet enjoyment*.[81]

If you have been paying for the utilities in your apartment without a written agreement, a court is limited to awarding you $25 for this violation.[82] You also may still be able to get back everything you paid for the utilities, but courts have not been consistent about the amount of money that they award for this type of violation. In addition, you can ask the judge to have the utility bills put in your landlord's name.[83] Even if you have not paid the bill yourself—for instance, if fuel assistance paid part of the bill—you may still get back the full amount of the bills you were sent.[84] See **Chapter 6: Utilities**, for more information.

If you plan to file a claim against a landlord and you have already paid some of the bills yourself, or you have several bills that need to be paid, bring the bills and proof of what you have paid to court with you. If you do not have any utility bills or proof of what you have paid, go to the utility company. The company can give you a computer printout that states how much you have been billed and how much you have paid.[85]

10. Nuisance

A landlord who knows about or participates in the creation of a condition that "materially interferes with the ordinary comfort of human existence" or that lowers the reasonable use or value of property may be found liable for injuries caused by that condition. This condition is known technically as a "nuisance." In Massachusetts, conditions involving noise, noxious odors, fumes, or vermin constitute a nuisance.[86]

11. Discrimination

See **Chapter 7: Discrimination**.

12. Lead Paint

If you determine your apartment has lead paint, and children under 6 years old were living in the apartment, you may have a claim for the landlord's failure to disclose or remove the lead paint. See **Chapter 9: Lead Poisoning**.

13. Failure to Give a Copy of the Lease

A landlord must give you a copy of the lease within 30 days of your signing it.[87] Failure to do so can result in a fine of up to $300.[88]

Grounds for Filing a Criminal Complaint

Some landlords act in ways that violate criminal laws. If your landlord breaks into your apartment without your consent, assaults you, or commits any other serious offense, call the police at once. Ask the police to seek a criminal complaint against your landlord. When the police request that a criminal complaint be issued, they are almost always successful. For more information about criminal cases, see **Chapter 14: Using the Court System - Criminal Cases**.

Unfortunately, judges rarely enforce criminal laws against landlords. The prospect of facing a criminal complaint, however, may prevent some landlords from committing criminal acts. What follows is a summary of criminal laws most frequently violated by landlords.

1. State Sanitary Code Violations

It is a criminal act for a landlord to willfully allow violations of the state Sanitary Code.[89] If the landlord has not made the necessary repairs within the time period designated by a local health inspector, the Board of Health can file a criminal complaint.

As a tenant, you also have a right to file a criminal complaint.[90] This can be difficult in many courts other than a housing court, but, with persistence, you should be able to do this. See **Chapter 8: Getting Repairs Made**, in the section called **Go to Court**.

2. Entering Your Apartment Illegally

If the owner enters your apartment without your permission, she is guilty of trespass. Conviction on a trespass charge is punishable by up to 30 days in jail and $100.[91] For more information, see **Chapter 8: Getting Repairs Made - Landlord's Right to Enter Your Home**.

3. Cutting Off Services

It is a criminal act for a landlord to willfully or intentionally interfere with your "quiet enjoyment" of the premises. It is also a criminal act for a landlord to willfully or intentionally fail to furnish water, hot water, heat, light, power, gas, elevator service, telephone service, janitor service, or refrigeration service where the landlord is required by the terms of your tenancy agreement to provide these services.[92] The penalty provisions of the law are a fine of $25 to $300, or up to 6 months in jail.

4. Failure to Provide Locks

A landlord is required to provide adequate locks for your individual apartment, as well as locks at the building entrances if you live in a building with more than 3 apartments.[93] Willful failure to provide locks can result in your landlord's being fined up to $500.

Endnotes

1. The state Sanitary Code defines an owner as "every person who alone or severally with others 1) has legal title to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or 2) has care, charge or control of any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park, in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or 3) is a mortgagee in possession; or 4) is a agent, trustee or other person appointed by the courts; or (5) is an officer of trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner." See 105 C.M.R. §410.020; see also *LAS Collection Management v. Pagan*, 447 Mass. 847 (2006), for a discussion of whether a property manager can bring a summary process action.

2. 105 C.M.R. §410.481.

3. 11 U.S.C. §362 states that a petition for bankruptcy filed under the Bankruptcy Code operates as a stay as to all actions already filed or which may be filed in the future. To proceed with any action already filed or to start a new lawsuit, permission must be received from the bankruptcy court, or the case must be litigated in the bankruptcy court and not in any other court.

4. *Boston Hous. Auth. v. Hemingway*, 363 Mass. 184 (1973).

5. *McKenna v. Begin*, 3 Mass. App. Ct. 168 (1975).

6. *Boston Hous. Auth. v. Hemingway*, 363 Mass. 184, 218 (1973); see also *Crowell v. McCaffery*, 377 Mass. 443 (1979); *McKenna v. Begin*, 3 Mass. App. Ct. 168 (1975).

7. The state Sanitary Code sets out the conditions that may be deemed to materially endanger the health and safety of tenants. See 105 C.M.R. §410.750. Other defects not included in this list may also have the potential to fall within this category, given the specific conditions.

8. *McKenna v. Begin,* 3 Mass. App. Ct. 168 (1975).

9. *Boston Hous. Auth. v. Hemingway*, 363 Mass. 184 (1973). *Berman and Sons, Inc. v. Jefferson*, 379 Mass. 196 (1979), held that the right to rent abatement commences from the time the landlord first has knowledge of the condition (contrary to the suggestion in Hemingway that it would begin only after the landlord had failed to repair in a reasonable amount of time). Accord, *McKenna v. Begin*, 3 Mass. App. Ct. 168 (1975); *Montanez v. Bagg*, 24 Mass. App. Ct. 954 (1987).

10. *McKenna v. Begin*, 5 Mass. App. Ct. 304 (1977).

11. *McKenna v. Begin*, 3 Mass. App. Ct. 168 (1975);*Berman and Sons, Inc. v. Jefferson*, 379 Mass. 196 (1979); *Montanez v. Bagg*, 24 Mass. App. Ct. 954 (1987).

12. Most judges compute 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 has 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, yet failed to correct them. Thus, you can use this as a defense to a non-payment of rent charge (i.e., to reduce the amount of rent owed) or affirmatively to get money back from the landlord. *McKenna v. Begin*, 5 Mass. App. Ct. 304 (1977).

13. The owner cannot charge you a smaller amount of money simply to make up for the fact that your apartment is in bad condition and, by this method, reduce her damages, *Montanez v. Bagg*, 24 Mass. App. Ct. 954 (1987); *McKenna v. Begin*, 3 Mass. App. Ct. 168 (1975). The amount of the rent reduction, or abatement, that you can get depends on the fair market value, not on the amount of rent being charged, although this may be evidence of the fair market value of the apartment. *Boston Hous. Auth. v. Hemingway*, 363 Mass. 184 (1973). Therefore, when a tenant's rent is subsidized, the amount of the rent abatement is calculated based on the contract rent, not based on the amount of rent the tenant pays. This means that if a subsidized tenant pays $78 but the full contract rent is $500, the amount of the abatement will be based on $500 and not $78. *Simon v. Solomon*, 385 Mass. 91 (1982). See *Smith v. Renbel Management Co.*, Hampden Housing Court, SP-4383-S87 (Abrashkin, J., March 24, 1988); But see *Serreze v. YMCA of W. Mass.*, Inc., 30 Mass. App. Ct. 639 (1991). Tenants living in public housing are also permitted to present expert testimony as to the fair market value of their

apartments so that rent abatements are based on the fair market value and not on the amount of rent they pay. See *Boston Housing Authority v. Williams*, Boston Housing Court, 98-SP-2641 (Winik, J., 2000) (abatement based on per-unit operating cost).

14. *Boston Hous. Auth. v. Hemingway*, 363 Mass. 184 (1973); see also *Blackett v. Olanoff, 371 Mass. 714 (1977)*; *Charles E. Burt, Inc. v. Seven Grand Corp.*, 340 Mass. 124 (1959).

15. *Boston Hous. Auth. v. Hemingway*, 363 Mass. 184 (1973); *McKenna v. Begin*, 3 Mass. App. Ct. 168 (1975).

16. *Boston Hous. Auth. v. Hemingway*, 363 Mass. 184 (1973).

17. G.L.c. 111 §§ 127C-D.

18. G.L. c. 186, §14. These damages can be lessened by a set-off claim by your landlord for rent due. *Simon v. Solomon*, 385 Mass. 91 (1982). 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).;see also *Homesavers Council of Greenfield Gardens, Inc. v. Sanchez*, 70 Mass. App. Ct. 453 (2007), for a full discussion of emotional distress damages under G.L. c. 186, §14.

19. See *Darmetko v. Boston Hous. Auth.*, 378 Mass. 758 (1979). If you get G.L. c. 186, §14 damages and G.L. c. 93A damages, the courts have held that you are entitled only to one recovery. That is, if the only violation of G.L. c. 93A was that the landlord failed to fix the apartment properly, you can get only one recovery, either 93A or actual damages, whichever is greater, Wolfberg v. Hunter, 385 Mass. 390 (1982). If, on the other hand, the same act violates two different laws protecting two different rights, you can recover under both laws. *Ianello v. Court Management Co.*, 400 Mass. 321 (1987).

20. *Darmetko v. Boston Hous. Auth.*, 378 Mass. 758 (1979).

21. *Simon v. Solomon*, 385 Mass. 91 (1982).

22. *Lowery v. Robinson*, 13 Mass. App. Ct. 982 (1982).

23. *Manijak v. Fitzpatrick*, Hampden Housing Court, LE-2571-H-85 (1985); see also *Ianello v. Court Management Co.*, 400 Mass. 321 (1987).

24. *Blackett v. Olanoff*, 371 Mass. 714 (1977). Owner rented an abutting premises as an entertainment lounge, from which amplified music and sounds of brawls frequently emanated late into the night. The landlord unsuccessfully argued that he was not personally responsible for the noise. The court found that he was responsible, as he had allowed the place to be used as a lounge. See also *Manzaro v. McCann*, 401 Mass. 880 (1988), where the court held that owner-caused noise may be sufficient to support a claim for breach of quiet enjoyment.

25. *Homesavers Council of Greenfield Gardens v. Sanchez*, 70 Mass. App. Ct. 453 (2007).

26. *Manzaro v. McCann*, 401 Mass. 880, 884-5 (1988).

27. Thus, when the tenants in *Blackett v. Olanoff*, 371 Mass. 714 (1977), moved out because of the continuing noise problem, they were not held liable for the rent that was technically continuing to accrue under their rental agreement. See also *Charles E. Burt v. Seven Grand Corp.*, 340 Mass. 124 (1959). In that case, commercial tenants were constructively evicted by the landlord's refusal to provide heat, electricity, and elevator service. See also *Cramer v. Knight Real Estate*, Hampden Housing Court, 91-SC-1875 (1992) (constructive eviction due to infestation).

28. *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196 (1979). Under the state Sanitary Code, a landlord must pay for the heat and hot water unless there is a written rental agreement that says the tenant or occupant is responsible for the bill. 105 C.M.R. §§410.190 and 410.201. If there is no written rental agreement that specifically provides for payment by the tenant, the tenant may bring a separate claim or counterclaim against the landlord to recover all money paid for heat and hot water bills. *Young v. Patukonis*, 24 Mass. App. Ct. 907 (1987).

29. G.L. c. 186, §18. See, e.g. *Scofield v. Berman and Sons, Inc.*, 393 Mass. 95 (1984).

30. G.L. c. 239, §8A last sentence of last paragraph.

31. *Jablonski v. Clemons*, 60 Mass. App. Ct. 473 (2004).

32. The law does not give you the "presumption" of retaliation if you are being evicted for non-payment of rent. However, you can still bring the retaliation claim; it is just harder to prove without the presumption. G.L. c. 186, §18. For examples of cases in which the tenant won her retaliation claim, see *Unachukwu v. Mitchell*, Boston Housing Court, 06-SP-04259 (Edwards, Jr., J., Feb. 9, 2007); *P.F. Holdings v. Lynch*, Boston Housing Court, 96-06018 (Winik, J., March 20, 1997); *Hassasta v. Quabira*, Boston Housing Court, 02-3522 (Winik, J., Sept. 25, 2002).

33. The Consumer Protection Act, G.L. c. 93A, was explicitly extended to cover owners and tenants by Chapter 241 of the Acts of 1971 (approved April 29, 1971). The 1971 amendment gave the protection of the Massachusetts Consumer Protection Act to "any person who purchases or leases goods or services, real or personal, primarily for personal, family, or household purposes." The next year the Legislature passed Chapter 123 of the Acts of 1972 (approved March 28, 1972). This amendment explicitly expanded the definition of "trade" and "commerce" in G.L. c. 93A to include rental housing by amending G. L. c. §1(b). In *Leardi v. Brown*, 394 Mass. 151 (1985), the Supreme Judicial Court noted that "tenants are among those for whose benefit the Consumer Protection law was passed." The Supreme Judicial Court noted that: "The 1972 amendment to the definition of trade or commerce, adding express reference to the renting and leasing of services or property, did not expand, but only clarified, the scope of the words 'trade' or 'commerce'." *Commonwealth v. DeCotis*, 366 Mass. 234, 239 (1975). For a detailed discussion of the purposes of G.L. c. 93A, see *Slaney v. Westwood Auto, Inc.*, 366 Mass. 688 (1975), and *PMP Assocs., Inc. v. Globe Newspaper Co.*, 366 Mass. 593, 596 (1975).

34. G.L. c. 93A, §2(a) prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." The definition of "act or practice" in the Attorney General's "General Regulations" was amended in 1975 to include "any threat or attempt to perform such act or practice." See 940 C.M.R. §3.01(1). The Attorney General has further declared that an act or practice is in violation of G.L. c. 93A, §2 if it is oppressive or otherwise unconscionable in any respect. 940 C.M.R. §3.16(1).

35. Chapter 406 of the Acts of 1979 (approved July 20, 1979) amended G.L. c. 93A, §9 by broadening recovery to cases in which there was a showing of an "injury" as opposed to the earlier requirement of a showing of "loss of money or property." This was to correct an inadequacy in the law highlighted in *Baldassari v. Public Finance Trust*, 369 Mass. 33 (1975), where the plaintiff, who had suffered from the harassing debt collection practices of the defendant, was held not to be able to recover damages because of his failure to show "loss of money or property" or the giving up of a right that the plaintiff did not otherwise have to give up. It may still be necessary to prove the existence of some injury or the possibility of injury, since violation of the statute or regulations will not automatically create a claim for relief under G.L. c. 93A. But once the injury is proved, you are able to recover at least the minimum monetary damages ($25 per violation) and perhaps more if a larger dollar value can be related to the defendant's action. *Leardi v. Brown*, 394 Mass. 151 (1985). In *Hershenow v. Enterprise Rent-A-Car Co.*, 445 Mass. 790 (2006), the Supreme Judicial Court said that a causal connection is required between the deceptive act and an adverse consequence or loss. The Court reaffirmed its holding in Leardi.

36. *Homesavers Council of Greenfield Gardens, Inc. v. Sanchez*, 70 Mass. App. Ct. 453 (2007).

37. G.L. c. 93A, §9(3) and (4). These provisions, however, allow an owner to limit your recovery to relief that the owner offers to you in writing within 30 days, if the court finds that such an offer was reasonable. The statute of limitations for such actions brought under laws intended to protect consumers, including G.L. c. 93A, is now four years. G.L. c. 260, §5A, as amended in 1975. See *Babco Industries, Inc. v. New England Merchants Nat'l Bank*, 6 Mass. App. Ct. 929 (1978). Prior to the effective date of G.L. c. 260, §5A, the period was set at three years, the general "tort" statute of limitations, by Chapter 777 of the Acts of 1973, Section 1, amending G.L. c. 260, §2A applicable to causes of action arising after January 1, 1974. Prior to that amendment, the period was two years.

    For a plaintiff to recover attorney's fees and damages, "the violation of the legal right that has created the unfair or deceptive act or practice must cause the consumer some kind of separate, identifiable harm arising from the violation itself." *Tyler v. Michaels Stores*, 464 Mass. 492, 503 (2013).

38. G.L. c. 93A, §9(3) states that a plaintiff is entitled to at least double and up to triple damages. When a landlord's actions are clearly unlawful under the Attorney General's regulations, that is sufficient grounds to hold her actions to be willful, justifying the award of double or triple damages and attorney's fees. *Montanez v. Bagg*, 24 Mass. App. Ct. 954 (1987); see also *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621 (1978). Willfulness can also be established if the landlord refuses to agree to a reasonable offer for settlement and thus "force[s] the plaintiffs to litigate their claim." *Heller v. Silverbranch*

Constr. Corp., 376 Mass. 621, 628 (1978). On the other hand, you can still get actual damages even if the landlord did not know she was violating the law. "The 'willful or knowing' requirement of §9(3) goes not to actual knowledge of the terms of the statute, but rather to knowledge, or reckless disregard, of conditions in a rental unit which, whether the defendant knew it or not, amount to violations of the law." *Montanez v. Bagg*, 24 Mass. App. Ct. 954, 956 (1987).

39. In *Billings v. Wilson*, 397 Mass. 614 (1986), the Supreme Judicial Court held that an owner who lives in a two-family house who rents out the second floor to help pay the mortgage is not in the business of being a landlord and is not subject to G.L. c. 93A. See also *Young v. Patukonis*, 24 Mass. App. Ct. 907 (1987)

40. See *Young v. Patukonis*, 24 Mass. App. Ct. 907 (1987).

41. See *Boston Housing Authority v. Howard*, 427 Mass. 537 (1998), where the Supreme Judicial Court held that the Housing Authority was not engaged in trade or commerce and thus was not covered by G.L. c. 93A.

42. Attorney General's General Regulations issued under authority granted by G.L. c. 93A, §2(c); 940 C.M.R. §3.16(3). It is a good idea to introduce the regulations into evidence if you have a case where you are relying on them to prove that the defendant committed an unfair and deceptive act. You cannot necessarily assume that the court will take judicial notice of the regulations, see *York v. Sullivan*, 369 Mass. 157, 160 n.2 (1975), although a statute now states that regulations published in the Massachusetts Register (put out for sale every week in the Mass. Book Store at the State House or at any State bookstore) "shall be judicially noticed." G.L. c. 30A, §6, last paragraph, as inserted by Chapter 459 of the Acts of 1976, Section 5 (approved October 22, 1976).

43. 940 CMR 3.17.

44. In *Nei v. Burley*, 388 Mass. 307, 315 (1983), the Supreme Judicial Court held that there is no right to a jury trial under G.L. c. 93A. A court has discretion, however, on the motion of either party to allow ". . . issues of fact to be tried to a jury." Mass. R. Civ. P. 39(c).

How "unfair or deceptive acts or practices" is to be construed is provided for in G.L. c. 93A, §§2(b) and (c). G.L. c. 93A, §2(b) reads: "It is the intent of the Legislature that in construing paragraph (a) of this section . . . the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. §45(a)(1)), as from time to time amended." G.L. c. 93A, §2(c) states that the Attorney General is authorized to make regulations consistent with the provisions of §2(b) interpreting the statute.

The Supreme Court has approvingly said of the Federal Trade Commission's guidelines that "in measuring a practice against the elusive, but congressionally mandated standard of fairness, it, like a court of equity, considers public values beyond simply those enshrined in the letter or encompassed in the spirit of the anti-trust laws." *Federal Trade Commission v. Sperry & Hutchinson Company*, 405 U.S. 233, 244 (1972).

The Supreme Judicial Court has explicitly adopted this Federal Trade Commission rule as a guide for interpreting G. L. c. 93A. See *PMP Assocs., Inc. v. Globe Newspaper Co.*, 366 Mass. 593, 596 (1975). Moreover, consistent with this broad federal standard, the Massachusetts Attorney General has declared that "an act or practice is a violation of Chapter 93A, Section 2 if [i]t is oppressive or otherwise unconscionable in any respect. . . ." 940 C.M.R. §3.16, intro and (1). The application of this standard by the Supreme Judicial Court has led to rulings that the existence of an industry-wide standard does not constitute a defense to a Chapter 93A action. *Commonwealth v. DeCotis*, 366 Mass. 234, 240 (1974); 35 Mass. Practice Series, §116. See *Slaney v. Westwood Auto, Inc.*, 366 Mass. 688, 704 (1975) (93A "is not subject to the traditional limitations of preexisting causes of action such as tort for fraud and deceit"); *Commonwealth v. DeCotis*, 366 Mass. 234, 244, n.8 (1974); *Dodd v. Commercial Union, Inc.*, 373 Mass. 72 (1977); *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621 (1978) (defendant's defenses to common law causes of action insufficient to defend against 93A). Specifically, in *York v. Sullivan*, 369 Mass. 157 (1975), the court found that a landlord's assurances that rent would remain stable during a one-year lease period bound him despite subsequent approval of a rent increase by HUD. In addition, the Supreme Judicial Court has ruled that broad standards in another statute, similar to G. L. c. 93A are not unconstitutionally vague. *Commonwealth v. Gustafsson*, 370 Mass. 181 (1976).

Finally, a violation of G.L. c. 93A will occur if an act or practice is unfair. See 35 Mass. Practice Series, §116 (Comment at 46); *Commonwealth v. DeCotis*, 366 Mass. 234, 241 (1974) (mobile home park practice unfair). Similarly, an act need only be "deceptive." In *Lowell Gas Co. v. Attorney General*, 377 Mass. 37 (1979), the court found that "a practice is deceptive if it could reasonably be found to have caused a person to act differently from the way he otherwise would have acted." 377 Mass. at 51.

45. G.L. c. 93A, §9(3). The demand letter is a procedural prerequisite to any G.L. c. 93A action, and the failure to send an appropriate letter will bar any subsequent suit. *Entrialgo v. Twin City Dodge, Inc.*, 368 Mass. 812 (1975). However, if you are asserting the 93A claim by way of counterclaim (for example, in an eviction case) or cross-claim, you do not have to send the demand letter because of special language in the next to the last sentence of G. L. c. 93A, §9(3), inserted by Chapter 406 of the Acts of 1979, Section 2.

46. G.L. c. 93A, §9(3). No relief is available in court from practices that are not listed in the demand letter. *Entrialgo v. Twin City Dodge, Inc.*, 368 Mass. 812 (1975). For a full discussion of the requirements of a demand letter, see *Slaney v. Westwood Auto, Inc.*, 366 Mass. 688 (1975).

47. G.L. c. 93A § 9(3) ("The demand requirements of this paragraph shall not apply if the claim is asserted by way of counterclaim or cross-claim…").

48. Even if your landlord sends you a written offer of settlement within 30 days, you can still sue. But if the court finds that your landlord's offer was "reasonable," your recovery will be limited to the relief offered by your landlord, plus attorney's fees and costs incurred before you rejected her offer. G.L. c. 93A, §9(3) and (4). See *Kohl v. Silver Lake Motors, Inc.*, 369 Mass. 795 (1976).

    Where a landlord has led a tenant to believe the rent will be stable for a year, and then tries to increase the rent during that year, it is not a "reasonable" settlement offer for the landlord to offer the tenant a lease cancellation without penalty and no eviction until a court decision on the increase. *York v. Sullivan*, 369 Mass. 157 (1975).

    While this 30-day letter procedure is a prerequisite for success under G. L. c. 93A, administrative remedies (where they exist) need not be exhausted before bringing a G. L. c. 93A action. G.L. c. 93A, §9 (6) and (8), added by Chapter 939 of the Acts of 1973 (approved October 23, 1973), effectively overruling *Gordon v. Hardware Mut. Casualty Co.*, 361 Mass. 582 (1972). Further, the existence of a separate statute regulating industry practice does not preclude the application of G.L. c. 93A to the conduct in question. See, e.g., *Dodd v. Commercial Union Ins. Co.*, 373 Mass. 72 (1977) (insurance industry); *Lowell Gas Co. v. Attorney General*, 377 Mass. 37 (1979) (public utility company); *Schubach v. Household Fin. Corp.*, 375 Mass. 153 (1978) (small loan company).

    However, the court does have the power to require exhaustion of other remedies. See G.L. c. 93A, §9 (7). The existence of a remedy in equity is no bar to bringing one at law (i.e., for money damages rather than an injunction). *Slaney v. Westwood Auto, Inc.*, 366 Mass. 688, 700 (1975).

49. G.L. c. 93A, § 9(3).

50. G.L. c. 93A, §9(3) and (4). However, "even a wilful or knowing violator of §2 may limit his maximum potential damages by making a reasonable offer of settlement." *Kohl v. Silver Lake Motors, Inc.*, 369 Mass. 795, 803 (1976).

51. G.L. c. 260, § 5A. *Rita v. Carella,* 394 Mass. 822, 825–27 (1985).

52. G.L. c. 93A, §9(2).

53. G.L. c. 93A; 940 C.M.R. §3.17.

54. For a full discussion of the history and evolution of the tort liability of landlords, see *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1074-80 (D.C. Cir. 1970) cert. den. 400 U.S. 925 (1970); *Boston Hous. Auth. v. Hemingway*, 363 Mass. 184 (1973);*Crowell v. McCaffrey*, 377 Mass. 443 (1979).

55. *Crowell v. McCaffrey*, 377 Mass. 443 (1979). In this case, the court ruled that the questions of owner liability for negligence and breach of warranty of habitability had to go to the jury. This means that an owner can be held liable to a tenant for damage caused by the owner's negligent failure to repair building and Sanitary Code violations. In *Crowell*, the injury occurred when the tenant fell from a porch after the railing gave way. The Supreme Judicial Court found that it did not matter whether or not the tenant had rented the porch; the owner was still responsible when injury resulted from the failure to maintain the porch in accordance with the building and sanitary codes. The court said: "Thus extension of the warranty [of habitability] to the ordinary residential tenancy at will, in accordance with the Hemingway decision, logically carries with it liability for personal injuries caused by a breach." 377 Mass. at 451.

56. *Young v. Garwacki*, 380 Mass. 162 (1980); *Lindsey v. Massios*, 372 Mass. 79 (1977).

57. G.L. c. 186, §15 provides that a tenant cannot sign away these rights.

58. *McKenna v. Begin*, 5 Mass. App. Ct. 304 (1977). The owner is deemed to have knowledge of all problems that exist in the apartment at the beginning of a tenancy as well as any problems that are reported to her by the tenants. Kraus v. Webber, 359 Mass. 565 (1971).

59. *King v. G&M Realty Corp.*, 373 Mass. 658 (1977).

60. G.L. c. 186, §15E states that it is no defense that the defect existed at the time of the letting, if the defect was in violation of a building code. The Supreme Judicial Court has acknowledged that this section reflects legislative reform of the common law rule of non-liability of owners for injuries occurring on defective premises. *Simon v. Solomon*, 385 Mass. 91, 100-101 (1982).

61. *Gilroy v. Badger*, 301 Mass. 494, 496 (1938).

62. *DiMarzo v. S. & P. Realty Corp.*, 364 Mass. 510 (1974) (owner who had agreed to make repairs is liable in tort to injured employee of tenant when owner failed to make repairs) and cases cited; *Markarian v. Simonian*, 373 Mass. 669 (1977) (tenant may recover for injuries suffered as a result of repairs effectuated in a negligent manner).

63. *Markarian v. Simonian*, 373 Mass. 669 (1977); *DiMarzo v. S. & P. Realty Corp.*, 364 Mass. 510 (1974).

64. *Markarian v. Simonian*, 373 Mass. 669 (1977); *DiMarzo v. S. & P. Realty Corp.*, 364 Mass. 510 (1974).

65. G.L. c. 231, §85: Comparative negligence: "Contributory negligence shall not bar recovery in any action . . . if such negligence was not greater than the total amount of negligence attributable to the person or persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person [trying to recover]."

66. *Gidwani v. Wasserman*, 373 Mass. 162 (1977) (owner liable to commercial lessee for burglary where he entered premises without adequate notice, disconnected burglar alarm, and neglected to reset it). Cf. *Mullins v. Pine Manor College*, 389 Mass. 47 (1983) (college held liable where its inadequate security measures resulted in rape of student, but the college was held to a higher duty of care than regular landlords); *Parslow v. Pilgrim Parking, Inc.*, 5 Mass. App. Ct. 822 (1977) (parking garage liable to rape victim because of inadequate security measures).

67. *Gidwani v. Wasserman*, 373 Mass. 162 (1977) (owner liable to commercial lessee for burglary where he entered premises without adequate notice, disconnected burglar alarm, and neglected to reset it). Cf. *Mullins v. Pine Manor College*, 389 Mass. 47 (1983) (college held liable where its inadequate security measures resulted in rape of student, but the college was held to a higher duty of care than regular landlords); *Parslow v. Pilgrim Parking*, Inc., 5 Mass. App. Ct. 822 (1977) (parking garage liable to rape victim because of inadequate security measures).

68. *Bellows v. Worcester Storage Co.*, 297 Mass. 188 (1937) (warehouse owner's failure to repair broken slats in door held not to be proximate cause of entry of insane person who set fire to the warehouse; the foreseeable risk was theft, not arson).

69. *Young v. Jackson*, Boston Housing Court, SP-40979-40984 (Abrashkin, J., 1987); *Renbel Management Co. v. Adkins*, Hampden Housing Court, 88-SP-8408 (Abrashkin, J., 1989) (damages awarded to the tenant based on reduced value of the property and negligence following a robbery in the apartment and insufficient maintenance).

70. In *George v. Jordan Marsh*, 359 Mass. 244, 245, n.l. (1971), emotional distress was defined as any "mental anguish, mental suffering, mental disturbance, mental humiliation, nervous shock, emotional disturbance, distress of mind, fright, terror, alarm, [or] anxiety." The old rule limiting recovery was established in *Spade v. Lynn & B.R.R.*, 168 Mass. 285, 290 (1897) ("there can be no recovery for fright, terror, alarm, anxiety, or distress of mind, if these are unaccompanied by some "physical injury; . . . and there can be no recovery for such physical injuries as may be caused solely by such mental disturbance, where there is no injury to the person from without"). Over the years, however, a number of inroads were made into this rule. It was finally overturned in *Dziokonski v. Babineau*, 375 Mass. 555 (1978).

    See *Simon v. Solomon*, 385 Mass. 91 (1982) (damages allowed for emotional distress caused by landlord's substandard maintenance of apartment); *Homesavers Council of Greenfield Gardens v. Sanchez*, 70 Mass. App. Ct. 453 (2007).

71. The severity of the emotional distress must be "of a nature 'that no reasonable [person] could be expected to endure it.'" *Agis v. Howard Johnson Co.*, 371 Mass. 140, 145 (1976), quoting from Restatement (Second) of Torts, §46 (Comment j)

(1965); see also *Abdeljaber v. Gaddoura & Kheiry*, 60 Mass. App. Ct. 294 (2004) (tenant awarded $3,000 for emotional distress where landlord grabbed tenant's 8-year-old daughter by the arm and shouted obscenities at her; awarded double damages under Chapter 93A).

72. The term "negligent" is a legal one. In law, a "negligent" act is essentially an unintentional but unreasonable act that foreseeably will and actually does cause injury to another person. The rule for emotionally based physical injuries caused by the defendant's negligence was established in *Cameron v. New England Tel. & Tel. Co.*, 182 Mass. 310, 312 (1902); *Driscoll v. Gaffey*, 207 Mass. 102, 105-107 (1910); see also *George v. Jordan Marsh*, 359 Mass. 244 (1971).

73. *Agis v. Howard Johnson*, 371 Mass. 140 (1976).

74. *Dziokonski v. Babineau*, 375 Mass. 555, 568 (1978). Where mother of child who had been negligently struck by a car, upon seeing her injured child, suffered severe shock and died, the court held:

    In cases of this character, there must be both a substantial physical injury and proof that the injury was caused by the defendant's negligence. Beyond this, the determination whether there should be liability for the injury sustained depends on a number of factors, such as where, when, and how the injury to the third person entered into the consciousness of the claimant, and what degree there was of familial or other relationship between the claimant and the third person.

    See also *Cohen v. McDonnell Douglas Corp.*, 389 Mass. 327 (1983). Where court found that the defendant could not be held liable for the emotional distress of a third party.

75. *Agis v. Howard Johnson*, 371 Mass. 140 (1976) (where wife was victim of outrageous conduct and was severely upset, the court held that the husband's claim of loss of consortium was valid).

76. See *Payton v. Abbott Labs*, 386 Mass. 540 (1982).

77. G.L. c. 214, §1B. This "intrusion upon physical solitude" may also be a claim of interference with quiet enjoyment under G.L. c. 186, §14.

78. Where a landlord's wife attended a closed tenants' union meeting under an assumed name and secretly taped the proceedings in anticipation of litigation, two attorneys who were present later sued under Massachusetts anti-wiretap statute (G.L. c. 272, §99) for damages. *Pine v. Rust*, Boston Housing Court, 13409 (King, J., 1986). While the tenants presumably suffered an invasion of privacy, this claim was not raised in the suit.

79. In a New Hampshire case, the court said that a husband and wife, as tenants, had grounds to sue the owner for invasion of privacy when they discovered he had "bugged" their bedroom and had apparently listened in on them. The "invasion" in invasion of privacy need not be a physical intrusion by a person. *Hamberger v. Eastman*, 206 A.2d 239 (N.H. 1964).

80. 105 C.M.R. §§410.190, 410.201, and 410.354. The case of *Young v. Patukonis*, 24 Mass. App. Ct. 907 (1987), held that any tenant paying for heat and hot water without a written agreement could get back all money paid on these bills from the owner.

81. G.L. c. 186, §14; *McCormick & Williamson v. Butler*, Hampden Housing Court, SP7404-S (Abrashkin, J., January 19, 1989).

82. *Sclamo v. Shea*, 29 Mass. App. Ct. 1113 (1990) (Memorandum and Order Pursuant to Rule 1:28).

83. *McCormick & Williamson v. Butler*, Hampden Housing Court, SP-7404-S (Abrashkin, J., January 19, 1989).

84. *McCormick & Williamson v. Butler*, Hampden Housing Court, SP-7404-S (January 19, 1989).

85. Keep in mind that any violation of the state Sanitary Code is also a violation of G.L. c. 93A. Therefore, be sure to include this claim as a claim under the Consumer Protection Law. If the judge finds that the owner acted unfairly or deceptively in not paying for the utilities, she can double or triple all of the money you are awarded for this claim. Remember that under G. L. c. 93A, you must send a demand letter before filing a lawsuit.

86. *Proulx v. Basbanes*, 354 Mass. 559 (1968); *Garland v. Stetson*, 292 Mass. 95, 104 (1935); *Tortorella v. H. Traiser & Co., Inc.*, 284 Mass. 497, 501 (1933).

87. G.L. c. 186, §15D.

88. G.L.c. 186, § 15D. This is also a violation of G. L. c. 93A.

89. G.L. c. 111, §31 provides that the penalty for a violation of the state Sanitary Code is a fine of up to $1,000.

90. *Commonwealth v. Haddad*, 364 Mass. 795, 798 (1974). The rationale behind this decision may be applicable to other crimes discussed in this section. The court noted: "In general, anyone may make a criminal complaint in a District Court who is competent to make oath to it. General statutes imposing a duty to prosecute on particular public officials are read as directory only, and do not exclude the right of any other citizen to enter complaints for a violation of the law."

91. G.L. c. 266, §120.

92. G.L. c. 186, §14.

93. G.L. c. 143, §3R see also 105 CMR 410.480(C).