

## Mandatory Rent Escrowing

Status: this bill has been submitted to the State House. At this time, Thomas Stanley (Representative from Waltham and Vice Chair of the Housing Committee) and Pamela Richardson (Representative from Framingham) are sponsoring the bill, we're working on getting additional sponsors for the bill.

Objective: With the current legislation, a tenant can withhold rent if a call is made to the board of health and problems are found in the apartment. Unfortunately, in some cases, the tenant does not have the rent money and even after the problems are resolved, the landlord cannot get the rent.

The proposed legislative changes would require that a tenant put the rent into an escrow account if the landlord serves the tenant a notice to vacate and the tenant then proceeds to call the Board of Health to report problems. This is called the "Free Rent Trick".

The money to be placed in escrow would be the current rent minus any repair costs the tenant incurs to resolve the problem.

While many opponents to this change state that this is a burden on the tenant, there are multiple indications that this is not.

1. The tenant should have the money for rent. If this is a legitimate problem (i.e., furnace isn't working etc), then the expenses incurred by the tenant in this situation can be deducted from the money put into escrow. The tenant should have receipts for these expenses.
2. In some eviction situations, the tenant calls the Board of Health because they do not have the money and are looking for a way to stall an eviction.
3. Some argue that a tenant should not have to escrow rent because he would lose his day in court (due process). However, there is currently precedent for a payment-first scenario in other areas of real estate.
  - a. When a resident wishes to challenge the real estate tax imposed on his residence, he must first pay the tax and then challenge it. The law states that he must pay it before he can even challenge the assessment in court.
  - b. Any condominium owner who wishes to challenge his condominium fee must first pay it before he can bring a court action.

Both these payment-first scenarios are based on the fact, so the courts say, that the towns and the condo trustees rely on these funds to operate financially and anyone who does not pay first would be jeopardizing the financial integrity of these institutions. So, they must always pay, then challenge. And the law says there is no violation of their due process rights in those instances.

On the same theory, there is no due process violation if renters are required to pay first, and then challenge. The landlord's financial well-being also depends on his receipt of the rent in most cases. One can't argue that the landlord could always

get the money somewhere else in the meantime, because the condo trustees could too – by imposing a special assessment to carry them through the shortfall. So, renters can be required to pay the rent without any due process violations.

Modifications Proposed:

Chapter 239, Section 8A, second paragraph.

Add the following line after “section unless”

The changes required (1) *the tenant or occupant deposits with the clerk all rent due prior to final disposition of the plaintiff’s action;*

Addition (in italics) to second paragraph, Chapter 239, Section 8A

Whenever any counterclaim or claim of defense under this section is based on any allegation concerning the condition of the premises or the services or equipment provided therein, the tenant or occupant shall not be entitled to relief under this section unless: (1) *the tenant or occupant deposits with the clerk all rent due prior to final disposition of the plaintiff’s action;* (2) the owner or his agents, servants or employees, or the person to whom the tenant or occupant customarily paid his rent knew of such conditions before the tenant or occupant was in arrears in his rent; (3) the plaintiff does not show that such conditions were caused by the tenant or occupant or any other person acting under his control; except that the defendant shall have the burden of proving that any violation appearing solely within that portion of the premises under his control and not by its nature reasonably attributable to any action or failure to act of the plaintiff was not so caused; (4) the premises are not situated in a hotel or motel, nor in a lodging house or rooming house wherein the occupant has maintained such occupancy for less than three consecutive months; and (5) the plaintiff does not show that the conditions complained of cannot be remedied without the premises being vacated; provided, however, that nothing in this clause shall be construed to deprive the tenant or occupant of relief under this section when the premises are temporarily vacated for purposes of removal or covering of paint, plaster, soil or other accessible materials containing dangerous levels of lead pursuant to section one hundred and ninety-seven of chapter one hundred and eleven.

Chapter 238, Section 8A, paragraph 4:

In the sentence: The court after hearing the case may require the tenant or occupant claiming under this section to pay to.....

Should be changed to: The court after hearing the case shall require the clerk of the court to pay the landlord, from the deposit required by the second paragraph.

C. 239, s. 8A – Amendments to paragraph 4 (in italics) as follows (bracketed words/sentences should be deleted from existing text of statute):

There shall be no recovery of possession pursuant to this chapter pending final disposition of the plaintiff’s action if the court finds that the requirements of the second

paragraph have been met. The court after hearing the case [may] *shall* require [the tenant or occupant claiming under this section to pay to] the clerk of the court *to pay to the landlord, from the deposit required by the second paragraph*, the fair value of the use and occupation of the premises less the amount awarded the tenant or occupant for any claim under this section. [, or to make a deposit with the clerk of such amount or such installments thereof from time to time as the court may direct, for the occupation of the premises.] In determining said fair value, the court shall consider any evidence relative to the effect of any conditions claimed upon the use and occupation of residential premises. Such funds may be expended for the repair of the premises by such persons as the court after a hearing may direct, including if appropriate a receiver appointed as provided in section one hundred and twenty-seven H of chapter one hundred and eleven. When all of the conditions found by the court have been corrected, the court shall direct that the balance of the funds, if any, remaining with the clerk be paid to the landlord. Any tenant or occupant intending to invoke the provisions of this section [may] *shall*, after commencement of an action under this chapter by the landlord, [voluntarily] deposit with the clerk any amount for rent [or for use and occupation] which may be in dispute, and such payments shall be held by the clerk subject to the provisions of this paragraph.