Chapter 14
Taking Your Landlord to Court

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

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Italicized words are in the Glossary

If 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. There are different ways to use a court.

The purpose of this chapter is to tell you what a court can do for you and the legal reason (*grounds*) you may have to sue your landlord. If you decide to take your landlord to court, the next chapter will tell you how you can file a court case.

Deciding to Go to Court

Before you decide to go to court, you should carefully evaluate the following:

- What you want,
- Whether you have a good case,
- Whether there are other ways to resolve your problem, and
- Whether you need and can get an attorney.

1. What Can a Court 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.

Injunction: A judge can order your landlord to take action 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. 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.

- **Money Damages**: A judge can award you money to compensate you for the harm that you have suffered. The law calls money awards *damages*.
- **Judgment**: A judge can give you an official opinion that interprets the law, tells you your rights and obligations and your landlord's rights and obligations, and tells you who won the case. This is called a *judgment*.
- **Criminal Sanction**: A judge can fine or jail your landlord for a violation of criminal law.
- **Receivership**: 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 11: Receiverships**.

In addition to the remedies listed above, a court may provide staff to help you resolve your problem through *mediation*. For more about mediation, see **Pros and Cons of Mediation** in **Chapter 13: Evictions**.

2. What Do You Want

If you feel that one or more of the remedies listed above would help you, it is then important to have a clear idea about what your goal is so you can tell a judge what you want.

- Do you want a court to order your landlord to make repairs?
- Do you want a court to order a landlord to rent an apartment to you, when the landlord has discriminated against you by not choosing you as a tenant?
- Do you want your security deposit back?
- Do you want to be compensated for the harm that you have suffered?
- Do you feel that your landlord should be fined or put in jail because of how she has treated you?

These are all valid reasons to use a court. Tenants (and landlords) should not use the court system to intentionally harass, intimidate, frustrate, or hurt someone.

Who Should You Take to Court

Before filing a *complaint* in court, you must decide 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. If, while trying to find an apartment, you have been discriminated against, you may have a claim against a real estate agent and a landlord. If you have been dealing with a private management company and have never met the landlord or do not know who the landlord 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 landlord.[1]

If you live in publicly owned or publicly subsidized housing, you may have a legal claim against the housing authority or your subsidized landlord. You may also have a valid reason to sue the government agency responsible for making sure your program is run right.

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 any rent receipts or receipts for security deposits,
- Asking your landlord or people at the management office,
- Looking for a sign in your building (owners of buildings with three or more apartments must post their 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, or
- Going to the county Registry of Deeds office (which may have staff who can help you).

If the landlord has had the building taken away by a bank because she did not pay her mortgage, there may be a new landlord or the bank may own your building. You must find out whether there is a new landlord before filing a lawsuit. Go to the Registry of Deeds for the county you live in and look up your property. If you cannot find anything that shows that your landlord has been *foreclosed* upon, you can file the lawsuit against your landlord. Your lawsuit, however, may be dismissed or thrown out by the judge if the judge finds that the landlord has lost the property or been foreclosed upon. For more about foreclosures, see **Chapter 21: Foreclosures**.

If your landlord has declared bankruptcy, 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, and that court will hear

your complaint or allow you to go forward in state court. You can call the bankruptcy court in Boston (617-565-8950) or Worcester (508-770-8900) to see if your landlord has declared bankruptcy. 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. An *injunction* is a type of civil lawsuit. If your case involves less than $2,000 and you go to small claims court, you are filing a civil complaint.

If your case involves a lot of money or is complex, you will probably need the help of a lawyer in order to file a civil lawsuit. The purpose of this section is to describe when you may have a valid legal *claim*.

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]

The warranty of habitability is a bit complicated, but it is worth knowing about. If your landlord does not keep your apartment in good condition, she has "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 it up.[5]

The landlord is in violation of this warranty from the moment she has actual knowledge of violations of the state Sanitary Code.[6] A judge must assume that the landlord had knowledge if violations of the Sanitary Code existed at the time you moved into your apartment. You do not need to tell her about them, although it's usually better to do so, and always better to do so in writing.

If problems occur after you have moved in, the landlord has notice when she sees the defects or when you tell her about them (either verbally or in writing), or when a Board of Health sends her a notice that problems exist.[7] When one tenant gives notice of a defect that affects other tenants, the landlord has received notice upon which these other tenants may rely. 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.[8]

A court is given broad power to decide what is a *breach* of the warranty and what is not. Not every defect will be enough for a court to say that there has been a lessening of the value of your apartment.[9] 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 learns of the bad condition in your apartment.[10] 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.[11] 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.[12]

If your landlord has seriously breached the warranty of habitability, you can choose to cancel your *lease* and move out[13] or you can ask a court to cancel your lease and give a full or partial refund of rent money you have already paid.[14] If you do this, the court will use several factors to decide if you will be allowed to break your lease:

1. The seriousness of the defective conditions and their effect on the habitability of the apartment,
2. How long you have had to live with the defects,
3. Whether the defects could be fixed within a reasonable amount of time and your apartment made livable again, and
4. Whether you are responsible for the defect.

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.[15]

If you file a *tenant petition* to enforce the state Sanitary Code, which is different from filing a civil lawsuit, you can also sue for damages under the warranty of habitability. 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. For more information about other ways to deal with bad conditions and more information about this warranty, see **Chapter 8: Getting Repairs Made**.

2. Breach of Quiet Enjoyment

In Massachusetts, if your landlord interferes with your use and enjoyment of your apartment, you may sue her for money *damages* in the following situations:

- If your landlord is required to furnish utilities or other services and she intentionally fails to provide them,
- 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 move you out without first taking you to court, or
- If the landlord in any way intentionally interferes with your "quiet enjoyment" of your apartment.[16]

The fact that you owe rent does not prevent you from bringing this type of lawsuit.

The money damages the court awards you will be the equivalent of either three months' rent or your actual loss, whichever is greater. 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 weather-tight roof and your apartment with a leaky roof (in other words, your breach of warranty damages).[17]

Some courts in Massachusetts will give you a separate money award for each wrong. For example, if your landlord illegally locked you out, turned off the electricity, and later attacked you with a knife, you could receive three separate awards of three months' rent for each violation (or nine months' rent total).[18] 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.[19]

Some examples of disturbances 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.[20]
- The landlord's failure to provide adequate heat during the heating season even if she could not afford to buy heating oil.[21]
- The landlord's changing into a common space an area, like a porch or basement, that used to be accessible only to you.[22]
- Excessive noise from other tenants under the landlord's control.[23]
- Emotional distress caused by the landlord's miscalculation of rent and attempt to evict the tenant for non-payment.[24]
- A ringing fire alarm that continues for a 24-hour period.[25]

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 legally breaking your lease or rental agreement.[26] The situation has to be extremely serious for you to be able to break your lease. 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 12: 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.[27]

3. Retaliation

State law makes it illegal for the landlord or her agent to threaten to take any action against you for engaging in the following "protected activities":[28]

- Notifying your landlord in writing of violations of the state Sanitary Code;[29]
- 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 six 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. If your landlord fails to prove this, you may be entitled to between one and three 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.[31]

4. Unfair or Deceptive Practices

The Massachusetts legislature has recognized that tenants are consumers of one of the most significant consumer products—housing.[32] Under the state Consumer Protection Act, it is illegal for a landlord to threaten, attempt, or actually use any unfair or deceptive acts against you or anyone in your house.[33]

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 if this causes you to be "injured,"[34] 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, and perhaps even loss of time at work. You may also be entitled to reasonable attorney's fees and $25 for each violation, or the amount of your actual loss if it is more.[35] 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.[36]

Not all landlords, however, are covered by the Consumer Protection Act. If you live in a two-family building and the landlord lives in the building with you, the Consumer Protection Act does not apply.[37] If you live in a three-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.[38] Public housing tenants cannot recover damages under the Consumer Protection Act for a housing authority's breach of the *warranty of habitability*.[39] 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 is any action that violates existing laws that protect your health, safety, or welfare.[40] This includes:

- Violations of the local building codes, housing codes, and state Sanitary Code;
- 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 conduct by the landlord that you can convince a judge was unfair or deceptive.[41] To make sure you claim all possible violations of the Consumer Protection Act (also referred to as 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*.[42] 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, and what you want done.[43] See the sample demand letters (**Forms 5, 10**, and **18**). This letter is not required if your consumer protection claim is raised as a *counterclaim* in an eviction case. 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 within 30 days, you can sue her.[44] 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.[45] You may also be able to get money damages or emotional distress under the Consumer Protection Act.[46]

To bring a lawsuit under the Consumer Protection Act, you must sue the landlord within four years of when the landlord's unfair or deceptive act occurred.[47]

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.[48]

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.[49]

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.[50] 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.[51]

> 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.[52] The owner is *liable* to all lawful occupants[53] and to all lawful visitors[54] and, in some instances, to children who were not invited onto the property.[55] No matter what your lease says, your landlord is liable to you for injuries resulting from the following defective housing conditions:[56]

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.[57]

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.[58] Whether these defects existed at the beginning of your tenancy or occurred later, she is liable for any injury that happens to you.[59] She is also liable for injuries caused in areas within her exclusive control if there were sanitary or building code violations.[60]

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 either failed to repair or has not repaired correctly.[61]
- 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.[62]
- 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 by *certified mail* or by a health inspector.[63] This applies to all landlords except homeowners in two- and three-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.[64] A landlord can reduce, but cannot avoid, her liability if your own negligence contributed to your injury.[65]

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]

7. Infliction of Emotional Distress

There are a number of situations in which you may now recover money damages for emotional distress and any physical injury caused by your landlord.[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:

Physical and Emotional 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
If a landlord causes you severe emotional distress that does not result in physical harm, you can recover for this purely emotional injury only 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]

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 illegal. 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, you may be able to get back all of the money you have paid for the heat, hot water, gas, and electricity.[82]

It is important to be aware that a court cannot reduce the amount of money you get back from the landlord just because the rent was lowered to make up for the fact that you agreed to pay for utilities. You may still be entitled to get back everything you paid for the utilities. 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 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

See **Chapter 9: Lead Poisoning**.

Grounds for Filing a Criminal Complaint

Some landlords act in ways that violate criminal laws. If your landlord breaks into your apartment, 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 15: Using the Court System**, in the section called **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 description 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.[87] 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.[88] 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.[89] For more information, see **Chapter 8: Getting Repairs Made** in the section called **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.[90] The penalty provisions of the law are a fine of $25 to $300, or up to six months in jail.

4. Failure to Provide Locks

A landlord is required to provide adequate locks for the building, as well as for your individual apartment, if you live in a building with more than three apartments.[91] Willful failure to provide locks can result in your landlord's being fined up to $500.

5. Failure to Post Landlord's Name and Address

A landlord who does not live in the building and who does not employ a manager who lives in the building must post her name, address, and phone number in a visible place in the building.[92] For each day the landlord fails to post this information, she may be fined up to $50.

6. 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.[93] Failure to do so can result in a fine of up to $300.

Endnotes

1. The state Sanitary Code defines an owner as "every person who alone or severally with others a) has legal title to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or b) 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 c) mortgagee in possession; or d) agent, trustee or other person appointed by the courts. 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. §410.036. 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. See also *Code Enforcement Dept. of Springfield v. Segelman*, 71 Mass. App. Ct. 1118 (2008) (unpublished opinion), regarding personal liability for operational and relocation expenses as an "owner" under the Code.

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. *Boston Hous. Auth. v. Hemingway*, 363 Mass. 184, 218. See also *Crowell v. McCaffery*, 377 Mass. 443 (1979); *McKenna v. Begin*, 3 Mass. App. Ct. 168 587 (1975).

6. 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.

7. *Boston Hous. Auth. v. Hemingway*, 363 Mass. 184. *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).

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

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

10. *McKenna v. Begin*, 3 Mass. App. Ct. 168 (1975); *Berman and* Sons, supra; *Montanez v. Bagg*, 24 Mass. App. Ct. 954 (1987).

11. 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).

12. 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); *Whitney v. Howell*, Worcester Housing Court, 87-SP-0099 (May 8, 1987); *Howell v. Nails*, Boston Housing Court, 33614 (King, J., May 24, 1985); *Greenfield Housing Authority v. Hunter*, Franklin Sup. Ct., 91-201 (June 29, 1992). 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).

13. *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).

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

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

16. 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 v. Sanchez*, 70 Mass. App. Ct. 453 (2007), for a full discussion of emotional distress damages under G.L. c. 186, §14.

17. 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).

18. *Rosa v. Rodriguez*, Hampden Housing Court, 88LE-3006 (Abrashkin, J., October 7, 1987). Here, the owner threatened the plaintiff—a tenant who was six months pregnant—with a knife, repeatedly threatened to kill her, shut off her lights, locked her out of her apartment, and later threatened her with a brick. The housing court found three separate violations of G.L. c. 186, §14, and awarded damages for each violation, separately.

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

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

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

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

23. *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.

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

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

26. Thus, when the tenants in *Blackett*, 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.

27. *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). But see *Poncz v. Loftin*, 415 Mass. 1102 (1993). In that case, the landlord and

tenant orally agreed that the tenant would pay for heat and hot water. The court found that such an oral agreement violated the state Sanitary Code, but because the tenant proved no actual damages, she was awarded nominal damages of $25.00. The court suggested that damages may be recoverable in the absence of a written agreement where the landlord fails to provide adequate heat; where the arrangement negatively affects the tenant's use of the premises; where the tenant has objected to the arrangement; where the rent plus utilities is more than the fair market value of the premises; or where the landlord has violated the separate-metering requirements of the Code.

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

29. *Manzaro v. McCann*, 401 Mass. 880 (1988). The owner's retaliatory actions are not the basis for a lawsuit or counterclaim unless the tenant's complaints are in writing. Therefore, oral complaints to the owner cannot be the basis for a retaliation claim in an affirmative lawsuit.

30. G.L. c. 239, §8A.

31. 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).

32. The Consumer Protection Act, G.L. c. 93A, was explicitly extended to cover owners and tenants by St. 1971, Chapter 241, approved by the Legislature on 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 St. 1972, Chapter 123. This amendment explicitly expanded the definition of "trade" and "commerce" in G.L. c. 93A to include rental housing by amending §1(b) of G.L. c. 93A. 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*, 366 Mass. 688 (1975), and *PMP Assocs. Inc. v. Globe Newspaper Co.*, 366 Mass. 593, 596 (1975).

33. 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).

34. Chapter 406 of the Acts of 1979, effective October 18, 1979, amended §9 of G.L. c. 93A 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.*

35. 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 §5A, the period was set at three years, the general "tort" statute of limitations, by St. 1973, Chapter 777, §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.

36. 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. at 628. 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*, at 956.

37. 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.

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

39. 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 Chapter 93A.

40. 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 §5 of c. 459 of the Acts of 1976.

41. 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). §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." §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 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*, 366 Mass. 688, 704 (1975) (93A "is not subject to the traditional limitations of pre-existing causes of action such as tort for fraud and deceit"); *Commonwealth v. DeCotis*, 366 Mass. at 244, n.8, *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 Chapter 93A are not unconstitutionally vague. *Commonwealth v. Gustaffson*, 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.

42. 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 last sentence of §9(3), inserted by §2 of Chapter 405 of the Acts of 1979.

43. 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*, 366 Mass. 688 (1975).

44. 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 93A, administrative remedies (where they exist) need not be exhausted before bringing a 93A action. G.L. c. 93A, §9, paragraphs (6) and (8) added by St. 1973, Chapter 939, 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, paragraph (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*, 366 Mass. 688, 700 (1975).

45. 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).

46. *Haddad v. Gonzalez*, 410 Mass. 855 (1991).

47. *Regan v. Nelson*, 345 Mass. 678, 680-81 (1963); *Gilroy v. Badger*, 301 Mass. 494, 496 (1938).

48. G.L. c. 93A, §9(2).

49. G.L. c. 93A; 940 C.M.R. §3.17.

50. 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); and *Crowell v. McCaffrey*, 377 Mass. 443 (1979).

51. *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.

52. G.L. c. 231, §85q.

53. *Cooper v. Boston Hous. Auth.*, 342 Mass. 38 (1961). The old rule that a tenant at sufferance could recover only for gross negligence has been abolished.

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

55. The formerly slight duty owed to child trespassers under Massachusetts common law was made stricter by G.L. c. 231, §85q; *Soule v. Massachusetts Elec. Co.*, 378 Mass. 177 (1979). It is a common law rule, however, that landowners are not liable to adult trespassers for injuries resulting from the owner's negligence. *Schofield v. Merrill*, 386 Mass. 244 (1982). However, reasonable care must be taken not to further injure adult trespassers if they are helplessly trapped on the owner's property. *Pridgen v. Boston Hous. Auth.*, 364 Mass. 696, 705-709 (1974).

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

57. *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.

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

59. 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).

60. *Kraus v. Webber*, 359 Mass. 565 (1971); *Gilroy v. Badger*, 301 Mass. 494, 496 (1938).

61. *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).

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

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.

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.'" *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 and 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).

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. The statute authorizes civil suits in response to four distinct types of invasion of privacy: (1) intrusion upon someone's physical solitude; (2) publication of private matters violating ordinary decency; (3) putting someone in a false position in the public eye; and (4) appropriating some element of someone's personality for commercial use. Most problems with landlords would fall into category 1. 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. That case was later limited by *Poncz v. Loftin*, 415 Mass. 1102 (1993). See endnote 27.

81. G.L. c. 186, §14, and *McCormick & Williamson v. Butler*, Hampden Housing Court, SP7404-S (Abrashkin, J., January 19, 1989); and *Hall v. Abraham*, Worcester Housing Court, 91-SP-991 (July 23, 1991).

82. *Sclamo v. Shea*, 29 Mass. App. Ct. 1113 (1990) (Memorandum and Order Pursuant to Rule 1:28); cf. *Poncz v. Loftin*, 415 Mass. 1102 (1993).

83. *McCormick & Williamson v. Butler*, Hampden Housing Court, SP-7404-S (Abrashkin, J., January 19, 1989); cf. *Poncz v. Loftin*, 415 Mass. 1102 (1993).

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 Chapter 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.*, 284 Mass. 497, 501 (1933).

87. G.L. c. 111, §31 provides that the penalty for a violation of the state Sanitary Code is a fine of up to $500.

88. *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."

89. G.L. c. 266, §120.

90. G.L. c. 186, §14.

91. G.L. c. 143, §3R.

92. G.L. c. 143, §3S.

93. G.L. c. 186, §15D.