

HOUSE No. 1223

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to rent escrow..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 8A of chapter 239 of the General Laws, as appearing in the 2006
2 Official Edition, is hereby amended by striking out the second, third and fourth paragraphs and
3 inserting in place thereof the following: -

4 Whenever any counterclaim or claim of defense under this section is based on any
5 allegation concerning the condition of the premises or the services or equipment provided
6 therein, the tenant or occupant shall not be entitled to relief under this section unless:

7 (1) (a) the board of health or other local enforcement agency has inspected and certified
8 that the condition of the premises constitutes a violation of the standards of fitness for human
9 habitation as established in the state sanitary code, the state building code, or any other law,
10 ordinance, by-law, rule or regulation establishing such standards, and that the health, safety or
11 well-being of the persons occupying the premises is endangered or materially impaired as a
12 result of such conditions,

13 (b) the tenant or occupant, within 10 days following such certification and not less
14 than 15 days before withholding any payment of rent, notified the landlord thereof in writing,
15 and

16 (c) the landlord fails to remedy such conditions substantially within 15 days following
17 such written notice to the tenant, or such longer period as may be required, in the exercise of due
18 diligence, to substantially remedy such conditions;

19 (2) the landlord fails to show that such conditions were caused by the tenant or occupant
20 or any other person acting under his control, except that the tenant or occupant shall have the
21 burden of proving that any violation appearing solely within that portion of the premises under
22 his control and not by its nature reasonably attributable to any action or failure to act of the
23 landlord was not so caused;

24 (3) the premises are not situated in a hotel or motel, or in a lodging house or rooming
25 house wherein the occupant has maintained such occupancy for less than three consecutive
26 months;

27 (4) the landlord fails to show that the conditions complained of cannot be remedied
28 without the premises being vacated, provided however that nothing in this clause shall be
29 construed to deprive the tenant or occupant of relief under this section when the premises are
30 temporarily vacated for purposes of removal or covering of paint, plaster, soil or other accessible
31 materials containing dangerous levels of lead pursuant to chapter 111; and

32 (5) the tenant or occupant proves that all rent withheld has been deposited at or before the
33 time at which it first became due and payable to the landlord (a) into an account maintained by
34 the clerk of the court, at the court's discretion, (b) into an escrow account controlled by an

35 attorney, or (c) into an escrow account under the provisions of section 32B of chapter 167D
36 payable on the signatures of both the tenant or occupant and the owner, landlord or person to
37 whom rent is customarily paid; provided, however, that bona fide documented out-of-pocket
38 expenses properly incurred pursuant to section 127L of chapter 111, shall not be required to be
39 deposited; and further provided that, in the case of a tenant receiving rental assistance from a
40 governmental entity where the rental assistance is being withheld because the landlord has failed
41 to repair serious code violations not caused by the tenant, the tenant shall be required to deposit
42 only the tenant's unassisted portion of the rent due. Any amounts so deposited shall be paid over
43 as ordered by the court after hearing the case or as the parties may mutually agree. If the landlord
44 is required by law to make repairs to the premises or is suffering severe financial hardship, any
45 amounts so deposited and otherwise payable to the landlord shall be used for such purposes if the
46 court so orders.

47 SECTION 2. Chapter 167D of the General Laws, as so appearing, is hereby amended by
48 inserting after section 32A the following new section:-

49 Section 32B. Any bank or federally chartered bank, upon request of a person claiming
50 relief under section 8A of chapter 239, shall create an account payable only, except as provided
51 below, upon the signatures of two named parties, one being the plaintiff in counterclaim, the
52 tenant or occupant, and the other being the defendant in counterclaim, the owner, landlord or
53 person to whom rent is customarily paid. The bank shall not require any signature or identity
54 verification of the defendant in counterclaim in order to create the account nor until such time as
55 a payment from the account is requested. The bank shall provide, upon demand of either of the
56 named parties on the account or the court, a statement of the deposits to the account and the
57 named two-party authorized payors. At the time that a payment from the account is requested,

58 the bank shall accept a standard signature guarantee as sufficient authorization for payment by
59 the defendant in counterclaim. If such signature guarantee is executed in the normal and
60 customary manner, the bank shall not be held liable for claims of incorrect payment. The bank
61 shall also make payment from such account upon court order. The bank may deduct from the
62 account all ordinary and reasonable expenses for operating the account at any time. If the
63 account is left inactive for longer than two years, the bank shall make payment of the entire
64 amount in the account, less ordinary and reasonable banking fees, to the defendant in
65 counterclaim, upon receipt of a duly executed signature guarantee.