

HOUSE No. 3683

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to the escrowing of withheld rent. ..

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 said chapter 239, as appearing in the 2004 Official Edition, is
2 hereby amended by striking out the second, third and fourth paragraphs and inserting in place
3 thereof the following 6 paragraphs:At any time when a person is entitled to serve a notice to quit
4 upon a tenant or occupant or is otherwise entitled to commence a summary process action
5 pursuant to this chapter, such person may demand, in the notice to quit or by later demand, that
6 the tenant or occupant pay into court all unpaid rent or use and occupancy that is accruing or has
7 accrued since the first day of the sixth full calendar month prior to the date of service of the
8 notice or later demand. Such amount shall be paid within 5 business days following the date of
9 service of the notice or later demand, whichever is later; provided, however, that in the event that
10 the tenant’s or occupant’s rent is subsidized by any governmental agency or governmentally
11 subsidized agency, the amount to be paid shall be limited to only that portion of the rent paid by
12 the tenant or occupant. Any notice to quit or later demand submitted in accordance with this
13 paragraph shall include a statement indicating into which court the deposit shall be made. Such
14 court may be any court which would have jurisdiction over a summary process action against the

15 tenant or occupant. The person making such demand shall file with such court a copy of the
16 notice to quit or later demand, together with a statement under oath by the person who served
17 such notice to quit or later demand indicating how such service was made. Service of such notice
18 to quit or later demand shall be by any means permitted for service of a summary process
19 complaint. Such court shall have jurisdiction over all issues arising out of the demand for such
20 deposit, which shall be considered a separate action from any summary process action against
21 such tenant or occupant and shall be commenced by the filing of the copy of the notice to quit.
22 The person making such demand shall be the plaintiff. The tenant or occupant receiving such
23 demand shall be the defendant. Any notice to quit or later demand submitted in accordance with
24 this paragraph shall contain a statement of the agreed-upon rent rate heretofore payable, the
25 subsidized tenant's or occupant's portion of the agreed-upon rent rate, if applicable, and the
26 amount of any and all unpaid rent as defined and limited by this paragraph. The defendant shall
27 pay into court within 5 business days of service of the notice or later demand the amounts so
28 demanded under the previous paragraph and shall continue to pay into court within 3 business
29 days after its due date the agreed-upon rent rate or the unsubsidized portion thereof that accrues
30 during the pendency of the action demanding deposit in accordance with the preceding paragraph
31 or during the pendency of a companion summary process action; provided, however, that the
32 tenant or occupant may deduct any amounts, documented with copies of receipts, that were
33 reasonably spent by the tenant or occupant pursuant to section 127L of chapter 111. Such copies
34 of receipts shall be deposited in the same manner with the court in lieu of payment. The
35 defendant shall provide the court with the name of the plaintiff in the action demanding deposit
36 or in the companion summary process action. The defendant shall notify the plaintiff in writing
37 of the amounts so deposited and shall provide therewith copies, if any, of all receipts deposited

38 with the court according to this section.If the plaintiff or the defendant believes the amounts
39 demanded or deposited are in error and not according to the requirements of the previous 2
40 paragraphs, either the plaintiff or the defendant may request a hearing. The defendant shall
41 request such hearing not later than the date on which the demanded deposit is due in court. The
42 plaintiff shall request such hearing within 3 business days after receipt of the notice from the
43 defendant of the amount deposited. The hearing shall be requested in writing to the clerk of the
44 court and may be mailed. The hearing shall be scheduled by the court for a date not later than 10
45 calendar days after the court's receipt of the hearing request. At the hearing, the court shall
46 consider only arguments pertaining to the agreed-upon rent rate, a subsidized tenant's or
47 occupant's portion of the agreed-upon rent rate, the amounts not paid since the first day of the
48 sixth full calendar month prior to the date of service of the notice or later demand and any
49 documented deductions pursuant to said section 127L of said chapter 111, as required by the
50 previous 2 paragraphs. After hearing arguments only relative to the amounts required by the
51 previous 2 paragraphs, the court shall determine the escrow amount and order its payment or
52 refund by the close of the next business day after the hearing. The court shall order the
53 determined amount to be paid into court or any excess previously deposited to be refunded by the
54 court not later than the close of 5 business days after the hearing. In the event that a hearing on
55 the amount demanded or deposited has been requested, the eviction trial date and any companion
56 summary process action shall be scheduled not later than the next regular trial date that occurs
57 after 5 business days following the hearing.If the defendant fails to comply with any portion of
58 this section, any claims, counterclaims or defenses asserted under this section shall be dismissed
59 and shall not be considered in the hearing on the plaintiffs companion summary process action,
60 which shall commence on the original trial date or as provided in the previous paragraph.

61 Nothing in this section shall prevent the tenant or occupant from maintaining a separate action
62 for damages regarding the habitability or condition of the premises. Amounts deposited with the
63 court under this section shall be paid over by the clerk of the court in accordance with a written
64 out-of-court agreement between the plaintiff and the defendant provided that their signatures are
65 duly notarized, or if the parties cannot agree, then the amounts deposited shall be paid to the
66 plaintiff or the defendant as the court directs upon final disposition of the action. Before final
67 disposition of the action, if the court so orders, any amounts so deposited shall be paid to the
68 plaintiff to make repairs to the premises that are required by law or to mitigate financial hardship
69 to the plaintiff. If, within 1 year of the commencement of an action demanding deposit in
70 accordance with this section, no summary process action is initiated against the tenant or
71 occupant arising out of the notice to quit, or at any time when the tenant fails to make ongoing
72 monthly deposits in accordance with this section, the court may, upon motion of either party,
73 order any such deposit to be distributed in such manner as it would have been distributed in a
74 summary process action concerning rent due for such land or tenements. Whenever any
75 counterclaim or claim of defense under this section is based on any allegation concerning
76 conditions affecting the premises or services or equipment provided therein, the tenant or
77 occupant shall not be entitled to assert such counterclaim or claim of defense unless: (1) (a) the
78 board of health or other local enforcement agency has certified that such conditions constitute a
79 serious violation of the standards of fitness for human habitation as established in the state
80 sanitary code, the state building code or any other law, ordinance, by-law, rule or regulation
81 establishing such conditions; (b) the plaintiff received such certification prior to the date that the
82 tenant or occupant received the notice to quit or the notice terminating the tenancy; (2) the
83 plaintiff does not show that such conditions were caused by the tenant or occupant or any other

84 person acting under the tenant's or occupant's control, except that the defendant shall have the
85 burden of proving that any violation appearing solely within that portion of the premises under
86 his control and not by its nature reasonably attributable to any action or failure to act of the
87 plaintiff was not so caused;(3) the premises are not situated in a hotel or motel, or in a lodging
88 house or rooming house wherein the occupant has maintained such occupancy for less than 3
89 consecutive months;(4) the plaintiff does not show that the conditions complained of cannot be
90 remedied without the premises being vacated; provided, however, that nothing in this clause
91 shall be construed to deprive the tenant or occupant of relief under this section when the
92 premises are temporarily vacated for purposes of removing or covering paint, plaster, soil or
93 other accessible materials containing dangerous levels of lead pursuant to said chapter 111;
94 and(5) the tenant or occupant has complied with all provisions of this section regarding deposit
95 of past and accruing rent as defined herein.