HOUSE DOCKET, NO. 1643 FILED ON: 1/20/2011

HOUSE . . . . . No. 1284

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the withholding of rent..

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
William N. Brownsberger		*1/20/2011*
Elizabeth A. Poirier	*14th Bristol*	*2/1/2011*
John W. Scibak	*2nd Hampshire*	*2/1/2011*
Robert M. Koczera	*11th Bristol*	*2/3/2011*
Cleon H. Turner	*1st Barnstable*	*2/4/2011*
Richard T. Moore		*2/4/2011*
Viriato Manuel deMacedo	*1st Plymouth*	*2/4/2011*
Gale D. Candaras		*2/4/2011*
John H. Rogers	*12th Norfolk*	*2/4/2011*
Colleen M. Garry	*36th Middlesex*	*2/4/2011*
Bruce E. Tarr		*2/4/2011*
Sal N. DiDomenico	*Middlesex and Suffolk*	*2/4/2011*
Linda Dorcena Forry	*12th Suffolk*	*2/4/2011*
Vincent A. Pedone	*15th Worcester*	*1/31/2011*

HOUSE DOCKET, NO. 1643 FILED ON: 1/20/2011

HOUSE . . . . . No. 1284

By Mr. Brownsberger of Belmont, a petition (accompanied by bill, House, No. 1284) of William N. Brownsberger and others relative to the witholding of rent. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *3623* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the withholding of rent..

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

SECTION 1. Section 8A of chapter 239, as appearing in the 2004 Official Edition, is hereby amended by striking out the second, third and four paragraphs and inserting in place thereof the following 6 paragraphs:—

At any time when a person is entitled to serve a notice to quit upon a tenant or occupant or is otherwise entitled to commence a summary process action pursuant to this chapter, such person may demand, in the notice to quit or by later demand, that the tenant or occupant pay into court all unpaid rent or use and occupancy that is accruing or has accrued since the first day of the sixth full calendar month prior to the date of service of the notice or later demand. Such amount shall be paid within 5 business days following the date of service of the notice or later demand, whichever is later; provided, however, that in the event that the tenant's or occupant's rent is subsidized by any governmental agency or governmentally subsidized agency, the amount

to be paid shall be limited to only that portion of the rent paid by the tenant or occupant. Any notice to quit or later demand submitted in accordance with this paragraph shall include a statement indicating into which court the deposit shall be made. Such court may be any court which would have jurisdiction over a summary process action against the tenant or occupant. The person making such demand shall file with such court a copy of the notice to quit or later demand, together with a statement under oath by the person who served such notice to quit or later demand indicating how such service was made. Service of such notice to quit or later demand shall be by any means permitted for service of a summary process complaint. Such court shall have jurisdiction over all issues arising out of the demand for such deposit, which shall be considered a separate action from any summary process action against such tenant or occupant and shall be commenced by the filing of the copy of the notice to quit. The person making such demand shall be the plaintiff. The tenant or occupant receiving such demand shall be the defendant. Any notice to quit or later demand submitted in accordance with this paragraph shall contain a statement of the agreed-upon rent rate heretofore payable, the subsidized tenant's or occupant's portion of the agreed-upon rent rate, if applicable, and the amount of any and all unpaid rent as defined and limited by this paragraph. Any notice to quit or later demand submitted in accordance with this paragraph shall contain a statement prepared by the department of housing and community development of the tenant's rights and responsibilities under this section. Such statement shall be prepared by the department within six weeks after passage of this act.

The defendant shall pay into court within 5 business days of service of the notice or later demand the amounts so demanded under the previous paragraph and shall continue to pay into court within 3 business days after its due date the agreed-upon rent rate or the unsubsidized

portion thereof that accrues during the pendency of the action demanding deposit in accordance with the preceding paragraph or during the pendency of a companion summary process action; provided, however, that the tenant or occupant may deduct any amounts, documented with copies of receipts, that were reasonably spent by the tenant or occupant pursuant to section 127L of chapter 111. Such copies of receipts shall be deposited in the same manner with the court in lieu of payment. The defendant shall provide the court with the name of the plaintiff in the action demanding deposit or in the companion summary process action. The defendant shall notify the plaintiff in writing of the amounts so deposited and shall provide therewith copies, if any, of all receipts deposited with the court according to this section.

If the plaintiff or the defendant believes the amounts demanded or deposited are in error and not according to the requirements of the previous 2 paragraphs, either the plaintiff or the defendant may request a hearing. The defendant shall request such hearing not later than the date on which the demanded deposit is due in court. The plaintiff shall request such hearing within 3 business days after receipt of the notice from the defendant of the amount deposited. The hearing shall be requested in writing to the clerk of the court and may be mailed. The hearing shall be scheduled by the court for a date not later than 10 calendar days after the court's receipt of the hearing request. At the hearing, the court shall consider only arguments pertaining to the agreed-upon rent rate, a subsidized tenant's or occupant's portion of the agreed-upon rent rate, the amounts not paid since the first day of the sixth full calendar month prior to the date of service of the notice or later demand and any documented deductions pursuant to said section 127L of said chapter 111, as required by the previous 2 paragraphs. After hearing arguments only relative to the amounts required by the previous 2 paragraphs, the court shall determine the escrow amount and order its payment or refund by the close of the next business day after the hearing. The court

shall order the determined amount to be paid into court or any excess previously deposited to be refunded by the court not later than the close of 5 business days after the hearing. In the event that a hearing on the amount demanded or deposited has been requested, the eviction trial date and any companion summary process action shall be scheduled not later than the next regular trial date that occurs after 5 business days following the hearing.

If the defendant fails to comply with any portion of this section, any claims, counterclaims or defenses asserted under this section shall be dismissed and shall not be considered in the hearing on the plaintiff's companion summary process action, which shall commence on the original trial date or as provided in the previous paragraph. Nothing in this section shall prevent the tenant or occupant from maintaining a separate action for damages regarding the habitability or condition of the premises.

Amounts deposited with the court under this section shall be paid over by the clerk of the court in accordance with a written out-of-court agreement between the plaintiff and the defendant provided that their signatures are duly notarized, or if the parties cannot agree, then the amounts deposited shall be paid to the plaintiff or the defendant as the court directs upon final disposition of the action. Before final disposition of the action, if the court so orders, any amounts so deposited shall be paid to the plaintiff to make repairs to the premises that are required by law or to mitigate financial hardship to the plaintiff. If, within 1 year of the commencement of an action demanding deposit in accordance with this section, no summary process action is initiated against the tenant or occupant arising out of the notice to quit, or at any time when the tenant fails to make ongoing monthly deposits in accordance with this section, the court may, upon motion of either party, order any such deposit to be distributed in such manner

as it would have been distributed in a summary process action concerning rent due for such land or tenements.

Whenever any counterclaim or claim of defense under this section is based on any allegation concerning conditions affecting the premises or services or equipment provided therein, the tenant or occupant shall not be entitled to assert such counterclaim or claim of defense unless:

(1) (a) the board of health or other local enforcement agency has certified that such conditions constitute a serious violation of the standards of fitness for human habitation as established in the state sanitary code, the state building code or any other law, ordinance, by-law, rule or regulation establishing such conditions; (b) the plaintiff received such certification prior to the date that the tenant or occupant received the notice to quit or the notice terminating the tenancy;

(2) the plaintiff does not show that such conditions were caused by the tenant or occupant or any other person acting under the tenant's or occupant's 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;

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

(4) 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 removing or covering paint, plaster, soil or other accessible materials containing dangerous levels of lead pursuant to said chapter 111; and

(5) the tenant or occupant has complied with all provisions of this section regarding deposit of past and accruing rent as defined herein.