

HOUSE No. 1131

The Commonwealth of Massachusetts

PRESENTED BY:

Bradley H. Jones, Jr.

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 rent escrow.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>1/17/2013</i>
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>	<i>1/29/2013</i>
<i>Bradford Hill</i>	<i>4th Essex</i>	<i>1/30/2013</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>	<i>1/18/2013</i>
<i>Viriato Manuel deMacedo</i>	<i>1st Plymouth</i>	<i>1/25/2013</i>
<i>Donald Humason</i>		
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	
<i>Paul K. Frost</i>	<i>7th Worcester</i>	
<i>Nicholas A. Boldyga</i>	<i>3rd Hampden</i>	
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	
<i>Todd M. Smola</i>	<i>1st Hampden</i>	
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>	
<i>Matthew A. Beaton</i>	<i>11th Worcester</i>	
<i>Daniel B. Winslow</i>	<i>9th Norfolk</i>	

HOUSE No. 1131

By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 1131) of Bradley H. Jones, Jr. and others relative to the withholding of rents and the establishment of rent escrow accounts by tenants for code violations by landlords. Housing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2124 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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. Chapter 167D of the General Laws, as appearing in the 2010 Official
2 Edition, is hereby amended by inserting, after section 32A, the following new section:-

3 Section 32B. Any bank or federally chartered bank, upon request of a person claiming
4 relief under section 8A of chapter 239, shall create an account payable only, except as provided
5 below, upon the signatures of two named parties, one being the plaintiff in counterclaim, the
6 tenant or occupant, and the other being the defendant in counterclaim, the owner, landlord or
7 person to whom rent is customarily paid. The bank shall not require any signature or identity
8 verification of the defendant in counterclaim in order to create the account nor until such time as
9 a payment from the account is requested. The bank shall provide, upon demand of either of the
10 named parties on the account or the court, a statement of the deposits to the account and the
11 named two-party authorized payors. At the time that a payment from the account is requested,
12 the bank shall accept a standard signature guarantee as sufficient authorization for payment by
13 the defendant in counterclaim. If such signature guarantee is executed in the normal and
14 customary manner, the bank shall not be held liable for claims of incorrect payment. The bank
15 shall also make payment from such account upon court order. The bank may deduct from the
16 account all ordinary and reasonable expenses for operating the account at any time. If the
17 account is left inactive for longer than two years, the bank shall make payment of the entire

18 amount in the account, less ordinary and reasonable banking fees, to the defendant in
19 counterclaim, upon receipt of a duly executed signature guarantee.

20 SECTION 2. Section 8A of chapter 239 of the General Laws, as so appearing, is hereby
21 amended by striking out the second, third and fourth paragraphs and inserting in place thereof the
22 following: -

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

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

32 (b) the tenant or occupant, within 10 days following such certification and not less than
33 15 days before withholding any payment of rent, notified the landlord thereof in writing, and

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

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

42 (3) the premises are not situated in a hotel or motel, nor in a lodging house or rooming
43 house wherein the occupant has maintained such occupancy for less than three consecutive
44 months;

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

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

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