HOUSE DOCKET, NO. 2286 FILED ON: 1/17/2019

HOUSE . . . . . No. 1463

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:
Bradley H. Jones, Jr.	*20th Middlesex*	*1/17/2019*
Bradford Hill	*4th Essex*	*1/23/2019*
Elizabeth A. Poirier	*14th Bristol*	*1/17/2019*
Susan Williams Gifford	*2nd Plymouth*	*1/17/2019*
Paul K. Frost	*7th Worcester*	*1/30/2019*
Todd M. Smola	*1st Hampden*	*1/31/2019*
Randy Hunt	*5th Barnstable*	*1/28/2019*
Steven S. Howitt	*4th Bristol*	*1/30/2019*
Michael J. Soter	*8th Worcester*	*1/31/2019*
Bruce E. Tarr	*First Essex and Middlesex*	*2/1/2019*

HOUSE DOCKET, NO. 2286 FILED ON: 1/17/2019

HOUSE . . . . . No. 1463

By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 1463) 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. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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:

SECTION 1. Chapter 167D of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting, after section 20, the following new section:-

Section 21. Any bank or federally chartered bank, upon request of a person claiming relief under section 8A of chapter 239, shall create an account payable only, except as provided below, upon the signatures of two named parties, one being the plaintiff in counterclaim, the tenant or occupant, and the other being the defendant in counterclaim, the owner, landlord or person to whom rent is customarily paid. The bank shall not require any signature or identity verification of the defendant in counterclaim in order to create the account nor until such time as a payment from the account is requested. The bank shall provide, upon demand of either of the named parties on the account or the court, a statement of the deposits to the account and the named two-party authorized payers. At the time that a payment from the account is requested, the bank shall accept a standard signature guarantee as sufficient authorization for payment by

the defendant in counterclaim. If such signature guarantee is executed in the normal and customary manner, the bank shall not be held liable for claims of incurrent payment. The bank shall also make payment from such account upon court order. The bank may deduct from the account all ordinary and reasonable expenses for operating the account at any time. If the account is left inactive for longer than two years, the bank shall make payment of the entire amount in the account, less ordinary and reasonable banking fees, to the defendant in counterclaim, upon receipt of a duly executed signature guarantee.

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

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

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

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

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

(2) the landlord fails to show that such conditions were caused by the tenant or occupant or any other person acting under his control, except that the tenant or occupant 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 landlord was not so caused;

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

(4) the landlord fails to 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 or relief under this section when the premises are temporarily vacated for purposes of removal or covering of paint, plaster, soil or other accessible materials containing dangerous levels of lead pursuant to chapter 111; and

(5) the tenant or occupant proves that all rent withheld has been deposited at or before the time at which it first became due and payable to the landlord (a) into an account maintained by the clerk of the court, at the court's discretion, (b) into an escrow account controlled by an attorney, or (c) into an escrow account under the provisions of section 32B of chapter 167D payable on the signatures of both the tenant or occupant and the owner, landlord or person to whom rent is customarily paid; provided, however, that bona fide documented out-of-pocket

expenses properly incurred pursuant to section 127L of chapter 111, shall not be required to be deposited; and further provided that, in the case of a tenant receiving rental assistance from a governmental entity where the rental assistance is being withheld because the landlord has failed to repair serious code violations not caused by the tenant, the tenant shall be required to deposit only the tenant's unassisted portion of the rent due. Any amounts so deposited shall be paid over as ordered by the court after hearing the case or as the parties may mutually agree. If the landlord is required by law to make repairs to the premises or is suffering severe financial hardship, any amounts so deposited and otherwise payable to the landlord shall be used for such purposes if the court so orders.