

MOVING TIPS FOR TENANTS

Moving may be a time of great disruption in your life, with all the logistical problems it entails. It can also be an occasion for serious legal problems. Homeowners are aware of this and usually have a lawyer to protect their interests when they buy or sell a home. Tenants, for various reasons, do not usually have a lawyer to guide them through the rental process. This guide is intended to help fill that gap.

The most important thing in moving is to make sure to keep records and preserve evidence, in case legal disputes arise later. This is important, no matter how friendly you may be with your landlord. Even if you get along well with your landlord, there is no harm in following these precautions. If a dispute arises later, you will be glad you did. Since moving by its nature disrupts the arrangement of your possessions, you need to be careful with your records and note carefully where they are packed so that if needed, you can access them quickly after the move.

Moving not only involves dealing with landlords. It also may involve dealing with moving companies. At the end of this document, we provide a few tips on dealing with your mover.

Since, as a tenant, you are most likely to move out of one apartment and into another, we will proceed in that order.

MOVING OUT OF AN APARTMENT

After you move out of an apartment, there is, unfortunately, a good chance that you will have a legal dispute with your former landlord. You may have trouble getting back your security deposit because of claims by the landlord that you damaged the apartment. Even if you don't have a security deposit to get back, the landlord may sue you for claimed damage to the apartment. The time to protect yourself from these claims is **before** you move out, while you are still in control of the apartment.

Your ability to get back all of your security deposit may depend on the evidence you have of the condition of the apartment when you moved in and when you moved out. It is helpful, of course, if you have made a good set of records showing the condition of the apartment when you moved in (see instructions below). But whether or not you have done that, now is the time to make a good record of the condition of the apartment when you leave it.

You are not responsible for leaving behind a completely pristine apartment. A certain amount of reasonable wear and tear is expected. But you should try to leave the apartment in a clean condition, with no serious damage. If you have actually done damage to the apartment, you should repair what you can at your own expense before you leave. You can do the work yourself or hire people to do the job at a reasonable price. If you do the repairs or have them done, be sure to do a good, professional job. If there is something that you can't repair, try to get a written professional estimate of the cost of the repair before you leave.

If you leave the repair to your landlord to do after you move out, your landlord may jump at the chance to get the apartment done over completely at your expense. The price and the scope of the work may inflate beyond your wildest imagination!

You don't have to leave the apartment spotless, but you should leave it "broom clean." In these more technological times, that means all debris removed and a good vacuum cleaning when the apartment is completely empty. Defrost and clean the refrigerator and leave it turned off and open. Leave the kitchen and bathroom facilities reasonably clean. Even if you've never cleaned the toilet bowl or the bathtub before, do it now. Take all trash out to the sidewalk or the building's trash receptacles. Don't leave anything behind in the apartment unless it was there when you moved in. If you have an agreement with the landlord or with incoming tenants to leave something behind, get it in writing, with both parties (and if possible, the landlord) signing.

Next, you must preserve a record of the condition in which you left the apartment. Don't do this until you have finished moving out and cleaning the apartment and are about to turn in the keys. Then, do the following:

- Bring along a friend who can be available to testify in court if needed. It may be, but doesn't have to be, someone who helped you move out or clean the apartment. Bring along a camera (or a cell phone with a camera) with plenty of available memory. If you still use a film camera, make sure it has plenty of film. And bring a copy of **that day's** newspaper (in Boston, the Herald, with its large headlines, is better for this purpose than the Globe, but the Globe is adequate if you can't get that day's Herald).
- Take a good set of pictures of the whole apartment, showing the condition in which you have left it. Have your friend hold the newspaper in the field of each picture, with the front page showing. This will demonstrate that the pictures could not have been taken earlier than the date of the newspaper. Save the front page of the newspaper, with the date on it, with your important records.

With today's digital cameras and phones, you can take both a video and still pictures. If you can, take both. In a court hearing, the judge, jury, or magistrate will likely only see a video once. But if you bring a set of prints of still pictures, they may look at them several times before coming to a decision. A video can be useful, but not as a substitute for a good set of still pictures.

If you take a video, be sure to go slowly enough to allow the viewer to see everything. People used to taking still pictures sometimes forget that they aren't taking snapshots and go too fast.

- As soon as you have finished taking the pictures, leave the apartment, turn off all lights, and lock up for the last time. Have your friend watch as you seal all the keys in an envelope. Then have your friend come with you as you turn in the keys, leave them at the landlord's office, or address an envelope and put them in the mail to the landlord. Prepare in advance a brief letter to the landlord stating the date and what keys are enclosed. Keep a

copy of the letter and Include the original letter, signed, with the keys.

- If you have a security deposit, include in the letter the address to which you want the deposit returned. If you turn in the keys in person, try to get the landlord or an assistant in the office to sign a copy of the letter as a receipt. If the landlord has instructed you to leave the keys somewhere in the apartment, take a picture of the keys left where instructed, and then lock the door when you leave. If you can't lock the door without the keys, try not to agree to leave the keys in the apartment.
- Make sure that you turn in **all** the keys. The whole point is to build a chain of evidence showing the condition of the apartment when you left it for the last time. No one should be able to claim that you could have returned to the apartment later.

Some landlords will schedule a "walk-through" with you present. This is not always a good substitute for the procedure outlined above. The walk-through is usually controlled by the landlord, and you may still be in possession after the walk-through, leaving it open for the landlord to claim that you did damage after the walk-through. You want evidence that shows the condition of the apartment when you left it for the last time.

It may be useful to video-record the walk-through. But if you do, don't do it secretly. It is illegal in Massachusetts to secretly record any conversation. If you record any conversation, start the recorder, then state that you are recording and try to get the landlord to acknowledge that they know that you are doing so. You don't need anyone's consent to record a conversation, but you need to be able to prove that all parties knew that they were being recorded.

Sometimes a landlord will see movers, think you've finished moving out, and not realize that you planned to return to pick up a few remaining items, do a final clean-up, and take pictures. Then, the landlord may come in, think you've left a mess, clean out whatever you've left in the apartment, throw out your remaining belongings, and even change the locks while it is still legally your apartment. To prevent this, make sure you let your landlord know your moving plans, explicitly and in writing. And, of course, keep a copy of the letter or e-mail for your own records.

Your landlord may be totally honest and not give you any problem about the condition in which you left your apartment. But even if you have gotten along well with your landlord, it is better to follow these procedures and be safe rather than sorry.

MOVING INTO AN APARTMENT

When you move into an apartment, you have a one-time opportunity to preserve a record of events that may be very important to you later. This is the time to preserve the evidence so that you will be able later to get back your security deposit and respond convincingly if you are accused of having done damage.

At the beginning of the tenancy, the landlord is entitled to charge you a first month's rent, a last month's rent, a security deposit, and the purchase or installation cost of a lock or key. The last month's rent and security deposit should each be no more than the first month's rent. The law does not authorize a key deposit, a pet deposit, or any other kind of deposit.

Some landlords also charge a "broker's fee" or "finder's fee." If an actual broker is involved, the landlord is entitled to require you to pay the broker's fee, which is usually one month's rent. If there is no broker, you should not be required to pay a broker's fee. But if you want the apartment, it may be a good idea to pay any illegal charges up front and demand them back or deduct them from rent after you have moved in. It is easy for a landlord to refuse to rent to you before you move in, but once you've moved in, it is much more difficult to evict you, especially if the landlord has done something illegal.

Make sure that you know whether you are paying a security deposit, a last month's rent deposit, or both. The distinction is important and may affect your rights when you move out. Make sure that the memo line of each check or money order records what the check is for. If you pay cash, make sure you get a receipt which accurately records the amount of money and what it was for. Beware of any landlord or broker who tries to get you to indicate in the memo of your check something other than the truth or who won't give you an accurate receipt for cash. There is no legitimate reason for such refusal.

After you move in, conduct a comprehensive inspection and inventory of the condition of the apartment and make a complete record of its condition. If you gave a security deposit, the landlord is required to give you a statement of the condition of the apartment. Within 15 days after you receive the statement or within 15 days after you move in, whichever is later, you must return the statement to the landlord with a list of any additional damage which you believe exists in the apartment.

Take this seriously and record even scratches and nail holes in the walls. The landlord may later accuse you of causing any condition which you don't list. Make sure you keep a copy of this statement and any additional list you send the landlord. Keep it in a safe place, preferably off the premises.

If the landlord doesn't send you a statement of condition, during your first month in the apartment, you should send the landlord your own inventory of the condition of the apartment. Again, keep a copy of this list. Any condition which you don't document now, you may later be accused of having caused.

Take pictures of serious conditions in the apartment and consider calling the local housing code enforcement agency to inspect. They will provide important documentation and will order the landlord to correct any conditions which constitute violations of the State Sanitary Code.

If you signed a lease, the landlord is required to return a signed copy of the lease within 30 days. If you don't get a copy, be sure to write to the landlord and ask for it (and keep a copy of the letter or e-mail). If you still don't receive it, you should persist in writing to the landlord, so as to document that they didn't send it to you. This will make it harder for the landlord to claim later that they sent it to you if they didn't.

If you pay a security deposit, the landlord is required to deposit it in an escrow account in a bank in *Massachusetts*. The landlord must also give you a notice, within 30 days after receiving a security deposit, showing the name and location of the bank where the deposit is being held and the amount and account number of the deposit. If you receive this notice, make sure you keep it with your important records. If you don't receive it, you should write to the landlord about it promptly. If the landlord doesn't comply with this requirement you are entitled to the immediate return of the deposit on demand.

A last month's rent deposit does not have to be placed in escrow, but the landlord owes you interest on both deposits, payable annually at the end of each year of the tenancy. If you don't

hear from the landlord about this by the anniversary date of your tenancy, the law says that you may deduct the interest from the following month's rent. The interest is at the rate of 5% per year or the rate actually received from the bank holding the deposit, whichever is less. You may assume the correct amount is 5% until you are notified otherwise by the landlord. With current interest rates, the security deposit will probably earn much less than 5%. But since landlords often don't escrow last-month's rent deposits, the interest due on those deposits usually is still 5%.

Make sure you keep important records in a safe place. Don't leave them out in the open. Important tenancy records left out in the open have been known to disappear mysteriously, right around the time the landlord was in the apartment for some reason. If possible, keep a set of copies of these records at some location off the premises. These records are important, and not having them could cost you money later. If you archive letters on your computer, make sure that the letters have hard dates, so that when you look at the document later, it will show the actual date of the letter. And make sure you BACK UP computer files so that a computer malfunction doesn't destroy your records. Don't leave the pictures in the camera without a backup somewhere else. Valuable pictures can get corrupted in a camera of phone, especially if the battery runs low.

These are the most important things that you need to know when you first move into an apartment. While many landlords are honest and conscientious, you need to know how to protect yourself from those who are not.

DEALING WITH MOVING COMPANIES

Some people can rent a truck and have able-bodied friends to help them move their furniture and other possessions. If you are not so fortunate, or you have too many possessions to move that way, you will need to deal with a moving company. Some moving companies are honest and competent. Some are not. Here are some suggestions to avoid problems.

Use only a moving company licensed by the Massachusetts Department of Public Utilities (MDPU) for an in-state move or by the Federal Motor Carrier Safety Administration (FMCSA) if you are moving out-of-state. As with landlords, make sure all agreements are in writing and kept in a safe place. Check the websites of these agencies for further information:

- Moving Tips within Massachusetts – FAQs are at <http://www.mass.gov/eea/grants-and-tech-assistance/guidance-technical-assistance/agencies-and-divisions/dpu/dpu-divisions/transportation-division/moving-tips.html>
- The Federal Protect Your Move website is at <http://www.fmcsa.dot.gov/consumer-protection/household-goods/protect-your-move>

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