

Joint Committee on Housing and Urban Development

Room 38
State House
Boston, MA 02133
Telephone: (617) 722-2470

Chair Sen. Steven Panagiotakos (D-1st Middlesex/Lowell)	518	722-1630
Vice-Chair Sen. Robert Creedon (D-2nd Plymouth & Bristol/Brockton)	413-C	722-1200
Sen. Fred Berry (D-2nd Essex/Peabody)	109-D	722-1410
Sen. Marian Walsh (D-Norfolk and Suffolk/Boston)	405	722-1348
Sen. Susan Tucker (D-2nd Essex and Middlesex/Andover))	416-A	722-1612
Sen. Richard Tisei (R-3rd Middlesex)	313	722-1206
Chair Rep. Robert Koczera (D-New Bedford)	43	722-2030
Vice-Chair Rep. Robert Fennell (D-Lynn)	36	722-2470
Rep. Christine Canavan (D-Brockton)	279	722-2140
Rep. Kay Khan (D-Newton)	23	722-2140
Rep. John Merrigan (D-Greenfield)	38	722-2470
Rep. Alice Wolf (D-Cambridge)	473	722-2070
Rep. Jarrett Barrios (D-Cambridge)	437	722-2800
Rep. Brian. P. Golden (D-Boston)	437	722-2800
Rep. David Gately (I-Waltham)	156	722-2235
Rep. Mary Rogeness (R-Longmeadow)	237	722-2305
Rep. Nancy Caffyn (R-Mashpee)	437	722-2800

Room and telephone number assignments for the Senate are complete. However, room and telephone number assignments for the House of Representatives are not. Before visiting Representatives, call (617)-722-2800 to check numbers.

Bills in HUD and Judiciary Committees Undercut Renters Ability to Raise Valid Claims in Court

The Judiciary and HUD Committees are now considering bills that would drastically undercut the ability of tenants to defend themselves against an eviction. *(Bill numbers are listed below.)*

✂ **Tenants Must Pay to Be Heard**

These bills attempt to create a mandatory rent escrow system where all tenants would be forced to escrow the amount of rent that a landlord *claims* is due in order to be heard by a court.

✂ **No Hearing, No Due Process**

These bills provide no hearing prior to forcing all tenants to deposit amount *claimed* to be due. Landlords who have failed to make repairs could prevent tenants from raising valid claims of code violations if landlords merely claim an amount that they know tenants cannot prepay.

✂ **Few Cases Are Contested**

The perception is that eviction cases take many months and result in excessive judgments for tenants. While there are a large number of eviction cases, few are contested. In a study done by the Massachusetts Law Reform Institute, between 81-86% of the eviction cases were disposed of in less than a month and 61% were disposed of in less than 11 days. Most cases result in landlords obtaining possession.

✂ **Landlords Have a Remedy**

Using existing laws, courts have ordered tenants to escrow rent prior to trial in cases that have been continued. Judges believe that these laws give them power and discretion to order that rents be escrowed in appropriate cases.

✂ **Barriers to Withholding**

Some of these bills also create barriers to tenants getting repairs made by making the right to withhold dependent on overextended, short-staffed boards of health, who many times tenants fear that they will be retaliated against for contacting.

Bills in HUD Committee include: S. 541, H. 1194, and H. 1363.

Bills in Judiciary Committee include H. 1398, H. 1399, H.2366, and H. 2718.

Judiciary Committee Bills

HOUSE No. 1398

By Mr. Travis of Rehoboth, petition of Philip Travis relative to amending summary process to prohibit tenant retaliation after notices to quit. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Nine.

**AN ACT AMENDING SUMMARY PROCESS TO PROHIBIT TENANT RETALIATION
AFTER A NOTICE TO QUIT.**

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 2A of chapter 239 of the General Laws, as appearing in
- 2 the 1994 Official Edition, is hereby amended by inserting at the
- 3 end thereof the following new paragraph:—
- 4 Notwithstanding any general or special law, rule or regulation
- 5 to the contrary, no court shall consider in any summary process
- 6 action any sanitary code or other violations of law that are first
- 7 cited by the responsible governmental agency after notice to quit,
- 8 i.e., notice to terminate tenancy, is served upon a tenant.

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HOUSE No. 1399

By Mr. Travis of Rehoboth, petition of Philip Travis and Carol A. Donovan for legislation to provide for the escrowing of withheld rent. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Nine.

AN ACT AMENDING SUMMARY PROCESS TO PROVIDE FOR ESCROWING OF WITHHELD RENT.

- 1 *Whereas*, Claims of rent withheld because of sanitary code vio-
2 lations are often falsely asserted to retrospectively justify nonpay-
3 ment of rent; and
4 *Whereas*, There is no device in law to distinguish nonpayment
5 of rent from legitimately 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 Chapter 239 of the General Laws, as appearing in the 1986
2 Official Edition, is hereby amended by striking out section 8A and
3 inserting in place thereof the following section:—
4 Section 8A. Notwithstanding any general or special law, regula-
5 tion, ordinance, by-law or rule to the contrary, no tenant shall
6 withhold rent on a dwelling unit unless the rent is current and
7 unless, prior to withholding of rent, the tenant informs the owner
8 of the conditions for which rent is being withheld. If rent is
9 properly withheld, each month's rent or portion thereof shall be
10 escrowed and the location and account number of the escrowed
11 deposits supplied to the owner. To assert a defense of legal rent
12 withholding in a summary process action, the tenant must show
13 proof of said escrowing and of said written notice to the owner.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Nine.

AN ACT PROVIDING FOR THE MANDATORY ESCROWING OF WITHHELD RENT TO FACILITATE RESOLUTION OF SUMMARY PROCESS CASES.

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. That Chapter 239, Section 8A be deleted and the following section be added in its place:-

Rent Withholding. No tenant shall withhold rent on a dwelling unit if the rent is not current and unless there has been an inspection conducted under 105 CMR 410.00, the owner cited for violations and a determination made that the violations were sufficiently serious that a withholding is justified. Each month's rent is to be escrowed and proof of said escrowing shall be required in order for a defense of legal rent withholding to be allowed. Security deposit and/or last month's rent shall not be considered as withheld rent under this section. The agent to hold the monies escrowed shall be the probation department of the court or other suitable department as determined by the court. Upon settlement of the action, the funds will be turned over to the prevailing party in the action.

[END OF BILL]

H. 2366
Broadhurst

①

H. 2718 De Filippo

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Nine.

AN ACT PROVIDING FOR THE MANDATORY ESCROWING OF WITHHELD RENT TO FACILITATE RESOLUTION OF SUMMARY PROCESS CASES.

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. That Chapter 239, Section 8A be deleted and the following section be added in its place:-

Rent Withholding. No tenant shall withhold rent on a dwelling unit if the rent is not current and unless there has been an inspection conducted under 105 CMR 410.00, the owner cited for violations and a determination made that the violations were sufficiently serious that a withholding is justified. One month's rent is to be escrowed and proof of said escrowing shall be required in order for a defense of legal rent withholding to be allowed. Security deposit and/or last month's rent shall not be considered as withheld rent under this section. The agent to hold the monies escrowed shall be the probation department of the district court or other suitable department as determined by the court. Where there is jurisdiction by a Housing Court, the escrow will be held by the nearest district court. Upon settlement of the action, the funds will be turned over to the prevailing party in the action.

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HUD Committee Bills

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Nine.

AN ACT FURTHER REGULATING 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 127L of chapter 111 of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by inserting after the second paragraph the following:-

Any tenant who deducts rent for any reason shall give to the owner at the time of such deducting, a statement indicating the amount of such deduction, the date on which it was made, the reason or reasons for such action, the name of the person or escrow agent holding the funds, the account number, the name of the owner from whom the rent is deducted and a clause indicatancy that the owner is entitled to interest on said deducted funds at a rate of five per cent per year and paid to the owner for each full month the rent is deducted. Such statement shall be signed by all tenants deducting such funds.

Tenants who deduct rent for any reason are hereby required to place the deducted funds into an escrow account with the court or an attorney to be held for the owner. The tenant is required to furnish the owner with the name of the escrow agent and the account number. Upon request the owner may at any time, within two banking days, inspect the account to insure the funds exist and are on deposit within the account so named. Failure by the tenant to deposit and keep the deducted funds in the escrow account so stated would automatically and immediately default any tenant defense, by-pass summary process and immediately terminate said tenancy.

If the tenant deducts rent for a deficiency in the rented premises or a sanitary code violation, a detailed description of any such deficiency or code violation shall accompany the notice of deduction along with proof of notice to the landlord of said deficiency or code violations along with proof of a similar notice to the board of health or local code enforcement agency.

The deducted rent shall continue to be the property of the owner of the real property, shall not be commingled with the assets of the tenant and shall not be subject to any claims of any creditor of the tenant or of the tenants successor in interest, including a trustee in bankruptcy.

Funds so deducted shall be immediately released, adjusted by amounts agreed to between the tenant and owner or as ruled by court order, to the owner together with all accumulated interest as soon as the stated reason for withholding the funds has been corrected.

If the tenant fails to repay any rent deducted or interest thereon to which the owner is entitled within thirty days after the owner is entitled thereto, the owner shall be awarded damages in the amount equal to three times the aggregate amount due together with court costs and reasonable attorneys fees.

[END OF BILL]

H. 1194
Walrath

(15)

Missing

H. 1193

Travis

HOUSE No. 1363

By Mr. Travis of Rehoboth, petition of Philip Travis for legislation to further regulate the withholding of rent by tenants. Housing and Urban Development.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Nine.

AN ACT TO CLARIFY THE LAW RELATIVE TO RENT WITHHOLDING.

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 8A of chapter 239 of the General Laws is hereby
2 amended by striking out the second, third and fourth paragraphs
3 and inserting in place thereof the following:—
4 Whenever any counterclaim or claim of defense under this
5 section is based on any allegations concerning conditions
6 affecting the premises or services or equipment provided therein,
7 the tenant or occupant shall not be entitled to relief under this
8 section unless: (1)(a) the board of health or other local enforce-
9 ment agency has certified that such conditions constitute a viola-
10 tion of the standards of fitness for human habitation as established
11 in the state sanitary code, the state building code, or any other
12 law, ordinance, by-law, rule or regulation establishing such stan-
13 dards, and that the health, safety, or well-being of the persons
14 occupying the premises is endangered or materially impaired as a
15 result of such conditions, (b) the tenant or occupant, following
16 such certification, notified the landlord thereof in writing at least
17 fifteen days in advance of the date on which the tenant or occu-
18 pant became in arrears in his rent, and (c) such conditions were
19 not substantially remedied within said fifteen day period or such
20 longer period as may be required, in the exercise of due diligence,
21 to substantially remedy such conditions; (2) the landlord does not
22 show that such conditions were caused by the tenant or occupant
23 or any other person acting under his control, except that the defen-
24 dant shall have the burden of proving that any violation appearing

25 solely within that portion of the premises under his control and
26 not by its nature reasonably attributable to any action or failure to
27 act of the landlord was not so caused; (3) the premises are not sit-
28 uated in a hotel or motel, or in a lodging house or rooming house
29 wherein the occupant has maintained such occupancy for less than
30 three consecutive months; (4) the landlord does not show that the
31 conditions complained of cannot be remedied without the
32 premises being vacated, provided however that nothing in this
33 clause shall be construed to deprive the tenant or occupant of
34 relief under this section when the premises are temporarily
35 vacated for purposes of removal or covering of paint, plaster, soil
36 or other accessible materials containing dangerous levels of lead
37 pursuant to chapter one hundred and eleven; and (5) all rent has
38 been deposited into court pursuant to the following paragraph.

39 Any tenant or occupant intending to invoke the provisions of
40 this section shall be required to deposit into court the entire
41 amount of all rent due in accordance with the terms of the applic-
42 able lease or tenancy agreement under which the premises are
43 occupied, at all times before or after trial when the same would
44 otherwise be customarily payable. Any amounts so deposited shall
45 be paid over in accordance with the direction of the court after
46 hearing the case or as the parties may mutually agree. If the land-
47 lord is required by the court to make repairs to the premises, any
48 amounts so deposited and otherwise payable to the landlord shall
49 be used for such purposes if the court so orders.

SENATE No. 541

By Mr. Creedon, a petition (accompanied by bill, Senate, No. 541) of Robert S. Creedon, Jr., George N. Peterson, Jr., Cele Hahn, Richard T. Moore and other members of the General Court for legislation relative to rent withholding. Housing and Urban Development.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Nine.

AN ACT RELATIVE TO RENT WITHHOLDING.

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 8A of Chapter 239 of the General Laws is hereby
- 2 amended by striking out the second, third and fourth paragraphs
- 3 and inserting in place thereof the following:—
- 4 Whenever any counterclaim or claim of defense under this sec-
- 5 tion is based on any allegation concerning conditions affecting the
- 6 premises or services or equipment provided therein, the tenant or
- 7 occupant shall not be entitled to relief under this section unless:
- 8 (1) (a) the board of health or other local enforcement agency
- 9 has certified that such conditions constitute a violation of the stan-
- 10 dards of fitness for human habitation as established in the state
- 11 sanitary code, the state building code, or any other law, ordinance,
- 12 by-law, rule or regulation establishing such such conditions,
- 13 (b) the tenant or occupant, following such certification, notified
- 14 the landlord thereof in writing, at least fifteen days in advance of
- 15 the date on which the tenant or occupant became in arrears in his
- 16 or her rents, and
- 17 (c) such conditions were not substantially remediated within
- 18 said fifteen day period or such longer period as may be required,
- 19 in the exercise of due diligence, to substantially remedy such
- 20 conditions;
- 21 (2) the landlord does not show that such conditions were caused
- 22 by the tenant or occupant or any other person acting under his or
- 23 her control, except that the defendant shall have the burden of

24 proving that any violation appearing solely within that portion of
 25 the premises under his or her control and not by its nature reason-
 26 ably attributable to any action or failure to act of the landlord was
 27 not so caused;

28 (3) the premises are not situated in a hotel or motel, or in a
 29 lodging house or rooming house wherein the occupant has main-
 30 tained such occupancy for less than three consecutive months;

31 (4) the landlord does not show that the conditions complained
 32 of cannot be remediated without premises being vacated, provided
 33 however that nothing in the clause shall be construed to deprive
 34 the tenant of relief under this section when the premises are tem-
 35 porarily vacated for purposes of removal or covering of paint,
 36 plaster, soil or other accessible materials containing dangerous
 37 levels of lead pursuant to chapter one hundred and eleven; and

38 (5) the tenant shows proof that all rent has been deposited
 39 (a) into an account with the court, (b) into an escrow account con-
 40 trolled by an attorney, or (c) into an escrow account at a commer-
 41 cial bank payable on the signatures of both the tenant or occupant
 42 and the landlord or person to whom rent is customarily paid.

43 Any amounts so deposited shall be paid over in accordance
 44 with the direction of the court after hearing the case as the parties
 45 may mutually agree. If the landlord is required by law to make
 46 repairs to the premises, any amounts so deposited and otherwise
 47 payable to the landlord shall be used for such purposes if the court
 48 so orders.

49 RENT ESCROW ACCOUNTS AT COMMERCIAL BANKS

50 Every commercial bank in the Commonwealth, upon the
 51 request of a person claiming relief under this section, shall create
 52 an account payable only (except as provided below) upon the sig-
 53 natures of two named parties, one being the person claiming relief
 54 and the other being any person named by the person claiming
 55 relief. The bank shall not require any signature or identity verifi-
 56 cation of the person named by the person claiming relief in order
 57 to create the account nor until such time as a payment from the
 58 account is requested. The bank shall provide, upon demand of
 59 either of the named parties on the account or the court, a statement
 60 of the deposits to the account and the named two-party authorized
 61 payors. At the time that a payment from the account is requested,
 62 the bank shall accept a standard signature guarantee as sufficient

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63 authorization for payment by the person named by the person
 64 claiming relief. If such signature guarantee is executed in the
 65 normal and customary manner, the bank shall not be held liable
 66 for claims of incorrect payment. The bank shall also make pay-
 67 ment from such account upon court order. The bank may deduct
 68 from the account all ordinary and reasonable expenses for oper-
 69 ating the account at any time. If the account is left inactive for
 70 longer than two years, the bank shall make payments of the entire
 71 amount in the account (less ordinary and reasonable banking fees)
 72 to the person named by the person claiming relief, upon receipt of
 73 a duly authorized signature guarantee.

M.G.L. 239, 58A

239 § 8 Rent withholding; grounds; amount claimed; presumptions and burden of proof; procedures

In any action under this chapter to recover possession of any premises rented or leased for dwelling purposes, brought pursuant to a notice to quit for nonpayment of rent, or where the tenancy has been terminated without fault of the tenant or occupant, the tenant or occupant shall be entitled to raise, by defense or counterclaim, any claim against the plaintiff relating to or arising out of such property, rental, tenancy, or occupancy for breach of warranty, for a breach of any material provision of the rental agreement, or for a violation of any other law. The amounts which the tenant or occupant may claim hereunder shall include, but shall not be limited to, the difference between the agreed upon rent and the fair value of the use and occupation of the premises, and any amounts reasonably spent by the tenant or occupant pursuant to section one hundred and twenty-seven L of chapter one hundred and eleven and such other damages as may be authorized by any law having as its objective the regulation of residential premises.

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) the owner or his agents, servants, or employees, or the person to whom the tenant or occupant customarily paid his rent knew of such conditions before the tenant or occupant was in arrears in his rent; (2) the plaintiff does not show that such conditions were caused by the tenant or occupant or any other person acting under his 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 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; and (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 removal or covering of paint, plaster, soil or other accessible materials containing dangerous levels of lead pursuant to section one hundred and ninety-seven of chapter one hundred and eleven.

Proof that the premises are in violation of the standard of fitness for human habitation established under the state sanitary code, the state building code, or any other ordinance, by-law, rule or regulation establishing such standards and that such conditions may endanger or materially impair the health, safety

The well-being of a person occupying the premises shall create a presumption that conditions existed in the premises entitling the tenant or occupant to a counterclaim or defense under this section. Proof of written notice to the owner or his agents, servants, or employees, or to the person to whom the tenant or occupant customarily paid his rent, of an inspection of the premises, required by the board of health, or in the city of Boston by the commissioner of housing inspection, or by any other agency having like powers of inspection relative to the condition of residential premises, shall create a presumption that on the date such notice was received, such person knew of the conditions revealed by such inspection and mentioned in such notice. A copy of an inspection report issued by any such agency, certified under the penalties of perjury by the official who inspected the premises, shall be admissible in evidence and shall be prima facie evidence of the facts stated therein.

There shall be no recovery of possession pursuant to this chapter pending final disposition of the plaintiff's action if the court finds that the requirements of the second paragraph have been met. The court after hearing the case may require the tenant or occupant claiming under this section to pay to the clerk of the court the fair value of the use and occupation of the premises less the amount awarded the tenant or occupant for any claim under this section, or to make a deposit with the clerk of such amount or such installments thereof from time to time as the court may direct, for the occupation of the premises. In determining said fair value, the court shall consider any evidence relative to the effect of any conditions claimed upon the use and occupation of residential premises. Such funds may be expended for the repair of the premises by such persons as the court after a hearing may direct, including if appropriate a receiver appointed as provided in section one hundred and twenty-seven H of chapter one hundred and eleven. When all of the conditions found by the court have been corrected, the court shall direct that the balance of funds, if any, remaining with the clerk be paid to the landlord. Any tenant or occupant intending to invoke the provisions of this section may, after commencement of an action under this chapter by the landlord, voluntarily deposit with the clerk any amount for rent or for use and occupation which may be in dispute, and such payments shall be held by the clerk subject to the provisions of this paragraph.

There shall be no recovery of possession under this chapter if the amount found by the court to be due the landlord equals or is less than the amount found to be due the tenant or occupant by reason of any counterclaim or defense under this section. If the amount found to be due the landlord exceeds the amount found to be due the tenant or occupant, there shall be no recovery of possession if the tenant or occupant, within one week after having received written notice from the court of the balance due, pays to the clerk the balance due the landlord, together with interest and costs of suit, less any credit due the tenant or occupant for funds already paid by him to the clerk under this section. In such event, no judgment shall enter until after the expiration of the time for such payment and the tenant has failed to make such payment. Any such payment received by the clerk shall be held by him subject to the provisions of the preceding paragraph.

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LETTERS

'Economic Barrier' For Tenants Would be Mistake

To The Editor:

I am a partner in small litigation firm which has represented both owners and tenants in summary process (eviction) proceedings, although "full disclosure" requires me to note that we represent tenants more frequently than owners.

I was surprised by the recent Lawyers Weekly editorial ("Summary Process Safeguards," Jan. 25) recommending that the Legislature create economic (i.e., dollar) barriers to having anyone's claims heard in our courts — and, especially surprised that Lawyers Weekly would suggest adoption of financial barriers which would mostly be imposed on our lowest income residents.

I was surprised that anyone believes that the courts take too long to evict families to homelessness — since any Thursday when I am in eviction session, I see dozens (or, in the Boston Housing Court, hundreds) of residents being evicted in five-minute hearings.

I am especially surprised that Lawyers Weekly wants to make it more costly for tenants to present defenses in court, since tenants are evicted in over 90 percent of the evictions which are filed, and since, correspondingly, and not surprisingly, the number of homeless families in Massachusetts

just increases and increases and increases.

But most of all, I am surprised at your editorial because you are just plain wrong. Our eviction laws already give judges the statutory authority to require tenants or occupants defending against eviction to pay to the court the fair value of the use and occupation, or deposit such amount from time to time as the court directs.

I know this authority is actually used — appropriately and inappropriately — in the trial courts, as I have been counsel in cases where housing was in seriously substandard condition, verified by inspection reports, and the court struck the tenant's defenses because the tenant did not make the payments the court required, the *full rent* I might add, despite deplorable conditions.

As evidence of the "unfairness" of the current system, Lawyers Weekly noted that counselors have advised landlords to "pay" tenants to leave, because the legal costs of litigating the eviction could be higher than such a "buyout." As a practicing lawyer, with a wide range of clients, I often advise clients that the "costs" of litigating a claim are likely to exceed the "costs" of working the dispute out by compromise, payment, or "buyout," as the case may be.

You are simply wrong to suggest that this is some sort of miscarriage of justice. To the contrary, this is just good legal counseling, which I hope we all aspire to.

In closing, I note that there are no doubt "unfair" eviction cases, where minimal housing problems have been taken advantage of, to the landlord's detriment. The truth is that we all know of these "horror stories" in family law, business law, commercial law, and, yes, housing law.

However, in no other area of law do we require that litigants pay for the privilege of having their claims heard by a judge, as an (ill-considered) "strategy" to "weed out" the horror stories.

You should have thought long and hard before you recommended this kind of economic barrier for those of us least able to afford the family security most of us, as homeowners, not renters, have bought.

I do understand that in this brave new world, picking on the poorest becomes respectable. But I respect Lawyers Weekly the less for joining the pack.

I expected more from the "voice" of our legal community. Wrong again.

Paul R. Collier III
Cambridge

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LETTERS

'Deeply Disturbed' By Eviction-Law Proposal

To the Editor:

We were deeply disturbed by your editorial of Jan. 25 ("Summary Process Safeguards"), calling for a legal system that would automatically force tenants to pay to have their day in court to defend against evictions.

The fact is that there are comparatively few contested eviction cases, courts already have the power to require tenants to escrow rent pending trial, and we know of no other situation in Massachusetts where a defendant must pay what the plaintiff "claims" is due in order to be heard by a court.

Further, tenants do not typically defend against eviction actions at all, let alone defend by claiming violations of the state sanitary code, as your editorial stated. As the Boston Housing Court will tell you, on a given Thursday it has on average 300 eviction cases.

Most tenants are unrepresented and have no idea as to what defenses they may have. Approximately 30 percent of the tenants default, meaning judgment for the landlord that day. Out of the remaining cases, 80 percent go through mediation that day and come out with agreements — the majority of which give possession to the landlord.

The overwhelming majority of summary process cases are resolved in less than a month. Your editorial stated that "it typically takes many months to move a contested case to trial" and that these cases are clogging the court system. This statement grossly distorts reality.

The courts may be clogged, but not because they are overburdened with eviction cases that take months. Two studies done by the Massachusetts Law Reform Institute in 1990 and 1995 demonstrated that between 81 and 86 percent of eviction cases were disposed of in less than one month.

In addition, the 1995 study showed that a majority of the cases, 61 percent, were disposed of in less than 11 days. The most striking aspect of our current law is that it is summary and efficiently serves the needs of landlords who keep their properties up to code and want to quickly evict tenants.

For the small number of cases that are contested, judges, using their equitable powers and G.L.c. 239, §58A, have ordered tenants to escrow rent prior to trial, while cases are being continued. In contrast to what you wrote, G.L.c. 239, §8A did not remove a court's discretion to require deposit of rent into court pre-trial.

The law states that the court "after hearing the case may require the tenant ... to make a deposit with the clerk of such amount or such installments thereof from time to time, as the court may direct." Courts have interpreted this language to mean that they have discretion, upon hearing from both sides, to decide whether an escrow remedy is appropriate.

But as judges will tell you, most landlords do not request that the rent be escrowed because as a practical matter their cases are resolved the first day they come to court.

Furthermore, if a case is postponed because of a continuance, removal of a default, or a stay of execution, rules of civil procedure allow the court the discretion to set conditions for that continuance while the parties' rights are being sorted out.

Legislation filed by landlords attempts to remove judicial discretion by forcing all tenants, regardless of circumstances, to a mandatory escrowing of rent without a hearing. In Massachusetts, we know of no other situation where a defendant must put up money a plaintiff "claims" is due in order to being heard by the court; and we believe that forcing all tenants in all cases across-the-board to escrow rents with-

out a hearing is unconstitutional.

Such a system would be akin to giving the courts the authority to automatically attach every landlords' property merely upon a tenants filing a complaint.

The hallmark of our judicial system is that it looks at the merits of each case and does not operate out of stereotypes. G.L.c. 239, §8A is an even-handed law that allows both landlords and tenants to present their claims.

The fact is that some tenants have been forced to contest their cases because their landlords have refused to make repairs and they have no other recourse. Attempting to portray the small number of contested eviction cases as raising frivolous, ill-founded tenant defenses, while neglecting to present any analysis about the complexity and varied outcomes of contested cases, is to rely on stereotypes to make policy recommendations.

With few contested cases and with an existing remedy that allows for rents to be deposited in court in cases that are continued, we search in vain for what possible justification there is for such a drastic revamping of the law. It is overkill.

In fact, mandatory escrowing for every eviction may cause the delays that landlords complain about. And while you claim that some landlords have lost respect for the legal system, the case data we report suggests that the number of eviction cases where there are vigorous contest by tenants are quite small.

Perhaps landlords who are promoting change want to snuff out the few remaining challenges.

Allan G. Rodgers
Annette R. Duke
Boston

The writers are the executive director and staff attorney, respectively, of the Massachusetts Law Reform Institute.

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WHEREAS: The City Council recognizes a housing emergency in the shortage of affordable housing in the City of Cambridge as set forth in its resolution dated February 1, 1999; and

WHEREAS: The City Council is aware that there is currently pending before the Judiciary and HUD Committees of the state legislature several bills seeking to amend M.G.L. c. 239, §8A to require mandatory rent escrowing and other procedural requirements before a tenant could defend themselves in a summary process actions based on substantial violations of the State Sanitary Code; and

WHEREAS: It is the concern of the council that these proposed laws would make it extremely difficult for tenants to raise legitimate and critical defenses in eviction actions especially where tenants have language and cultural barriers ; and

WHEREAS: It is the concern of the Council that this would cause increased homelessness and further aggravate the shortage of affordable housing in the City; and

WHEREAS: It is our understanding that several of these bills would require mandatory inspections by the Department of Inspectional Services in order for any tenant to raise a claim of bad conditions;

WHEREAS: The Department of Inspectional Services has limited staff and a very large caseload and would be overburdened by a large increase in demand for their services;

THEREFORE BE IT RESOLVED: That the City Council opposes the passage of pending legislation which would make rent escrow a mandatory requirement in summary process cases and would place other procedural restrictions on tenants' ability to raise substances defenses and counterclaims in summary process actions.

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CAMBRIDGE EVICTION FREE ZONE

CAMPAIGN TO SAVE 2000 CAMBRIDGE HOMES

Campaña para Salvar 2000 Hogares

Kanpay pou Sove 2000 Kay

11 Inman St. Cambridge MA 02139 (617) 868-2900 (ask for EFZ)

(617) 912-8574 (our voice mail)

May 6, 1999

1999 MAY -6 P 2:12
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

Mayor Duehay and the City Council
c/o Margaret Drury, City Clerk
City Hall

Re: Consent Communication

Dear Mayor Duehay and ladies and gentlemen of the City Council,

In light of the Housing Emergency, the Eviction Free Zone and The Campaign to Save 2000 Homes wish to speak on our Housing Justice Program which calls on the City Council to support new Rent and Eviction protections; to oppose anti-tenant "Rent Escrow" bills; and to allocate \$10 million for permanently affordable housing.

Sincerely,

Nancy Hall

Nancy Hall

for the Eviction Free Zone

Consent Communication #11

3575

A communication was received from Nancy Hall, Cambridge Eviction Free Zone, requesting permission to speak on the Housing Justice Program.

In City Council May 10, 1999

PLACED ON FILE