

Some concepts to expect to face in a Massachusetts housing court eviction case?

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When facing an eviction case, there are some typical legal concepts that will be in play that could change the course of events. These concepts that will be discussed herein along with some practical items first.

When faced with an eviction, tenants usually fight back by raising counterclaims. This is easy enough to do as the legal assistance programs that work with the courts and give free advice to those in financial need that appear in the housing court, which is a high percentage of tenants in an eviction case, have check-the-box type forms to use. These forms have categories of areas with more specific counterclaims to choose from. Thus, in a sense, a tenant is run through a list of items to check to raise counterclaims and many times when counterclaims are raised they are not the product of long-term intent.

Discovery, which is a catch all term for information and documents that are required from other parties in litigation, is also given to tenants to serve upon landlords in an easy set of forms. This Discovery is sweeping and often landlords are unaware of their obligation to respond to same, which causes them difficulty procedurally and substantively.

The deadline for tenants to raise counterclaims is rarely enforced and landlords many times are facing the same with little to no preparation. Many parties in housing court, probably more than any other Massachusetts court, appear *pro se* (representing themselves), which lends to the practical need for guidance from the clerk staff. Now for some of the legal points.

A landlord is strictly liable for breach of the warrantee of habitability regardless of their good intent to repair defects in the property. Berman & Sons, Inc. v. Jefferson, 379 Mass. 196, 200-201 (1979). The damages for this is the difference between what the property is valued as warranted and the value of it in its actual condition. Haddad v. Gonzalez, 410 Mass. 855, 872-873 (1991). If a tenant's damages exceed the damages in favor of the landlord, usually the amount of rent owed, then possession remains with the tenant; and vice versa. A premises must comply with Article II of the Massachusetts sanitary code. 105 CMR 410.00 et seq.

The wisdom of requiring and holding a security deposit is questionable, with some lawyers advising not to require one simply to avoid violating the burdensome law.

A trip to the housing court can be stressful. One way to mitigate that stress and the risk of an unfavorable outcome is to mediate the matter and agree with the opposing party. Look for these services when they are offered when you appear in housing court and take advantage of them.

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