

HOUSE No. 1259

By Mr. Jones of North Reading, petition 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.

The Commonwealth of Massachusetts

PETITION OF:

Bradley H. Jones, Jr.	Robert S. Hargraves
Mary S. Rogeness	Karyn E. Polito
George N. Peterson, Jr.	Susan Williams Gifford
John A. Lepper	Richard J. Ross
Viriato Manuel deMacedo	Paul J. P. Loscocco
Paul K. Frost	Donald F. Humason, Jr.
Elizabeth A. Poirier	

In the Year Two Thousand and Seven.

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. Section 8A of chapter 239 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by
3 striking out the second, third and fourth paragraphs and inserting in
4 place thereof the following:—

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

9 (1) (a) the board of health or other local enforcement agency has
10 inspected and certified that the condition of the premises constitutes
11 a violation of the standards of fitness for human habitation as estab-
12 lished in the state sanitary code, the state building code, or any other
13 law, ordinance, by-law, rule or regulation establishing such stan-
14 dards, and that the health, safety or well-being of the persons occu-
15 pying the premises is endangered or materially impaired as a result
16 of such conditions,

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

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

24 (2) the landlord fails to show that such conditions were caused by
25 the tenant or occupant or any other person acting under his control,
26 except that the tenant or occupant shall have the burden of proving
27 that any violation appearing solely within that portion of the
28 premises under his control and not by its nature reasonably attribut-
29 able to any action or failure to act of the landlord was not so caused;

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

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

40 (5) the tenant or occupant proves that all rent withheld has been
41 deposited at or before the time at which it first became due and
42 payable to the landlord (a) into an account maintained by the clerk of
43 the court, at the court's discretion, (b) into an escrow account
44 controlled by an attorney, or (c) into an escrow account under the
45 provisions of section 32B of chapter 167D payable on the signatures
46 of both the tenant or occupant and the owner, landlord or person to
47 whom rent is customarily paid; provided, however, that bona fide
48 documented out-of-pocket expenses properly incurred pursuant to
49 section 127L of chapter 111, shall not be required to be deposited;
50 and further provided that, in the case of a tenant receiving rental
51 assistance from a governmental entity where the rental assistance is
52 being withheld because the landlord has failed to repair serious code
53 violations not caused by the tenant, the tenant shall be required to
54 deposit only the tenant's unassisted portion of the rent due. Any
55 amounts so deposited shall be paid over as ordered by the court after

56 hearing the case or as the parties may mutually agree. If the landlord
57 is required by law to make repairs to the premises or is suffering
58 severe financial hardship, any amounts so deposited and otherwise
59 payable to the landlord shall be used for such purposes if the court
60 so orders.

1 SECTION 2. Chapter 167D of the General Laws, as so appearing,
2 is hereby amended by inserting after section 32A the following new
3 section:—

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