

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger, (BY REQUEST)

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 requiring mandatory rent escrow.

PETITION OF:

NAME:DISTRICT/ADDRESS:G. Emil Ward, Esq.21 Oak Square Avenue Brighton, MA 02135

SENATE DOCKET, NO. 1552 FILED ON: 1/20/2017 SENATE No. 778

By Mr. Brownsberger (by request), a petition (accompanied by bill, Senate, No. 778) of G. Emil Ward, Esq. for legislation to require mandatory rent escrow. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court (2017-2018)

An Act requiring mandatory 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	Notwithstanding any law or special law to the contrary, Ch. 239, the
2	General Laws, Section 8A shall be amended as follows:
3	At Paragraph 4, the following text shall be deleted in its
4	entirety:
5	"The court after hearing the case may require the tenant or occupant claiming under this
6	section to pay to the clerk of the court the fair value of the use and occupation of the
7	premises less the amount awarded the tenant or occupant for any claim under this section,
8	or to make a deposit with the clerk of such amount or such installments thereof from time
9	to time as the court may direct, for the occupation of the premises. In determining said
10	fair value, the court shall consider any evidence relative to the effect of any conditions

11	claimed upon the use and occupation of residential premises. Such funds may be
12	expended for the repair of the premises by such persons as the court after a hearing may
13	direct, including if appropriate a receiver appointed as provided in section one hundred
14	and twenty-seven H of chapter one hundred and eleven. When all of the conditions found
15	by the court have been corrected, the court shall direct that the balance of funds, if any,
16	remaining with the clerk be paid to the landlord. Any tenant or occupant intending to
17	invoke the provisions of this section may, after commencement of an action under this
18	chapter by the landlord, voluntarily deposit with the clerk any amount for rent or for use
19	and occupation which may be in dispute, and such payments shall be held by the clerk
20	subject to the provisions of this paragraph."
21	At paragraph 4 the below text shall be inserted where the above text was
22	deleted:
23	"The court after hearing on motion of a request for rent escrow shall require the tenant or
24	occupant claiming under this section to pay to the clerk of the court all rent withheld or
25	accrued to date and as yet unpaid to the plaintiff on the date of filing any defense or
26	counterclaim and all rent accruing thereafter until the matter has been settled or judgment
27	is entered by the court for occupation of the premises. Upon motion of either party or

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28		upon the court's own motion such escrowed funds shall be expended for the repair of the
29		premises, if the tenant or occupant claims the premises are in violation of the standard of
30		fitness for human habitation established under the state sanitary code, the state building
31		code, or any other ordinance, by-law, rule, or regulation establishing such standards and
32		that such conditions may endanger or materially impair the health, safety or well-being of
33		a person occupying the premises, said repairs shall be made by such persons including
34	the	
35		landlord, lessor or plaintiff, as the court after hearing on motion may direct, including if
36		appropriate a receiver appointed as provided in section one hundred and twenty-seven H
37		of chapter one hundred and eleven. When all of the conditions found by the court to have
38		been in violation of the standards of fitness as described above have been corrected, the
39		court shall direct that the balance of funds in escrow, if any, remaining with the clerk be
40		paid to the landlord."
41		At paragraph 4, the following text shall be deleted:
42		"Any tenant or occupant intending to invoke the provisions of this section may, after
43		commencement of an action under this chapter by the landlord, voluntarily deposit with
44		the clerk any amount for rent or for use and occupancy which may be in dispute, and such
45		payments shall be held by the clerk subject to the provisions of this paragraph.

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46	At paragraph 4 immediately after the words: " if any, remaining with the
47	clerk to be paid to the landlord."
48	The following text shall be inserted:
49	"If the tenant or occupant fails to pay the required escrow amount into court within 7
50	business days of the court's order to pay into escrow, the court shall strike any jury claim,
51	if any, or shall deny any request for continuance by the tenant and shall set the matter
52	down for a speedy trial with 7 business days' notice to the parties. Any monies expended
53	by the tenant or occupant pursuant to the repair and deduct statute, section one hundred
54	and twenty-seven L of chapter one hundred and eleven shall be deemed a payment under
55	this section, as will be any payment made into escrow be deemed payment of rent and
56	may be used in the tenant or occupant's defense under this section. Any tenant or
57	occupant who asserts a defense or counterclaims under paragraph 2 of this section shall
58	give notice to the owner, his agents, servants, or employees, or the person to whom the
59	tenant or occupant ordinarily pays rent of said conditions. In opposition to the tenant or
60	occupant raising a counterclaim or defense, plaintiff may raise the defendant's failure to
61	provide reasonable access in mitigation of damages claimed against said plaintiff and in
62	support of plaintiff's action for possession. If the court finds that the tenant's or

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- 63 occupant's claims or defenses asserted under this section are without merit and not raised
- 64 in good faith, the court shall award reasonable attorney's fees to the landlord or lessor
- 65 seeking possession hereunder."