

HOUSE No. 1669

The Commonwealth of Massachusetts

PRESENTED BY:

Chris Walsh

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 passage of the accompanying:

An Act requiring the use of escrow accounts during rent disputes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>

HOUSE No. 1669

By Mr. Walsh of Framingham, a petition (accompanied by bill, House, No. 1669) of Chris Walsh and others relative to requiring the use of escrow accounts during rent disputes. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE

□ HOUSE
□ , NO. 2274 OF 2011-2012.]

The Commonwealth of Massachusetts

An Act requiring the use of escrow accounts during rent disputes.

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 appearing in the 2010
2 Official Edition, is hereby amended by striking out the second paragraph and inserting in place
3 thereof the following paragraph:-

4 “Whenever any counterclaim or claim of defense under this section is based on any
5 allegation concerning the condition of the premises or the services or equipment provided
6 therein, the tenant or occupant shall not be entitled to relief under this section unless: (1) the
7 tenant or occupant deposits with the clerk all rent due prior to final disposition of the plaintiff’s
8 action; (2) the owner or his agents, servants, or employees, or the person to whom the tenant or
9 occupant customarily paid his rent was given written notice of such conditions before the tenant
10 or occupant was in arrears in his rent; (3) the plaintiff does not show that such conditions were
11 caused by the tenant or occupant or any other person acting under his control; except that the
12 defendant shall have the burden of proving that any violation appearing solely within that portion
13 of the premises under his control and not by its nature reasonably attributable to any action or
14 failure to act of the plaintiff was not so caused; (4) the premises are not situated in a hotel or
15 motel, nor in a lodging house or rooming house wherein the occupant has maintained such
16 occupancy for less than three consecutive months; and (5) the plaintiff does not show that the
17 conditions complained of cannot be remedied without the premises being vacated; provided,
18 however, that nothing in this clause shall be construed to deprive the tenant or occupant of relief
19 under this section when the tenant otherwise applies rent pursuant to section one hundred twenty-

20 seven of chapter one hundred eleven (L) or when the premises are temporarily vacated for
21 purposes of removal or covering of paint, plaster, soil or other accessible materials containing
22 dangerous levels of lead pursuant to section one hundred and ninety-seven of chapter one
23 hundred and eleven.”

24 SECTION 2. Section 8A of Chapter 239 of the General Laws, is hereby amended by
25 striking out the fourth paragraph and inserting in place thereof the following paragraph:-

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