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CHARGING TENANTS FOR WATER

A new law enacted in 2004 allows a landlord to charge tenants for water and sewer usage. The requirements of the law are very detailed and must be followed carefully. A landlord who does not follow all requirements exactly may be unable to charge tenants for water and may even be required to refund to tenants all charges already collected.

Eligibility

To charge a tenant for water, a landlord must comply with the following requirements:

- The landlord must have installed, at the landlord's expense, submetering equipment in every dwelling unit in the building, as well as for the common areas, so that all water used in the building is measured by both the primary meter and a submeter.
- The equipment must be installed by a Massachusetts-licensed plumber and must meet the standards of accuracy and testing of the American Water Works Association or a similar accredited association.
- The submeter must measure only water that is supplied for the exclusive use of the particular dwelling unit and only to an area within the exclusive possession and control of the tenant and not measure any water usage for any portion of the common areas or for any other party or dwelling unit.
- All showerheads, faucets, and "water closets" in the dwelling unit must be low-flow water conservation devices, and all water closets must have been installed by a licensed plumber. The landlord must ensure that all water conservation devices are installed and functioning properly at the commencement of each new tenancy in the dwelling unit.
- The landlord must certify under penalties of perjury to the city or town's Sanitary Code enforcement agency that the dwelling unit is in compliance with the provisions of this law. This is done on a state-prescribed form.
- A dwelling unit becomes eligible for charging the tenant for water only upon the start of a new tenancy on or after 16 March 2005, and then only if:
 - it is a new unit being occupied for the first time; or

- ▶ the previous tenant vacated the unit voluntarily or was evicted for nonpayment of rent or for breach of lease or noncompliance with a rental agreement for the dwelling unit ; and
 - ▶ the new tenant did not relocate involuntarily from another dwelling unit in the same building or building complex;
 - ▶ however, once a unit has become eligible for charging the tenant for water, it remains eligible for all subsequent tenancies. For this reason, a landlord would be well-advised to keep and maintain accurate records of tenancies.
- The tenant must have signed a written rental agreement that clearly and conspicuously provides for separate water charges and that fully discloses in plain language the details of the water submetering and billing arrangements.

Billing

Each bill for submetered water usage must clearly set forth all charges and all other relevant information, including at least the following:

- the current and immediately preceding submeter readings and the date of each reading;
- the amount of water consumed since the last reading;
- the charge per unit of water;
- the total charge;
- the payment due date.

Charges must be billed to the tenant at least as often as the landlord is billed by the water company. Alternatively, charges may be billed monthly if the written rental agreement so provides. If the landlord bills monthly, the tenant's payment is due 15 days after the date the bill is mailed to the tenant. If the landlord bills at greater intervals, payment is due 30 days after the date the bill is mailed to the tenant. Nonpayment is considered a material violation of the written rental agreement, which the tenant may cure by paying the water charges in full prior to any court hearing to adjudicate the violation.

The landlord must determine a calculated cost per unit of water consumption by taking the total amount of any bill or invoice provided from the water company for water usage, the customer service charge, and taxes, but not including any interest for late payment, penalty fees, or other discretionary assessments or charges, for all water provided to the premises through the water company meter in that billing period, and dividing that by the total amount of water consumption for the entire premises.

The total amount charged separately to each submetered dwelling unit for any billing period cannot exceed the calculated cost per unit of water multiplied by the number of units of water delivered exclusively to that dwelling unit for the same billing period. The landlord must verify that

the total amounts of water usage measured by all submeters in the building, including those for common areas, does not exceed the total amount of water usage in the building for the same billing period as shown on the bill or invoice.

Whenever a new tenancy begins during a billing period for which the landlord has not yet been billed by the water company, the landlord must mail to the tenant, on the first day of the tenancy, the reading on the submeter for that dwelling unit as of that day. The landlord may bill the tenant only for water measured on the submeter after that reading;

Whenever a tenancy terminates during a billing period for which the landlord has not been billed by the water company, the landlord must provide to the tenant on the last day of the tenancy the reading on the submeter for that dwelling unit as of that day, together with a final bill for water usage in the dwelling unit since the last prior reading of the submeter for that dwelling unit. The final bill is immediately due and payable by the tenant. If the tenant does not pay, the landlord may deduct the amount of the bill from any security deposit, in accordance with the security deposit law, prior to returning the balance of the security deposit to the tenant.

If the landlord can't provide the final reading on the submeter and the final bill for water usage to the tenant on the last day of the tenancy, the landlord must mail the reading and final bill to the tenant no later than the day after the termination of the tenancy.

In preparing the final bill, the landlord must use the water rate charged in the last bill from the water company to the landlord. If the water company subsequently charges the landlord a lesser rate than the landlord charged the tenant in the final bill, the landlord is required to recalculate the bill "forthwith" based on the new rate and mail to the tenant the revised bill, together with a rebate for any overpayment.

Sewer Use Charges

All provisions of the law allowing landlords to charge tenants for water also apply to sewer use charges if they are calculated by means of the same primary meter or submeter.

Testing and Leaks

Upon receipt of a bill from the landlord for water usage and within the time allowed for paying it, the tenant may request to have the submeter tested by an expert in water submeters who has no financial or other relationship to the landlord, to determine whether it is accurately measuring the water being used. If the submeter is found to be measuring more water than is being used, the landlord is required to install a new submeter at the landlord's expense and to pay the cost of the test.

The testing expert will also determine the amount of water improperly measured by the submeter in both the prior and current billing periods, and the landlord is required to calculate the amount the tenant was overcharged and reduce the bill or rebate that amount.

If the submeter is found to be measuring no more water than is being used in the dwelling unit, the tenant must pay for the cost of the test, and if the tenant does not pay for the cost of the test, the landlord may add the cost to the next bill.

If there is a repair or a leak in the water supply system to a dwelling unit, the landlord must determine as accurately as possible the amount of water measured on the submeter as a result of the leak, after a review of the billing records for the dwelling unit and consultation with the licensed plumber who repairs the leak. The landlord must then determine the amount of the bill that was attributable to the leak and adjust the bill accordingly. However, if the tenant knew or should have known of the leak, the landlord is only required to reduce the bill for the excess water usage between the date the tenant notified the landlord of the leak and the date the leak was repaired.

Other Provisions

For a single-family dwelling or any dwelling unit that is connected directly to a water company meter, the landlord may charge for water without installing a submeter if the water company meter measures only water that is supplied for the exclusive use of the dwelling unit and only to an area within the exclusive possession and control of the tenant and does not measure any water for any common area or other party or dwelling unit.

A landlord cannot charge any additional servicing, administrative, establishment, meter-reading, meter-testing, billing, or submetering fee or any other fee whatsoever pertaining to water usage. The landlord also cannot shut off or refuse water service to a tenant for nonpayment of a water usage charge.

The landlord is considered the customer of the water company and is responsible for payment of the water company bills and subject to any actions of the water company for nonpayment. In the event of the nonpayment by the landlord of a bill from the water company, the water company has all normal rights and remedies against the landlord as its customer.

The landlord must allow tenants access to any water submeters that affect their units in order to ensure that the submeters are functioning properly.

A licensed plumber employed by or under contract with the landlord must be available to perform any work in any dwelling unit in the building as required to comply with this law, even if it is in a unit occupied by a tenant who cannot be charged for water as specified next;

The landlord has an affirmative obligation to maintain in good working order the water supply system to each dwelling unit and all components, including any water conservation device and submeter installed under this law and to respond in a timely manner to any request by the tenant for the repair of any defect or malfunction in the system, including any leak. The water supply system is governed by and must be maintained in accordance with the State Sanitary Code, and the tenant has all normal legal rights and remedies for overcharges or other violations.