

# Form 20: Motion to Dismiss

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## HOW TO USE THIS FORM

You can use this sample Motion to Dismiss form to ask the court to dismiss your eviction case. Courts also have blank motion forms you can use.

## HOW TO FILL OUT THIS FORM

Complete this form by following these instructions. The letters and numbers in these directions match those on the form.

### Court Heading

- a. Write the name of your county.
- b. Write the original trial date, which you will find in the *summons and complaint* you received. If you are filling out the **Discovery Form**, check the box that says "Rescheduled Trial Date" and write the date that is exactly two weeks after the original trial date. If you are not doing Discovery, check box before "Original Trial Date."
- c. Write your landlord's name as it is written on the summons and complaint.
- d. Write your name as it is written on the summons and complaint.
- e. Copy the name of the court from the summons and complaint.
- f. Fill in the Docket Number that is listed on the summons and complaint. The Docket Number is the number the court has assigned to your case. If it is unclear what the docket number for your case is, ask the court for this number when you bring your motion to court.

### Motion Section

Check off the reason or reasons (boxes 1 through 6) that a judge should dismiss your case. Bring to court any documents or receipts that will prove what you are saying.

### Notice of Hearing

Under the section in the motion you notify your landlord when your motion will be heard by the court. This will be on the date and time when your eviction was originally scheduled.

Note: If you are filing for Discovery, the original trial date will be automatically postponed for two weeks to a rescheduled trial date. The Motion to Dismiss will, however, be on the original trial date. If the judge dismisses your case after the hearing, you will not have to go back to court on the rescheduled trial date for the eviction trial.

## Certificate of Service

This is the part of the form that tells the court how and when you gave the Motion to Dismiss to the landlord or her lawyer (if a lawyer signed the summons). Circle either "delivered" or "mailed" and fill in the date you did this. Mailing is easier if you have the landlord's correct address. Be sure to send the motion by first class mail, not certified mail.

When you are done filling out the motion, sign your full name and print your address and telephone number.

## HOW TO DELIVER THE MOTION

- Make two copies of the completed motion.
- Deliver the original motion to the court. **The court must receive your motion no later than seven days before your original trial date. If you can't get the form in on time, you should still bring it to court on your trial date.**
- Deliver or mail a copy to your landlord (or her lawyer).
- Keep a copy for yourself to bring to court.

(Please type or print)

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

a. \_\_\_\_\_, ss: e. Name of Court: \_\_\_\_\_  
County f. Docket No.: \_\_\_\_\_  
Summary Process

b. \_\_\_\_\_ Trial Date

- ☐ Original Trial Date \_\_\_\_\_ (No Discovery requested)  
☐ Rescheduled Trial Date \_\_\_\_\_ (Discovery requested)

c. \_\_\_\_\_  
Plaintiff(s) - Landlord(s)

**MOTION TO DISMISS**

vs.

d. \_\_\_\_\_  
Defendant(s) - Tenant(s)

The Defendant moves in this summary process action that this case be dismissed because:

1. ☐ The landlord started this case before the Notice to Quit expired.
2. ☐ The landlord did not serve me with a Notice to Quit or did not properly terminate my tenancy.
3. ☐ I have paid rent or tried to pay the landlord and therefore the landlord cannot terminate my tenancy with a 14-day Notice to Quit.
4. ☐ I "revived" my tenancy by paying all the rent "owed" 10 days from when I received the Notice to Quit.
5. ☐ The landlord accepted my rent without reservation after service of Notice to Quit, creating a new tenancy, and, therefore, is barred from recovering possession of premises, G.L. c. 239, §1.
6. ☐ Other \_\_\_\_\_  
\_\_\_\_\_

**Notice of Hearing**

This Motion to Dismiss is scheduled for a hearing on \_\_\_\_\_.

**Certificate of Service**

I delivered or mailed (*circle which one applies*) a copy of the Motion to Dismiss to my landlord or his/her lawyer on \_\_\_\_\_ (date).

\_\_\_\_\_  
*Signature of Tenant*

\_\_\_\_\_  
*Tenant's Name (print)*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*City State Zip*

\_\_\_\_\_  
*Telephone Number*