

# STUDENT RIGHTS ADVOCATE

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## EMOTIONAL DISTRESS DAMAGES IN LANDLORD-TENANT CASES:

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Moving off campus sometime during your college career can be a quite a rite of passage. More likely than not, you are moving into your very first apartment. While this can be an exciting time, it can also be extremely difficult when confronted with a landlord who does not make repairs or otherwise take care of the apartment, as required by the law. For many students already dealing with the pressures of classes, papers, exams, jobs and more, this experience can be extremely stressful and can result in sleeplessness, anxiety, depression or other symptoms. This can be particularly true when the relationship between the landlord and tenant deteriorates and results in a potential court action. If you are experiencing any of these symptoms, you could have suffered "emotional distress" because of your landlord's actions (or inactions). But what is "emotional distress?" How do I know if I've experienced it? Also, if this occurs, how can I recover damages for emotional distress from my landlord?

Black's Law Dictionary defines emotional distress as "A highly unpleasant mental reaction (such as anguish, grief, fright, humiliation or fury) that results from another person's conduct; emotional pain and suffering."<sup>1</sup> While we all may experience these emotions as part of our daily lives, the law states that in order to prove a claim for emotional distress, it must be something more than the "usual" distress.

This means that you cannot sue for emotional distress simply because you are annoyed, aggravated or even inconvenienced by the actions of your landlord. You must experience "mental anguish," which can be manifested as: stress, anxiety, depression, sleeplessness, extreme weight loss or gain, loss of appetite, or a host of other possible symptoms or physical manifestations. Usually, if you are diagnosed with any of these conditions or if you are seeking mental health treatment, as a result of your landlord's actions, you may have suffered emotional distress. In addition, you may also be entitled to damages if your emotional distress leads to a breakdown in a relationship, loss of employment or an interference with your ability to perform a "normal life activity." This is by no means an exhaustive list of the possible symptoms or results of emotional distress.

The courts have defined two forms of emotional distress, with different elements of proof: intentional (or reckless) infliction and negligent infliction. The necessary elements for proving a claim of intentional infliction of emotional distress are:

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<sup>1</sup> Black's Law Dictionary 542 (7<sup>th</sup> Ed., 1999).

<sup>2</sup> *Agis v. Howard Johnson Co.*, 371 Mass. 140, 355 N.E. 2d 315 (1976)



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## EMOTIONAL DISTRESS DAMAGES IN LANDLORD-TENANT CASES:

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1. The actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; and
2. that the conduct was 'extreme and outrageous,' was 'beyond all possible bounds of decency' and was 'utterly intolerable in a civilized community;' and
3. that the actions of the defendant were the cause of the plaintiff's distress; and
4. that the emotional distress sustained by the plaintiff was 'severe' and of a nature that "no reasonable man could be expected to endure it."

Therefore, if you can prove the above elements, you can be entitled to an award of damages for intentional infliction of emotional distress. In addition, claims of intentional infliction of emotional distress are subject to M.G.L. ch. 93A, which means that they could potentially be doubled or tripled if the landlord's conduct was found to be willful. The threat of multiple damages can provide an incentive for landlords to settle these types of cases.

The necessary elements for negligent infliction of emotional distress<sup>3</sup> can be more difficult to prove. They are:

1. **Negligence;**
2. **Emotional Distress;**
3. **Causation;**
4. **Physical harm manifested by objective symptomatology; and**
5. **That a reasonable person would have suffered emotional distress under the circumstances of the case.**



The main difference between negligent infliction of emotional distress and intentional infliction of emotional distress is whether or not you need to prove that "physical harm," resulted from the emotional distress. In order to prove this, you would need a medical expert to testify regarding your symptoms and that you have suffered physical harm (even though there are no visible signs of injury).

However, a recent case, Homesavers Council of Greenfield Gardens v. Sanchez, 70 Mass.App.Ct. 453 (2007), has held that, in certain types of landlord-tenant cases, you do not have to prove all the above elements of intentional infliction of emotional distress in order to recover damages. The court in that case decided that when a landlord has violated M.G.L. ch 186 § 14 (or any statute which allows for the recovery of consequential damages), and causes a tenant foreseeable emotional distress as a result of such violation, then the tenant can recover damages for such distress without having to independently prove all the elements outlined above. This decision makes it easier for tenants to recover damages for a landlord's violation of an important statutory right.

Consider the following hypothetical to help understand the differences between the different types of emotional distress claims: John lives in an apartment owned by Doris. His apartment has loose steps, sporadic hot water, and the lock on his front door does not function properly. He repeatedly wrote letters to Doris and left phone messages for her to repair these conditions. After two months of messages and letters, Doris came to the home to inspect the apartment and told John that she would return with her contractor to make repairs. She never returned and continued to ignore John's requests that she repair the conditions. Later, John's apartment was broken into and some of his valuables were stolen. Also, because of the lack of consistent hot water, he was unable to bathe regularly and do dishes, causing him great embarrassment. Finally, John tripped on one of the loose steps causing him to break his leg and miss many days of school and work. Because of all these mishaps, John became extremely depressed. He was also anxious and felt extremely unsafe in his own home. He was unable to sleep and unable to go to work. He subsequently lost his job and his grades began to drop because of his emotional state.

In the above situation, the landlord knew, or should have known, about the conditions in John's apartment because of all the notices and phone messages he left for her. In addition, the landlord's inaction (not repairing the conditions) was a

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<sup>3</sup> Payton v. Abbott Labs. 386 Mass. 540, 557, 437 N.E.2d 171, 181 (1982)