

## Warranty of Habitability

### FAQS

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#### **Is My Landlord Required to Provide Me With a Safe, Sanitary Home?**

Yes, in certain ways, although the tenant also has some responsibilities.

#### **What Are the Landlord's Responsibilities?**

There are no set rules. However, generally, the landlord must provide:

- drinkable water
- heat (in cold weather)
- working sewer system
- safe, working electrical system
- working smoke detector
- a lock for your door
- a home not filled with bugs
- safe, sanitary condition of the structure of the home and outside area

This does not mean that the landlord has to pay for all these things, only that he or she must make sure they are available. For example, a tenant usually has to pay for his or her own electrical bills, unless they are specifically included in the rent amount.

#### **Should I Move Into a Home Where There Are Problems, But the Landlord Promises That He Will Fix Them?**

That's a hard question to answer. Many people do move into places with bad conditions because the rent is so cheap and the landlord promises to fix it up. In many cases, however, the landlord never does what he or she promises.

You should probably be suspicious of places that are priced way below other similar places, especially if there are lots of problems. Don't sign the lease unless you get the landlord's promises in writing, and a deadline when the repairs will be finished. Specify all the problems in writing, and exactly what the landlord promises to do.

Do not sign any repair slips or papers about work being done on your home until the work is completed. Sometimes a landlord will begin some repairs and will try to get you to sign repair slips. Do not sign until the repairs are finished and working to your satisfaction.

#### **What Can I Do If There's a Serious Problem After I Move In?**

There are five main things you may be able to do:

- Move out
- Have the problem repaired and subtract the cost from your rent
- Sue to get back part of the rent that you have paid plus other expenses

- Withhold rent until the landlord makes repairs
- Get a court order to make the landlord make the repairs

Some of these can also be done in combination. All are described in detail below.

### **Move Out**

1. If a landlord does not provide certain things for you, such as a working sewer system, heat in cold weather, or drinkable water, he may be violating what's called a "warranty of habitability". In these situations, you have the right to end your lease and move out.
2. Do not just leave. If you plan to move out, you should first write to your landlord, tell him about your problems, and ask him to fix them. (See Letter #1) Try to be detailed in your letter-- explain how the problem affects your family's home, health, cleanliness, etc. Keep a copy of your letter.
3. If he does not fix the problems within a reasonable time, go ahead and plan to move.
4. When you know when you will be moving out, write to him again, telling him that because he did not fix these problems, that he has violated the warranty of habitability, and that as a result, you are moving out. You may also want to request your security deposit back, and some back rent for the time the conditions were bad. (See Letter #2)
5. It is probably a good idea to wait until the day you are leaving to send the landlord the letter.

### **Repair and Deduct**

1. Repair and Deduct may be a good solution for you if:
  - you don't want to move;
  - your problem is something specific that a repair-person can fix; and
  - the cost of the repairs will be less than what you pay for your monthly rent.
2. Before you can get the problem repaired, your first step is to write to your landlord, tell him about your problem(s), and ask him to fix it. (See Letter #1) Do not skip this step -- you must tell him in writing, even if you've already told him before about the problem.
3. Be detailed about the problem-- explain how it affects your family's home, health, safety, cleanliness, etc. If you can, also take pictures of the problem.
4. Always keep copies of all your letters.

5. Next, give your landlord a reasonable time to do the repairs.
6. If he doesn't fix it, you need to write to him again. Tell him that because he has not fixed your problem, that you plan to get the problem fixed yourself, and to subtract the cost from your rent, if he does not repair it immediately. (See Letter #3)
7. If the landlord doesn't do anything within a day or two, call around and get about three written estimates of how much the repairs will cost. Choose the most reasonably priced company. Remember. You cannot spend more than your monthly rent.
8. Get the repairs done. Get a receipt. Then, when it is time to pay rent, write to your landlord again, telling him that you got the repairs done, and how much money you spent. Give him a copy of your receipt, and copies of the other estimates you had gotten, so he can see you spent a fair amount. Subtract the amount you paid for repairs from your usual rent amount, and only pay your landlord the difference. (See Letter #4)
9. Important: only spend the money on the repairs, not on anything else. The next month, you must go back to paying your usual rent amount.
10. Before you get the repairs done, make sure that other people have seen the problem and its effects, so that if you ever need to go to court, you'll have proof that the problem was serious. In addition, if you can get the repair-people to describe the problems in their written estimates or receipts, that could be helpful.

### **Lawsuit for Back Rent and Other Expenses**

1. Suing for back rent and other expenses may be a good solution for you if you've already spent your own money to get things repaired, or if you're moving out and think you deserve some back rent because the home had serious problems. You can sue whether you are staying in the home or moving out.
2. Before bringing this kind of lawsuit, you should make sure that you've notified the landlord of the problems (in writing), and given him a reasonable chance to fix them, but that he hasn't.
3. This solution means going to the District Justice and filling out lawsuit papers. You can get more information on how to do this from Legal Services.

4. There are many things you can ask for in this lawsuit. For example, you can request:
  - Reimbursement for any money you've spent to repair the problem, or to repair damages to your property, or to make your place more livable under the circumstances;
  - Refund for part or all of your back rent paid, for the time period when the problem made your home uninhabitable (how much depends on how bad it was or is);
  - Reimbursement for your extra utility costs, if your utility bills were unusually high because of the problem;
  - Reimbursement for any money you spent if you ever had to pay for temporary housing because of the bad conditions;
  - Reimbursement if you suffered some emotional or physical harm because of the bad conditions caused by the landlord.
5. Bring to court any photographs which show the bad conditions. It would also be helpful for other people who have seen the bad conditions to come to your hearing and testify for you. If your local Housing Code Enforcement Office knows how bad the problems are, get them to testify at the hearing or make sure to bring their reports with you.
6. What you need to do at the hearing is prove to the court that:
  - these problems seriously interfered with your health, safety, cleanliness, etc.;
  - these problems were your landlord's fault or responsibility; and
  - the landlord didn't fix the problems within a reasonable time after you told him about them.
7. Bring to court all receipts for your expenses, back rent, utility bills, and anything else you are asking for reimbursement.

### **Withholding Rent**

1. Withholding rent may be appropriate for you only if:
  - your repairs would cost more than one month of your rent; and
  - your problems are so serious that your home is uninhabitable.

But be careful, because it is not often the most appropriate choice, and many courts do not look favorably on it. In addition, while you are withholding rent you should be looking for another place to live.

2. Examples of what would not be appropriate problems for withholding rent are torn carpeting, leaky faucets, toilets that won't stop running, cracked walls, or a normal amount of bugs. Examples of what might be appropriate are no hot water, no heat in the winter, dangerous conditions in the structure of your home, a seriously malfunctioning sewage system, or an extreme amount of rodent or other infestation.
3. The safest way to withhold rent to try to get the landlord to improve conditions is to put the rent money into a separate bank account from your other funds. This way, if your landlord tries to evict you or sue you for the money, you can prove to the court that you were not using the money for another purpose.
4. The first step in this process would, again, be to write to your landlord, tell him about your problem(s), and ask him to fix it. (See Letter #1) Do not skip this step-- you must tell him in writing, even if you've already told him before about the problem.
5. Be detailed about the problem-- explain how seriously it affects your family's home, life, health, safety, cleanliness, etc. If you can, also take pictures of the problem.
6. Always keep copies of all your letters.
7. Next, give your landlord a reasonable time to do the repairs.
8. If he doesn't fix the problem, you need to write to him again. Tell him that because he has not fixed your problem, your home is uninhabitable, and therefore, you intend to withhold your rent. Tell him that you will begin paying rent again after he fulfills his obligations as a landlord. (See Letter #5)
9. Do not spend this money. (To learn how to spend your money to make repairs, see "Repair and Deduct" above). Put the money into a separate account. You can ask your local bank how to do this. This way, if your landlord takes you to court and wins a judgment against you, you will have money to pay it back.

### **Court Order - Specific Performance**

1. "Specific performance," in these situations, means getting a court to order that a landlord make necessary repairs to an apartment. This sounds like a great solution, but unfortunately it's very difficult to get a court to stand over a landlord's shoulder and make sure he does something he may not want to do. As a result, courts will most often choose not to do this.
2. Specific performance is something that must be ordered by a Court, not the District Justice. As a result, you should contact a lawyer if you have questions about whether this is possible in your case.

You should be aware that none of these options are perfect or easy winners. Any of them could cause your landlord to try to evict you. However, if your landlord is truly not providing you with safe, sanitary conditions, he cannot evict you solely to get back at you. But, if you do get eviction papers in the mail, call a lawyer for further assistance.

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*The law often changes. Each case is different.  
This pamphlet is meant to give you general information and not to give you specific legal advice.*