



REPAIR ISSUES?

KNOW YOUR RIGHTS

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****The landlord has an obligation to keep your apartment in good repair****

“Under the warranty of habitability, tenants have the right to a livable, safe and sanitary apartment. This is a right that is implied in every written or oral residential lease. Any lease provision that waives this right is contrary to public policy and is therefore void... Any uninhabitable condition caused by the tenant or persons under the tenant’s direction or control does not constitute a breach of the warranty of habitability. In such a case, it is the responsibility of the tenant to remedy the condition.

Real Property Law §235-b.”

Some common repair issues include loose or exposed wires, breaks or cracks in walls/ceilings/floors, leaky pipes or no hot water, public areas with insufficient lighting, rats/roaches/insect infestations, or leaks throughout the apartment.

If you find that any of these problems, or others like these exist in your apartment, there is a specific set of steps you should take to address the issue. Do the following to create an "apartment repair diary":

1. **Inform** your landlord about the issue immediately. Whenever possible, do so in writing by text, email, or by writing a letter. If unable to notify the landlord in writing at the time, tenants should follow up with a professional and calm letter citing the verbal conversation and send the letter to the landlord. If the tenant is worried that it will not be received, consider sending the letter certified mail or with the rent. Tenants should then keep a copy of the letter in the "diary".
2. **Wait** a reasonable amount of time to give the landlord an opportunity to take action. The amount of time tenants should wait will vary, depending on the severity of the nonrepair issue. Use your best judgment and when possible, be patient, calm, and professional.
3. **Follow up** with the landlord if no action is taken. Try to do so calmly and professionally and when possible, do so in writing. One useful tip is to send the follow up letter with the month's rent if it happens to be coming due, as a cashed rent check that was sent with the letter will illustrate the letter was received by the landlord. Put all documentation in the diary.
4. **Involve** your local code enforcement if after your second follow up request there is still no action taken.

CODE ENFORCEMENT

If you have completed all the steps above and continue to have ongoing nonrepair issues in your apartment, it may be in your best interest to involve your local code enforcement. In the City of Albany, they can be reached at (518)434-5995.

1. **Call** code enforcement & request a "complaint inspection", be prepared to answer any questions the clerk may have.
2. **Schedule** the inspection and ensure you are available and able to be home to let the inspector inside.
3. **Show** the inspector the nonrepair issues so that they can document them in a "notice of violation" (a list of the nonrepair issues that code enforcement will send to the landlord as a formal citation). The inspector may document other issues as part of their job that you never noticed, or they may advise you that an issue you feel is problematic is not actually a code violation. Engage with the inspector respectfully and professionally.
4. **Follow up** with code enforcement to get a copy of the inspector's report. Put the report in your apartment repair diary. The report will have a "compliance date" usually located towards the top right-hand side of the form. (Hopefully this intervention will result in action being taken by your landlord)
5. **Check-in** with code enforcement around the "compliance date" if your landlord hasn't taken any action. You will want to request a follow up inspection. Code enforcement may move forward with "prosecution" where they take your landlord to court for failing to make repairs. The landlord will be penalized/punished by the city for not fixing violations.

****SEE BACK****

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HOLDING BACK RENT?

*If tenants have completed all the steps on the front of this handout and continue to deal with repair issues, they may feel compelled to **hold** back their rent payment as leverage. Tenants should speak to an attorney before making that decision.*

****UNITED TENANTS OF ALBANY (UTA) RECOMMENDS TENANTS USE EXTREME CAUTION IF MAKING THE DECISION TO HOLD BACK RENT. UTA REMINDS TENANTS THAT ANY RENT THEY ELECT TO HOLD SHOULD NOT BE SPENT ON OTHER THINGS. MISMANAGING RENT MONEY HELD TO LEVERAGE REPAIRS CAN RESULT IN A HOUSING EMERGENCY THAT CAN ESCALATE TO EVICTION. UTA STRONGLY RECOMMENDS TENANTS GET LEGAL ADVICE BEFORE MAKING THE DECISION TO HOLD BACK RENT****

Tenants who elect to hold back rent should generally be aware of the following:

1. The landlord retains the right to sue for nonpayment of rent that the tenant withholds. This initiates a housing court process (see Eviction - Court Process handout for more information)
2. The tenant should appear in court for that first appearance and bring all the documentation from the "apartment repair diary" as well as the rent money that was held back.
3. The tenant should inform the judge that the rent was being withheld due to nonrepair issues. The judge will give landlord and tenant an opportunity to discuss the issues together. There may be an opportunity to reach an agreement where a reasonable deduction of rent is granted (known as an "abatement" of rent) and the payment of the reduced amount will occur when the repairs are complete. This is a great way to use the court process to assert tenants' rights.
4. If there is no agreement, the tenant should ask the court for an "abatement hearing" and request "injunctive relief". This "abatement hearing" gives the tenant an opportunity to seek a court ordered reduction in rent by presenting the "apartment repair diary" and any photographs or testimony related to the nonrepair issues that illustrate reduced use of the apartment, making the space worth less rent money. This request for "injunctive relief" could result in the court ordering the landlord to make repairs. Sometimes the court has the power to do these things. Both these requests will likely be decided on a separate day, at **trial**.
5. Remember that as early as that first appearance, or later at the "abatement hearing"/trial, rent money may be ordered by the court to be paid to the landlord. If it isn't paid, that could result in eviction. Until the judge hears the case in full and issues an order about whether the landlord is entitled to the rent money or not, the tenant should not spend the money on other things.

Special Circumstances to Note:

DEDUCTIONS: In extenuating circumstances, tenants may make necessary repairs and deduct REASONABLE costs from the rent. For example, when a landlord has been notified that an entry door lock is broken and willfully neglects to repair it, the tenant may be within their rights to hire a locksmith and deduct the cost from the rent. Tenants should keep receipts for such repairs and copies of all communications with the landlord about the repairs. Having a paper-trail is absolutely necessary in these cases to protect oneself against the threat of eviction. The landlord will still have the right to sue the tenant for nonpayment of the amount deducted from the rent, and as such the tenant will need to have sufficient proof to defend themselves against that potential action to illustrate to the court their reasoning & decision making process.

UNINHABITABLE: If an apartment becomes entirely uninhabitable due to fire, flood or other extenuating damage not caused by the tenant, and the lease does not expressly provide otherwise, the tenant may vacate the apartment and cancel the lease. The tenant will not be liable for subsequent rental payments and the landlord shall be responsible to refund any rent paid in advance as well as any rent security held (RPL, section 227)