

LEGAL SERVICES *of* **NORTHERN CALIFORNIA**

How to Get Your Landlord to Make Needed Repairs



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LEGAL DISCLAIMER: This packet is intended to provide accurate and general information regarding your legal rights pertaining to the warranty of habitability in California. Because laws and procedures are subject to frequent change and differing interpretations, Legal Services of Northern California cannot guarantee the information in this packet is current nor be responsible for any use to which it is put. This is not legal advice. Do not rely on this information without consulting an attorney or appropriate agency about your rights in your particular situation.

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I. Right to a Habitable Rental Unit

All landlords are legally required to make the premises habitable when they originally rent a unit, and to maintain it in that condition throughout the tenancy. This legal obligation is called the “implied warranty of habitability.” The word “implied” means that by offering the unit as a residential rental, the landlord is promising you a habitable place to live – even if the landlord does not realize it.

Importantly, you have a right to a habitable rental even if you’ve willingly moved into a place that is obviously below habitability standards, or even if the lease or rental agreement you signed states that the premises are “as is” or that the landlord doesn’t have to provide a habitable unit.

II. Serious Repairs are Treated Differently from Minor Repairs

What you do when your rental unit needs repairs depends on how serious the repairs needed are. Serious repairs often require emergency action while minor repairs do not have to be done immediately. This distinction is necessary because serious repairs and minor repairs have different legal options.

You should always cooperate with your landlord when repairs are done in a reasonable way. In emergency situations, the landlord does not have to give you notice to enter the rental to perform repairs. However, when the repairs are minor, the landlord is required to have

repairs fixed during normal business hours and give you 24 hours written notice before entering the rental (unless you both agree otherwise.)¹

A. Serious Repairs

Serious repairs require emergency action and the court has the authority to order the landlord to make repairs.² Serious repairs are those that need to be done right away or it would be unsafe or unhealthy for you to continue living in the rental unit.

Under California law,³ your landlord has a legal duty to provide:

- (1) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors;
- (2) Plumbing or gas facilities maintained in good working order;
- (3) A water supply that produces hot and cold running water;
- (4) Heating facilities maintained in good working order;
- (5) Electrical lighting and wiring maintained in good working order;
- (6) Building and grounds free from trash, rats, mice, roaches and all other vermin;
- (7) Enough garbage cans and trash barrels, that are kept clean and in good repair;

¹ California Civil Code § 1954

² California Code of Civil Procedure § 1174.2

³ California Civil Code § 1941.1 & 1941.3

(8) Floors, stairways, and railings maintained in good repair; and

(9) Working door and window locks.

B. Minor Repairs

Minor repairs are ones that do not have to be done immediately because they do not affect your health or safety. A leaking faucet, a cracked window pane that is still in place, or a door bell that doesn't work are all examples of repairs that are minor and do not require immediate repair. However, your landlord should still fix these things within a reasonable time.

III. What Should You do When Serious or Major Repairs Need to be Done?

Knowing that you have a legal right to a habitable rental unit and getting it are very different things - a lot depends on the attitude of your landlord. However, when the needed repair is serious there are certain options available to you.

A. Give an Emergency Notice to Your Landlord

Before doing anything else, you **MUST** give your landlord a written notice of the needed repairs. While there is no requirement you follow any particular form, you need to make sure at the very least the notice

- (1) Is in writing;
- (2) Explains what the problem is;
- (3) Has the date on it;
- (4) Is signed by you.

Be sure to keep a copy of your written notice to your landlord and put in a safe place as you may need it later on.

Under certain emergency conditions you may not have time to give your landlord written notice, in which case verbally informing them of the problem is probably okay. For example, if a water pipe broke, waiting to give written notice to your landlord could cause more damage. However, if you do need inform your landlord verbally, make sure you have a witness to your conversation, make a note of the time and date you spoke with your landlord and what you said. Once you have informed your landlord verbally, be sure to follow up with a written notice that mentions the time and date when you first spoke with your landlord.

B. What to do When Your Landlord Fails or Refuses to Fix Serious Repairs

When your landlord fails to repair a serious problem **after** you have given them written notice **and** a reasonable opportunity to repair the problem, you may have a right to exercise one or more of the following options: file a report with a government agency, move, repair and deduct, withhold rent, and/or sue your landlord.

It's important to note that we do not recommend you withhold your rent without being aware of the possible ramifications. This packet will explain in more detail later.

Additionally, make sure you document how bad the problem is by taking pictures, keeping a written record, and asking others who do not live in the home to view the problem and write a description.

1) Report the Problem to a Government Agency

If your landlord fails to make serious repairs, you should consider making a report to a government agency such as your local Code Enforcement Office, Building Inspector, or Health Department. Make a complaint in writing and request an inspection.

Please note that often times these agencies are understaffed and underfunded, especially in rural areas. Be polite, but be persistent if they initially refuse to do an inspection. As a tenant, if there are serious repairs needed that are not being made, you are entitled to have an inspection done.

If an inspector finds serious issues they may issue a notice to the landlord to repair the problems immediately. If an inspector finds that the rental unit is unsafe for human occupancy, they may "red tag" or "condemn" the building. Essentially, this means that you would be required to move out of the unit immediately. However, if this did happen you would be entitled to relocation benefits.⁴ It also means the landlord would be unable to rent the unit again until all the repairs required by the agency have been completed.

2) Move

When your landlord fails to repair a serious problem after you have given them written notice and a chance to repair to the problem, you may terminate your lease or rental agreement by moving.⁵ You should give your landlord notice that you're moving and breaking the lease. However, you should wait until you have secured other living arrangements. Note that you are not required to give your landlord a 30

day notice, only one that is reasonable once you have alternative living arrangements.

If you move out because of habitability problems, you may want to consider suing your landlord in small claims court to compensate you for your losses. You may be able to recover moving expenses and other associated costs.

3) Repair and Deduct

As a tenant you may repair the problem yourself, or pay a professional, and deduct the cost from your rent ("repair and deduct"). Note this may only be done after you have given your landlord written notice of the problem and reasonable time to repair to the problem. Additionally, the following limitations to this method apply:

- (1) You may only use this method for serious or substandard conditions;
- (2) You may not repair and deduct if you have prevented your landlord from fixing the problem or where you caused the problem;
- (3) You may only deduct up to one month's rent (practically, this means that serious problems that are big and expensive cannot be solved using this method);
- (4) You may only use this method twice in any 12 month period;

⁴ Health & Safety Code §§ 17975-17975.10

⁵ California Civil Code § 1942(a)

- (5) You must wait a reasonable time after asking your landlord to fix the problem. Reasonable time is dependent on the problem. For an emergency, you should request that the repair be done within 24 hours;
- (6) You must keep all receipts and records of all the time and money you spend on materials and/or labor;
- (7) When your next month's rent is due you **MUST** send a copy of all invoices, receipts, work orders, etc., along with a letter explaining why the rent is reduced.

The repair and deduct remedy is often the best choice where applicable because it is safer, quicker, and you are less likely to end up in court. Additionally, California law specifically states your landlord cannot retaliate against you because you have used this method.⁶

4) Rent Withholding

If you conclude that your landlord has not met the responsibility of keeping your unit livable, you may be able to withhold your rent until repairs are made. However, we advise you to explore other remedies first. Withholding your rent not only puts your tenancy at risk, but you could also face an eviction lawsuit. If you lose an eviction lawsuit it will negatively impact your credit report and make it much more difficult to move. If you can address

the problems without risking an eviction, you may be better off in the long term.

If you do decide to withhold your rent until repairs you should withhold rent by following the steps below. Please note these steps will **NOT GUARANTEE** you will win an eviction lawsuit, but following them will put you in a better position to defend yourself should you end up in court.

Thus, if you are you going to withhold your rent you **MUST**:

- (1) Give the landlord written notice of the serious repair issue and a reasonable time in which to complete the repair;
- (2) If, after you have given written notice, the landlord fails to repair the issue, you **MUST** notify your landlord in writing of your intent to withhold rent;
- (3) Set your rent money aside. **DO NOT SPEND IT**. Even if you withhold rent for multiple months, you **MUST** set that money aside each month and continue to save it all;
- (4) Lastly, collect as much evidence as possible to help prove that the problem truly is serious. Pictures, videos, reports, etc.

Many tenants make the unfortunate mistake of thinking that if they withhold their rent correctly, they won't have to pay anything for the months they endured an unfit rental. However, that is **NOT** the case. You will still owe the landlord the reasonable rental value of the unit in its

⁶ California Civil Code §§ 1942; 1942.5

unfit state, during the time you withheld rent.

5) Small Claims Court

In some cases, it makes sense to be the first to act and sue your landlord in small claims. It makes it easier for a Judge to believe your story if you have paid your rent and are asking the court for help, rather than fighting an eviction. Small claims court does not allow attorneys, so it will just be you telling your story and your landlord telling their story to the Judge.

In a small claims lawsuit, you ask the judge to rule that your rental is not worth the rent you have paid for it because of the condition it is in. Essentially you are requesting the landlord to pay the difference between the monthly rent paid and the real value of the unit, multiplied by the number of months that you've lived with the substandard conditions. Essentially, you are asking for a retroactive rent decrease or abatement.

IV. What Should You do When Minor Repairs Need to be Done?

Most repairs that do not fall into the serious repair category are considered minor repairs. While most minor repairs are the landlord's responsibility, not every minor repair falls on the landlord to repair. If you or one of your guests caused the problem, accidentally or intentionally, you are responsible for repairing the problem or paying your landlord for the cost to repair it.

Be sure to notify your landlord in writing of the repairs needed. Unfortunately, if your landlord refuses to attend to minor repairs you don't have

much legal recourse as you are **NOT** entitled to move, repair and deduct, or withhold your rent without approval from your landlord.

V. Special Habitability Issues

The law is evolving every day when it comes to habitability issues. Thus, there are things to note when it comes to Air Conditioning, Bed Bugs, and Mold.

A. Air Conditioning

In this region, temperatures begin to rise in the summer and often reach above 100 degrees. In this type of climate, a broken Air Conditioner is often a very real and problematic issue. However, it's important to note that in most cases, lack of Air Conditioning is not considered a serious habitability problem.

If you had a working Air Conditioner when you moved in, and through no fault of your own, it has stopped working then you are entitled to have it repaired. However, if a landlord fails to do so, we do not advise that you withhold your rent but seek another remedy already mentioned.

If you have a verified medical issue or there are special circumstances that would make Air Conditioning necessary, please contact our office so that we may advise you properly.

B. Bed Bugs

Bed bug infestations are on the rise nationwide. Research shows that bed bugs are not attracted to unclean or unsanitary living conditions. Rather, bed bugs tend to amass in apartments, shelters, hotels, nursing homes, hospitals, buses, trains and other areas where people frequently sleep.

Close quarter living environments, such as apartments, form ideal conditions for the spread of bed bugs. Further, bed bugs can spread by traveling through walls and electrical outlets. They can also “hitchhike” meaning, bed bugs can be transported from literally anyplace by anyone who has been in contact with them no matter how brief. Essentially, it is virtually impossible to identify the source of the infestation.

Because of the difficulty in identifying the cause of the infestation, it can be difficult to determine whether the landlord or tenant is responsible for treatment. However, unless it can be determined definitively that the tenant is at a fault, bed bugs should be treated in the same manner as any other health and safety issue and the landlord should bear the burden of the cost of treatment. Bed bug laws currently are as follows:

- As of January 1, 2018 landlords are required to notify all new and existing tenants in writing of the proper procedure for reporting suspected bed bug infestations to the landlord;⁷
- Landlords are prohibited from retaliating against a tenant who gives notice of a suspected bed bug infestation;⁸
- Bed bugs are considered a health and safety issue and their presence makes a unit substandard;⁹

- Landlords are required to remedy the situation within a reasonable time once they are aware of it;¹⁰
- Landlords are required to conduct follow up treatments of infected units and those surrounding them until the bed bugs are eliminated. Additionally, a landlord is required to give written notice of entrance;¹¹
- Tenants **MUST** cooperate with all extermination procedures;¹²
- Landlords must notify tenants of the pest control operator’s findings within two days of receiving the report.

1) Subsidized Housing

If you live in subsidized housing and are experiencing a bed bug infestation look to your lease to discover how bed bug infestations are handled. If you are unable to locate anything, call our office and we will advise you.

C. Mold

Certain types of mold can have serious and lasting effects on your health. If you have visible mold you should call your local Code Enforcement or Health Department and request an inspection.¹³ If they determine that the presence of mold is bad enough they may require you to vacate the unit. If this happens you are entitled to relocation benefits.

It’s important to note that neither Code Enforcement nor the Health Department will test the mold to determine if it is toxic.

⁷ California Civil Code § 1954.603

⁸ California Civil Code §142.5

⁹ Health & Safety Code § 17920.3

¹⁰ California Civil Code § 1954.602

¹¹ California Civil Code § 1954.604

¹² California Civil Code § 1954.604

¹³ Health & Safety Code § 17920.3

Thus, if you have a health problem you think may be a result of or aggravated by the presence of mold you should speak to a private attorney with experience in toxic mold litigation.

VI. Low Income Housing

If you live in low income housing you are still entitled to a fit place to live and have repairs made. However, there may be additional steps you will need to take.

A. Housing Authority

Most Housing Authorities have a policy to withhold the rent subsidy when a landlord fails to maintain the unit properly. Therefore, if you participate in the Housing Choice Voucher program (also known as Section 8), live in Section 8 Project based housing, Public Housing, or a property owned by the Housing Authority, you should contact the Housing Authority and let them know that your landlord or property manager is not making needed repairs.

Under California law, when a Housing Authority withholds their payment of a subsidy to a landlord for failing to maintain the unit, a landlord is not allowed to evict the tenant or demand the tenant pay the Housing Authority's portion.¹⁴

Additionally, you should send the Housing Authority a copy of any written notice you give the landlord requesting repairs.

B. Other Low Income Housing

Most low income housing units in California receive funding from either the State or Federal government. Because of this, there may be a grievance procedure you need to

follow when repairs are not being made. If you live in low income housing you should consult your lease to see what options are available to you before doing anything else.

VII. Landlord Retaliation

One very real fear that many tenants face is that a landlord may try to evict them if they complain. It's important to know that the law prohibits your landlord from retaliating in this way. However, in practice a landlord may be able to overcome this by asserting a different reason. Thus, it is very important that you keep records and put everything in writing to your landlord.

If you are served with a notice to pay or quit, a notice to terminate your tenancy, or an Unlawful Detainer ("Eviction"), contact our office as soon as possible so we are able advise you on how you should respond. It is important that you contact us as soon as possible.

¹⁴ *Scott v. Kaiuum* (2017) 8 Cal.App.5th Supp. 1

_____, 20____
(Date)

(Landlord's name)

(Landlord's address)

Landlord's address)

Dear _____,
(Landlord's name)

I live at _____.
(Your address)

Under California law (Civil Code Section 1941.1), it is the landlord's duty to keep any residential rental units livable. Unfortunately, my home has the following problems which make it unsafe and unhealthy to live there:

_____ The roof and/or walls leak.

_____ The door(s) are broken (Specify which one(s) _____)

_____ The window(s) are broken (Specify which one(s) _____)

_____ The gas is inadequate (describe _____)

_____ The plumbing is inadequate (describe _____)

_____ The rental unit lacks hot water

_____ The rental unit lacks cold water

_____ The rental unit lacks a good sewage system

_____ There is no heat

_____ The electrical lighting and wiring is inadequate (describe _____)

_____ The rental unit is not in sanitary condition (describe _____)

_____ There are no garbage cans

_____ The floors, stairs or railings are unsafe (describe _____)

_____ There are other problems with my rental unit (describe _____)

I did not cause any of these problems. I am requesting that you repair each of the problems listed above as soon as possible. I would be more than happy to cooperate with you in getting these repairs done. Please call me to tell me when you intend to do these repairs, so that I can arrange to be present. The best times for me are:

1. _____

2. _____

Sincerely,

(Your signature)

(Print your name)

_____ (Date)

_____ (Landlord's name)

_____ (Landlord's address)

Dear _____:

I am formally writing to address the habitability issues with my rental unit. The problems are as follows:

1.

2.

3.

I have verbally requested that these repairs be made on the following dates:

_____, _____, _____.

Your failure to make these repairs violates Civil Code Section 1941.1. Due to your failure to make said repairs, I intend to withhold my rent payment and put it into a savings account until such time as these repairs are completed. Additionally, Civil Code Section 1942.5(a) states that you may not take any action against a tenant, including raising their rent or evicting them within 180 days of the tenant's exercise of their rights.

Please give me at least 24 hours notice, as is required by Civil Code Section 1954, before entering my rental to make the repairs.

Sincerely,

(Your signature)

(Print your name)

(Address)

(Phone)

