

# When a Landlord Won't Make Repairs

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Tenants often have problems trying to get their landlords to make repairs. This article provides general information about how you can try to get the repairs done. It also shows how you can protect yourself in case you have to go to court.

## The Law

New York has a law called the "Warranty of Habitability" (Real Property Law 235-b). "Warranty" means promise. "Habitable" means that the rental unit is a safe and decent place to live. Any landlord who rents you a place to live must keep it in safe and decent condition, and must do needed repairs. This is true even if you do not have a written lease.

You cannot give up this right. Even if you signed a lease that says you did, the courts will not enforce that agreement.

## Notify the Landlord

When you move in, be sure to get the landlord's name, address, and phone number. Find out who you should contact for repairs.

If you sign a lease after June 13, 2019, the landlord is required to let you inspect the apartment before you move in. If you ask for an inspection, the landlord is required to make a written agreement with you about the condition of the property. The agreement should include a list of any existing defects or damages. If the landlord does not repair the damages, this agreement will help you prove that the damage was there before you moved in.

If you notice a problem with the apartment, tell the landlord as soon as possible. Ask when you can expect the work to be done. Always put all requests for repairs in writing, even if you spoke to the landlord by phone or in person. Be sure to put your name, address, and date on the letter. Be sure to keep a copy of your letter.

Don't be afraid to send several letters to your landlord. Make sure you always keep a copy. Even if the repairs aren't done, you will have proof that the landlord knew about the problem.

## **Call the Inspectors**

If your landlord doesn't fix the problem, the next step is to call the housing or building inspector. This person is sometimes called the code enforcement officer. Check with your city, village, or town clerk or the county health department to see who can do an inspection.

**NOTE: Many tenants do not want to call the inspectors. They are afraid that their landlord will get mad or try to evict them. It is illegal for the landlord to get back at you if you complain about poor conditions. You should know, however, that it may be hard to convince a judge that the eviction is because your landlord is trying to get back at you.**

Set up a time and date to meet the inspector. Be home when the inspector comes so you can point out the problems. If the inspector finds violations of the housing code, ask the inspector to give you a copy of their report. Hopefully, the code officer will order the landlord to fix any violations within 30 days.

Some landlords will obey the inspector's orders. Others will ignore them. Even if you don't think that your landlord will do the repairs, get an inspection done anyway. It is the best proof of the problems that need to be fixed.

Please note that if your apartment has serious problems, the code enforcement officer may condemn your residence, which is also called "posting" or "placarding." This means that you will be ordered to leave the property. This should only happen if there is an immediate health or safety risk in the home. In most cases, the code officer should get the landlord to make any needed repairs instead of condemning it. If the home is condemned, you have important rights, including a hearing to

challenge the code officer's decision. You should call a lawyer right away.

## **Repair and Deduct**

If the repair you need is something simple, you may want to do it yourself. You can also pay someone else to do it. You pay for the work, and then deduct the cost from the next month's rent payment. If you do this, be sure to:

1. Write to the landlord again, telling him that if the work isn't done, you plan to do it and deduct the cost. Keep a copy of this letter.
2. Get receipts for all parts and/or labor.
3. The costs of all repairs must be reasonable.
4. When you pay the next month's rent, include a letter that says what work you did, why, and how much it cost - which is the amount you will deduct. Send copies of the receipts; keep the originals. If the landlord tries to evict you for not paying all the rent, you will have good records of what you did, and why.

## **Rent Withholding**

If there are very serious problems that affect health and safety, you may want to withhold the rent. This means that you do not pay the landlord rent. If possible, talk to a lawyer before you do this. The landlord will probably try to evict you for non-payment of rent. You want to protect yourself as much as possible.

Here are some steps you may want to take when withholding rent for repairs:

- Send a letter to the landlord saying that you will withhold some rent money until the repairs are done. Keep a copy of the letter.

- Get proof of the problems, and the landlord's failure to fix them. Here are some ideas:
  - Copies of earlier letters to the landlord
  - Reports or orders from the housing inspectors
  - Photos of the problems
  - Witnesses who have seen the problems
- **PUT THE RENT MONEY ASIDE.** Rent withholding means just that: holding the rent, not spending it. If you can, put the rent money in the bank or a lawyer's trust account. You may lose the case if the case goes to court and you do not have the money, even though there are some code violations. If you get public assistance and your rent is on a voucher , you need to ask your worker to take the rent off of the voucher before you can withhold it.

The problems cannot be caused by you, your family, or your guests if you want to withhold rent.

## **Going to Court**

Some landlords will do the repairs if you withhold rent. But many others will just start an eviction proceeding, saying that you didn't pay rent.

If you cannot get a lawyer to go to court with you, you will need to tell the judge why you didn't pay the rent. You should explain that you didn't pay because of poor conditions in your home. You should say that you have proof of the problems, and that you have the rent money put aside. You should ask the judge to have a hearing so that the court can hear all the evidence.

When you go to court, you can also ask the judge to postpone your case. The judge is required to postpone your case for at least 14 days. You can use this time to get

copies of records, talk with witnesses, and talk with a lawyer.

The judge should hold a hearing and listen to the evidence. Under the “Warranty of Habitability” law, you only need to pay as much rent as the place is worth. The judge decides if the landlord failed to keep your house or apartment in good shape. The judge also decides how much rent the landlord has the right to charge you. You must then pay whatever rent the judge says you owe. The rest of the rent money goes back to you.

If the hearing is not held right away, the judge may tell you to deposit the rent money with the court.

If the Court finds that you owe any rent money after a nonpayment hearing, it may issue a warrant of eviction. If the warrant was issued in a nonpayment proceeding, you will have at least fourteen days before you can be removed from the home. You have the right to pay any rent the court found due at any time before you are removed. If you pay or offer to pay the full rent, the court must cancel the warrant.

If the Court finds that you do not owe any money after a nonpayment proceeding, you should not be evicted. If the court issues a warrant anyway, you should call a lawyer right away.

### **Department of Social Services (DSS) Withholding**

DSS can also help you get repairs done. DSS can hold back the rent share from your public assistance grant if it learns from the code office that there are serious problems at your apartment. By law, the landlord cannot evict you because of this.

If the DSS office is holding back their share, you can hold back your share, too. You must hold that money, and not spend it. Example: the rent is \$250. DSS pays \$200; you pay \$50. You can withhold the \$50.

If the entire rent is on voucher, you may get a bigger check while DSS is withholding. Example: DSS pays the landlord the full rent of \$250. When they hold back their share, they may only hold back \$200. The extra \$50 will be sent to you. As before, hold the extra money. Don't spend it.

## **Talk to a lawyer about what to do with the money you are holding back.**

In some cases, this law works very well. Both landlords and judges seem to take DSS's withholding more seriously than when tenants withhold all the rent on their own. However, it can take the DSS office 2-3 months to withhold the rent after they first learn that there are serious problems. Also, if the landlord fixes the problems within 3 months, DSS may pay the landlord all of the past rent. If the tenant had withheld rent under the Warranty of Habitability law, some of this money might have gone to the tenant instead of the landlord. It can be hard to decide which law works best in your case. Try to talk to a lawyer about it.

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**Last reviewed:** November 22, 2021

Last updated on March 25, 2022.

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