

When a Landlord Won't Make Repairs

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What constitutes a breach of the Warranty of Habitability?

New York State has a law called the “Warranty of Habitability,” which applies to every residential lease. See Real Property Law (RPL) § 235-b. “Warranty” in this context means “promise,” and “habitable” means that the rental unit is a safe and decent place to live. Under this law, residential tenants (as opposed to commercial tenants/businesses) are entitled to housing that is fit for human habitation and free from conditions that are dangerous or detrimental to their life, health, or safety.

If something important in the apartment breaks or an unsafe or unhealthy condition arises, the landlord is generally required to make the necessary repairs to restore the rental unit to habitable condition.

The Warranty of Habitability covers conditions within a rental and common areas. For instance, if dangerous conditions exist in a hallway, the landlord has a duty to fix them.

Landlords are not obligated to fix or repair any damage directly caused by the tenants themselves. Therefore, if you damage something in your apartment, your landlord will likely not be required to fix it.

What are some common problems that might constitute a breach of the Warranty?

Conditions that breach the Warranty of Habitability can vary and are determined by a court. The warranty has been interpreted to protect tenants from issues like insects and vermin, water leaks, and insufficient heat and/or hot water. The lack of heat and hot water is the most severe among these examples, particularly in winter. The Property Maintenance Code also mandates that every rental unit include suitable cooking and food preparation facilities, such as a functioning refrigerator, stove, etc. For instance, if your refrigerator or stove is broken or not functioning properly, your landlord is required to make repairs and restore those appliances to working order. The same applies to certain bathroom fixtures, such as toilets, showers, and sinks. If your apartment has essential appliances for living, and those appliances break through no fault of your own, it is the landlord’s responsibility to fix them.

As mentioned above, the Warranty of Habitability also covers common areas such as hallways and laundry facilities. Therefore, if the washers and dryers in your building are no longer functioning, or if a light goes out in a hallway, the landlord is likely required to repair and restore these appliances to working order. Additionally, landlords must maintain reasonably clean conditions in common areas. The landlord is likely responsible for removing excessive trash or other hazardous materials in common areas.

What problems might not constitute a breach of the Warranty of Habitability?

The Warranty of Habitability covers conditions in residential buildings that are dangerous, hazardous, or detrimental to the occupants' life, health, and safety. However, determining what constitutes a sufficiently

dangerous or harmful condition is often difficult. For instance, if there is an excessive amount of trash lining the hallways of an apartment building, the landlord has likely breached the Warranty of Habitability, as landlords are generally responsible for maintaining common areas. In contrast, a single piece of trash in a hallway probably isn't severe enough to rise to the level of an uninhabitable condition.

What can I do if I believe the Warranty of Habitability has been breached?

If you need repairs in your rental, the first step is to contact your landlord. If the issue is not addressed promptly, you can make your request to the landlord in writing and keep a copy.

When a rental unit has significant problems, tenants sometimes withhold rent or pay for the repairs and deduct the cost from their rent. This approach is very risky and often results in the landlord filing a nonpayment eviction against the tenant. A tenant should only take this action if they have already given the landlord many opportunities to make the repairs and have documentation of their requests.

If you, or any tenant, chooses to withhold rent, it is essential that you:

1. Inform the landlord in writing of the repairs needed and notify them that you will withhold rent if the repairs are not made within a reasonable time.
2. Document the necessary repairs or conditions for your records (e.g., take pictures or videos of the problem, save receipts from pest control, record dates and times when you lost utilities).
3. After you submit the written request, allow your landlord a reasonable amount of time to address the issue. There is no strict rule regarding what constitutes a reasonable time frame, but 30 days is generally considered reasonable.
4. Withhold the rent. Withholding the rent means you save the money you would have paid for that month's rent, in its entirety, so you are prepared to pay some or all of it. If you are concerned that you may spend the money, open a secure savings account and deposit each month's rent payment into that account so that it is not available for immediate use or withdrawal.

Be aware that withholding rent only incentivizes the property manager or landlord to make repairs; it does not force them to do so.

How is repairing and deducting different from withholding rent?

"Repair and deduct" is a variation of withholding rent: a tenant spends a portion of the rent repairing a defect in the property that has caused a breach of the Warranty of Habitability. A tenant can pay a reasonable amount to make a necessary repair to the property and deduct the cost of the repair from the rent.

A tenant should follow similar steps before repairing and deducting to correct a breach of the Warranty of Habitability. If you choose to repair and deduct, you should:

1. Inform your landlord in writing of the repairs needed and advise them of your intention to repair and deduct if the appropriate repairs are not made.
2. After you submit the written request, allow your landlord a reasonable amount of time to address the issue. There is no strict time frame, but 30 days is generally reasonable unless there is a more urgent need for repair.
3. Document what work has been done and provide receipts for equipment or services necessary for the repairs. These receipts will be the basis on which you reduce your rent.

Repairing and deducting can be risky for several reasons:

First, you are substituting your judgment for that of a court regarding what constitutes a necessary repair or a reasonable cost. A court could determine that the condition of the property never breached the Warranty of Habitability, and/or that the amount of rent deducted is excessive given the work completed. In this scenario, you could be responsible for changes to the property and rent that you deducted.

Second, you would contribute to improving a property you do not own. A landlord could still evict a tenant who has invested significantly in enhancing their property. Moreover, the expenses associated with fixing a specific issue may exceed initial estimates.

If you pay rent after withholding or making repairs and deducting costs, you should note the charges you cover with your payment. For example, you withhold \$200 from your monthly rent of \$1,000 to cover a plumbing repair. You return to paying the full rental amount the following month. You may want to pay with a personal check or money order and fill out the memo to say, "[June 2025] rent, paid in full, in accord and satisfaction of all disputed charges". You should also provide the landlord with a copy of the \$200 repair bill. Keep a copy of the repair bill and evidence of this payment. If the landlord accepts this payment, it may serve as a defense in court if the landlord claims you still owe rent for the month you deducted the repair costs.

Many tenants enter into agreements where they commit to repairing parts of the property they are renting in exchange for a reduction in rent. These arrangements present several issues. They are often not well-documented or fail to specify how the work will be completed and how the rent will be adjusted. Such agreements are not advisable. Landlords are responsible for repairs (except for damage caused by tenants) and must provide safe and suitable living conditions.

What happens if I withhold rent or repair and deduct?

You may find that your landlord makes repairs or accepts the reduced rent you offered. However, landlords often try to evict tenants who withhold their rent. In that case, a judge or jury will decide how much to reduce your rent based on your claim that the landlord violated the Warranty of Habitability, provided you inform the court about this claim at the beginning of the case. In many cases, however, judges have declined to award any rent reduction to the tenant.

You should be prepared to provide evidence showing the problems in the home, your request(s) for repairs, and that you withheld the rent money or used it for repairs. You can seek a rent reduction even if you don't have the money set aside, but your case will be stronger if you have the total amount of rent owed saved in a separate bank account.

You should be prepared to pay the overdue rent (or part of it) at court or immediately after your court appearance if the judge or jury rules against you. In a nonpayment case, you have the right to remain at the rental property if you pay the rent that the court deems you owe. You may be evicted if you cannot pay the entire rental arrears. If you pay the rent owed, you must inform the court and the sheriff's department that the rent has been paid and request that the eviction/Warrant of Eviction be withdrawn.

How has the law recently changed?

In January 2024, New York State changed its laws regarding how tenants can address breaches of the Warranty of Habitability. Tenants can sue landlords who breach the Warranty of Habitability, and more courts can order

landlords to make repairs.

A tenant should still follow the notice and documentation advice provided above. You should notify your landlord of problems with the property in writing and document the issues, as well. If you ask the court to order repairs under the new law, you should not withhold rent unless the court agrees that your rent should be reduced. Suing your landlord to address breaches of the Warranty of Habitability is an alternative to withholding rent.

The process of suing your landlord can be complex. You should seek legal assistance to maximize your chances of success. In brief, it requires filing a Petition and a Notice of Petition in a city, district, justice, or county court with jurisdiction over your rental property. The Petition is the document that allows you to describe how the Warranty of Habitability has been violated and what you want the court to do to correct those problems. The Notice of Petition contains information such as where and when the case will be heard. You then must serve the respondent listed in the Petition, typically the landlord, with the papers. The respondent will have the opportunity to answer the allegations you make against them in the Petition.

Under the new law, a tenant can seek remedies such as an order for the landlord to repair the problems, a monetary judgment, and/or an order reducing future rent until the violations have been cured.

Can my landlord enter my apartment to make repairs?

If the landlord is seeking to make repairs and provides reasonable notice, you should generally cooperate. In Warranty of Habitability cases, landlords often claim that the tenant wouldn't let them into the rental unit to fix the issues. You want to show the court that you did everything possible to allow the landlord to make repairs.

What if I live in subsidized housing and the Warranty of Habitability has been violated?

Subsidized housing is when the state or federal government assists with some of your housing costs. If you withhold rent while living in subsidized housing, you risk losing your assistance. An agency oversees the condition of the housing to ensure it meets federal standards. This agency may be your local housing authority or a state or federal entity. To protect your valuable housing, it is advisable to consult them or an attorney before taking any independent action, such as withholding rent.

Should I call code enforcement if I believe the Warranty of Habitability has been violated?

If you believe a code violation breaches the Warranty of Habitability, you have the right to call your local code enforcement agency and report the issue. However, it is our experience that Code Enforcement Agencies often condemn properties upon receiving complaints, meaning the tenants must leave immediately. Tenants are supposed to be afforded a hearing in this case, and property condemnation should only happen in very severe situations. However, Code Enforcement officers frequently condemn homes without a hearing, rendering tenants homeless.

My landlord tried to evict me after I complained about the property's condition. Could this be retaliation?

A landlord cannot evict a tenant for a "good faith" (sincere) complaint that the landlord violated the lease, the Warranty of Habitability, or a state law regulating housing.

The retaliation statute can be challenging to prove. It is important to document all complaints made to the landlord or another party concerning the property's condition and adhere to the terms of your lease. Avoid giving your landlord a legitimate reason to terminate your tenancy.

If your landlord attempts to terminate your lease and evict you in the year following your request for repairs, withholding of rent, contacting code enforcement, or bringing a court case for repairs, inform the court about it and provide proof. You should mention Real Property Law 223-B if you want the court to dismiss a case for this reason. Please note that retaliation is not a defense when your landlord is suing to evict you for unpaid rent.

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