



REPAIRS, MAINTENANCE, AND HABITABILITY

Under California law, all residential leases and rental agreements contain an implied warranty of habitability. The landlord is responsible for repairing and maintaining a rental unit in a habitable condition and must ensure that the rental unit complies with state and local building and health codes. This responsibility is subject to the tenant's concurrent duty to maintain the unit.

A RENTAL UNIT MUST PROVIDE:

- ✓ Effective weather and waterproofing of roof and exterior walls, including no broken doors and windows.
- ✓ Plumbing system in working order, including hot and cold water and an efficient sewage system.
- ✓ Gas and heating system in working order.
- ✓ Electrical system, including wiring and lighting, in working order.
- ✓ Clean and sanitary buildings, common grounds, and appurtenances; be free from debris, filth, rubbish, garbage, rodents, and vermin.
- ✓ Adequate trash receptacles.
- ✓ Floors, stairways, and railings in good repair.



THE LANDLORD MUST ALSO PROVIDE:

- ✓ A working bathtub or shower and toilet. The toilet, bathtub, or shower must be located in a ventilated area that affords the tenant privacy.
- ✓ A kitchen sink made of non-absorbent material.
- ✓ Natural lighting in every room through windows or skylights. All windows must be able to be opened at least halfway, unless a fan provides mechanical ventilation.
- ✓ Safe fire and emergency exits.
- ✓ Storage areas and garages free of combustible materials.
- ✓ Operable door locks and deadbolts on entry doors.
- ✓ Smoke detectors in all multi-unit complexes and in common areas.

A landlord cited by code enforcement for a substantial violation cannot collect rent or take legal action against a tenant if the violation is unremedied for more than 30 days. Breach of a minor housing code or loss of mere aesthetic qualities in a rental unit are not sufficient to violate habitability.

RETALIATION FOR REQUEST OF REPAIRS OR MAINTENANCE

California law presumes the landlord has a retaliatory motive, if subsequent to a tenant's complaint concerning repairs or the exercising of a right by the tenant, such as, the repair and deduct remedy, the landlord terminates the tenancy, increases the rent, or initiates any punitive action against the tenant. The presumption of retaliation extends for 6 months after exercising a tenant right, but the tenant cannot be behind in rent for unrelated reasons, and cannot provide an independent basis for eviction such as violating the terms of the lease.

For assistance contact **Project Sentinel (408) 720-9888**



A TENANT'S RESPONSIBILITY TO MAINTAIN A RENTAL UNIT IN HABITABLE CONDITION

A landlord may not be held liable for violation of the implied warranty of habitability if the tenant has not fulfilled his/her responsibility to take reasonable care of the rental unit.

THE TENANT MUST:

- ✓ Keep the premises clean and sanitary, to the extent the condition of the rental unit allows.
- ✓ Properly use all gas, electrical, and plumbing fixtures.
- ✓ Properly dispose of all trash and garbage in appropriate receptacles.
- ✓ Ensure that household members or guests cause no damage to the premises.
- ✓ Use the rental unit for its intended purpose.
- ✓ Notify the landlord, preferably in writing, when the rental unit is in need of repair or maintenance.
- ✓ Not interfere with the landlord's ability to repair any deficiencies.

HOW SHOULD NOTICE OF NEEDED REPAIRS BE GIVEN?

If a tenant believes that his or her rental unit has a deficiency under the implied warranty of habitability, the tenant should immediately notify the landlord by phone and in writing of any needed repairs or maintenance. The tenant should always keep a copy of any correspondence with the landlord or management. Any delay in notifying the landlord may cause additional damage and may result in the tenant being held responsible for damages, even though the landlord may have the initial responsibility to respond. If the landlord has not responded within a reasonable amount of time, then the tenant may exercise other options to remedy deficiencies in the rental unit.

WHAT IS A REASONABLE TIME PERIOD TO MAKE REPAIRS UNDER THE IMPLIED WARRANTY OF HABITABILITY?

A reasonable time period depends on the type of repair to be done. Some repairs may require an urgent response from the landlord, such as, plumbing or electrical problems, while some repairs may allow a landlord a longer period to respond or complete the needed repair, such as, the repair or replacement of a furnace in mild weather.



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REMEDIES FOR OBTAINING NEEDED REPAIRS

The landlord must respond within a reasonable period of time to a request by the tenant for any repairs involving the implied warranty of habitability. If the landlord does not respond, a tenant may choose to use remedies allowed by law to resolve deficiencies in rental housing. These are: withholding of rent until repairs are completed; abandonment of the untenable unit; or paying for the repair and deducting the cost from the rent. If you use “repair and deduct”, the cost cannot exceed one month’s rent. These remedies can be used for any repair that involves the habitability of a rental unit, or the tenant’s health and safety. Examples include loss of electricity, roof leaks, lack of hot water, absence of working locks.

THE TENANT MAY LAWFULLY USE REPAIR AND DEDUCT, ABANDONMENT, OR RENT WITHHOLDING AS A REMEDY IF THESE CONDITIONS EXIST:

- ✓ The defects must be serious and directly related to the tenant’s health and safety.
- ✓ The tenant, guests, or pets must not be responsible for causing the deficiency in the rental unit.
- ✓ The tenant must give the landlord a reasonable amount of time to repair the deficiency.
- ✓ The tenant must provide the landlord with notice, preferably in writing, of the deficiency and of the intent to repair and deduct, abandon the rental unit, or withhold rent.
- ✓ The tenant may not use the repair and deduct remedy more than twice in a 12 month period.

WHAT ARE THE RISKS IN APPLYING REPAIR REMEDIES?

If a tenant withholds rent or deducts repairs from rent, a landlord may respond by serving the tenant with a 3-day notice to pay rent or quit. If the tenant continues to assert the right to refuse payment, the landlord has the option of filing an eviction suit in court. However, if the landlord was cited for a substantial code violation that has been unremedied for at least 30 days, he is precluded from serving notices or taking legal action. If a case proceeds to trial, the tenant must prove that the deficiencies in the rental unit violated the implied warranty of habitability or the deficiencies were severe enough to constitute a safety or health hazard. If the court finds that the deficiencies in the rental unit did not violate the implied warranty of habitability, or the deficiencies were not severe enough to constitute a safety or health hazard, then the court may order that the tenant pay the withheld rent or allow the landlord to proceed with the eviction of the tenant. Any tenant seeking to use these remedies should have strong evidence that the legal requirements of the remedy have been met, including evidence of citations for code violations.

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