

# When a Landlord Won't Make Repairs

## **What constitutes a breach of the warranty of habitability?**

New York 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 in. Under this law, residential tenants (as opposed to a business) are entitled to housing that is fit for human habitation, and without conditions that are dangerous or detrimental to their life, health, or safety.

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

The Warranty of Habitability not only covers conditions within a rental, but also applies to common areas. If there are dangerous or hazardous conditions in a hallway, for instance, the landlord has a duty to fix those conditions.

Note, however, that landlords are not required to fix or repair any conditions that are directly caused by tenants themselves. So, if you damage something in your apartment, your landlord likely won't be required to fix it.

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

Conditions that violate the Warranty of Habitability are variable and are decided by a Court. The warranty has been interpreted to protect tenants from insects and vermin, water leaks, and lack of heat or hot water, among other things. Perhaps the most serious condition of those listed above is the lack of heat and hot water,

particularly during the winter months. Moreover, the Property Maintenance Code also requires that every rental unit has adequate cooking and food preparation spaces such as a working refrigerator, stove, etc. So, for instance, if your refrigerator or stove is either broken or doesn't work properly, then your landlord is required to make repairs and restore those appliances to working order. The same goes for certain bathroom appliances such as toilets, showers, and sinks. In other words, if your apartment has appliances that are essential for living, and if those appliances break through no fault of your own, then it is the landlord's responsibility to fix them.

Finally, as mentioned above, the Warranty of Habitability also covers common areas such as hallways and laundry facilities. So, if the washers and dryers in your building no longer function, or if a light goes out in a hallway, then the landlord is likely required to repair and restore those appliances to working order. Additionally, landlords are required to keep common areas relatively clean. Thus, if there is excessive trash or other hazardous material in common areas, the landlord is likely responsible for clearing it out.

### **What are some problems that might not constitute a breach?**

As mentioned above, the Warranty of Habitability covers conditions in residential buildings that are dangerous, hazardous, or detrimental to the life, health, and safety of the occupants. It's often difficult, though, to determine exactly what constitutes a sufficiently dangerous or detrimental condition. For instance, if there's an excessive amount of trash lining the hallways of an apartment building, then the landlord has likely breached the Warranty of Habitability since landlords are generally responsible for maintaining common areas. By contrast, a single piece of trash in a hallway probably isn't serious 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 at your rental, the first step is to contact your landlord. If it won't be addressed right away, you can ask your landlord in writing, and keep a copy.

For major problems in an apartment, tenants sometimes withhold rent or pay for the repairs and deduct from the rent. This is very risky and often leads to an eviction filing. You should only take this step if you have already given the landlord an opportunity to make the repairs, and have documentation of the request.

If you choose to withhold, it is essential that you:

- (1.) Inform your landlord in writing of the repairs that need to be done and that you will be withholding the rent if said repairs are not made within a reasonable time.
- (2.) Document for your own purposes the needed repairs or concerns (e.g.: take pictures or videos of the problem, save receipts from pest control, record dates and times when you lost utilities).
- (3.) Give your landlord a reasonable amount of time to correct the problem after you emailed or mailed him the writing. There is no hard-and-fast rule regarding what constitutes a reasonable amount of time; 30 days is typically considered reasonable.
- (4.) Actually withhold the rent. Actually withholding the rent means you save the money you would have spent on that month's rent in its entirety so that you are prepared to pay some or all of it.

Be aware too that withholding rent only provides an incentive to the property manager or landlord to make repairs; it does not compel them to make the repairs.

How is repairing and deducting different from withholding rent?

Repair and deduct is just a variation of withholding rent: a tenant spends a portion of the rent on repairing a defect in the property which has caused a breach of the

warranty of habitability. In other words, you could spend a reasonable amount to make a necessary repair to the property and deduct the cost of repair from the rent.

You should follow similar steps before repairing and deducting to correct a breach of the warranty of habitability as those outlined above. Namely, you should:

- (1.) Inform the landlord in writing of the needed repairs and your intention to repair and deduct if those repairs are not made.
- (2.) Wait a reasonable amount of time – again, around 30 days – for the landlord to perform the desired repairs.
- (3.) Document what work has been done and provide receipts for equipment or services necessary for making 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 a court's judgment regarding what constitutes a necessary repair or a reasonable cost. That is, a court could say that the condition of the property never breached the warranty of habitability and / or the amount of rent deducted is too much given the work done. In this scenario, you would have to pay for both the changes made as well as the non-deducted rent (and potentially the cost of restoring the property).

Second, you would be paying to improve a property you do not own. A landlord could still potentially evict a tenant who has spent a large amount of money improving their property. And the costs of repairing a particular problem may be greater than expected.

If you pay rent after holding rent or repairing and deducting, you should write on your payment the charges you are paying. An example: You held \$200 from your March rent of \$1000 to pay for a plumbing repair and now want to pay the April,

2024 rent in full. You should write on the payment: "April, 2024 rent, paid in full, 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 this payment. If the landlord accepts this payment, it presents a defense in court if the landlord claims you still owe for March rent.

Many tenants will enter into an agreement where they promise to repair part of the property they are renting in return for a reduction in the rent. These arrangements have a number of problems. They are often not in writing or fail to say how the work will be done or how the rent will be reduced. These agreements are not advisable. Landlords are responsible for making repairs (except for damage caused by tenants) and must offer properties that are safe and fit to live in.

### **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, if at all, due to your claim that the landlord violated the Warranty of Habitability, if you tell the court about the claim at the beginning of the case.

You should be prepared to prove the problems in the home, that you asked 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 money in a separate account).

You should be prepared to pay the rent (or some portion of it) at, or right after court, if the judge or jury rules against you. In a nonpayment case, you have the right to stay in the home if you pay the amount of rent the court decides that you owe. If you cannot pay that amount, you may be evicted. If you do pay the rent due, you must let the court and sheriff know that the rent has been paid, and ask that the eviction be canceled.

## **How has the law recently changed?**

New York changed its laws beginning in January, 2024, regarding how a tenant can address a breach of the Warranty of Habitability. Tenants can sue a landlord who breaches the warranty of habitability, and many more courts can order the landlord to make repairs.

A tenant should still follow the notice and documentation advice mentioned above. You should still notify your landlord of problems with the property in writing. You should still document the problem. If you are going to ask the court to order repairs under the new law, you should not withhold the rent unless the court agrees that your rent should be reduced. Suing your landlord is an alternative to withholding rent to correct breaches of the warranty of habitability.

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 which allows you to describe the ways in which the warranty of habitability has been violated and how you want the court to correct those problems. The Notice of Petition contains information such as where and when the case will be decided. Then you need to serve the respondent 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.

The remedies a tenant can ask for under the new law include: 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 cases, landlords often claim that the tenant wouldn't let them in. You want to be able 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 means the state or federal government helps pay some of the costs of your housing. If you withhold rent and you live in subsidized housing, you may lose your assistance. In subsidized housing, there is an agency which is supposed to make sure the housing meets federal standards. This may be your local housing authority or a state or federal agency. To protect your valuable housing, you should speak with them or an attorney before taking any action on your own.

### **Should I call code enforcement if I believe the warranty has been violated?**

If you believe that there is a code violation that breaches the Warranty of Habitability, you have the right to call your local code enforcement agency and report the issue. However, we find that Code Enforcement Agencies often condemn properties when they receive complaints, which means that the tenants have to leave. Tenants are supposed to be afforded a hearing in this case, and condemning property should only happen in very severe cases. However Code Enforcement officers often condemn homes without a hearing.

### **My landlord is trying to evict me after I complained about the condition of the property. Could this be retaliation?**

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

The problem with the retaliation statute is that it can be difficult to prove. It is important for you to: (1.) attempt to document by letter, email, or text message any complaints you make to the landlord or another party regarding the condition of the property and (2.) otherwise adhere to the terms of your lease, i.e. do not give your landlord a good excuse for why he can evict you.

If your landlord tries to terminate your lease and evict you in the year after you seek repairs, withhold rent, call code or bring a court case for repairs, make sure to tell 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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