DEALING WITH PROBLEMS

All tenants have a right to a safe rental unit. Most landlord-tenant relationships go smoothly. However, problems sometimes do arise. For example, what if the rental unit's furnace goes out in the middle of the winter? What happens if the landlord sells the building or decides to convert it into condominiums? This section discusses these and other possible issues and problems that may arise in the landlord-tenant relationship.

REPAIRS AND HABITABILITY

A rental unit must be fit to live in; that is, it must be habitable. In legal terms, "habitable" means that the rental unit is fit for occupation by human beings and that it substantially complies with state and local building and health codes that materially affect tenants' health and safety.[181]

California law makes landlords and tenants each responsible for certain kinds of repairs, although landlords ultimately are legally responsible for ensuring that their rental units are habitable

Landlord's responsibility for repairs

Before renting a rental unit to a tenant, a landlord must make the unit fit to live in, or habitable. Additionally, while the unit is being rented, the landlord must repair problems that make the rental unit unfit to live in, or **uninhabitable**.

The landlord has this duty to repair because of a California Supreme Court case, called *Green v. Superior Court*,[182] which held that all residential leases and rental agreements contain an **implied warranty of habitability**. Under the "implied warranty of habitability," the landlord is legally responsible for repairing conditions that seriously affect the rental unit's habitability[183] That is, the landlord must repair substantial defects in the rental unit and substantial failures to comply with state and local building and health codes.[184] However, the landlord is not responsible under the implied warranty of habitability for repairing damages that were caused by the tenant or the tenant's family, guests, or pets.[185]

Generally, the landlord also must complete maintenance work which is necessary to keep the rental unit livable.[186] Whether the landlord or the tenant is responsible for making less serious repairs is usually determined by the rental agreement.

The law is very specific as to what kinds of conditions make a rental unit uninhabitable. If you believe that your landlord is providing you with an uninhabitable home, it is best to document those conditions with photographs or written repair requests with descriptions and date of the problem and how long that condition has been occurring. These are discussed in the following pages.

Tenant's responsibility for repairs

Tenants are required by law to take reasonable care of their rental units, as well as common areas such as hallways and outside areas. Tenants must act to keep those areas clean and undamaged. Tenants also are responsible to repair all damage that results from their neglect or abuse, and to repair damage caused by anyone for whom they are responsible, such as family, guests, or pets.[187] Tenants' responsibilities for care and repair of the rental unit are discussed in detail in this booklet.

Conditions that make a rental unit legally uninhabitable

There are many kinds of defects that could make a rental unit unlivable. The implied warranty of habitability, which applies to every single residential tenancy in California, requires landlords to maintain their rental units in a condition fit for the "occupation of human beings."[188] In addition, the rental unit must "substantially comply" with building and housing code standards that materially affect tenants' health and safety.[189]

A rental unit may be considered uninhabitable (unlivable) if it contains a lead hazard that endangers the occupants or the public, or is a substandard building because of, for example, a structural hazard, inadequate sanitation, or a nuisance that endangers the health, life, safety, property, or welfare of the occupants or the public.[190]

A dwelling also may be considered uninhabitable (unlivable) if it substantially lacks any of the following:[191]

- Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system.
- Gas facilities in good working order.
- Heating facilities in good working order.
- An electric system, including lighting, wiring, and equipment, in good working order.
- Clean and sanitary buildings, grounds, and appurtenances (for example, a garden or a detached garage), free from debris, filth, rubbish, garbage, rodents, and vermin at the inception of the tenancy and areas within the landlord's control during the tenancy.
- Adequate trash receptacles in good repair.
- Floors, stairways, and railings in good repair.

In addition to these requirements, each rental unit must have all of the following:

- A working toilet, wash basin, and bathtub or shower. The toilet and bathtub or shower must be in a room which is ventilated and allows privacy.
- Natural lighting in every room through windows or skylights. Windows in each room must be able to open at least halfway for ventilation, unless a fan provides mechanical ventilation.
- Safe fire or emergency exits leading to a street or hallway. Stairs, hallways, and exits must be kept litter-free. Storage areas, garages, and basements must be kept free of combustible materials.[192]
- Operable dead bolt locks on the main entry doors of rental units, and operable locking or security devices on windows.[193]
- Working smoke detectors that meet applicable code requirements in all bedrooms and other designated areas of rental units, except for manufactured housing, such as a mobilehome. Apartment complexes also must have smoke detectors in common stairwells.[194] Also, any rental unit that includes appliances (water heater, heater, stove, fireplace, etc.) that utilize 'fossil fuels' (natural gas, propane, fuel oil, etc.), or which has an attached garage, are required to have working carbon monoxide detectors that meet applicable code requirements.[195]
- A locking mail box for each unit. The mail box must be consistent with the United States Postal Service standards for apartment housing mail boxes.[196]
- Ground fault circuit interrupters for swimming pools and anti-suction protections for wading pools in apartment complexes and other residential settings (but not single family residences).[197]

The implied warranty of habitability is not violated merely because the rental unit is not in perfect, aesthetically pleasing condition. Nor is the implied warranty of habitability violated if there are minor housing code violations, which, standing alone, do not affect habitability.[198]

While it is the landlord's responsibility to install and maintain the inside wiring for one telephone jack, it is unclear whether the landlord's failure to do so is a breach of the implied warranty of habitability.[199]

There are two additional ways in which the implied warranty of habitability may be violated. The first is the presence of mold conditions in the rental unit that the landlord has notice of and affect the livability of the unit or the health and safety of tenants. The tenant should notify his/her landlord if he/she is aware of water intrusion or suspects the presence of mold. Since January 1, 2016, visible mold growth, as determined by a health officer or a code enforcement officer, that is judged to be other than superficial, such as mildew, may be a substandard condition.[200] The second follows from a law that imposes obligations on a property owner who is notified by a local health officer that the property is contaminated by methamphetamine. A tenant who is damaged by this kind of documented contamination may be able to claim a breach of the implied warranty of habitability.[201]

Limitations on landlord's duty to keep the rental unit habitable

Even if a rental unit is unlivable because of one of the conditions listed above, a landlord may not be legally required to repair the condition if the tenant has not fulfilled the tenant's own responsibilities.

In addition to generally requiring a tenant to take reasonable care of the rental unit and common areas, the law lists specific things that a tenant must do to keep the rental unit livable.

Tenants must do all of the following:

- Keep the premises "as clean and sanitary as the condition of the premises permits."
- Use and operate gas, electrical, and plumbing fixtures properly. (Examples of improper use include overloading electrical outlets; flushing large, foreign objects down the toilet; or allowing any gas, electrical, or plumbing fixture to become filthy.)
- Dispose of trash and garbage in a clean and sanitary manner. However, a landlord may agree in writing to clean the rental unit and dispose of the trash.[202]
- Not destroy, damage, or deface the premises, or allow anyone else to do so.
- Not remove any part of the structure, dwelling unit, facilities, equipment, or appurtenances, or allow anyone else to do so.
- Use the premises as a place to live and use the rooms for their intended purposes. For example, the bedroom must be used as a bedroom, and not as a kitchen.[203]
- Notify the landlord when dead bolt locks and window locks or security devices do not operate properly,[204] and notify the landlord or manager if the tenant becomes aware of an inoperable smoke or carbon monoxide detection systems.[205]

However, a landlord may agree in writing to clean the rental unit and dispose of the trash.[206]

Even if a tenant violates these requirements, in some minor way, the landlord is still responsible for providing a habitable dwelling and may be prosecuted for violating housing code standards. If the tenant fails to do one of these required things, and the tenant's failure has either substantially caused an unlivable condition to occur or has substantially interfered with the landlord's ability to repair the condition, the landlord does not have to repair the condition,[207] the landlord does not have to repair the condition and the tenant cannot withhold rent, until the tenant cures his/her own violation.[208]

Responsibility for other kinds of repairs

As for less serious repairs, the rental agreement may require either the tenant or the landlord to fix a particular item. Items covered by such an agreement might include refrigerators, washing machines, parking places, or swimming pools. These items are usually considered "amenities," and their absence does not make a dwelling unit unfit for living.

These agreements to repair are usually enforceable in accordance with the intent of the parties to the rental agreement.[209]

However, a tenant may have a right to a reduced rent if a landlord does not provide certain amenities that are part of the tenant's lease. A local rent control ordinance may allow a tenant to file a petition seeking a reduced rent until the amenities are restored.

Tenant's agreement to make repairs

The landlord and the tenant may agree in the rental agreement that the tenant will perform some of the repairs and maintenance in exchange for lower rent.[210] Regardless of any such agreement, the landlord is responsible for maintaining the property as required by state and local housing codes.[211] Such an agreement must be made in good faith, namely there must be a real reduction in the rent, and the tenant must intend and be able to make all the necessary repairs. When negotiating the agreement, the tenant should consider they want to try to negotiate a cap on the amount that they can be required to spend making repairs. To be clear, a tenant being responsible for any habitability-related repairs will be a result of the tenant's agreement. A landlord cannot unilaterally change the terms of a tenancy to shift the responsibility for these repairs after the tenant's initial occupancy.

Regardless of any such agreement, the landlord is ultimately responsible for maintaining the property as required by state and local housing codes.[212]

HAVING REPAIRS MADE

If a tenant believes that his or her rental unit needs repairs and the landlord is responsible for the repairs under the implied warranty of habitability, the tenant should notify the landlord in writing and retain a copy for their records. Since rental units typically are business investments for landlords, most landlords want to keep them safe, clean, attractive, and in good repair.

If the damage or repairs require urgent attention, the tenant should notify the landlord orally (i.e., telephone or in person) and memorialize his/her communication in writing immediately thereafter. The tenant should specifically describe the damage or defects and the required repairs. The tenant should date the writing and always keep a copy of it to show that notice was given, and what it said.

If the tenant sends a letter to the landlord, manager, or agent, the tenant[213] should try to send it by certified mail with return receipt requested. Sending the notice by certified mail is not required by law, but is a very good idea. Or, the tenant (or a friend) may personally deliver the notice to the landlord, manager, or agent and ask for a receipt to show that the notice was received. The tenant should always keep a copy of the notice and the receipt, or some other evidence that the notice was delivered (see "Giving the landlord notice").

A landlord, owner or manager may enter the rental unit to make necessary or agreed upon repairs, but they must provide the tenant with a written Notice of Intent to Enter. The landlord must provide the Notice at least 24-hours in advance of entry.

A landlord is also responsible for changing the locks if the tenant is a survivor of domestic violence, sexual assault, or stalking and provides the landlord with a copy of either a valid restraining order (that includes a move-out order if the abuser lives with the survivor) or a police report involving domestic violence, sexual assault, or stalking against the tenant that occurred within 180 days. The landlord must change the locks within 24 hours of notice of the tenant's request. If the landlord fails to do so within 24 hours of receiving notice from the tenant, the tenant may have the locks changed, even if the lease prohibits them from otherwise doing so. The tenant must change the lock to a similar likeness and quality to the original lock, provide the landlord with notice of the locks change and provide the landlord with the new key. The tenant can notify the landlord that the tenant made this required change themselves, and deduct the cost of changing the locks from their next rental payment in the same manner as described in the "repair and deduct remedy" section.[214] If the landlord does not make the requested repairs, and does not have a good reason for not doing so, the tenant may have several remedies, depending on the seriousness of the repairs. These remedies are discussed below. *Each of these remedies has its own risks and requirements, so the tenant should use them carefully.*

Regardless of which remedy a tenant uses, it is always a good idea to document defective conditions with photographs or video.

The "repair and deduct" remedy

The "**repair and deduct**" remedy allows a tenant to deduct money from the rent to pay for repair of defects in the rental unit if the repairs would not cost more than one month's rent. This remedy covers substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability (see discussion of the implied warranty of habitability).[216] Examples might include a leak in the roof during the rainy season, no hot running water, or a gas leak.

As a practical matter, the repair and deduct remedy allows a tenant to make needed repairs of serious conditions without filing a lawsuit against the landlord. Because this remedy involves legal technicalities, it is recommended that the tenant talk to a lawyer, legal aid organization, or tenants' association before proceeding.

The basic requirements and steps for using the repair and deduct remedy are as follows:

1. The defects must be serious and directly related to the tenant's health and safety.[217]
2. The repairs cannot cost more than one month's rent.
3. The tenant cannot use the repair and deduct remedy more than twice in any 12-month period.
4. The tenant or the tenant's family, guests, or pets must not have caused the defects that require repair.
5. The tenant must inform the landlord, either orally or in writing, of the repairs that are needed (see "Giving the landlord notice,"). Writing is strongly recommended. If you notify the landlord via writing, retain a copy of the notice for your records.

6. The tenant must give the landlord a reasonable period of time to make the needed repairs before undertaking the repairs themselves.
    - What is a reasonable period of time? This depends on the defects and the types of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the situation. For example, if the furnace is broken and it is very cold outdoors, one to two days may be considered reasonable (assuming that a qualified repair person is available within that time period).
7. If the landlord does not make the repairs within a reasonable period of time, the tenant may either make the repairs or hire someone to do them. The tenant may then deduct the cost of the repairs from the rent when it is due. The tenant should keep all receipts for the repairs.
    - It is recommended, but not required by law, that the tenant give the landlord a written notice that explains why the tenant has not paid the full amount of the rent. The tenant should always keep a copy of this notice.

Risks: The defects may not be serious enough to justify using the repair and deduct remedy. In that event, the landlord can sue the tenant to recover the money deducted from the rent, or can serve a 3-day notice to pay rent or quit and file an **eviction** action based on the tenant's nonpayment of rent. If the tenant deducted money for repairs not covered by the remedy, or did not give the landlord proper advance notice or a reasonable period of time to make repairs, the court can order the tenant to pay the full rent even though the tenant paid for the repairs, or can order that the eviction proceed. Because of the risk of a lawsuit, tenants who plan to use the repair and deduct remedy should document the defective conditions with photographs or video and keep copies of letters informing the landlord of the problem. Before the tenant repairs and deducts, it is a good idea to check with a legal aid organization, lawyer, housing clinic, or tenant program to help determine if rent withholding is the appropriate remedy.

The landlord may try to terminate the tenancy, increase the rent, decrease services or file a legal action to evict the tenant because the tenant used the repair and deduct remedy. These actions are known as "**retaliatory acts**." The law prohibits retaliation, but the landlord may still attempt to do so. A tenant should contact a legal aid organization, lawyer, housing clinic, or tenant program, if they believe they are being subject to retaliation.[218]

The "abandonment" remedy

Instead of using the repair and deduct remedy, a tenant can abandon (move out of) a seriously defective rental unit. This remedy is called the "abandonment" remedy. A tenant might use the abandonment remedy where the defects would cost more than one month's rent to repair,[219] but this is not a requirement of the remedy. The abandonment remedy has most of the same requirements and basic steps as the repair and deduct remedy.[220]

In order to use the abandonment remedy, the rental unit must have substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability (see discussion of the implied warranty of habitability).[221] If the tenant uses this remedy properly, the tenant is not responsible for paying further rent once they has abandoned the rental unit.[222]

The basic requirements and steps for lawfully abandoning a rental unit are:

1. The defects must be serious and directly related to the tenant's health and safety.[223]
2. The tenant or the tenant's family, guests, or pets must not have caused the defects that require repair.
3. The tenant must inform the landlord, either orally or in writing, of the repairs that are needed (see "Giving the landlord notice"). Writing is strongly recommended. If you notify your landlord in writing, always retain a copy for yourself.
4. The tenant must give the landlord a reasonable period of time to make the needed repairs.
    - What is a reasonable period of time? This depends on the defects and the types of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the circumstances. For example, if tree roots block the main sewer drain and none of the toilets or drains work, a reasonable period might be as little as one or two days.
5. If the landlord does not make the repairs within a reasonable period of time, the tenant should notify the landlord in writing of the tenant's reasons for moving and then actually move out. The tenant should return all the rental unit's keys to the landlord. The notice should be mailed or delivered as explained in "Giving the landlord notice." The tenant should always keep a copy of the notice.
    - It is recommended, but not required by law, that the tenant give the landlord written notice of the tenant's reasons for moving out. The tenant's letter may discourage the landlord from suing the tenant to collect additional rent or other damages. A written notice also documents the tenant's reasons for moving, which may be helpful in the event of a later lawsuit. If possible, the tenant should take photographs or a video of the defective conditions or have local health or building officials inspect the rental unit before moving out. If you end up in court, a report from a local health or building official documenting the existence of substantial substandard conditions will be helpful. The tenant should keep a copy of the written notice and any inspection reports and photographs or videos.

Risks: The defects may not affect the tenant's health and safety seriously enough to justify using the remedy. The landlord may sue the tenant to collect additional rent or damages. Again, because of the risk of a lawsuit, tenants who plan to use the abandonment remedy should document the defective conditions with photographs or video and keep copies of letters informing the landlord of the problem. Before the tenant abandons the rental property, it is a good idea to check with a legal aid organization, lawyer, housing clinic, or tenant program to help determine if rent withholding is the appropriate remedy.

The "rent withholding" remedy

A tenant may have another option for getting repairs made—the "**rent withholding**" remedy.

By law, a tenant is allowed to withhold (stop paying) some or all of the rent if the landlord does not fix serious defects that violate the implied warranty of habitability (see discussion of the implied warranty of habitability).[224] The defects must be substantial—they must be serious ones that threaten the tenant's health or safety.[225]

By way of example, the court in *Green v. Superior Court* found the following defects serious enough to justify withholding rent:[226]

- Collapse and non-repair of the bathroom ceiling.
- Continued presence of rats, mice, and cockroaches.
- Lack of any heat in four of the apartment's rooms.
- Plumbing blockages.
- Exposed and faulty wiring.
- An illegally installed and dangerous stove.

In the *Green* case, *all* of these defects were present, and there also were many violations of the local housing and building codes. In other situations, the defects that would justify rent withholding may be different, but the defects would still have to be serious ones that threaten the tenant's health or safety.

In order to prove a violation of the implied warranty of habitability, the tenant will need evidence of the defects that require repair. In the event of a court action, it is helpful to have photographs or video of the defects that require repairs, witnesses, and copies of letters informing the landlord of the problem. As with the abandonment remedy, a report from a local health or building official documenting the existence of substantial substandard conditions is helpful in defending the use of this remedy

Before the tenant withholds rent, it is a good idea to check with a legal aid organization, lawyer, housing clinic, or tenant program to help determine if rent withholding is the appropriate remedy.

The basic requirements and steps for using the rent withholding remedy are:

1. The defects or the repairs that are needed must threaten the tenant's health or safety.[227]
    - The defects must be serious enough to make the rental unit uninhabitable. For example, see the defects described in the discussion of the *Green* case above.
2. The tenant, or the tenant's family, guests, or pets must not have caused the defects that require repair.
3. The tenant must inform the landlord either orally or in writing of the repairs that are needed (see "Giving the landlord notice"). Writing is strongly recommended. If you notify the landlord in writing, always keep a copy for yourself.
4. The tenant must give the landlord a reasonable period of time to make the repairs.
    - What is a reasonable period of time? This depends on the defects and the type of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the circumstances (see discussion above).
5. If the landlord does not make the repairs within a reasonable period of time, the tenant can withhold some or all of the rent. The tenant can continue to withhold the rent until the landlord makes the repairs.
    - How much rent can the tenant withhold? While the law does not provide a clear test for determining how much rent is reasonable for the tenant to withhold, judges in rent withholding cases often use one of the following methods. These methods are offered as examples.

      Percentage reduction in rent: The percentage of the rental unit that is uninhabitable is determined, and the rent is reduced by that amount. For example, if one of a rental unit's four rooms is uninhabitable, the tenant could withhold 25 percent of the rent. The tenant would have to pay the remaining 75 percent of the rent. Most courts use this method.

      Reasonable value of rental unit: The value of the rental unit in its defective state is determined, and the tenant withholds that amount. The tenant would have to pay the difference between the rental unit's fair market value (usually the rent stated in the rental agreement) and the rental unit's value in its defective state.[228]
6. The tenant should save the withheld rent money and *not spend it*. The tenant may be required to pay the landlord some or all of the withheld rent.
    - If the tenant withholds rent, the tenant should try to put the withheld rent money into a special bank account (called an **escrow account**). The tenant should notify the landlord in writing that the withheld rent money has been deposited in the escrow account and explain why.

Depositing the withheld rent money in an escrow account is not required by law but is a very good thing to do for three reasons.

First, as explained under “Risks,” rent withholding cases often wind up in court as a result of the landlord suing the tenant in an eviction case or in a monetary case to recover the withheld rent. The judge usually will require the tenant to pay the landlord some reduced rent based on the value of the rental unit with all of its defects. Judges rarely excuse payment of all rent. Depositing the withheld rent money in an escrow account ensures that the tenant will have the money to pay any “reasonable rent” that the court orders. The tenant will have to pay the rent ordered by the court five days (or less) from the date of the court’s judgment.

Second, putting the withheld rent money in an escrow account proves to the court that the tenant did not withhold rent just to avoid paying rent. If there is a court hearing, the judge will often ask the tenant if they set aside the rent. The tenant should bring rental receipts or other evidence to show that they have been reliable in paying rent in the past.

Third, it may strengthen a tenant's position in their case to deposit the withheld rent money in an escrow account or set it aside, particularly if the defenses turn out to not be that strong. Tenants should contact their local legal aid organization for more information.

Sometimes, the tenant and the landlord will be able to agree on the amount of rent that is reasonable for the time when the rental unit needed repairs. If the tenant and the landlord cannot agree on a reasonable amount, the dispute will have to be decided in court, or resolved in an arbitration or mediation proceeding provided the parties included an arbitration or mediation clause in their rental agreement or subsequently have agreed to use arbitration or mediation to resolve their dispute. Whether or not the rental agreement contains an arbitration or mediation clause, landlords and tenants are encouraged to utilize dispute resolution programs (such as arbitration or mediation) in lieu of proceeding to court where possible since disputes submitted to dispute resolution can be resolved more quickly, less expensively, and the parties can avoid the adversity associated with litigation.

Risks: The defects may not be serious enough to threaten the tenant’s health or safety. If the tenant withholds rent, the landlord may give the tenant a three-day notice to pay the rent or quit. If the tenant refuses to pay, the landlord likely will file an unlawful detainer action to evict the tenant. In the court action, the tenant will have to prove that the landlord violated the implied warranty of habitability.[229]

If the tenant wins the case, the landlord can be ordered to make the repairs, and the tenant will be ordered to pay a reasonable rent amount, which may be less than the usual rent amount. The rent ordinarily must be paid five days or less from the date of the court’s judgment. If the tenant wins but does not pay the amount of rent ordered when it is due, the judge will enter a judgment for the landlord, and the tenant may be evicted. If the tenant loses, they will have to pay the rent, may be evicted, will be ordered to pay the landlord’s court costs, and will likely be ordered to pay the landlord’s attorney’s fees if the rental agreement contains an attorney's fees clause.

There is another risk of tenants withholding rent. The landlord may ignore the tenant’s notice of defective conditions and seek to remove the tenant by giving them a 30-day, 60-day or 90-day notice to move. This may amount to a “**retaliatory act**.”[230] The law prohibits retaliation, but there are some limitations to this protection.[231]

Giving the landlord notice

Whenever a tenant gives the landlord notice of the tenant’s intention to repair and deduct, withhold rent, or abandon the rental unit, it is suggested that the tenant put the notice in writing. The notice should be in the form of a letter and can be typed or handwritten. The letter should describe in detail the problem and the repairs that are required. The tenant should sign and date the letter and always keep a copy.[232]

The tenant might be tempted to send the notice to the landlord by text message, e- mail, or fax. The laws regarding repairs specify that the tenant may give the landlord notice orally or in writing, but do not mention text messaging, e-mail, or fax. To be certain that the notice complies with the law, the tenant should follow up any texted, e- mailed, or faxed notice with a letter describing the damage or defects and the required repairs.

The letter should be sent to the landlord, manager, or agent by certified mail (return receipt requested). Sending the letter by certified mail is not required by law but is recommended. Or, the tenant (or a friend) may personally deliver the notice to the landlord, manager, or agent. The tenant should ask for a signed and dated receipt showing that the notice was received or ask the landlord to date and sign (or initial) the tenant's copy of the letter to show that the landlord received the notice. Whatever the method of delivery, it is important that the tenant obtain proof that the landlord, or the landlord's manager or agent, received the notice.

The copy of the letter and the receipt will serve as proof that the tenant notified the landlord, and also proof of what was contained in the notice. The tenant should keep a copy of the letter and the receipt in case of a dispute with the landlord. The tenant also should take photographs or videos when possible to document the extent of the damage or defect.

The landlord or agent may call the tenant to discuss the request for repairs or to schedule a time to make the repairs. It is recommended that the tenant keep notes of any conversations and phone calls about the request for repairs. During each conversation or immediately after it, the tenant should write down the date and time of the conversation, what both parties said, and the date and time that the tenant made the notes. It is important to note that neither the tenant nor the landlord can record a telephone conversation without the other party's permission.[233] If a landlord gives a notice that he/she will enter the unit to make repairs but never shows up, it is a good idea for the tenant to send the landlord a letter explaining that the landlord never showed up at the specified time. This will serve as proof if, in the future, the landlord tries to claim that the tenant did not allow entry.

Tenant information

An occupant of residential property can invite another person onto the property during reasonable hours, or because of emergency circumstances, to provide information about tenants' rights or to participate in a tenants' association or an association that advocates for tenants' rights. The invited person cannot be held liable for trespass. [234]

Lawsuit for damages as a remedy

The remedies of repair and deduct, abandonment, and rent withholding allow a tenant in a rental unit with serious habitability defects to take action against the landlord without filing a lawsuit. Arbitration and mediation are other methods of resolving disputes about the condition of a rental unit.

A tenant has another option. The tenant can file a lawsuit against the landlord to recover money damages if the landlord does not repair serious defects in the rental unit in a timely manner.[235] For damages under $10,000, the tenant can file a lawsuit in the Small Claims Court in the county where the property is located. In 2020, the jurisdictional limit for Small Claims Court cases is $10,000 or less. For damages above $10,000, the tenant will need to file his/her lawsuit in the Superior Court in the county where the property is located.[236] The tenant can file this kind of lawsuit without first trying another remedy, such as the repair and deduct remedy. It is important to note that according to the law, tenants cannot be represented by a lawyer in Small Claims Court cases, although many legal services organizations and court self-help centers have materials that provide guidance.

If the tenant wins the lawsuit, the court may award the tenant his or her actual damages, plus "special damages" in an amount ranging from $100 to $5,000.[237] "Special damages" are costs that the tenant incurs, such as the cost of a motel room, because the landlord did not repair defects in the rental unit. The party who wins the lawsuit is entitled to recover his or her costs of bringing the suit (for example, court costs), plus reasonable attorney's fees as awarded by the court pursuant to any statute or the contract of the parties.[238] While attorneys cannot appear in small claims court, a tenant may still have had attorney's fees, for example for the preparation of a demand letter.

The court also may order the landlord to abate (stop or eliminate) a nuisance and to repair any substandard condition that significantly affects the health and safety of the tenant.[239] For example, a court could order the landlord to repair a leaky roof, and could retain jurisdiction over the case until the roof is fixed. This type of relief, called 'injunctive relief', is typically not available in small claims court, but Civil Code section 1942.4 allows for it. It should be noted

that local code enforcement officials can also order the landlord to correct violations by way of a “Notice of Violation and Order to Abate”. In fact, that is a necessary step for this type of affirmative lawsuit, as described in the following.

In order for a tenant to prevail in his/her affirmative lawsuit and recover actual and special damages against the landlord, all of the following conditions must be met.[240] The tenant can still prevail in his/her affirmative claim without meeting these conditions, but will not recover both actual and special damages.

- The rental unit has a serious habitability defect that endangers the health, life, safety, property, or welfare of the occupants or the public;
- A housing inspector has inspected the minimum requirements for habitability; or has been declared substandard because, for example, a structural hazard, inadequate sanitation, or premises liability and has given the landlord or the landlord’s agent written notice of the landlord’s obligation to repair the substandard conditions or abate the nuisance;
- The nuisance or substandard conditions continue to exist 35 days after the housing inspector mailed the notice to the landlord or agent, and the landlord does not have good cause for failing to make the repairs;
- The nuisance or substandard conditions were not caused by the tenant or the tenant’s family, guests, or pets; and
- The landlord collects or demands rent, issues a notice of rent increase, or issues a three-day notice to pay rent or quit after all of the above conditions have been met.

To prepare for filing this kind of lawsuit, the tenant should take all of these basic steps:

- The tenant should notify the landlord in writing about the conditions that require repair (see “Giving the landlord notice”). The rental unit must have serious habitability defects that were not caused by the tenant’s family, guests, or pets.
- The notice should specifically describe the defects and the repairs that are required.
- The notice should give the landlord a reasonable period of time to make the repairs.
- If the landlord does not make the repairs within a reasonable time, the tenant should contact the local city or county building department, health department, or local housing agency and request an inspection.
- The housing inspector must inspect the rental unit.
- The housing inspector must give the landlord or the landlord’s agent written notice of the repairs that are required.
- The substandard conditions must continue to exist 35 days after the housing inspector mailed the notice to the landlord or landlord’s agent. The landlord must then collect or demand rent, raise the rent, or serve a three-day notice to pay rent or quit.
- The tenant should gather evidence of the substandard conditions (for example, photographs or videos, statements of witnesses, inspection reports) so that the tenant can prove his or her case in court.
- The tenant should discuss the case with a lawyer, legal aid organization, tenant program, or housing clinic in order to understand what the lawsuit is likely to accomplish, and also the risks involved.[241]

Resolving complaints out of court

Before filing suit, the tenant should try to resolve the dispute out of court, either through personal negotiation or a dispute resolution program that offers mediation or arbitration of landlord-tenant disputes. If the tenant and the landlord agree, a neutral person can work with both of them to reach a solution. Informal dispute resolution can be inexpensive and fast (see “Arbitration and Mediation”).

LANDLORD’S SALE OF THE RENTAL UNIT

If your landlord voluntarily sells the rental unit that you live in, your legal rights as a tenant are not changed. Tenants who have a rental agreement have the right to remain through the end of the rental agreement under the same terms and conditions. The new landlord may be able to end a **periodic tenancy** (for example, a month-to-month tenancy), but only if allowed by law and after giving the tenant the required advance notice. The new landlord’s ability to

terminate the tenancy may be limited by the provisions of the Tenant Protection Act of 2019, in that just cause to terminate the tenancy may be required (see “Landlord’s notice to end a periodic tenancy”).

The sale of the rental unit does not change the rights of the tenants to have their security deposits refunded when they move. This booklet discusses the new landlord’s responsibility for the tenants’ security deposits after the rental unit has been sold.

When property is sold in foreclosure

State law provides that a tenant or subtenant in possession of a rental housing unit under a month-to-month rental agreement or periodic tenancy at the time a property is sold in foreclosure shall be given 90 days’ written notice to quit before the tenant may be removed from the property.[242] In addition, a tenant or subtenant in possession of a rental housing unit under a fixed-term residential rental agreement (such as a one-year rental agreement) entered into before transfer of title at the foreclosure sale shall have the right to possession until the end of the term, except that the fixed-term tenancy may be terminated upon 90 days' written notice to quit if any of the following apply: (1) the purchaser in the foreclosure sale will occupy the housing unit as a primary residence; (2) the tenant is the mortgagor or the child, spouse, or parent of the mortgagor; (3) the rental agreement was not the result of an arms' length transaction; or (4) the rent is much less than the fair market value of the property (unless the rent is reduced or subsidized due to federal, state or local subsidy or law such as a Section 8 voucher).[243] Federal law requires that the purchaser at foreclosure of a dwelling in which a tenant occupies with a Section 8 voucher must continue the tenancy under the rental agreement and housing assistance payment contract, being entitled to the rights and bound by the obligations of that program, unless they will occupy the dwelling as their primary residence, in which case they must first give the tenant 90 days’ notice to vacate.[244]

CONDOMINIUM CONVERSIONS

A landlord who wishes to convert rental property into condominiums must obtain approval from the local city or county planning agency. The landlord also must receive final approval in the form of a public report issued by the California Department of Real Estate. Affected tenants must receive notices at various stages of the application and approval process. [246] Tenants can check with local elected officials or housing agencies about the approval process and opportunities for public input.

Perhaps most important, affected tenants must be given written notice of the conversion to condominiums at least 180 days before their tenancies end due to the conversion.[247] Affected tenants also must be given a first option to buy the rental unit on the same terms that are being offered to the general public (or better terms). The tenants must be able to exercise this right for at least 90 days following issuance of the Department of Real Estate’s public report.[248] Local laws may provide additional requirements and protections for tenants.

DEMOLITION OF DWELLING

The owner of a dwelling must give written notice to current tenants before applying for a permit to demolish the dwelling. The owner also must give this notice to tenants who have signed rental agreements but who have not yet moved in (see page 30). The notice must include the earliest approximate dates that the owner expects the demolition to occur and the tenancy to end. [249]

INFLUENCING THE TENANT TO MOVE

California law protects a tenant from retaliation by the landlord because the tenant has lawfully exercised a tenant right. California law also makes it unlawful for a landlord to attempt to influence a tenant to move out by doing any of the following:

- Engaging in conduct that constitutes theft or extortion.
- Using threats, force, or menacing conduct that interferes with the tenant’s quiet enjoyment of the rental unit. Quiet enjoyment means you have the right to full use and enjoyment of the rental unit free from substantial interference from the landlord.

(Menacing conduct by the landlord must be of a nature that would create the fear of harm in a reasonable person.)

- Committing a significant and intentional violation of the rules limiting the landlord's right to enter the rental unit.[249]

A landlord does not violate the law by giving a tenant a warning notice, in good faith, that the tenant's or a guest's conduct may violate the rental agreement, rules or laws. The notice may be oral or in writing. The law also allows a landlord to give a tenant an oral or written explanation of the rental agreement, rules or laws in the normal course of business.[250]

If a landlord engages in unlawful behavior as described above, the tenant may sue the landlord in small claims court or Superior Court. If the tenant prevails, the court may award them a civil penalty of up to $2,000 for each violation.[252] Before filing a lawsuit, the tenant should be mindful that lawsuits can be very contentious, stressful, expensive and continue for extended periods of time. If you are faced with actions similar to those described above, try to assess the situation realistically. You may want to discuss the situation with a tenant advisor, or a lawyer who represents tenants. You should consider whether the landlord's actions have a discriminatory motive, in which case you should contact a local fair housing organization, a local legal aid organization or the California Department of Fair Employment and Housing. If you are convinced that you cannot work things out with the landlord, then consider your legal remedies.

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[181] *Green v. Superior Court* (1974) 10 Cal.3d 616, 637-638; Civ. Code §§ 1941 and 1941.1.
[182] *Green v. Superior Court* (1974) 10 Cal.3d 616.
[183] *Green v. Superior Court* (1974) 10 Cal.3d 616; Hinson v. Delis (1972) 26 Cal.App.3d 62.
[184] *Green v. Superior Court* (1974) 10 Cal.3d 616, 637-638.
[185] Civ. Code §§ 1929 and 1941.2.
[186] *Green v. Superior Court* (1974) 10 Cal.3d 616.
[187] Civ. Code §§ 1929 and 1941.2.
[188] Civ. Code § 1941.
[189] *Green v. Superior Court* (1974) 10 Cal.3d 616.
[190] Civ. Code § 1941.1(a); Health & Saf. Code §§ 17920.3 and 17920.10.
[191] Civ. Code § 1941.1.
[192] Health & Saf. Code §§ 17910-17998.3; Rosenquest & Portman, The California Landlord's Law Book: Rights and Responsibilities, 19th Ed., page 214 (NOLO Press 2021).
[193] Civ. Code § 1941.3. See this section for additional details and exemptions. Remedies for violation of these requirements are listed at Civ. Code § 1941.3(c). California Practice Guide, Landlord-Tenant, § 3:21.5 (Rutter Group 2021).
[194] Health & Saf. Code § 13113.7.
[195] Health & Saf. Code §§ 17926 and 17926.1.
[196] Health & Saf. Code § 17958.3; Civ. Code § 1941.1(a)(9).
[197] Health & Saf. Code §§ 116049.1(b)(1) and 116064(c).
[198] *Green v. Superior Court* (1974) 10 Cal.3d 616, 637-638; Hinson v. Delis (1972) 26 Cal.App.3d 62, 70.
[199] Civ. Code § 1941.4; Pub. Util. Code § 788; California Practice Guide, Landlord-Tenant, § 3:21.10 (Rutter Group 2021).
[200] Health & Saf. Code § 17920.3(a)(13).
[201] Moskovitz et al., California Landlord-Tenant Practice, §§ 3.6-3.7 (Cont.Ed.Bar 2021); Health & Saf. Code §§ 25400.10-25400.47.
[202] Civ. Code § 1941.2(b).
[203] Civ. Code § 1941.2(a)(5).
[204] Civ. Code § 1941.3(b).
[205] Health & Saf. Code § 13113.7.
[206] Civ. Code § 1941.2(b).
[207] Civ. Code § 1941.2(a).
[208] Civ. Code §§ 1929, 1941.2, and 1942(c); Rosenquest & Portman, The California Landlord's Law Book: Rights & Responsibilities, 19th Ed., pages 218-219 (NOLO Press 2021).
[209] Weaver, California Tenants' Rights, 23rd Ed., page 32-33 (NOLO Press 2022).
[210] Civ. Code § 1942.1.
[211] Rosenquest & Portman, The California Landlord's Law Book: Rights and Responsibilities, 19th Ed., page 211-213 (NOLO Press 2021).
[212] Rosenquest & Portman, The California Landlord's Law Book: Rights and Responsibilities, 19th Ed., page 211-213 (NOLO Press 2021).

[213] Civ. Code § 1954.
[214] Civ. Code §§ 1941.5 and 1941.6; Family Code §§ 6321 and 6340. The National Housing Law Project has an informational packet on lock changes, available at http://nhlp.org/files/CA-Lock-Changes-Packet-Advocates-and-Survivors.pdf.
[215] Civ. Code § 1942.
[216] California Practice Guide, Landlord-Tenant, §§ 3:114-3:117 (Rutter Group 2021).
[217] Rosenquest & Portman, The California Landlord's Law Book: Rights & Responsibilities, 19 Ed., page 217 (NOLO Press 2021).
[218] See Civ. Code § 1942.5(a).
[219] California Practice Guide, Landlord-Tenant, § 3:124 (Rutter Group 2021).
[220] Civ. Code § 1942.
[221] California Practice Guide, Landlord-Tenant, §§ 3:126-3:128, (Rutter Group 2021).
[222] Civ. Code § 1942.
[223] Rosenquest & Portman, The California Landlord's Law Book: Rights & Responsibilities, 19th Ed. page 217 (NOLO Press 2021).
[224] *Green v. Superior Court* (1974) 10 Cal.3d 616.
[225] Rosenquest & Portman, The California Landlord's Law Book: Rights & Responsibilities, 19th Ed., pages 219 (NOLO Press 2021).
[226] *Green v. Superior Court* (1974) 10 Cal.3d 616, 621. See Hyatt v. Tedesco (2002) 96 Cal.App.4th Supp. 62, 68 for additional examples of substantial defects that violated the implied warranty of habitability.
[227] Rosenquest & Portman, The California Landlord's Law Book: Rights & Responsibilities, 19th Ed., page 219 (NOLO Press 2021).
[228] See discussion in Rosenquest & Portman, The California Landlord's Law Book: Rights & Responsibilities, 19th Ed., pages 219-220. (NOLO Press 2021), Weaver, California Tenants' Rights, 23rd Ed., pages 216-217 (NOLO Press 2022), and California Practice Guide, Landlord-Tenant, §§ 3:138-3:142 (Rutter Group 2021).
[229] Depending on the facts, the tenant may be entitled to a rebuttable presumption that the landlord has breached the implied warranty of habitability. (Civ. Code § 1942.3.) This presumption affects the burden of producing evidence.
[230] California Practice Guide, Landlord-Tenant, §§ 7:330, et seq (Rutter Group 2021).
[231] See Civ. Code § 1942.5(a).
[232] Moskovitz et al., California Landlord-Tenant Practice, § 3.13 (Cont.Ed.Bar 2021); Civ. Code § 1942(a).
[233] Pen. Code § 632.
[234] Civ. Code § 1942.6. A tenants' association does not have a right under the California Constitution's free speech clause to distribute its newsletter in a privately owned apartment complex. (Golden Gateway Center v. Golden Gateway Tenants Assoc. (2001) 26 Cal. 4th 1013.
[235] Civ. Code § 1942.4.
[236] One reference book cautions against a tenant litigating implied warranty of habitability issues in small claims court because collateral estoppel precludes an issue decided there from being relitigated. Moskovitz et al., California Landlord-Tenant Practice, §§ 5.16 and 5.39 (Cont.Ed.Bar 2021), citing Pitzen v. Superior Court (2004) 120 Cal. App. 4th 1374.
[237] Civ. Code § 1942.4(b)(1).
[238] Civ. Code § 1942.4(b)(2); Code Civ. Proc. § 1174.2.
[239] Civ. Code § 1942.4(a),(c).
[240] Civ. Code § 1942.4(a); Health & Saf. Code §§ 17920.3 and 17920.10.
[241] Civ. Code § 1942.4, which gives the tenant the right to sue the landlord as described in this section, also can be used defensively. If the landlord brings an unlawful detainer action against the tenant based on nonpayment of rent, and the court finds that the landlord has violated all of the five conditions listed in the bullets on this page, the landlord is liable for the tenant's attorney's fees and costs of suit, as determined by the court. (Code Civ. Proc. § 1174.21).
[242] Code Civ. Proc. § 1161b(a).
[243] Code Civ. Proc. § 1161b(b); Weaver, California Tenants Rights, 23rd Ed., page 259 (NOLO Press 2022).
[244] 42 U.S.C § 1437f(o)(7).
[245] Gov. Code § 66427.1(a) and (b).
[246] Gov. Code §§ 66451.3, 65090 and 65091.
[247] Gov. Code § 66427.1(a)(2)(E).
[248] Gov. Code §§ 66427.1 and 66427.1(a)(2)(F); Bus. & Prof. Code §§ 11018 and 11018.2; California Practice Guide, Landlord-Tenant, § 5:313.7 (Rutter Group 2021).
[249] Civ. Code § 1940.6.
[250] Civ. Code § 1940.2(a).
[251] Civ. Code § 1940.2(c).
[252] Civ. Code § 1940.2(b).

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