

CAN THE LANDLORD TRY TO EVICT ME FOR ENFORCING MY RIGHT TO “REPAIR AND DEDUCT”?

For 180 days (6 months), the landlord may not retaliate against you by raising the rent, reducing services, or evicting you if you enforce your rights as follows:

1. You give written notice to the landlord to make repairs or you orally complain to the landlord about the condition of the place; or
2. After giving reasonable notice to the landlord to make repairs, you file a complaint with the County Dept. of Environmental Health (363-4305), have the place inspected, and/or a citation is issued as a result; or
3. You file and/or win a court action about the poor conditions.

FOR FURTHER INFORMATION AND ASSISTANCE CALL THE LEGAL AID SOCIETY OF SAN MATEO COUNTY
(650) 558-0915 or 1-800-381-8988

www.legalaidsmc.org

or

www.landlordtenantinfo.org

This pamphlet provides general information on the law, which may change. For specific legal problems, you should see a lawyer.

Grateful acknowledgment is given to the following organizations for their contributions to the production of this brochure:

The Peninsula Community Foundation,
The County of San Mateo, Daly City, and
Redwood City

SAMPLE “NOTICE TO REPAIR”

(Date)

(Landlord or Landlord’s Agent Name)

(Landlord or Agent’s Address)

Dear (Landlord or Agent’s Name):

The following repairs need to made at the place I rent from you at (address) (list problems). These problems are serious and make the property unsafe and uninhabitable. If the repairs are not made by (set date, giving reasonable time), I will take legal action. If necessary, I will do one of the following:

1. Make the repairs myself and deduct the expenses (including labor and charges) from the rent. Under California Civil Code Sec. 1942, I may do this twice in a 12 month period. If I do this, I will send you copies of the receipts for the repairs; or
2. Sue you to have the repairs made and for a return of the part of my rent paid for the repairs.

I would appreciate your prompt attention to these repairs.

Yours truly,

(Tenant’s signature)

Tenant’s name and address

LEGAL AID SOCIETY
of San Mateo County

REPAIR AND DEDUCT

*Issues in Landlord-Tenant
Law Series. No.7*

Prepared by the
Legal Aid Society of
San Mateo County

July 2002



CAN I MAKE REPAIRS AND DEDUCT THE COSTS FROM MY RENT?

You have the right to ask the landlord to repair serious habitability problems. If the landlord refuses, you may make the repairs and deduct the cost from the next month's rent/ The cost of repairs (labors and materials) cannot exceed one month's rent.

WHAT REPAIRS ARE "SERIOUS"?

The landlord does not have to keep your place in perfect shape. A few cockroaches or a broken screen may not be enough to allow you to withhold your rent. The landlord must provide:

- working plumbing and heating
- hot and cold running water
- electricity and lights that work and are safe (no exposed wiring)
- roof, walls and windows that do not leak and are not broken
- clean common areas, no vermin
- window screens that keep out bugs
- enough trash cans to keep trash from overflowing
- safe floors, stairs, railings.

WHEN CAN THE LANDLORD CLAIM THAT I MUST MAKE THE REPAIRS?

If you, roommates or guests damage the property, or you violate your rental agreement, then you may lose your right to

"repair and deduct." For example, you must:

- keep the place clean;
- properly dispose of garbage;
- properly use electrical systems, gas, plumbing and fixtures, and keep them as clean as their condition permits;
- prevent anyone on the premises with your permission from doing damage;
- use rooms only for the purposes for which they were meant. For example, do not use the kitchen for sleeping purposes or the bedroom for cooking.

WHAT IS THE PROCEDURE FOR "REPAIR AND DEDUCT"?

Before you can do repairs, you must give your landlord a written notice requesting repairs. A Sample Notice is included in this brochure. You must wait a reasonable time - usually 30 days - for the landlord to make the repairs. This time can be less for emergencies, such as a flooding toilet or a broken heater in the winter. If the landlord tries to make repairs and you interfere, you may lose your rights under this remedy.

You can only use the "repair and deduct" remedy twice in any 12 month period. You may wish to consult an attorney to be sure that this is the right thing to do and that you do it properly.

WHAT IF THE LANDLORD DOES NOT MAKE THE REPAIRS?

If the landlord does not make repairs in a reasonable time, you can:

1. Have the repairs made yourself and deduct the cost from the next month's rent. Get 2 or 3 estimates for the job and select the one that is the most reasonable. Once repairs are done and you have paid the bill, deduct that amount from the next month's rent. Include with your rent a statement of the amount deducted for repairs, as well as copies of all repair receipts. Keep copies of your statement and receipts for your records.
2. Sue your landlord in Small Claims Court to pay for repairs. Continue to pay your full rent until the court hearing. The court will decide if the repairs were for serious problems and what cost is reasonable. If you win, it will order the landlord to refund part of your rent to pay repair costs.
3. If a code enforcement agency ordered the landlord to fix violations and they are not done within 60 days, sue in Small Claims Court for a repair order. If you win, the court will order the landlord to do repairs and may bar all rent payments until they are made.