

## ***"Landlord/Tenant Issues: Getting Repairs Done"***

### **Repairs - [Civil Code §1941.1]**

Under state and local housing codes, the landlord is required to maintain the rental units in a habitable (livable, tenantable) condition.

This is the "'implied warranty of habitability" [Green vs. Superior Court (1974), 10 Cal. 3d 616; Civil Code §1941]. This warranty means the law assumes that a landlord must keep the premises in habitable condition, and if he/she does not, the rental agreement may be considered canceled and the tenant may owe only the "reasonable rental value" of the premises in its defective condition. Tenants also have obligations to keep the premises clean and not destroy the property. Unless the landlord and tenant agree on the "reasonable rental value," it is up to the Court to decide what the reasonable rental value is.

**NOTE:** Ignoring the requests for repairs of one tenant and taking care of repairs for another tenant could be a form of arbitrary discrimination.

### **Tenant's Duties [Civil Code §1929 and 1941.2]**

A landlord may not be responsible for repairing damage, which resulted from the tenant being in substantial violation of his/her affirmative obligation under the law. The tenant has a duty to:

- Keep his/her part of the premises clean and sanitary.
- Properly dispose of garbage and other waste in a clean and sanitary manner.
- Properly use and operate all electrical, gas and plumbing fixtures and keep them as clean and sanitary as possible.
- Not permit any person to willfully or wantonly destroy, deface, impair or remove any part of the structure or dwelling unit, equipment, or parts of the equipment.
- Only utilize the premises for the purposes for which they are rented (to occupy the premises as a place for living, sleeping, cooking, etc.).
- Repair all deterioration or damage caused by tenant's own recklessness or negligence.

A landlord does not have to repair anything that a tenant or tenant's guest has broken due to misuse, or anything that breaks due to a tenant's lack of ordinary care.

### **Getting Repairs Done When a Landlord is Responsible under Civil Code §1941.1**

- Give notice to the landlord about the needed repairs, making sure the landlord knows exactly what is wrong. Written notice will offer the best protection, but you may request a repair orally. Keep a copy of all written requests for your files.
- Report immediately any type of water damage to the rental. For example, if there is a plumbing leak, a toilet overflow, a dishwasher overflow etc.
- Wait a reasonable amount of time for the repairs to be made. The law says that 30 days is "presumed" reasonable; however, a reasonable wait may depend on the circumstances. If a tenant waits fewer than 30 days and the case goes to court, he/she must prove the shorter wait was reasonable. For example, if there is no heat in the middle of a very cold month, a court may find a shorter time reasonable.
- Cooperate with the landlord in his/her attempts to make repairs. However, unless it is an emergency, the landlord is required to give a tenant "reasonable notice" of his/her

intent to enter the premises to make repairs. Reasonable notice is presumed to be 24 hours in most cases.

### **Tenant's Remedies for Landlord's Failure to Make Required Repairs [Civil Code §1942]**

If a landlord refuses to repair a habitability problem, a tenant may wish to consider exercising one of the following options:

#### **Repair and Deduct:**

- This option can only be used twice in a twelve-month period. Each time it is used, the repairs may not exceed the amount of rent due per month. The tenant cannot combine two months rent to pay for one repair. If these requirements are met, go on.
- Make sure the items needing repair fall under the landlord's obligation (as discussed under cc Section 1941.1.)
- Notify the landlord (written notice is advisable) that if the repairs are not made within a reasonable time, you intend to pay for the repairs and deduct them from next month's rent (keep a copy of the letter).
- Wait a reasonable time. Thirty days is presumed to be a reasonable time; however, a shorter time may be reasonable depending on the circumstances. Then make repairs which will cost less than one month's rent.
- When the next rent is due, include a copy of the receipt(s) or an itemized statement of the cost of repairs along with the remainder of the rent, and send them to the landlord. Remember to keep a copy of the receipt and itemized statement.

***WARNING: Your landlord may give you a Three-day Pay or Quit Notice after you have exercised your option to repair and deduct. You may have to defend your actions in court, and risk eviction and a judgment against you on your credit. If you choose to repair and deduct, make sure you follow all the procedures carefully and document everything. If you receive a Three-day Pay or Quit Notice, contact a private attorney or call a tenant/landlord professional for your options***

#### 2. **Withhold Rent** [Green vs. Superior Court (1974), 10 Cal.3d 616.]

It is legal for a tenant to withhold all or part of his/her rent to prompt the landlord to make necessary repairs in order to maintain the property in habitable condition and enforce the "warranty of habitability."

In order to withhold rent, the tenant should do the following:

- Make certain that the repairs requested fall under the landlord's minimum obligations (as discussed under cc Section 1941.1.)
- Give the landlord notice of the habitability problems, in writing/keeping a copy is best.
- Wait a reasonable amount of time for the repairs to be made (reasonable is presumed to be 30 days in most circumstances).
- After 30 days, notify your landlord (preferably in writing) that you are going to withhold your rent and will pay the amount withheld as soon as repairs are made.
- After the repairs are made, you are under an obligation to pay the landlord any rent withheld. To show good faith, you may set up a separate savings account or trust account, and pay the rent to the account every month, or purchase money orders. If you go to court over this matter, take evidence that you have the past rent due. Keep in mind you can still ask the court to reduce the amount of rent you owe for the time

the premises were in a defective condition. If the court does not grant your request, you will have to pay the full amount of rent owed.

***WARNING: Withholding rent is risky. Your landlord may give you a Three-day Pay or Quit Notice after you have exercised your option to withhold. You may have to defend your actions in court, and risk eviction and a judgment against you on your credit. If you choose to withhold rent, make sure you follow all the procedures carefully and document everything. Withholding rent is not suggested without the advice of an attorney.***

### **3. Call the Local Authorities for Habitability and Building Defect Inspections**

Elk Grove Code Enforcement (916) 478-2266

If one of the above agencies is called, and an inspector comes to the property, the tenant should request and save a copy of the report and the inspector's business card. Try to obtain a certified copy of the report, as some courts only accept certified copies into evidence.

**NOTE:** If the result of a call to the authorities is a determination that the premises must be vacated, the tenant may be eligible for relocation benefits.

### **4. Sue the Landlord**

The tenant has the option of making the repairs him/herself (or hiring someone to make the repairs) and then suing the landlord for the cost of making the repairs. A tenant may choose to contact an attorney or go to Small Claims Court. Most tenants favor Small Claims Court because attorneys are not involved and costs are minimal.

Before you make the repairs yourself:

- Make certain that the repairs requested fall under the landlord minimum obligations. (as discussed under cc Section 1941.1.)
- Give the landlord notice of the habitability problems, preferably in writing.
- Wait a reasonable amount of time for the repairs to be made (reasonable is presumed to be 30 days in most circumstances).
- Notify your landlord (preferably in writing) that you are going to make the repairs yourself.
- After the repairs have been made, provide evidence of the cost to the landlord, and ask the landlord to reimburse you. It is a good idea to do this in writing. If the landlord refuses, you may take him/her to court.

Depending on the circumstances, the tenant may request from the court:

- A refund for money spent on repairs.
- The judge to order the landlord to return some or all of the rent for the period the rental unit needed repairs.
- Damages for personal injuries or health problems that result from the landlord's breach of the warranty of habitability.

**NOTE:** *If a tenant takes any of the above actions, and is served with a 30-day notice to vacate within 180 days of the action, the notice may be considered "retaliatory" and may be illegal.*

## **5. Move**

If the landlord fails to make requested repairs, and the unit has been declared by proper officials to be uninhabitable a tenant may move without giving proper notice. This is called "constructive eviction".

### **Options for Repairs That Do Not Fall Under the Implied Warranty of Habitability**

Generally, items such as appliances, security, or luxury or cosmetic items will not be covered by the implied warranty of habitability. For those items, remedies of "withholding rent" and "repairing and deducting" do not apply.

However, if the landlord provides a stove or other appliance, the landlord still may have an obligation to provide them in working condition or repair them.

If the tenant has given the landlord reasonable notice and the landlord refuses to repair these items, the tenant may consider:

1. Consulting a private attorney.
  
2. Suing in Small Claims Court under:
  - Breach of expressed warranty (when the landlord promises to fix or maintain something and then fails to).
  
  - Breach of contract (when the rental agreement states that the landlord will provide something or make repairs and fails to do so).
  
  - Breach of implied warranty (when the landlord provides an item, such as a refrigerator, at the beginning of the rental agreement and fails to maintain it. [See *Strecker vs. Barnard* (1952), 109 Cal.App.2d 149; *McNally vs. Wood* (1961), 192 Cal.App.2d 871, 874.]