

4. Withhold your entire rent and set it aside in a bank or trust account. Before doing this, consult an attorney to be sure this is the right thing to do and that you use the proper procedure.

WHAT IF I WANT TO WITHHOLD MY RENT?

If you consult with an attorney and decide to withhold all rent because your landlord has not made necessary repairs in your unit, the landlord may try to evict you for failure to pay rent. The landlord will give you a notice to pay your rent in 3 days or leave. If you do not pay or leave at this time, the landlord will file an "Unlawful Detainer" Complaint (an eviction lawsuit) with the court and serve you with the complaint.

You must file your Answer in court within 5 calendar days of receiving the Complaint. Your affirmative defense will state that the fair rental value of the premises is too high because your landlord breached the implied warranty of habitability. You can also request an order that the landlord make repairs, that your rent be reduced until they are done, and that the court keep jurisdiction until that time. You will need proof that there was a problem and that your landlord was aware of it.

You may also sue in separate lawsuits, see previous section, above.

Be sure to set aside your rent money so you will have it to pay later. If you win, the court will subtract from the full rent the value of the bare living requirement(s) that were lacking. You only have to pay the remainder, and you will be able to stay in the premises.

FOR FURTHER INFORMATION AND ASSISTANCE CALL THE LEGAL AID SOCIETY OF SAN MATEO COUNTY (650) 558-0915 or 1-800-381-8898

www.legalaidsmc.org
or
www.landlordtenantinfo.org

This pamphlet is designed to provide general information on the law, which may change. If you have a specific legal problem, you may wish to see a lawyer.

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LEGAL AID SOCIETY
of San Mateo County

HABITABILITY

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WHAT ARE THE LANDLORD'S DUTIES TO A TENANT?

Your landlord or his/her agent must provide a safe and sanitary place to live when he/she accepts rent from you. In other words, it must be "habitable." If the unit is not habitable when you move in, your landlord must make all needed repairs as long as he/she charges you rent. This is called the "implied warranty of habitability." The landlord cannot legally terminate your tenancy because you complain that he/she has not provided habitable premises.

WHAT ARE MY DUTIES AS A TENANT?

As a tenant, you have a duty to keep the place clean and sanitary, remove trash, properly use plumbing, gas, and electrical systems, neither destroy nor vandalize the premises nor allow a guest to do so, and to use the housing as your living quarters (the purpose for which they were designed).

WHAT IS A HABITABLE PLACE?

A "habitable place" need not be nice looking or comfortable. However, it must be substantially in compliance with the building code and has to provide the "bare living requirements."

For example, the law does not require your landlord to paint your home every year or to give you new drapes or rugs. A

place is "habitable" if it has the following:

- 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, free from trash and debris
- no vermin or cockroaches
- enough trash cans to keep trash from overflowing
- safe floors, stairs and rails
- window screens that keep out bugs.

WHAT SHOULD YOU DO IF YOUR PLACE IS NOT HABITABLE?

Notify the landlord or his/her agent in writing about the problems that exist. Ask your landlord to make all needed repairs. Keep a copy of this letter for your records. Take pictures of all the problems, date the pictures and keep them in case you need to go to court. You should also call the city building inspector or the county's Environmental Health Services to inspect your home. He inspector will send your landlord a written report of any sub-standard living conditions found in your unit. You must allow your landlord or his/her repairman access to your home during normal business hours to fix all the problems that exist.

WHAT IF YOUR LANDLORD DOES NOT FIX HAZARDS?

If your landlord does not make the repairs, you can do one of the following:

1. Move out and sue your landlord in Small Claims Court for damages to you, your family, or to your property due to your landlord's breach of the implied warranty of habitability if the total is less than \$5000. For damages which exceed \$5000, sue in Superior Court;
2. Remain and pay full rent; sue your landlord for breach of the implied warranty of habitability in Small Claims Court for damages up to \$5,000 or in Superior Court for damages which exceed \$5000;
3. Remain and pay rent, but sue in Small Claims Court for a repair order. Do this only if your code enforcement agency ordered your landlord to fix hazards and she/he has not done so for 60 days. The court can order him/her to make repairs and bar all rent payments until they are done;