

GETTING REPAIRS DONE

[This is a selection from the 2007 Landlord-Tenant Law in Oregon booklet. This booklet is for general educational use only. *It is not a substitute for the advice of an attorney.* If you have a specific legal question, you should contact an attorney. The information in this booklet is accurate as of September, 2006. Please remember that the law is always changing through the actions of the courts, the legislature, and agencies. **TIME LIMIT WARNING:** Under state and federal laws there are time limits for taking action to enforce your rights. Most lawsuits related to the rental agreement and the Oregon Residential Landlord and Tenant Act must be filed (started in court) within one year of the incident. There may be other - shorter - time limits that apply in other cases. Ask a lawyer about the time limits that could apply in your situation.]

Q32. Does the landlord have to make repairs?

Yes. The landlord must keep your place and the common areas in good repair at all times. This means that the unit must not substantially lack the following:

- 1) Effective waterproofing and weather protection;
- 2) A proper and functioning plumbing system
- 3) A water supply, under the control of the tenant, that is capable of producing hot and cold running water, furnished to appropriate fixtures, connected to a proper sewage system, and, to the extent that landlord can control this, maintained so as to be in good working order and to provide safe drinking water
- 4) Adequate heating facilities
- 5) Electrical lighting and wiring
- 6) Smoke detectors installed and working when you move in (but tenants must test the detectors every 6 months, replace batteries when needed, and give the landlord written notice if the detectors are broken);
- 7) Safety from fire hazards;
- 8) Appliances and facilities (air conditioning, ventilating) in working order if they are provided by the landlord;
- 9) Working keys, locks, and window latches;
- 10) No garbage, rodents, or vermin in your

- place or common areas around the building when you move in or throughout the tenancy;
- 11) Garbage containers and garbage service, unless you agree otherwise in writing or unless there is a local ordinance that doesn't require this;
- 12) Adequate plumbing, heating, and electrical equipment kept in good working order;
- 13) Walls, floors, ceilings, stairways, and railings in good repair;
- 14) The place must be clean and in good repair when you move in; and
- 15) The areas under the control of the landlord must be safe for normal and expected use.

The landlord and tenant can agree in writing that the tenant will fix certain things if the agreement is not an attempt by the landlord to get away from the duty to repair. The written agreement must state the amount of the payment for repair and it must be a fair amount.

ORS 90.320

Q33. What can I do if my landlord will not repair my place?

Ask your landlord to make repairs. If this does not work, write a letter to your landlord asking for repairs. See Sample Letter 1. Keep a copy of the letter.

If this does not work, call a law office to ask for advice on what to do next, such as calling building inspectors, health inspectors, fire inspectors or neighborhood mediation. In an emergency, like a broken pipe or no heat, call a law office right away.

You can sue a landlord for a court order to force repairs. If you have given the landlord notice of the need for repair and if the problem was *not* caused by you or someone else (besides the landlord), you may sue the landlord for damages to compensate you for reduced rental value, destroyed property, attorney fees and court costs. You should have a lawyer in order to file this kind of case.

In small claims court you can sue the landlord for money. You cannot get an order for repairs in small claims court. When you sue the landlord for money, be sure to ask for all the money that you think you should get. You may sue for money because the landlord failed to make repairs, or because your landlord damaged or destroyed your clothing or furniture. You may sue for money because your home was worth less each month because of the need for repairs. For example, if you could not use two rooms in a four-room apartment because of a bad leak in the roof, you might say that there was a 50% reduced rental value. (Because you could use half the apartment, you could argue that you should only pay half the rent during that time.) You may also sue for lost work time, medical expenses, higher heat bills, and other expenses caused by the landlord's failure to make repairs. See Question 14; see Time Limit Warning at the beginning of this booklet section.

Q34. What can I do if my landlord fails to provide an “essential service”?

An “essential service” means heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior doors, latches for windows, and any cooking appliance or refrigerator supplied or required to be supplied by the landlord. An “essential service” also includes any other service that the landlord is required to provide because of habitability requirements (see Question 32) or

because of the rental agreement, where failing to do so creates a serious threat to the tenant’s health, safety, or property, or makes the rental unfit to live in (ORS 90.100(10)).

If the landlord fails to provide an “essential service,” and you have provided the landlord with a written notice saying both that the landlord has failed to supply an essential service and that you may take certain actions as a result of this (See Sample Letter 6), and you have provided the landlord with reasonable access and time to fix the problem, then you have several options:

- ▶ You can get reasonable amounts of the essential service during the time that the landlord is failing to supply the service, and deduct the cost from the rent; **(YOU SHOULD NOT WITHHOLD RENT UNLESS ADVISED TO DO SO BY A LAW OFFICE!)**
- ▶ You can get compensation for the damage caused by the failure to provide an essential service, based on how much less the rental unit was worth at the time of the landlord’s violation;
- ▶ If the failure to supply an essential service makes your rental unit unsafe or unfit to live in, you are not obligated to pay rent for the time period in which the landlord was failing to supply this service. You may also seek compensation from the landlord for the fair cost of comparable housing;
- ▶ If the landlord’s failure to supply the essential service poses an “imminent and serious threat” to your health, safety, or property, then you can give the landlord a written notice that says that you are moving out in 48 hours unless the problem is fixed in that time (See Sample Letter 7); or
- ▶ You may fix the problem yourself, and if you have kept receipts and given proper notice to the landlord (which may also need to be 48 hours or 72 hours in advance), you may be able to demand specific amounts of compensation.
- ▶ You *can't* use this law for certain specific

problems such as lead-based paint, radon, asbestos, or the future risk of flooding or earthquakes.

ORS 90.365

Also, it is illegal for a landlord to intentionally diminish an essential service to your rental unit, to seriously attempt to do so, or to seriously threaten unlawfully to do so by causing an interruption of an essential service. If the landlord does this, you have a right to terminate your rental agreement. Regardless of whether or not you terminate your rental agreement, you also have a right to get a court order requiring the landlord to restore the essential service(s) and you have a right to sue for two months rent or twice the amount of the actual damages caused by the shut off of the essential service, whichever is greater. If you terminate the rental agreement, the landlord is required to give you back all prepaid rent and security deposits.

ORS 90.375

(See Question 29 for more information on situations in which you can't get a utility service.)

Q35. If I am a victim of domestic violence, stalking, or sexual assault, may I have my locks changed?

If you are a victim of domestic violence, sexual assault, or stalking, you may request that your landlord change your locks. You are responsible for the cost of the lock change. You are *not* required to provide evidence that you are a victim of domestic abuse, sexual assault, or stalking. If the landlord fails to act promptly, you may change the locks without the landlord's permission and then give a key to the landlord. If the perpetrator of the domestic violence, sexual assault, or stalking is your co-tenant, you must give your landlord a copy of a restraining order signed by a judge before the landlord can change your locks. A perpetrator who was a co-tenant remains jointly liable with any other tenants for rent or damages to the dwelling unit incurred before the perpetrator was excluded from the dwelling unit.

ORS 90.459

Q36. May I withhold rent if repairs aren't made?

First, follow the steps listed under Question 33, including making a demand for repairs, writing a letter to the landlord, and calling an inspector. If this does not work, it is legal for a tenant to withhold all or part of the rent to force legally required repairs when there is serious need for repairs and the landlord refuses to make repairs. **YOU SHOULD NOT WITHHOLD RENT UNLESS ADVISED TO DO SO BY A LAW OFFICE!** (See the Resource Section at the end of this booklet.)

If you decide to withhold rent, you should probably withhold less than the full amount of rent. Think about what is a fair amount to withhold because of the need for repairs. **YOU SHOULD NOT WITHHOLD RENT UNLESS ADVISED TO DO SO BY A LAW OFFICE!**

IF YOU WITHHOLD RENT, DO NOT SPEND IT. PAY IT TO YOUR LAWYER'S TRUST ACCOUNT OR OPEN A SEPARATE BANK ACCOUNT. KEEP THE MONEY.

When the landlord sues you for nonpayment, the court can order you to pay the withheld rent into court. If the landlord fails to make repairs and rent becomes due again while you are waiting, pay the withheld rent into the lawyer's trust account or into the separate bank account on the date rent is due and get a receipt.

If you withhold rent, almost all landlords will give you a 72-hour OR 144-hour notice of nonpayment and will file an eviction case against you in court. If the landlord files an eviction case against you, this may appear on your credit record whether you win or lose the case. (You have a right to dispute the accuracy of your credit report.) Also, if the landlord files an eviction case against you, you must be ready to pay the rent into court, to file an answer describing the serious need for repairs, and to then go to court to prove that there were serious problems that the landlord did not fix after receiving notice. **YOU SHOULD NOT WITHHOLD RENT UNLESS ADVISED TO DO SO BY A LAW OFFICE!**

Sometimes tenants lose in court after withholding rent.

If you decide to withhold rent, you should ask a lawyer to send a demand letter like Sample Letter 5. The lawyer may tell you to send one like it yourself. **A TENANT SHOULD NOTIFY THE LANDLORD OF THE REASONS FOR WITHHOLDING RENT BEFORE THE LANDLORD FILES THE EVICTION CASE IN COURT.**

ORS 90.370

Q37. May I hire a repair person to do the repairs and deduct the costs of repair from the next month's rent?

You should make the demand for repair as described under Question 33. Do not use repair and deduct unless you are advised to do so by a law office.

IT IS USUALLY NOT A GOOD IDEA FOR PEOPLE TO USE THE REPAIR AND DEDUCT SECTION UNLESS YOUR LANDLORD AGREES IN ADVANCE TO LET YOU USE REPAIR AND DEDUCT.

If you decide to repair and deduct, you must follow these rules:

- 1) You must notify the landlord before you have something fixed. How you notify the landlord and how long the landlord has to deal with the problem before you can have it fixed, depends on what's the matter and how serious it is. If the problem poses an immediate and serious threat to your health, safety, or property, you must give the landlord at least 48 hours notice before you get the work done. The notice may be written or oral, followed by a written notice as soon as possible. Sample Letter 3. If the problem is with a cooking or refrigerator appliance provided by the landlord, you must give at least 72 hours written notice of your

intent to have the problem fixed. In all other cases, you must give the landlord written notice seven days before you have the work done. Sample Letter 2. Try to call the landlord as soon as possible. Try to get the landlord to agree to make the repair or to agree to your having it done. **As always, keep copies of all letters!**

- 2) The total costs of the repairs must not be more than \$1000 if the lack of the service is a serious threat to the tenant's safety or property and the work is done professionally, or \$500 if the problem is significant but is not a serious threat, or if the work is not done professionally.
- 3) The problem that needs to be repaired must not have been caused by the tenant, family, or guests.
- 4) You must be fixing an "essential service." "Essential service" means heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior doors, latches for windows, and any cooking appliance or refrigerator supplied by the landlord. "Essential service" is also anything else required under the law or your rental agreement which, if it is not provided, creates a serious threat to the tenant's health, safety, or property or that makes the dwelling unfit to live in.
- 5) The work must be done in a professional manner and at the lowest possible cost. If the person you hired to do repairs causes damage to the property, the landlord may argue that you must pay. The landlord may specify the person you must use to do the repairs.

ORS 90.365

Q38. Are there any risks if I use the repair and deduct section?

Yes. You must follow all the rules listed

under Question 36. The landlord might try to evict you for not paying the full rent and might sue you to recover the rent not paid if you do not follow all the rules. If the landlord files an eviction case, the filing

Q39. If I call the building inspector, can I be evicted?

Your landlord cannot legally evict you in retaliation for your calling a building inspector. But you may have to go to court to prove that this was the reason for the eviction.

ORS 90.385

may appear on your credit record even if you win the case in court. (You have the right to dispute the accuracy of your credit record.)

The building inspector could force you to move if the unit is very dangerous, but this doesn't happen often. If it does, contact a law office.

Q40. Can my landlord bill me for repairs?

Yes, if you cause damage to the premises that is beyond normal wear and tear.