

## PREPARING FOR YOUR WARRANTY OF HABITABILITY HEARING

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In New York State, every residential lease or rental agreement contains a guarantee that your landlord will rent out a safe place to live. This guarantee is called the Warranty of Habitability. The Warranty of Habitability does not have to be in writing. Even if you have no written lease, you are still protected by this guarantee.

The Warranty of Habitability does not cover conditions that only make an apartment look bad, like a dirty wall or bad paint job. But, if these conditions are unsanitary or dangerous, the Warranty of Habitability protects you. When a tenant raises the warranty of habitability, the tenant is saying that the place they live in has conditions that threaten their life, health or safety, and because of that, the apartment is not worth the rent they agreed to pay.

A tenant may bring up the warranty of habitability in an eviction proceeding, or as a separate claim against the landlord. Usually, a judge will hold a hearing to give the tenant a chance to prove that the landlord has violated the warranty of habitability. The following instructions will help you prepare for your warranty of habitability hearing, especially if you do not have a lawyer who can represent you.

### WINNING A WARRANTY OF HABITABILITY HEARING

If you are being evicted, and there are conditions in your home that threaten your health and safety, you can raise what is called a “*warranty of habitability*” defense.

A tenant who is not being evicted may also start a court action against the landlord if the tenant paid rent for a home or apartment that has conditions that threaten health or safety.

However, in both cases, the tenant has to prove that the conditions exist, that the conditions are a threat to health or safety, and that the landlord knew about the conditions. The purpose of this claim is to have the judge take money off the rent for every month that the tenant had to live with bad conditions (a “rent abatement”). If the tenants or the tenants’ guests caused the conditions, the judge will not lower the rent.

Even if the judge agrees to lower the rent, the judge will almost always say that a tenant has to pay the landlord something for the rent. How much the judge takes off depends on how bad the conditions are in the home, how good the tenant’s proof is (e.g. the tenant’s testimony, photos, inspection reports, witness, etc.), and the judge’s own opinion.

If the tenant is being evicted and the tenant does not have the balance of the money the judge says is owed, the judge can order the tenant to move in as little as 14 days.

In a court action started by the tenant, if the court agrees with the tenant, the judge would award a judgment for all the months that the tenant lived with the unhealthy conditions.

To win a warranty of habitability case, you need to do the following:

1. **Prove that there are bad conditions in your home.**

You can do this by:

- a) Describing each condition, by yourself or using a witness.
- b) Showing the judge pictures that show each condition.
- c) Showing the judge a report from the building inspectors and/or the county health department describing what is wrong with your home or apartment.

2. **Prove that these conditions affect the health and/or safety of you and your family.**

You can do this by:

- a) Describing your concerns about the future safety of your family. For example: you worry that your child may eat the peeling paint chips or play with exposed wires.
- b) Describing any injuries you have already received as a result of these bad conditions. For example: falling down stairs, getting shocked by electricity, etc. If any of these injuries were serious, **you may want to speak with a private attorney before you raise these issues in court.**

3. **Prove that the landlord knew about these bad conditions.**

You can do this by:

- a) Describing the conversations you had with your landlord about these conditions, including how many conversations you had, what you said, and when each one took place.
- b) Showing the judge a copy of a building inspector's report and/or a county health department report that was sent to your landlord.
- c) Showing the judge copies of letters, emails, or text messages you sent to your landlord complaining about the conditions.

4. **Prove how long these bad conditions existed.**

You can do this by:

- a) Telling the judge, yourself or using a witness.
- b) Showing the judge building inspector's reports and/or a county health department inspection reports.
- c) Showing the judge letters, text messages, dated photographs, or similar proof, from you to your landlord.

**5. Prove you did not cause these bad conditions.**

You can do this by:

- a) Telling the judge you did not cause them.
- b) Telling the judge when these problems started. For example: if these conditions were already present when you first moved in, you could not have caused them.
- c) Showing the judge reports inspection reports from before you moved in.
- d) Have someone else (for example, someone who helped you move in), tell the judge that these conditions existed when you moved in.
- e) Describing the conditions. For example, it is unlikely that you made the roof leak.

**CHECKLIST OF THINGS YOU SHOULD TRY TO BRING TO THE HEARING:**

- Photographs of the unsafe conditions in your home. (If these are on your phone, remember that the judge can swipe to see the rest of your gallery. If you have private images you do not want the judge to see, you may want to print out the pictures of your house instead.)
- Inspection reports from the building inspectors and/or the county health department.
- Letters, emails, or text messages you sent to your landlord about the unsafe conditions.
- Witnesses who can talk about the unsafe conditions, such as how long the unsafe conditions have existed, or the attempts you have made to get your landlord to make repairs.

**IF THIS IS AN EVICTION CASE, YOU SHOULD ALSO BRING:**

- The rent money demanded in your court papers, or as much of it as you can get, in CASH or money order.

If you can get one, a letter of guarantee from the Department of Social Services for any of the rent money you do not have.