

## **WITHHOLDING RENT DUE TO BAD CONDITIONS**

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### **Do I have to live with bad conditions in my apartment?**

No. In New York State, your landlord is required to keep your home a safe and decent place to live. Even if you don't have a lease or rental agreement in writing, or even if the lease or rental agreement is to re, the landlord still has to keep your home in safe conditions. This rule is called the Warranty of Habitability.

### **What are examples of bad conditions?**

Some common examples of conditions that might violate the Warranty of Habitability include:

- Roach, bedbug, rat or mice infestations.
- No heat, or inadequate or unsafe heaters.
- Faulty plumbing or electrical systems.
- No hot water, or no water at all.

There are many other conditions that would violate the Warranty of Habitability. The Warranty of Habitability does not cover conditions that only make the apartment look bad, like a dirty wall or bad paint job. But, if these conditions are unsanitary, or dangerous to you or your family, the Warranty of Habitability protects you.

### **What if I caused the bad conditions?**

If you, a member of your family, or your guest have caused the problem, your landlord has not violated the Warranty of Habitability.

### **Can I make my landlord fix the bad conditions in this apartment?**

Yes, but it is not always easy. There are several steps you must take.

First tell your landlord about the problems in your apartment that you want fixed. If you have talked to the landlord, and nothing is done, write a letter or email to your landlord. This letter is very important and should include:

- A list of how many times, where and when you have spoken to the landlord about the problem.

- A description of the problem and how it harms you. For example, if the back bedroom cannot be used because of a falling ceiling, and your children have had to sleep in your room, let the landlord know.
- A request that the problem be fixed. Give your landlord a date, within a reasonable time, by when you want the repairs done.

Be sure to keep a copy of this letter or email for your own records. This will be important if you end up in court.

## **I have notified my landlord of the problems in my apartment, but nothing has been done. Now what?**

It's time to get some help. Call the Health Department and the building inspectors. We have included information that tells you how to do this. The inspectors will look at your apartment and make a report. Don't miss your appointment with the inspectors and be sure to show them the problems that concern you. Also, be sure to get the inspector's name and work number, so that you can get a copy of their final report.

## **What can my landlord do to me if I call an inspector?**

Sometimes tenants are afraid to call an inspector because their landlord may try to evict them when the landlord hears from the inspector. New York State law gives you some protection. If your landlord tries to evict you after hearing from the inspectors, you should call Neighborhood Legal Services.

## **I receive Housing Choice Voucher (Section 8) benefits. Can I withhold rent?**

If you have a Housing Choice Voucher (Section 8), you should continue to pay your share of the rent or you may risk losing your Housing Choice Voucher benefits.

Instead of withholding rent, you should call your Housing Choice Voucher program and talk to someone there about the problems in your home. The program will send out an inspector, who will make a list of the bad conditions they find in your home. If the landlord refuses to make repairs, Section 8 may stop paying their portion of the rent.

## **Can I refuse to pay my rent until the landlord fixes my apartment?**

Generally, the answer is yes, but only if you follow the instructions below. **RENT WITHHOLDING IS A VERY SERIOUS STEP AND YOU COULD BE EVICTED IF YOU DO NOT DO IT CORRECTLY.** You should talk to Neighborhood Legal Services first. You should only withhold rent if there are serious health or safety problems. If you have a Housing Choice Voucher, you should **NOT** withhold rent (see above). If you have a lease, you may want Neighborhood Legal Services to review it for you before you withhold rent.

## What should I do before I withhold rent?

BEFORE you withhold any rent money, make sure you have taken the following steps:

- Write to your landlord about the unsafe conditions in your apartment. Be sure to include the information on the list above. **BE SURE TO KEEP A COPY OF THE LETTER.**
- Obtain copies of any building and health inspector reports.
- If the inspection reports show serious violations, you should write a letter to your landlord and tell him or her that you plan to withhold rent until the repairs are completed. **KEEP A COPY OF THE LETTER.**

## What should I do with the rent money after I've withheld it?

**DO NOT SPEND THE RENT MONEY.** Keep the money in a bank account or in another safe place. If your landlord tries to evict you for not paying the rent, you may have to show that you have the rent money and that you withheld the rent because of the condition of your apartment.

## Can I spend the withheld rent money on a new apartment?

You should spend the rent money you withheld on a new apartment only if you can move into that apartment very quickly, or if you have another place to stay if you are evicted. Your landlord may attempt to have you evicted for not paying rent. If the landlord wins in court, you could be put out of your apartment in as few as fourteen (14) days after your court date. Unless you can move into your new apartment within 14 days, you should not spend the withheld rent on a new home.

## What should I do if my landlord tries to evict me for withholding rent?

Never ignore any legal or court papers. Call the **Western New York Eviction Prevention Hotline** at **844-230-7376** to get a free lawyer who can represent you in your eviction case.

## What will happen in court?

You and your landlord might agree that the landlord will make repairs. If your case is decided by a judge because you **and** your landlord cannot agree, the judge will decide whether you had a good reason for withholding the rent. If the judge decides that you did not have good cause for withholding rent, you may be ordered to pay the full amount of the rent in court.