

RENTER'S HANDBOOK ON REPAIRS

Did something break in your apartment or rental house? Has an appliance not been working properly since you moved in? Are there issues with the plumbing? Have you noticed bugs, mice, or rats? You have the legal right to safe, decent housing. This handbook can help make your landlord keep your rental housing in livable condition.

Your landlord is legally required to keep your rental “habitable,” which is legalese for livable. That means that your landlord must make any repairs necessary to keep the unit within legal standards for rental housing. This packet focuses on statewide laws for habitability. However, some cities or counties may have additional requirements or other ways to enforce habitability standards. Some of these are listed at the end of the packet, but you should also call your city or county to ask if there is a code enforcement office where you live.

This packet contains information about how to respond to a repair issue in your rental housing. If you follow the steps suggested in *exactly the order they are laid out* and keep good records of all of the steps you take, it is more likely that you and your landlord will be able to reach a good resolution of the problem.

It is **very important** throughout the process to **document all repair problems with photographs** and to **keep records of your written communications** with your landlord.

This packet contains the following:

- Information about habitability standards (what a landlord is required to provide)
- Information about tenants' responsibilities for maintaining habitability
- Guidelines for demanding repairs
- Checklist for reporting habitability issues to your landlord and demanding repairs
- Letters and forms to use to write to your landlord about repairs:
 - Letter 1 (first request)
 - Letter 2 (notice of intent to withhold up to \$300 for minor repair)
 - Letter 3 (notice of intent to move, withhold rent for alternate housing, or withhold rent for reduced rental value)
 - Form A (notice of withholding for minor repair)

HABITABILITY (LIVABILITY)

- Oregon landlord-tenant law requires that the landlord maintain the rental property in “habitable” (livable) condition. The landlord is required to supply:
 - Heat
 - Working plumbing that is up to code
 - Hot and cold running water
 - Safe drinking water
 - Gas and/or electricity in safe working order
 - Light fixtures
 - Locks for exterior doors
 - Latches for windows
 - Effective waterproofing and weather protection of roof and exterior walls, including windows and doors
 - Building and common areas within the landlord’s control are safe, clean, sanitary, and free from debris, filth, rubbish, garbage, rodents and vermin
 - Floors, walls, ceilings, stairways and railings maintained in good repair
 - A working smoke alarm or smoke detector, with working batteries if solely battery-operated, provided at the beginning of any new tenancy
- If the landlord fails to supply any of the things in the list above, or fails to fix or replace any of the things in the list that break, a tenant has some important legal rights, including:
 - The right to break the lease, if the rental agreement is for a fixed term.
 - The right to collect damages for reduced rental value.
 - The right to vacate the unit and seek substitute housing.
 - If the unit is not habitable, the right to withhold rent.
- HOWEVER, the law requires that a tenant report any necessary repairs to the landlord before the tenant can exercise any of the tenant’s rights.
- **DO NOT**, under any circumstances, withhold any portion of the rent unless you have made a request for repairs *in writing*. If you withhold rent without making a written request first, you could lose your housing.
- If you do withhold rent, **hold on to it and keep it in a safe place**.
 - **Do not** spend it on something else, unless it’s related to your housing (like a motel).
 - If that happens, **keep all receipts**.
 - If you wind up going to court, you will need to prove that you withheld rent for a good reason, and that you had the money to pay the rent.
 - The judge may require you to give the withheld rent to the court to hold, so it’s very important not to spend it.

TENANTS' RESPONSIBILITIES FOR MAINTAINING HABITABILITY

Oregon law also requires tenants to take responsibility for their rental. Tenants are required by law to do the following:

- Use all parts of the rented space in a reasonable way and for the purposes they were designed and intended.
- Keep all areas within the tenant's control (in other words, the area inside your house, apartment, or room and any yard, deck, porch, or outdoor area that belongs only to you, not to other tenants) clean and free from any buildup of garbage, junk, or other dirty or unsanitary items.
- Keep all areas within the tenant's control free from anything that could lead to rats, mice, roaches, or other infestations. This generally means to keep kitchen areas clean, keep food enclosed in containers, and make sure garbage and trash doesn't build up.
 - This can also mean that a tenant must take care not to bring anything into the rental that could be infested with bedbugs (or other pests such as fleas, roaches, rats, or mice). Be aware that if you bring in used furniture, clothing, or other items that turn out to be infested with bedbugs, your landlord may require you to pay the costs of extermination.
- Keep plumbing fixtures — sinks, toilets, showers, bathtubs — as clean as possible.
- Use all appliances in a reasonable way and take care not to damage them.
- Test smoke detectors and/ or carbon monoxide detectors once a month. It's the tenant's responsibility to change the batteries on the smoke detectors.
 - Do not remove or tamper with a smoke alarm, smoke detector or carbon monoxide alarm.
- Tenants may not deliberately (on purpose) or negligently (carelessly) destroy, deface, damage, impair or remove any part of the rental or allow any other person to do so.

What this all means is that, if there is damage to the rental that is caused by the tenant, the tenant's children, or a guest of the tenant, the **landlord** must repair the damage, but the **tenant** must pay for it.

If you or someone in your household causes damage to the rental, you should report it to the landlord as soon as possible and explain how it happened. Expect that you may be required to pay some or all of the costs of repair.

If the landlord does charge for the repairs, you have a right to see all bills or receipts before paying.

GUIDELINES FOR DEMANDING REPAIRS

STEP 1: REPORT (Letter 1)

If your rental needs repairs, the first and most important step is to **TELL YOUR LANDLORD**. Don't assume that the landlord knows about the problem, and don't rely on a phone call or a text message to inform the landlord. If you live somewhere that has forms or online reporting for repairs, use those as well.

- For most repairs, you must report the problem to the landlord **IN WRITING**.
 - You can call or text the landlord first, especially if it's an urgent problem like a plumbing leak, a broken window, or a problem with the electricity.
 - But you **must** follow up with a written request for repairs.
 - You **lose** many important legal rights if you fail to make a written request for repairs.
- To make a repair request in writing, you must write the landlord a **letter**, not an email or text. The letter doesn't have to be typed, but it must have a **date** on it, it must **state the repairs** you are requesting, and it must give the landlord a **deadline** to respond to the request. If the repair isn't an emergency, ten days to two weeks is a reasonable amount of time.
- There are sample letters included in this packet. Start with Letter 1. You can fill in the blanks or write your own version. Any letter that you send must include these elements:
 - Your name and address
 - Landlord's name and address
 - Date you're sending the letter
 - Specific information about the problem
 - Deadline for repairs – at least ten days from the date of the letter.
- You can mail the letter or deliver it personally to the landlord.
- If you mail it, you **MUST** send it regular first class mail — not registered or certified mail.
 - If you want proof that you mailed the letter, you can ask for a certificate of mailing from the post office at the time that you mail the letter.
- Be sure to keep a copy of the letter. You can take a picture of the letter with a camera-phone, if you have one.
- Take pictures of the problem and keep them in a safe place.
- After you send your landlord the written repair request, the landlord can enter to make the requested repairs **without giving you additional notice** for one week.

STEP 2: FIX (Letter 2)

- If your landlord does not fix the problem on time, or if the repairs don't solve the problem, a tenant has some options. There are two kinds of repairs:
 - Minor repairs that cost less than \$300 to fix (something like a faulty light switch, a broken pane of glass in a window, or a leaky faucet).
 - Major repairs that affect a tenant's health or safety or the safety of the tenant's property.

- If your problem is something that you can pay a professional less than \$300 to fix, you can send your landlord Letter 2, included in this packet, to explain that you are going to pay for the repairs and deduct the cost from the rent. You can also write your own letter, but it must include the following information:
 - Your name and address
 - Landlord's name and address
 - Date you're sending the letter
 - Date of Letter 1
 - Specifics about the ongoing problem
 - Statement that you will deduct money from the rent to pay for repairs if the repairs are not complete within one week from the time you send Letter 2.

- You **cannot** make the repairs yourself — you have to pay someone else to do it.

- You can deduct up to \$300 from the rent to pay for minor repairs, but first you must tell your landlord **in writing**. *You CANNOT legally deduct for repairs without telling your landlord in writing first.*
 - If you decide to deduct the cost of repairs from the rent, you should fill out and send Form A (included in this packet).
 - You also must give your landlord a receipt for any amount that you plan to deduct from the rent.

- The law on deductions for minor repairs is ORS 90.368.

Oregon landlord-tenant laws are online at
https://www.oregonlegislature.gov/bills_laws/ors/ors090.html

STEP 3: OTHER SOLUTIONS

- If the landlord still refuses to fix the problem, you may have other options.
- Call your city or county to find out if your area has a municipal or county health, safety, or sanitation code.
- If there is such a code, your landlord may be in violation of the code for failure to maintain the rental unit.
 - This is more likely if the repairs involve problems with sewage, electricity, mold, or a rodent or insect infestation.
- If you receive a housing subsidy, the landlord is required to maintain the unit. If the landlord refuses to make repairs, you can contact your housing caseworker to report that the unit needs repairs.
 - This could create problems, though, because it's possible that the housing authority could stop paying the landlord if the problems are bad enough. You might be required to move.

STEP 4: ALTERNATE HOUSING (Letter 3)

- If your landlord is not fixing the problem and you believe that there is a serious threat to your health, safety, or property, you may need to temporarily move out of your rental. You should only do this if it is obvious what the risk is or if you have some kind of **written proof** that staying in your rental is dangerous to you or your family.
- Obvious risks would include things like:
 - A door to the outside that can't be closed or locked
 - A broken window or windows that let the weather in or that someone could enter through
 - A sewage leak
 - Flooding or flooding damage
 - Fire damage
 - A gas leak
 - Missing or damaged roof or walls
 - Major rat or mouse infestation
- If the risk is not obvious, it could be something like:
 - Major mold issue that is causing health problems
 - Unclean or tainted water supply
- If the risk is not obvious, you should only move out of your rental if you have written proof of the risk of harm. That proof could be:
 - A letter from a health care provider
 - A report from code enforcement or another official agency
- If you believe that you are in danger if you stay, you should send Letter 3 to your landlord. That letter gives you three options. You can:
 - 1) Terminate your rental agreement with 48 hours' notice;
 - 2) Move into a motel and deduct the cost of the motel from the rent; OR
 - 3) Pay partial rent to make up for the reduced value of your rental.
- Again, you **cannot** legally withhold rent using this option unless you have proof that you have given your landlord a **written notice** about the problem and told the landlord that you intend to withhold rent.
 - DO NOT, under any circumstances, withhold rent without giving your landlord written notice first — you could lose your housing.
- If you withhold rent, **hold on to it and keep it in a safe place.**
 - Don't spend it on something else, unless it's related to your housing (like a motel).
 - If you withhold rent to pay for a motel or other alternate housing, **you must keep receipts.**

STEP 5: LEGAL CONSEQUENCES

- If you do decide to withhold rent from your landlord, the landlord may issue you a nonpayment notice or a termination notice. If that happens, you should talk to a lawyer.
- For legal assistance, you can contact the Oregon State Bar's lawyer referral service at 800-452-7636.
- There is also information and assistance available to help you represent yourself in court. For more information, go to your county law library or visit <http://www.courts.oregon.gov/help/Documents/civiltrialbrochure.pdf>.
- Whatever option you choose, it's important that you respond to the notice as soon as possible. After the deadline in the termination notice passes, your landlord can take you to court to try to evict you. BUT, if you have followed these steps **exactly** and **kept copies of all of the required paperwork**, you should be able to prove that you deducted rent as allowed by law. This will be a legal defense against an eviction.
- If your landlord sends you a nonpayment notice, you should respond in writing. Explain that you withheld rent as permitted by law, and that you've provided written repair requests before withholding rent. If possible, let the landlord know that you still have the rent that you withheld.
- If you withheld rent to pay for minor repairs or the cost of alternate housing, provide your landlord with copies of your receipts.
- If your landlord decides to take you to court, you will receive a summons. It's very important that you show up to court on the date and time stated in the summons.
 - If you don't show up, your landlord will win automatically.
- If you and your landlord can't come to an agreement at the first appearance, you must ask for a trial. To ask for a trial, you'll need to file an answer with the court and either pay a filing fee or apply for a fee waiver.
- Be prepared to present copies of the letters you sent your landlord requesting repairs, and any receipts, to the judge at trial.

OTHER LEGAL OPTIONS

Tenants also have the legal right to sue their landlords for reduced rental value if the rental has been in poor condition for a long time. There are two ways that a tenant can do this:

- As a counterclaim in an eviction
- As an independent lawsuit

Counter claim:

If your landlord is trying to evict you and you are asking for a trial, you can also file a **counterclaim** against the landlord. In the counterclaim, you can ask for the court to order the landlord to pay you back for the excess rent the landlord charged for a rental that wasn't livable.

If you decide to file a counterclaim, keep in mind that the court can order you to pay the full rent into court while the case is going on. This means that, if you're being evicted for nonpayment of rent and you don't have the money to pay the rent, you may not be able to bring a counterclaim.

Independent lawsuit:

You don't have to wait for an eviction case to try to get back some of the rent that you paid to your landlord. You can also file your own lawsuit. Depending on how much of the rent you think you should get back, you can sue in small claims court. Small claims court is a simplified process for people who don't have lawyers to sue for up to \$10,000. If you want more information about suing in small claims court, go to www.oregonrentersrights.org or call Legal Aid at (503) 224-4086 and ask for a copy of our Renter's Handbook on Small Claims Court. You can also go to the Oregon State Bar's website, http://www.osbar.org/public/legalinfo/1061_SmallClaims.htm.

You don't have to sue in small claims court. If you want to sue your landlord for more than \$750, you can sue in regular civil court. That process is more complicated, and you will probably need a lawyer to help you.

No matter how you decide to try to get back money for reduced rental value, you should be prepared to prove that the rental was in such bad condition that you shouldn't have to pay full rent. If you've followed the steps in this booklet, you should have plenty of evidence, like:

- Photos of the problems
- Written repair requests to the landlord
- Letters or other papers from health care providers about the problems
- Reports from building inspectors, code inspectors, or public housing inspectors
- Eyewitness testimony from you, your family, or friends about the condition of the rental

REPAIR CHECKLIST FOR TENANTS

Note: Access to a camera or camera-phone will be necessary to complete these steps

TENANT INFORMATION	
Name of tenant:	
Address of unit:	
Name of landlord or property management company:	
Date of move in:	
Date of first repair request:	

CHECKLIST			
	Task	Date completed	Location of documentation
<input type="checkbox"/>	Document problem with photos		
<input type="checkbox"/>	List all property damage on Property Damage Itemized List (below)		
<input type="checkbox"/>	Notify landlord/ property manager in writing with Letter 1. Keep a copy of the letter.		
<input type="checkbox"/>	Photograph problem after landlord entry to repair		
<input type="checkbox"/>	Notify landlord with Letter 2. Keep a copy of the letter.		
<input type="checkbox"/>	Contact local code enforcement		
<input type="checkbox"/>	If necessary, pay for repairs, save receipt, deduct cost from rent using Form A		
<input type="checkbox"/>	Document second repair attempt, if applicable		
<input type="checkbox"/>	Send Letter 3. Keep a copy of the letter.		

Letter 1

Date: _____

Dear Landlord:

I am writing to notify you about the following repair issue(s):

Please contact me by _____ (10 days from date of letter) and provide repairs no later than _____ (14 days from date of letter).

I would like you to enter to make repairs between the hours of _____ and _____.

ORS 90.385 does not permit a landlord to retaliate against a tenant who requests repairs.

Thank you,

_____ (tenant name)

_____ (tenant address)

Letter 2

Date: _____

Dear Landlord:

I wrote to you on _____ (date of Letter 1) to notify you of a repair issue in my rental unit. However, the problem has not been solved.

ORS 90.368 permits a tenant to repair habitability problems that cost less than \$300 and deduct the cost from the rent. With this letter, I am notifying you that if you do not solve the problem by _____ (10 days from date of letter) I will pay for the repairs to be made, retain the receipt, and deduct the cost from next month's rent. If that does not solve the problem, I will pursue other legal options as permitted by ORS 90.360 or 90.365.

If my property is damaged because of your failure to repair the unit, I have the right to seek reimbursement from you in small claims court.

Thank you,

_____ (tenant name)

_____ (tenant address)

Letter 3

Date: _____

Dear Landlord:

I wrote to you on _____ (date of Letter 1) and _____ (date of Letter 2) to notify you of a serious problem in my rental unit. The problem has not been solved.

The ongoing problem represents a serious risk to my health, safety, and/ or property and places you in violation of the rental agreement and ORS 90.320. I have provided you with reasonable time and reasonable access to fix the problem. If repairs are not complete by _____ (at least 3 days from date of letter) I am notifying you that I will seek the following remedy or remedies as permitted by ORS 90.365:

- Terminate the rental agreement
- Recover damages for diminished rental value of the unit and deduct damages from the rent
- Procure substitute housing until the problem is solved. I will be excused from paying rent during this period and can recover any cost in excess of the rent as damages.

Thank you,

_____ (tenant name)

_____ (tenant address)

Form A

NOTIFICATION OF RENT WITHHOLDING ORS 90.368

ORS 90.368 permits a tenant to deduct up to \$300 from the rent for repair of minor habitability defects. On _____ (date of Letter 2) I informed you that if the problem in my unit was not solved I would pay for the repairs myself and deduct the cost from the rent.

On _____ (date of repair) I paid _____ (name of person or company) \$ _____ (total cost of repair). A copy of the receipt is attached to this notice.

I am therefore deducting \$ _____ (cost of repair) from my rent for this month. I am enclosing payment for \$ _____ (monthly rent minus cost of repair).

Thank you,

_____ (Tenant name)

_____ (Tenant address)