

## **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, every lease or rental agreement (oral or written) contains a guarantee that your landlord will rent a safe and decent place to live. This guarantee does not have to be in writing; it is implied. It is called the Warranty of Habitability. Your landlord cannot make you agree to rent your apartment as is. Even if you have rented an apartment as is, you do not have to live with bad conditions.

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

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

- roach, rat or mice infestation
- 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 problem things in your apartment that you want fixed. If you have talked to him, and nothing is done, write a letter to your landlord. This letter is very important and should include:

- A list of how many times, where and when you have spoken to him 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 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.

### **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 he 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 Section 8 benefits. Can I withhold rent?**

No. If you have a Section 8 voucher, you should call the Section 8 program and talk to someone there about the problems in your home. The Section 8 program will send out an inspector and will stop paying the Section 8 portion of the rent if your landlord refused to make repairs. You must continue to pay your share of the rent or you will risk losing your Section 8 benefits.

### **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 are on Section 8, 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 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 (s)he wins in court, you could be put out of your apartment in as few as twelve (12) days after your rent is due. Unless you can move into your new apartment in twelve 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 you receive. If you receive court papers, you should contact Neighborhood Legal Services, or another attorney for assistance.

**What if I can't get a lawyer?**

Go to court and tell the judge in a clear and precise manner that you have the money and why you have withheld the rent. Show the judge the copies of your letters, any building and/or health inspectors' reports as well as any pictures or other proof you may have.

**What will happen next?**

The judge will decide based upon the information presented to him or her 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.