



Tenants' Rights to Healthful Housing

You have the right to live in decent, safe, and healthful housing. California law protects tenants who live in poorly maintained housing. Even if your rent is low, you are entitled to a safe and healthful home. This information packet is designed to help you identify habitability problems in your housing and to help you take action toward improving your living conditions. This packet does not contain complete information about all your rights and remedies under the law, so you may want to seek further advice about other options, especially if you have questions about your specific situation.

The Natalie Lanam Justice Center • Sobrato Center for Nonprofits – Redwood Shores
330 Twin Dolphin Drive, Suite 123 • Redwood City, CA 94065 • 650.558.0915 • Fax 650.517.8973
Housing Intake 650.517.8911 • Toll-free 800.381.8898

Identifying Substandard Habitability Conditions

Habitability means that a place is suitable for humans to occupy. In California, each and every tenant is entitled to live in a place that meets basic habitability standards. Landlords are responsible for repairing and maintaining units in habitable condition. This does not mean that the unit needs to be in perfect condition. The need for minor repairs and unattractive conditions do not violate habitability standards. A unit is substandard when the poor conditions affect the health and safety of the tenants.

Under California law, both landlords and tenants have obligations for habitability.

The Landlord's Obligations –

Pursuant to the California Civil Code §§ 1941.1, 1941.3,

A rental unit must provide:

- Effective waterproofing and weather protection for the roof, walls, windows and doors
- Plumbing or gas facilities maintained in good working order
- Hot and cold running water and a working sewage system
- Heating facilities that are maintained in good working order
- Electrical lighting and wiring maintained in good working order
- Buildings, grounds, and common areas that are clean, sanitary, and free from the accumulation of debris, filth, garbage, rodents, and vermin
- Adequate garbage receptacles
- Floors, stairways, and railings that are kept in good repair
- Deadbolts on the exterior doors
- Proper locks on the windows

The landlord must also adhere to the standards set forth in the Health and Safety Code §§ 17920.3, 17920.10 (governing substandard buildings and lead hazards)

Pursuant to the California Health and Safety Code § 17920.3, et seq.,

A building is substandard if the following conditions are present and they endanger life, limb, health, property, safety or welfare of the public or the occupants:

- Inadequate sanitation
(lack of or improper bathroom facilities, kitchen sink, hot and cold running water, heating, ventilation, natural light, electrical lighting, improper dampness, and adequate garbage facilities)

- Structural hazards
(improper or defective foundations, floor supports, walls or partitions, ceilings, and fireplaces)
- Nuisance
- Wiring problems
- Plumbing problems
- Mechanical equipment problems
- Weather protection problems
- Any part of the building that may cause a fire, explosion, or provide fuel to a fire or explosion
- Issues with materials of construction
- Accumulation of weeds, junk, or combustible materials that may cause a fire, health or safety hazard
- Unsafe buildings due to inadequate maintenance
- a lack proper exit facilities
- Buildings that are not being used for what they were designed to be used for

The Tenant's Obligations –

Pursuant to the California Civil Code § 1941.2, Tenants have a duty to maintain their units and to promptly notify the landlord if there is a need for repair.

- The landlord is not responsible to repair of the tenant substantially contributes to the existence of the condition or interferes with the landlord's ability to make repairs.
- The tenant must keep the unit that he or she occupies and uses clean and sanitary.
- The tenant must dispose of all rubbish and garbage in a clean and sanitary manner.
- The tenant must properly use and operate all electrical, gas and plumbing fixtures and keep them clean and sanitary.
- The tenant and the tenant's guests must not destroy, deface, damage, impair, or remove any part of the dwelling or facilities.
- The tenant must use the portions of the dwelling for the purposes which they were designated for (sleeping, cooking, dining).
- The tenant must allow repairmen to enter the unit to make repairs, as long as the landlord gives reasonable (usually 24 hours) notice that the repairs will be made.

How to Document Problems and Request Repairs

Keep careful records of the problems in your unit and of any contacts with your landlord. Keeping good records is the best way to protect yourself from possible retaliation. Good records may also later assist you if you ever decide to take legal action against your landlord. The law does require landlords to respond to oral requests for repairs, but it is difficult for tenants to prove that they made such oral requests. When in doubt, put everything in writing!

California Civil Code section 1942.5 makes it illegal for a landlord to retaliate against a tenant who makes requests for repairs. However, because there is a risk that retaliation could occur, make sure to document and keep copies of everything.

The following steps will help you keep good records, request repairs, and request official inspections.

Step 1: Document the habitability problems in your unit.

- Make notes. Use the checklist on the following pages to get started.
- Each time you call your landlord to complain, write down the date of the call and what you said.
- Take pictures.
- Keep contact information for witnesses (friends, neighbors, repairmen).
- Keep medical bills and receipts if the poor housing conditions have affected your health or a family member's health.

Substandard Conditions violating California Civil Code § 1941.1 & Health and Safety Code § 17920.3	Description of the Conditions	Duration in time of the problems	Date of any Landlord Contacts
Roof, walls, windows and doors are not waterproofed and do not protect against bad weather			
Plumbing or gas facilities are not in good working order			
Water supply does not have hot and cold water connected to a sewage system			
Heating or stove is not in good working order			
Electrical lighting is not in good working order			
Exposed wiring or unsafe outlets			
Building and grounds are unclean (garbage, rats, other pests)			
Missing garbage cans or garbage cans in bad condition			

Unsafe or broken floors, stairways, or railings			
Lack of: Proper bathroom facilities Kitchen sink Hot and cold running water Heating Ventilation Electrical lighting			
Excessive dampness or mold on walls or carpet			
Structural hazards: Poor foundation Deteriorating floors Leaning walls House is generally run-down or falling apart			
Nuisance by landlord			
Plumbing problems			
Mechanical equipment problems (for example, heater, air conditioner, water heater)			
Any part of the building may cause a fire or explosion			

Any part of the building may provide fuel to a fire or explosion			
Accumulation of weeds, junk, or combustible materials that may cause a fire, health, or safety hazard			
Building lacks proper exit facilities			
Building is not provided with fire detection systems			
Flimsy exterior doors or no deadbolts on exterior doors			
Other health problems that are health and/or safety hazards			

Step 2: Write a letter to the landlord.

- You may use the sample letter in this packet or you may write one of your own.
- Keep a copy of the letter that you send.
- Send the letter via certified mail, if possible.
- Follow-up with your landlord to discuss time for repairs.

Instructions for the letter –

- Fill in the letter with the date, landlord's name and address, landlord's name, your address, the problems in the residence, and then sign the letter with your name and address.

If you do not know your landlord, you can send the letter to the building manager or to the management company.

[SEE SAMPLE LETTER ON FOLLOWING PAGE]

- Make at least 3 copies of the letter.
- Send the original to the landlord. Send it by certified mail, or by fax, so that you can prove it was sent and received.
- You may also send a copy of the letter to the building manager or to the management company.
- Make sure to keep a copy of the letter for your records. Also keep any receipts from the Post Office or fax confirmation.
- If your landlord refuses to accept the letter, you can hand-deliver the letter. If you choose to hand-deliver the letter, take a witness with you.

SAMPLE LETTER

Date: December 27, 2012

(WRITE IN THE LANDLORD’S NAME AND ADDRESS BELOW)

Mr. John L. Land
123 Fictitious Lane
San Mateo, California 94402

Dear Mr. Land,

(WRITE YOUR ADDRESS BELOW)

As you know, I am a tenant at the following address: 456 Imaginary Street, Unit 7, Foster City, CA 94403.

The purpose of this letter is to give you formal notice of the problems at this property that are health and safety hazards. Civil Code Section 1941.1 *et seq.* and Health and Safety Code Section 17920.3 *et seq.* require that landlords and property managers maintain rental units in a condition that is habitable. Failure to do so is a breach of the warranty of habitability.

The following conditions at the property violate the warranty of habitability:

The bedroom ceiling has been leaking for several months and my child has to sleep in the living room because of the dampness. Also, the heater is broken. The front door does not close properly, and this is a safety risk. Also, there are rats coming in through the holes in the closet wall. The toilet backs up frequently, and this is unsafe for my children. My asthma is much worse due to the lack of heat in my apartment. Please send someone to make repairs as soon as possible.

Neither I nor my guests caused or created any of these problems.

I know my rights under the law to reside in safe and habitable conditions. The law requires you to make repairs within a reasonable period of time.

I also know that I am allowed to make this complaint to you, and that Civil Code Section 1942.5 protects tenants from retaliation when they stand up for their right to live in safe and decent housing. Any rent increase, reduction in services, eviction, or other adverse action taken by you in response to this letter is punishable under this law.

You need to give me 24 hours notice before you enter the property to make repairs. I will allow entry to repairmen upon 24 hours notice, or at a time on which we both agree. Please contact me as soon as possible so that we can discuss the needed repairs.

Sincerely,
Joe T. Tenant
456 Imaginary Street, Unit 7,
Foster City, CA 94403
(650) 765-4321

Date: _____

Dear _____,

As you know, I am a tenant at the following address:_____

The purpose of this letter is to give you formal notice of the problems at this property that are health and safety hazards. Civil Code Section 1941.1 *et seq.* and Health and Safety Code Section 17920.3 *et seq.* require that landlords and property managers maintain rental units in a condition that is habitable. Failure to do so is a breach of the warranty of habitability.

The following conditions at the property violate the warranty of habitability:

Neither I nor my guests caused or created any of these problems.

I know my rights under the law to reside in safe and habitable conditions. The law requires you to make repairs within a reasonable period of time.

I also know that I am allowed to make this complaint to you, and that Civil Code Section 1942.5 protects tenants from retaliation when they stand up for their right to live in safe and decent housing. Any rent increase, reduction in services, eviction, or other adverse action taken by you in response to this letter is punishable under this law.

You need to give me 24 hours notice before you enter the property to make repairs. I will allow entry to repairmen upon 24 hours notice, or at a time on which we both agree. Please contact me as soon as possible so that we can discuss the needed repairs.

Sincerely,

Step 3: Request an official inspection.

- Call the inspection agency for your city or jurisdiction to report the problems in your unit and to orally request an official inspection. Many agencies also have on-line report forms that you can complete. Check the website for your local agency.
 - A list of inspection agencies is below.
- You may need to contact the agency several times, as these agencies receive many requests and may take some time to schedule an inspection.
- Each time you call, ask for the name of the person with whom you speak and make a note of it, in case you have to follow-up on the call.
- When inspectors come to your home, make sure to point out all of the problems to them, give them any information you have about your landlord or managers, and ask for a copy of the official inspection report.

***** RISK *****

If you are living in an illegal unit – such as a converted garage or if your unit is overcrowded (more than two people sleeping in each bedroom and one person in the living room) – building inspectors may order you to move because of the safety hazard.

San Mateo County Health System –
<http://smchealth.org>

San Mateo County Environmental Health –
<http://smchealth.org/environ/housing>
2000 Alameda de las Pulgas, Suite 100
San Mateo, CA 94403
Office Hours: 8 a.m.-5 p.m. Mon-Fri
(650) 372-6200
envhealth@smcgov.org

City of San Mateo –
<http://www.cityofsanmateo.org/index.aspx?nid=498>
(650) 522-7150

City of San Carlos –
http://www.cityofsancarlos.org/residents/resources/code_enforcement.asp
(650) 802-4261

City of East Palo Alto Building Services –
<http://www.ci.east-palo-alto.ca.us/index.aspx?NID=215>
1960 Tate St.
East Palo Alto, CA 94303
(650) 853-5908

Additional Ways to Address Habitability Problems

Organize Other Tenants –

- Talk to other tenants and join together if there are widespread problems in your building or with the same landlord
 - **Educate your neighbors** – give copies of this packet to your neighbors
 - **Organize a meeting** – discuss habitability issues with your neighbors
 - **Write a group letter** – compose a letter to the landlord that details the substandard living conditions of that landlord’s collective tenants
 - **Contact building inspectors or lawyers as a group** – organizations and attorneys may be interested in working with groups of tenants

Small Claims Court –

- You can sue your landlord in Small Claims court for damages and for an order to make repairs. Such damages may include: rent rebate to compensate you for paying rent on a substandard unit, damage to property the resulted from the bad conditions, health problems caused by the conditions, and costs to relocate or to stay in a motel. Such claims can be brought in Superior Court if the damages exceed \$10,000.
 - **RISK:** Tenants have to pay court fees up front and the landlord may counter-sue the tenant and claim that the damages are the tenant’s fault.

“Abandonment” Remedy –

- The “abandonment” or “constructive eviction” remedy allows a tenant to immediately move out of a defective rental unit. The rental unit must have serious substandard conditions that affect a tenant’s health and safety.
 - **RISK:** Your landlord can claim that you illegally broke the lease and can sue you for rent and damages.

“Rent Withholding” Remedy –

- A tenant may withhold (stop paying) some or all of the rent if the landlord fails to repair serious defects that violate habitability standards. In order for the tenant to withhold rent, the defects or repairs that are needed must be extremely serious. In order to use this remedy, the defects must be ones that threaten the tenant’s health and safety and the landlord must have actual notice and opportunity to repair these conditions. Only dangerous and pervasive habitability problems justify rent withholding, and this is a very risky remedy.
 - **RISK:** The landlord is likely to initiate an eviction action for non-payment of rent. If the court decision in the eviction action is that the conditions were insufficiently serious to justify rent withholding, or if the tenant does not actually have the rent saved, then the tenant will lose and be evicted very quickly.

“Repair and Deduct” Remedy –

- You have a right to ask the landlord to repair serious habitability problems. If the landlord refuses, you may make the repairs and deduct the cost from the next months’ rent. However, there are many risks and limitations to this remedy!
- Tenants should only use the “repair and deduct” remedy for urgent and serious problems. As stated earlier in this packet, your landlord does not have to keep your place in perfect condition, but the landlord must provide:
 - Working plumbing and heating
 - Hot and cold running water
 - Electricity and lights that work and are safe
 - Roof, walls, and windows that do not leak and are not broken
 - Clean common areas (with no pests or vermin)
 - Window screens that keep out bugs
 - Enough trash cans to keep trash from overflowing
 - Safe floors, stairs, and railings
- Before you can do any repairs yourself, you must first give the landlord a written notice requesting repairs. If the landlord does not make the repairs within a reasonable time (usually 30 days), then you may make the repairs yourself. In the case of emergencies, such as a broken toilet, the waiting period may be shorter. If you prevent the landlord from making repairs, you may lose your rights under this remedy!
 - You may use the “repair and deduct” remedy only TWICE in any 12 month period. The repairs may not cost more than one month’s rent each time.
- Only the actual cost of paying a licensed repairman and/or materials may be deducted from the rent. Do not attempt to charge for your own time or for unlicensed contractors, and always provide an invoice or receipt for the amount deducted.
- The “Repair and Deduct” remedy is risky because the landlord may begin eviction proceedings once you deduct your rent. To avoid the risk of eviction proceedings after you repair a serious habitability problem, you can choose to sue your landlord in Small Claims Court for your repairs after paying your rent in full. Always keep copies of any cost estimates or receipts.
- If you exercise your right to “repair and deduct," your landlord may not retaliate against you by raising the rent, reducing services, or evicting you so long as –
 1. You gave written notice to the landlord to make repairs or you can otherwise document that you complained to the landlord about the conditions; or
 2. after giving reasonable notice to the landlord to make repairs, you filed a complaint with the County Department of Environmental Health, had the place inspected, and/or a citation was issued as a result; or
 3. you filed and/or won a court action about the poor conditions.

Additional Resources

<http://www.nolo.com/legal-encyclopedia/repairs-maintenance>

<http://www.dca.ca.gov/publications/landlordbook/catenant.pdf>

Legal services organizations –

The Legal Aid Society of San Mateo County

650-558-0915 / 1-800-381-8898

Legal assistance for tenants who face eviction or have other legal problems.

Community Legal Services of East Palo Alto

650-326-6440

Legal assistance for tenants.

Stanford Community Law Clinic

650-725-9200

Legal assistance for tenants.