

Counterclaims: How to claim your landlord owes you for damage in eviction court

Is your landlord trying to evict you but you've been living in bad conditions? Have they failed to make repairs? If yes, you should include a counterclaim when you file an answer. Doing this counts as a proper legal defense - it will get you a court date which buys you time and makes it so you can challenge your landlord. Including a counterclaim is a good option if the other options on the answer form don't apply to your case.

A counterclaim can also help you get money from your landlord if they caused you harm by failing to maintain the property. If you have already filed your answer, you can change it any time before your court date. Filing a counterclaim is complicated – you should get advice from a lawyer.

The burden is on you to **prove** you gave your landlord notice about the repairs and that your landlord failed to make the repairs in a reasonable time. If the landlord never knew, the court will not make them pay you. See the next page for a list of different kinds of evidence. If you don't have some of the documents listed, but you think your landlord or someone else does, see the **subpoenas** section below.

If your eviction was filed for nonpayment, you can avoid eviction if you can prove the cost of the damages are more than the amount of rent you owed when the dispossessory warrant was filed. If the damages are valued at more than your rent, you may be able to reclaim the losses and stay on the property.

Here are some common situations in which you should make a counterclaim.

- Something in the house/apartment (or surrounding area) is broken
- There is a leak, mold, or mildew
- There are rats, mice, roaches, or other pests
- The windows or doors don't lock
- Something was fixed, but then broke again
- There is something else significantly wrong with the property

There are different ways you should fill out the answer form depending on your situation. Decide which situation below applies to you and follow the instructions for that situation.

**Did your landlord fail to make repairs after you told them something needed to be fixed?
Here's what to do:**

On the DISPOSSESSORY ANSWER form, initial next to

_____ My landlord failed to repair the property. The failure has lowered its value or resulted in other damages more than the rent claimed.

Under COUNTERCLAIM, initial next to:

_____ My landlord owes me \$_____ for the following reasons:

_____ My landlord failed to the repair the property. Due to this failure, its value has been reduced \$_____ each month for _____ months.

If the landlord's failure to make a repair damaged your health or property, initial next to:

_____ My landlord's failure to repair resulted in damages of \$ _____ to my person and/or property.

*In all the blanks, write TBD (to be determined). You should not write dollar amounts because sometimes tenants will underestimate the amount they are owed.

To estimate how much your landlord will owe you (for your own knowledge in court) see "calculating **diminution of value**" below.

Did you make a repair with your own money after you told your landlord about an issue and they still failed to make the repair? Here's what to do:

Complete the instructions explained in the above section.

Also initial next to:

_____ Since my landlord failed to make the requested repairs, I made these repairs. I made these repairs that cost \$_____. I have all my receipts. I will bring the receipts and all documents concerning these payments to my trial.

*In all the blanks, write TBD (to be determined). You should not write dollar amounts because sometimes tenants will underestimate the amount they are owed.

To estimate how much your landlord will owe you (for your own knowledge in court) see "calculating diminution of value" below.

Was the house/apartment in such horrible condition that you had to leave? This could be a "constructive eviction." Here's what to do:

On the DISPOSSESSORY ANSWER form, initial next to

_____ My landlord failed to repair the property. The failure has lowered its value or resulted in other damages more than the rent claimed.

On the DISPOSSESSORY ANSWER form, initial next to

_____ My landlord is not entitled to evict me or secure a money judgment for the following additional reasons:

On the lines underneath, explain why you were unable to live in the house/apartment and had to move out. Here's an example: "I could no longer live in the house because the rats were so bad, they were eating our food and biting my children."

Under COUNTERCLAIM, initial next to:

_____ My landlord owes me \$_____ for the following reasons:

_____ My landlord failed to repair the property. Due to this failure, its value has been reduced \$_____ each month for _____ months.

If the landlord's failure to make a repair damaged your health or property, initial next to:

_____ My landlord's failure to repair resulted in damages of \$ _____ to my person and/or property.

*In all the blanks, write TBD (to be determined). You should not write dollar amounts because sometimes tenants will underestimate the amount they are owed.

To estimate how much your landlord will owe you (for your own knowledge in court) see "calculating **diminution of value**" below.

For any of the above situations, attach any of the following as proof to your Answer form, and also bring that proof with you to your court date:

- A chart that lists each problem in the house/apartment, and for each problem: when it first started, when you told your landlord about it, how your landlord responded, if/when it was fixed, how much it cost your health or belongings
- Keep a list of items that you lost or were damaged due to the property conditions such as: clothing, food, furniture, housewares, etc. Describe the condition before the loss, the date of purchase and purchase price, and the value at the time of loss. Think, what could I have sold that for at a yard sale?
- Photos or video of the problem(s) in the house/apartment. Videos are great for things that move, like water, sewage, or bugs, and that make sounds, like broken appliances. Photos are good to show a lot of other conditions.
- Any doctor bills as evidence your health was damaged by your living conditions, such as a doctor visit for asthma assessment, mold exposure, or rat bites
- Emails or texts between you and the landlord discussing the problem(s)
- Any work orders you submitted
- Receipts or estimates of cost for items you had to pay for to fix the house/apartment yourself
- A new lease or anything else that shows you are living somewhere else

If you don't have this information, but you think your landlord does, you can **subpoena** any documents you need. Here's what to do:

1. File your answer form
2. Ask the court clerk for a documents subpoena
3. Fill out the form, listing each document you need from your landlord and the court date
4. Send your landlord the documents subpoena form by certified mail

Calculating “**Diminution**” or Decrease in Value

While it is best to write “TBD” (instead of a dollar amount) for counterclaims on the answer form, it can be useful to make a calculation for your own knowledge so you can argue your claims in court.

Judges and lawyers will often refer to the “diminution of value” - in other words, **the decrease in value** that is the difference between the rent you were charged and what the apartment is actually worth.

To calculate decrease of value, estimate how much you overpaid for your apartment considering the unfixed problems. For example, if you paid for a 2-bedroom (rent of \$1800), but no one could stay in one of the bedrooms because it had bad mold, then you should only have to pay for a 1-bedroom (rent of \$1100), so you overpaid \$700 per month while the mold was that bad. Print out information from a rental website comparing the rent of a 1 vs. 2-bedroom apartment in the area where you live.

If the landlord’s failure to make repairs damaged your health or property, add the amount you think the landlord owes you for damaged belongings or health.

If you paid for repairs to the property on your own budget, also add the amount you spent fixing the problem to the total amount.

This will give you an estimate of how much you should get.