

Warranty of Habitability

In 1979, the Pennsylvania Supreme Court ruled that landlords renting residential real estate have a legal duty to provide their tenants a living space that is safe, sanitary and reasonably comfortable. The Court called this the “warranty of habitability.” The warranty of habitability cannot be waived in a lease, because it is a legal duty imposed on the landlord as a matter of law.



The warranty of habitability only covers serious problems such as, but not limited to: Lack of adequate heat in the winter or ability to cool the property in the summer, inadequate or unsafe electrical service, lack of drinkable water, malfunctioning sewage system, and serious leaks or other structural problems resulting in unsafe, unsanitary conditions or vermin infestation. Tired looking, worn out but still usable floors, walls, doors/windows, cabinets, appliances and fixtures are not covered by the warranty of habitability.

Even though a landlord cannot make a tenant waive the warranty of habitability, it is usually of limited benefit as it cannot be used by a tenant to ask a judge to order a landlord to make repairs. Instead, it’s only use is in court as a legal defense to a landlord claim for unpaid or future rent. Given the limited amount of time set aside for hearings in Magisterial District Judge courts, which is where landlord/tenant disputes are decided, and the legal requirement for the court to make its decision within a strict period of time, warranty of habitability defenses can be challenging to successfully make.

For these reasons, we usually recommend contacting the local building code enforcement office, if available in your municipality, concerning habitability issues which a landlord will not fix before considering use of the warranty of habitability. Code enforcement officers do have the authority to order landlords to make repairs for violations of the local building code.

The warranty of habitability cannot be used as a legal defense in court unless you told the landlord about the problems that needed to be fixed and gave the landlord a ‘reasonable’ amount of time to make needed repairs. Reasonable time to repair depends on the nature of the problem and other relevant circumstances. For example, the reasonable amount of time to fix a broken furnace will be longer in July than January. We recommend that, in addition to telling the landlord about the problem(s), you send written notification as well, such as by letter, text or email, saving a copy to take to court if necessary.

The warranty of habitability gives you three options if the landlord fails to make necessary repairs in a reasonable time: End your lease and move with no further duty to pay rent, make the repairs yourself and deduct the cost of the repairs from your future rent (keep receipts and invoices), or withhold all or part of the rent until the landlord fixes the problem. If you withhold rent, the amount withheld should reflect the percentage of your home affected by the habitability problem(s). For example, if the defect affects one

room in your home and that room represents 25% of the living space you might withhold 25% of the rent. Put withheld rent in the bank or other safe place until the problem(s) are resolved or you find a new place to live and need to use those funds for moving expenses.

Once you notify the landlord of the problem(s) they should be promptly fixed. However, if they are not fixed, you will then have to decide whether to use one of the three options noted above, understanding that you will likely be sued for alleged rent owed and not paid and the Magisterial District Judge may not give you adequate time to present your warranty of habitability defense. If you are sued, bring the letter you sent to the landlord to the hearing to help prove the existence of the habitability problems, that you notified the landlord, and that you gave the landlord a reasonable amount of time to make repairs. Provide proof of the problem(s) at the hearing, such as pictures, work estimates and repair invoices if you paid to have the problems fixed. If you withheld rent, bring proof to the hearing that the money either has not been spent or was spent on repairs. A warranty of habitability defense is more likely to be considered if you have not spent the rent money on something else.

If your landlord tries to evict you for using a warranty of habitability remedy, you can contact Northwestern Legal Services to see if you qualify for free legal representation or advice by either calling 1-800-665-6957 or apply online at WWW.NWLS.org

We have attempted to ensure the accuracy of the information in this pamphlet at the time it was created or revised. However, the law does change, sometimes quickly and unexpectedly. Therefore, you should consult an attorney before taking or refraining from any action based on the information in this pamphlet.

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