

Repair and Deduct

1. What Code Section governs rules on repairing and deducting?

Civil Code Section 1942 governs rules on repairing and deducting.

2. How does the tenant send the notice to repair and deduct?

Whenever a tenant gives the landlord notice of the tenant's intention to repair and deduct, withhold rent, or abandon the rental unit, it's best to put the notice in writing. The notice should be in the form of a letter, and can be typed or handwritten. The letter should describe in detail the problem and the repairs that are required. The tenant should sign and date the letter and keep a copy.

The tenant might be tempted to send the notice to the landlord by e-mail or fax. The laws on repairs specify that the tenant may give the landlord notice orally or in writing, but do not mention e-mail or fax. To be certain that the notice complies with the law, the tenant should follow up any e-mailed or faxed notice with a letter describing the damage or defects and the required repairs.

The letter should be sent to the landlord, manager, or agent by certified mail (return receipt requested). Sending the letter by certified mail is not required by law, but is a very good idea. Or, the tenant (or a friend) may personally deliver the notice to the landlord, manager, or agent. The tenant should ask for a signed and dated receipt showing that the notice was received, or ask the landlord to date and sign (or initial) the tenant's copy of the letter to show that the landlord received the notice. Whatever the method of delivery, it's important that the tenant have proof that the landlord, or the landlord's manager or agent, received the notice.

The copy of the letter and the receipt will be proof that the tenant notified the landlord, and also proof of what the notice said. Keep the copy of the letter and the receipt in case of a dispute with the landlord.

3. What does the "repair and deduct" remedy allow the tenant to do? What code section governs?

The "repair and deduct" remedy allows a tenant to deduct money from the rent, up to the amount of one month's rent, to pay for repair of defects in the rental unit. This remedy covers substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability. Examples might include a leak in the roof during the rainy season, no hot running water, or a gas leak.

As a practical matter, the repair and deduct remedy allows a tenant to make needed repairs of serious conditions without filing a lawsuit against the landlord. Because this remedy involves legal technicalities, it's a good idea for the tenant to talk to a lawyer, legal aid organization, or tenants' association before proceeding.

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**4. What are the basic requirements and steps for using the "repair and deduct remedy?"
What code section governs?**

The basic requirements and steps for using the repair and deduct remedy are as follows:

- The defects must be serious and directly related to the tenant's health and safety.
- The repairs cannot cost more than one month's rent.
- The tenant cannot use the repair and deduct remedy more than twice in any 12-month period.
- The tenant or the tenant's family, guests, or pets must not have caused the defects that require repair.
- The tenant must inform the landlord, either orally or in writing, of the repairs that are needed.
- The tenant must give the landlord a reasonable period of time to make the needed repairs.
- If the landlord doesn't make the repairs within a reasonable period of time, the tenant may either make the repairs or hire someone to do them. The tenant may then deduct the cost of the repairs from the rent when it is due. The tenant should keep all receipts for the repairs.

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5. What is a reasonable period of time for the landlord to make repairs?

This depends on the defects and the types of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the situation. For example, if the furnace is broken and it's very cold outdoors, two days may be considered reasonable (assuming that a qualified repair person is available within that time period).

6. Describe the abandonment remedy? When would a tenant use it? What code section governs?

Instead of using the repair and deduct remedy, a tenant can abandon (move out of) a defective rental unit. This remedy is called the "abandonment" remedy. A tenant might use the abandonment remedy where the defects would cost more than one month's rent to repair, but this is not a requirement of the remedy. The abandonment remedy has most of the same requirements and basic steps as the repair and deduct remedy.

In order to use the abandonment remedy, the rental unit must have substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability. If the tenant uses this remedy properly, the tenant is not responsible for paying further rent once he or she has abandoned the rental unit.

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7. What is the "rent withholding remedy? How does the tenant do this? What code section governs?

By law, a tenant is allowed to withhold (stop paying) some or all of the rent if the landlord does not fix serious defects that violate the implied warranty of habitability.

In order for the tenant to withhold rent, the defects or repairs that are needed must be more serious than would justify use of the repair and deduct and abandonment remedies. The defects must be substantial - they must be serious ones that threaten the tenant's health or safety.

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8. When can a tenant file a lawsuit against the landlord to recover money damages if the landlord does not repair serious defects? What code section applies?

The remedies of repair and deduct, abandonment, and rent withholding allow a tenant in a rental unit with serious habitability defects to take action against the landlord without filing a lawsuit. Arbitration and mediation are other methods of resolving disputes about the condition of a rental unit.

A tenant has another option: filing a lawsuit against the landlord to recover money damages if the landlord does not repair serious defects in the rental unit in a timely manner. This kind of lawsuit can be filed in small claims court or superior court, depending on the amount demanded in the suit. The tenant can file this kind of lawsuit without first trying another remedy, such as the repair and deduct remedy.

Civil Code Section 1942.4 applies to a tenant filing a lawsuit against the landlord to recover money damages if the landlord does not repair serious defects.

9. How much in "special damages" may a court award to a tenant who wins such a lawsuit as mentioned in #8.

If the tenant wins the lawsuit, the court may award the tenant his or her actual damages, plus "special damages" in an amount ranging from \$100 to \$5,000. "Special damages" are costs that the tenant incurs, such as the cost of a motel room, because the landlord did not repair defects in the rental unit. The party who wins the lawsuit is entitled to recover his or her costs of bringing the suite (for example, court costs), plus reasonable attorney's fees as awarded by the court.

10. If the landlord decides to demolish the dwelling, what must he or she do? How much notice? What code section applies?

The owner of a dwelling must give written notice to current tenants before applying for a permit to demolish the dwelling. The owner also must give this notice to tenants who have signed rental agreements but who have not yet moved in. The notice must include the earliest approximate dates that the owner expects the demolition to occur and the tenancy to end.

Civil Code Section 1940.6 applies if the landlord decides to demolish the dwelling.