

How To Handle Maintenance & Habitability Issues

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In The Past


- ◆ History – A fast look back at the Landlord/Tenant Relationship



State of the Law Today

- ◆ Under current California law, Landlords and Tenants both have certain duties to keep the rental unit habitable
- ◆ These duties arise from
 - ◆ The Implied Warranty of Habitability – *Green v. Superior Court*
 - ◆ California Statutes

Landlord's Duties Case Law



The Implied Warranty of Habitability:

- ◆ **EVERY** residential contract contains an implied warranty that the Landlord will provide habitable premises
- ◆ Habitability means a rental unit is "fit to live in"
- ◆ "This implied warranty of habitability does not require that a landlord ensure that leased premises are in perfect, aesthetically pleasing condition, but it does mean that 'bare living requirements' must be maintained."
Green v. Superior Court

Landlord's Duties CA Statutes


The Implied Warranty of Habitability Means that:

- ◆ Landlord **MUST** repair
 - ◆ **Substantial** defects in the rental unit
- ◆ **Substantial** failures to comply with state and local law

Legally Uninhabitable Conditions

Compliance with Building and Housing Codes:

- ◆ Rental unit **MUST substantially** comply with building and housing code standards that **materially affect tenants' health and safety**
- ◆ Structural hazards, inadequate sanitation, or nuisance that endangers the health, life, safety, property, or welfare of the occupants or the public
- ◆ Ex: Gas leaks, lead hazards, and mold
- ◆ CA Civil Code § 1941.1, Health and Safety Code § § 17920.3, 17920.10



Legally Uninhabitable Conditions

CA Civil Code 1941.1

- ◆ Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors
- ◆ Adequate trash receptacles in good repair
- ◆ Floors, stairways, and railings in good repair
- ◆ Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system



Legally Uninhabitable Conditions

CA Civil Code 1941.1

- ◆ A working toilet, wash basin, and bathtub or shower.
- ◆ A kitchen with a sink that cannot be made of an absorbent material such as wood
- ◆ An electric system, including lighting, wiring, and equipment, in good working order
- ◆ Clean and sanitary buildings, grounds, and appurtenances (ex: garden or detached garage), free from debris, filth, rubbish, garbage, rodents, and vermin



Legally Uninhabitable Conditions


CA Civil Code 1941.1

- ◆ Gas facilities/Heating Facilities in good working order
- ◆ Natural lighting in every room through windows or skylights. Windows in each room must be able to open at least halfway for ventilation unless there is a fan
- ◆ Safe fire or emergency exits leading to a street or hallway. Stairs, hallways, and exits must be kept litter-free. Storage areas, garages, and basements must be kept free of combustible materials




Legally Uninhabitable Conditions

- ◆ Operable deadbolt locks on the main entry doors and operable locking or security devices on all windows
- ◆ Working smoke detectors and carbon monoxide detectors



See Health & Safety Code § § 116049.1, 116064, 13113.7, 17900-17995, CA Civil Code § 1941.3

Smoke Alarms - Landlord's Duty



- ◆ As of January 1, 2014 it is the Landlord's responsibility for testing and maintaining the smoke alarms.

Smoke Alarm Requirements

- ◆ Smoke Alarm Requirements:
 - ◆ Hardwired with battery back up OR solely battery powered but **MUST** contain a non-removable battery that is rated to last 10 years
 - ◆ Must display date manufactured and have a place to display the date the device was installed
 - ◆ Must have a built in hush feature

Smoke Alarm Requirements

- ◆ Smoke Alarm Placement
 - ◆ Every Bedroom
 - ◆ Hallways leading to bedroom, centrally located outside sleeping areas
 - ◆ Every level or floor, including basements
 - ◆ Do not install near draft areas, such as windows or vents
 - ◆ Mounted on the ceiling – 4 inches from the wall
 - ◆ Mounted on the wall – should be 4-12 inches from the ceiling
- * Call your local fire department if you are unsure about placement

Limits on Landlord's Duties to Repair

- ◆ Tenant must give Notice of needed repairs
- ◆ Landlord is not responsible for Repairing damages caused by the tenant, tenant's family, guests or pets
- ◆ Rental Agreement or Lease provisions
 - ◆ Generally enforceable to shift duty to repair to Tenant's for **minor** repairs
- ◆ Amenities: Ex: washing machine, parking places, swimming pools

Tenant's Duty to Maintain & Repair

Tenants must:

- ◆ Take reasonable care of the rental unit, including common areas
- ◆ Repair all damage caused by tenant's abuse or neglect
- ◆ Repair damage caused by tenant's family, guests or pets
- ◆ Keep the premises as clean and sanitary as the condition of the premises permits
- ◆ Use and operate gas, electrical, and plumbing fixtures properly

Tenant's Duty to Maintain and Repair

Tenants must:

- ◆ Dispose of trash and garbage in a clean and sanitary manner
- ◆ Not remove any part of the structure, dwelling unit, facilities, equipment or appurtenances
- ◆ Use the premises as a place to live, and use the rooms for their intended purposes
- ◆ Notify the Landlord when deadbolt locks and window locks or other devices do not operate properly

Tenant's Violation of Duty to Maintain

- ◆ Tenant's **minor** violation of these requirements does NOT relieve Landlord of the duty to repair
- ◆ Tenant's **major** violation of these requirements DOES relieve Landlord of the duty to repair
 - ◆ A major violation occurs if the tenant substantially caused an unlivable condition to occur or has substantially interfered with the Landlord's ability to make the repairs
 - ◆ Tenant cannot sue Landlord or withhold rent for violating the implied warranty of habitability

◆ See CA Civil Code §§ 1929, 1941.2(a)-(b), 1941.3(b), 1942

The Breakdown

- ◆ Thanks for the update but what does it all mean!!!!????
- ◆ Tenant - Notice/Access
- ◆ Landlord - Substantial Breach/Health & Safety
- ◆ Overview of Procedure to handle repairs

GAINING ENTRY TO MAKE REPAIRS

Landlord's Entry No Written Notice Required

- ◆ To respond to an emergency
- ◆ The tenant has moved out or has abandoned the rental unit
- ◆ The Tenant is present and consents to the entry at the time of entry
- ◆ The Tenant and Landlord have agreed that the Landlord will make repairs or supply services
 - ◆ Oral agreement of date and approximate time of entry
 - ◆ Entry must occur within 1 week of oral agreement

Landlord's Entry Civil Code 1954

24 Hour Notice - Written Notice Required:

- ◆ To make necessary or agreed repairs, decorations, alterations, or other improvements
- ◆ To supply necessary or agreed services
- ◆ To exhibit the rental unit to prospective mortgagees, to prospective tenants, or to workmen or contractors
- ◆ Pursuant to Court Order

Landlord's Entry

Civil Code 1954

24 Hour Notice - Written Notice Required:

- ◆ To inspect waterbed or liquid-filled furniture
- ◆ To test the smoke detectors
- ◆ To verify Resident has abandoned premises
- ◆ To inspect the unit prior to the termination of the tenancy if requested by Resident
- ◆ To exhibit the rental unit to prospective or actual purchasers*

Landlord's Entry


24 Hour Written Notice to Inspect & Make Repairs

- ◆ Reasonable advance notice (24 Hours)
- ◆ During normal business hours
 - ◆ 8:00 a.m. to 5:00 p.m. M-F
- ◆ Notice must include the date, approximate time, and purpose of entry

Landlord's Entry

Service of 24 Hour Notice

- ◆ Personal Delivery
- ◆ Leave the Notice at the rental unit with someone of suitable age and discretion
- ◆ Leave the Notice on, near or under the unit's usual entry door
 - ◆ Must be in a place where it is likely to be found
- ◆ Mail -At least 6 days prior to requested entry



24 HOUR NOTICE TO ENTER UNIT

Pursuant to California Civil Code Section 1954, Owner/ Agent hereby gives notice:

To: _____

And Dues 1 through 5, including:

Address of Premises: _____

Owner, Owner's Agent, or Owner's representative will enter said premises on _____ (date) at approximately _____ (time) for the reasons set forth in the checked item below:

☐ To make necessary or agreed repairs

☐ To do necessary or agreed decorating

☐ To make necessary or agreed alterations or improvements

☐ To supply necessary or agreed services

☐ To exhibit the rental unit to prospective or actual purchasers*

☐ To exhibit the rental unit to prospective tenants

☐ To exhibit the rental unit to prospective mortgagees

☐ To inspect, maintain or liquid-filled fireplaces

☐ Pursuant to Court Order

☐ To test the smoke detector

☐ To verify function for abandoned premises

☐ To inspect the unit prior to the termination of the tenancy if requested by Resident

* If the purpose of the entry is to exhibit the dwelling unit to prospective or actual purchasers, the notice can be given orally, in person, or by telephone if the owner or his or her agent has notified the resident in writing within 120 days of the unit notice that the property is for sale and that the owner or agent will contact the landlord orally for the purpose described above. Twenty-four hours is presumed reasonable notice in the absence of evidence to the contrary. At the time of entry, the owner or agent is required to leave written evidence of the entry inside the unit.

Date: _____ Telephone: _____

Agent/Owner: _____ Signature & Association
2304 47 Ave.
San Diego, CA 92108

Example

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Fillable Forms

3 Day Notices

- 3 Day Notice to pay Rent or Quit
- 3 Day Notice to Perform Covenant or Quit
- 3 Day Notice to Quit (Illegal Acts)

Notices to Quit (evacate)

- 30 Day Notice to Quit (Illegal) (This Notice is made by a tenant, and the tenant must be in possession for less than 1 year.)
- 60 Day Notice to Quit (Without Cause) (This Notice is made by a landlord to a tenant who has been in possession for more than 1 year and if the property is within the city of San Diego, then 90 days.)

RELOCATING TENANTS TO MAKE REPAIRS


- Landlords **MUST** immediately repair violations of Health & Safety Codes
- If a Landlord is cited for violations that substantially endanger the residents or public then the Landlord may be required to pay relocation benefits to the Tenants
- Relocation benefits include:
 - Relocation Compensation
 - Moving and Storage Costs

TENANT REMEDIES FOR LANDLORD'S FAILURE TO MAKE REQUESTED REPAIRS



Repair and Deduct

- ◆ The repair and deduct remedy allows a Tenant to deduct money from the rent to repair conditions that violate the implied warranty of habitability



Tenant's Steps to Repair and Deduct

- ◆ Defects in the rental unit that are serious and are related to the Tenant's health and safety
- ◆ Repairs cannot cost more than 1 month of rent
- ◆ Tenant cannot repair and deduct more than 2 times in 12 months
- ◆ Tenant cannot be the cause of the defects
- ◆ Tenant must give Landlord prior notice
- ◆ Tenant must give Landlord a reasonable time to make the repairs (usually 30 days)

Rent Withholding Remedy

- ◆ The rent withholding remedy allows Tenants to withhold rent if the Landlord fails to repair serious conditions that violate the implied warranty of habitability

Tenant's Steps to Rent Withholding Remedy

- ◆ Defects in the rental unit that are serious and are related to the Tenant's health and safety
- ◆ Tenant cannot be the cause of the defects
- ◆ Tenant must give Landlord prior notice
- ◆ Tenant must give Landlord a reasonable time to make the repairs
- ◆ Tenant holds the rent in an escrow account and pays a % rent when repairs are complete

Serious Defects Justify Withholding of Rent

- ◆ Collapse and non-repair of bathroom ceiling
- ◆ Continued presence of rats, mice, cockroaches
- ◆ Lack of any heat
- ◆ Plumbing blockages
- ◆ Exposed and faulty wiring
- ◆ Illegally installed and dangerous stove
- ◆ Defects in Green v. Superior Court

Abandonment Remedy

- ◆ The abandonment remedy allows a Tenant to move out of the rental unit due to substandard conditions that affect the Tenant's health and safety



Tenant's Steps to Abandonment Remedy

- ◆ Defects in the rental unit that are serious and are related to the Tenant's health and safety
- ◆ Tenant cannot be the cause of the defects
- ◆ Tenant must give Landlord prior notice
- ◆ Tenant must give Landlord a reasonable time to make the repairs-usually 30 days

Lawsuit for Damages

- ◆ Tenant can file a lawsuit for Landlord's failure to make repairs



Any Questions?

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