

## TENANT – LANDLORD INFORMATION:

### PROPERTY MAINTENANCE AND REPAIRS TO RENTAL PROPERTY

#### I. Overview

Both landlords and tenants have rental property maintenance responsibilities. Under Michigan law, a landlord is obligated to keep rental property in reasonable repair and fit for its intended purpose, and to comply with applicable health and safety laws. MCL 554.139. (For multifamily property rental units in cities and townships with populations of 10,000 or more, the “housing law of Michigan” also imposes repair duties on landlords. See MCL 125.471). The law imposes these obligations even if they are not included in the lease agreement or there is no written lease agreement.

Tenants are generally expected to assist the landlord in maintaining the premises in a safe and sanitary condition, and to promptly notify the landlord of maintenance problems that require attention. Whether a tenant inspects the rental unit before the tenancy begins does not eliminate the landlord’s repair obligations. The landlord and tenant may modify these obligations in certain circumstances by mutual agreement, but only when the lease has a term of at least one year.

When the disrepair or violation of health or safety laws is caused by the tenant’s willful, irresponsible conduct or lack of conduct, the landlord is not responsible for the repairs that conduct makes necessary.

#### II. What to Do about Maintenance and Repair Problems

If a landlord is not maintaining the rental property in line with its obligation, a tenant should first try to discuss the matter with the landlord. If after an initial discussion, the landlord does not address the repair issue(s), the tenant should send a letter to the landlord. A letter should restate the problems discussed earlier and mention any new ones, and ask that the landlord promptly respond to them.

**KEEP GOOD RECORDS** – The tenant should keep a written list of the repair problems, the date they were first noticed, and the date the landlord was notified about them. Tenant notes could also include a summary of what repairs, if any, the landlord (including its employees and contractors) made and whether they corrected the problem(s).

Photographs are an excellent way to document repair problems in the rental unit and the common areas of the property (i.e., shared hallways, walkways, courtyards, parking lots, etc). The nature and location of the problem and the date on which the photograph was taken should be noted.

The tenant should send all letters to the landlord via certified mail, return receipt requested (or at least, get a certificate of mailing), and should keep a copy of all correspondence (whether sent or received).

#### III. When The Landlord Will Not Make Repairs

If the landlord does not maintain the rental unit as required by the lease agreement and Michigan law, the tenant has a few different options: (1) contact the city or township building/housing department to request an inspection; (2) withhold rent; (3) make repairs and deduct the costs from the rent payments; or (4) terminate the lease/tenancy and move out; (5) sue the landlord in court for an order to make repairs, and money damages.

If a tenant takes any of these steps, he or she should be protected against a termination of tenancy action by the landlord under Michigan's retaliatory eviction defense law, MCL 600.5720. This law does not permit entry of a termination of tenancy judgment against a tenant where the filing of the case was intended primarily as a penalty for the tenant's attempt to exercise its rights under the law (which each of the following steps are).

#### **a. Making a Complaint to the Local Building/Housing Department**

If the local government (city or township) has a building or housing department that conducts rental housing inspections, the tenant can make a complaint to the department, upon which the department can conduct an inspection of the rental property to determine whether it complies with the housing code.

#### **b. Withholding Rent**

If the landlord does not maintain the rental unit in good and reasonable repair, the tenant may withhold rent payments. Before withholding rent, the tenant should send the landlord at least one letter identifying the needed repairs and telling the landlord that rent will be withheld if the repairs are not made. (It's best to send one letter listing the repair problems and threatening withholding if they aren't corrected, and if they are not, sending a second letter to say that withholding will begin with the next month's rent unless repairs are made.)

If, despite getting one or more letters listing repair needs and threatening withholding of rent if those repairs are not made, the landlord still fails to make the repairs within a reasonable time, the tenant may establish a separate account (sometimes called an "escrow account") at a financial institution (for example, a bank or credit union) and deposit the rent money into that account. The tenant should send the landlord a letter informing him or her of the account and stating the some or all of the money will be released to the landlord after the problems have been corrected.

The landlord may challenge the tenant's right to withhold rent by bringing an eviction action for failure to pay rent. The tenant, however, has a valid defense to eviction if he or she can prove that the landlord received notice of the needed repairs and failed to take action within a reasonable time. If the court agrees and finds tenant's actions to be justified, a nonpayment of rent judgment will not be entered against the tenant. Again, it is important to keep good records of all the steps taken before withholding the rent.

#### **c. Repair and Deduct**

A tenant may make repairs and deduct the cost from the rent in certain instances where the landlord fails to make such repairs. In order to exercise this right, there must be:

- (a) A duty to repair provided by statute (MCL 554.139, MCL 125.471).
- (b) A notice to the landlord by the tenant that repairs are needed *or* actual knowledge by the landlord of the needed repairs.
- (c) The failure of the landlord to make the repairs within a reasonable time after receiving notice about the problem, or otherwise knowing about it.

If these three conditions exist, the tenant could obtain written estimates of the repair costs. The tenant could then send a letter informing the landlord of the estimates and stating that the repairs will be made and their costs deducted from the rent unless the landlord makes the needed repairs by a specified date.

If the landlord still does not make the repairs by such date, the tenant may have the repairs completed and deduct the costs from the rent payments. The tenant should inform the landlord when the repairs are completed and should send copies of repair related receipts to the landlord.

As with withholding rent, the landlord may challenge the tenant's right to deduct the cost of the repairs and file a nonpayment of rent eviction action. If, however, the tenant has kept good receipts and records (including {6600187:}

copies of notices and any responses from landlord), the tenant should be able to convince the court that repair and deduct was justified. But, if the court disagrees with the tenant's repair and deduct decision, it may say the tenant is responsible for payment of the rent deducted to make repairs.

**d. Terminate the lease and move out**

If the landlord's lack of action in responding to repair issues is a substantial breach of its repair obligations, and the tenant is deprived of the beneficial use and enjoyment of the rental property, the tenant may terminate the lease and move out. This is often referred to as *constructive eviction*. For example, if the landlord fails to provide adequate heat or correct significant repair problems after it received notice from the tenant about the problem (or knew or should have known about it), the tenant could be justified in terminating the lease and moving out. A tenant should inform the landlord in writing of a decision to terminate the lease for this reason. Again, if a court disagrees that there was a good enough reason for the tenant to terminate the lease, the tenant may be found liable to the landlord for rent for the rest of the lease term.

**e. Sue the landlord for an order to make repairs and money damages**

Another step or remedy that a tenant can take if the landlord does not maintain the rental unit in good and reasonable repair is to file a court complaint against the landlord and ask the court to order the landlord to make repairs (that type of order is called "injunctive relief") and award the tenant money damages for the diminished value of the rental and for any properly loss or harm due to the landlord's repair failures. Filing a court complaint, especially one that asks for injunctive relief, is not easily done, but it is an option. The "housing law of Michigan" provides a way to file a court complaint asking for money damages and injunctive relief. See MCL 125.536. There are other ways, too. If a tenant doesn't have electrical, heat, or water service because of a landlord's action or inaction, the landlord could be liable for money damages and an order to restore the service under the "lockout" law, MCL 600.2918. There are other theories under which tenants can seek to recover money damages, including breach of contract.

*This pamphlet should not be used in place of legal assistance. In the event of a landlord / tenant dispute, seek legal advice.*

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MICHIGAN Rev 02/20/17