

#3: WITHHOLD RENT

WARNING!

Withholding rent because repairs were not made is a serious step, and often the landlord will try to evict you for doing so. Always consult with an attorney before you withhold rent.

If you do withhold rent because of the dangerous conditions in your home, follow these steps carefully:

- 1) Write a letter to your landlord explaining when and why you will withhold the rent.
- 2) Keep the rent money, don't spend it! You will have to bring the money to court if the landlord tries to evict you.
- 3) Get as much evidence as possible that there is a serious problem that the landlord won't fix. For example, take pictures, get Codes reports, and have reliable friends look at the problem so they can testify about the conditions.
- 4) If the landlord takes you to court, tell the judge, "I am withholding the rent because the landlord would not make repairs; therefore, I'm entitled to a reduction in rent."
- 5) Ask the judge for a trial. You have the right to a trial. If you win at the trial, the judge may order a reduction in the rent. Even if the rent is reduced, you may still owe some rent, and this must be paid to stop the judge from signing a warrant of eviction. If you lose, the judge may sign a warrant of eviction and award back rent and money damages to the landlord.

REMEMBER

Put all oral promises in letter form and keep copies of all letters and receipts. A home is too important to trust oral promises.

OUR LOCATIONS

Main Office - Utica
120 Bleecker Street
Utica, New York 13501

Syracuse
221 South Warren Street
Suite 310
Syracuse, NY 13202

Binghamton
105 Court Street, 3rd Fl.
Binghamton, NY 13901

Watertown
215 Washington Street
Suite 202
Watertown, NY 13601

Oswego
335 West First Street
Suite 2
Oswego, NY 13126

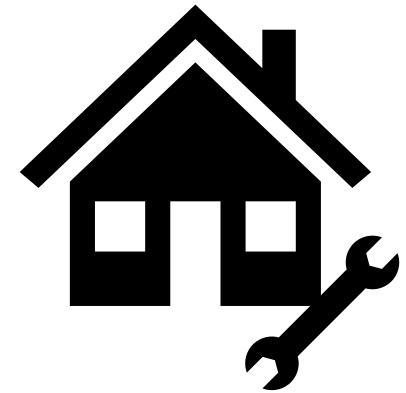
Oneonta
189 Main Street, #3
Oneonta, NY 13820-3510

Farmworker Law Project (statewide)
P.O. Box 282
Wappingers Falls, NY 12590

This brochure is intended to give general information, not legal advice. The information in this brochure may not apply to your particular situation. You should also know that the law could change in the future. Whenever possible, speak to a lawyer for advice and representation.



REPAIR ISSUES Know Your Rights



Legal Aid Society of Mid-New York, Inc.

Housing Preservation Line: (315) 793-7083
HelpLine: (877) 777-6152
www.lasmny.org

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Tenants have the right to safe and livable rental units. The legal term for this is the Warranty of Habitability. If your landlord won't make repairs, there are things you can do to protect your rights.

FIRST!

Speak to your landlord. Ask when the repairs will be made. Even if you get along with your landlord, it's a good idea to send him/her a follow-up letter like the one below. And remember to keep a copy, you may need it later in court.

(DATE HERE)

Dear Linda Landlord,

I talked to you on (DATE) about fixing the leaky roof, and you said you would be over on (DATE) to do the work.

I will be home to let you in. Thank you for agreeing to fix the problem.

**Sincerely,
Timothy Tenant**

BUT WHAT IF THE LANDLORD WON'T FIX IT?

Then you have to think carefully about the next steps. You have some options.

TAKE YOUR LANDLORD TO COURT

Sometimes you can sue the landlord to get the repair issues corrected. Consult with an attorney for more information on this option. *See our pamphlet on Filing a Petition for Repairs for more info.*

WE MAY BE ABLE TO HELP!

If you would like more information or legal advice on any issues covered in this brochure, [contact our Helpline at \(877\) 777-6152](#) to be screened.

#1: COMPLAIN TO CODES

Most cities have a codes inspector who makes sure buildings comply with building codes. If you live in a small town or rural area, someone else, like the fire department or county health department might be responsible for codes inspections.

Often, you can make a phone complaint, but it's a good idea to make the complaint in person, if possible. Get a copy of the complaint when you make it. You may need this in court.

The codes inspector will come and inspect your home. Be there when the inspector arrives. Then get a copy of the report.

WARNING!

When your landlord learns that you've complained to Codes, he/she may get upset and try to evict you. If this happens, the law should protect you. A landlord cannot evict you for making a good-faith complaint about repair issues. Doing so is called a retaliatory eviction, and Real Property Law § 223-b says landlords cannot do this.

- ✓ If you receive Section 8 assistance, you should complain to Section 8 about the condition of your apartment; they will send an inspector and can withhold rent on your behalf. If you withhold your portion of rent while receiving Section 8, you may lose your voucher.
- ✓ If you receive public assistance and rent is paid directly to the landlord by Social Services, tell your caseworker that you've made a Codes complaint. The county has the power to legally withhold rent on your behalf under the Spiegel Act.

#2: REPAIR AND DEDUCT

If the problem is serious, in some situations you can make the repairs yourself, and then deduct the cost from the next month's rent.

WARNING!

If you do this, your landlord may try to evict you. You should first talk with an attorney before taking any of the following steps. With the advice of your attorney, follow these steps carefully:

- 1) Tell your landlord about the problem in writing and give the landlord a chance to fix

(DATE HERE)

Dear Linda Landlord,

I have asked you several times to fix the leaky roof, and you have not done so. Therefore, I'm going to make the repairs myself and deduct the cost from my next month's rent.

Here are two estimates of the cost of fixing the roof. If I do not hear from you in two weeks, I will go ahead with the repairs.

**Sincerely,
Timothy Tenant**

- it. If the repairs aren't made, follow up with a second letter. Remember to keep a copy.
- 2) Get a building inspector or a friend to look at the problem. You may need them as witnesses. Photographs are best.
- 3) Get at least 2 written estimates of the cost of repairs.
- 4) Keep copies of receipts for work and materials.

Remember, your landlord must have a chance to fix the problem before you can repair yourself and deduct. How long you have to wait before you take further action depends on the seriousness of the problem.