

Repair Rights

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Repairs: The Tenant's Right and the Landlord's Duty

Tenants have the right to have any condition that threatens their health or safety repaired by the landlord. Subchapter B of Chapter 92 of the Texas Property Code (§92.051 – §92.061) describes the process a tenant must follow to enforce repair rights and provides specific remedies for a tenant if the landlord fails to make the repairs. By giving the proper notices, a tenant can obtain repair remedies as soon as legally possible. Those remedies, described below, depend on the repair problem.

One important exception to the landlord's duty to repair exists in the law. The landlord does not have a duty to repair a condition caused by the tenant, household members, or the tenant's guests, unless the condition was caused by normal wear and tear.

Conditions requiring repair fall into two categories: those that threaten the health or safety of an ordinary tenant and those that do not. An example of a condition that is not a threat to health or safety would be a non-working dishwasher or garbage disposal. Examples of conditions that are a threat to health or safety are plumbing stoppages, lack of hot water, electrical shorts, leaking roofs or ceilings, and rodent or bedbug infestations.

For tenants living anywhere in Texas, the landlord must provide:

1. A dwelling that is decent, safe, and sanitary;
2. Repairs of conditions that threaten the health or safety of a tenant;
3. Hot water at a minimum temperature of 110° Fahrenheit;
4. Smoke detectors; and
5. Secure locks on all doors and windows, including a keyless bolting device. See ATC's brochure, **Locks and Other Security Devices**, for a complete list of security devices required by law.

The City of Austin Housing Code specifically requires that all residential dwellings in the City of Austin have:

1. Heating facilities capable of maintaining a room temperature of 68° Fahrenheit;
2. Hot water supplied to plumbing fixtures at a temperature of not less than 110° Fahrenheit; and
3. A kitchen sink, a shower or bathtub, a toilet, and hot and cold water.

If the rental unit does not meet state/city standards or other conditions exist which threaten the health or safety of a tenant, the procedure described below must be used to obtain repairs if the landlord has not responded to less formal requests for repairs, such as an email, text, or telephone call. Following the proper process of requesting repairs is essential to obtaining the repairs or to exercising your lawful remedies if the landlord fails to make them. You should read these instructions carefully before requesting repairs.

Procedure for Requesting Health and Safety Repairs

STEP 1

All rent must be paid.

A tenant who is behind in rent or withholds rent because repairs have not been made may be evicted and forfeits all rights to have repairs made until the rent is paid. The only time a tenant may withhold rent is when the tenant has given the required notices and is exercising the right to repair and deduct. See the section, "Repair and Deduct."

STEP 2

If a landlord does not respond to telephone or oral repair requests, the tenant should send a letter by certified mail, return receipt requested, by registered mail, or by a private delivery service that allows tracking of the delivery. The letter should include the following:

- The date;
- The tenant's name and address;
- A description of the repair problem;
- A statement that the problem is a threat to health or safety;
- A request that the repairs begin in a reasonable amount of time (seven days is presumed to be a reasonable amount of time for most repairs. If there is an emergency, then as little as 24 hours notice can be given);
- A request for a written response if the work cannot be completed within seven days; and
- A signature.

The Austin Tenants' Council recommends that you also send the notice by regular first class mail in case the landlord chooses not to claim certified mail.

STEP 3

If the landlord has not made a diligent effort to make the repairs within seven days after receipt of the written repair request, a tenant should write a second and final notice that is the same as the first.

DELIVERY OF REPAIR REQUESTS

Certified Mail, Registered Mail or Trackable Method via Private Carrier

For a repair that is a threat to the health and safety of a tenant, the law only requires a tenant to send one repair request, explicitly provided that it is delivered by certified mail, by registered mail, or by a private delivery service that allows tracking of the delivery. Nevertheless, it is strongly recommended that a tenant send a second letter as described in STEP 3.

Personal-Delivery

If the letter is delivered in person or by regular first class mail, the law requires that the tenant give the landlord a second notice after a reasonable amount of time (seven days) has expired. When delivering a repair notice by hand, the tenant should always take a witness who is 18 years of age or older and can attest to the fact that the letter was delivered. Try to get a written receipt that is dated and signed by a property agent to prove the landlord received the repair request.

Notice by Email

Email is not necessarily considered *written* notice and may not satisfy the requirement for giving a repair request. Many problems can arise using email to communicate a repair problem to your landlord. For example, it is difficult to prove that the intended recipient received your email, especially if the person does not reply. Sending a written letter is always the best way to request a repair. If, however, the landlord requires or mandates that the tenant send repair requests by email, the landlord has likely waived the right to receipt of repair notices in writing.

Proof of Delivery

Having proof that you sent the repair request and that it was received is critical. Always keep copies of your repair request notices and any receipts from the post office and/or from the landlord.

STEP 4

After the landlord has been notified of the needed repair and failed to make a diligent effort to remedy the problem within seven days, the tenant may file a lawsuit in justice court without an attorney and seek an order for the repair, reduction in the rent, civil penalty of \$500 plus one month's rent, actual damages, and reasonable attorney's fees if an attorney is hired.

Always consult an attorney if you have legal concerns.

The Austin Tenants' Council provides this **Self-Help Repair Packet**, which includes form letters that may be used to write proper repair requests. You should carefully read the instructions.

YOUR REMEDIES IF THE LANDLORD DOES NOT MAKE THE REPAIRS

If the required notices have been sent, and the landlord has not made a diligent effort to make health and safety repairs within a reasonable amount of time (seven days), then the tenant may, according to the Texas Property Code:

1. Terminate the lease and move.

The tenant should give the landlord a written notice that the tenant is terminating the lease. The notice should give a date by which the tenant will move out. The tenant will be entitled to a refund of the security deposit in accordance with the law and to a refund of the rent for the remainder of the month after the tenant leaves. The tenant may also deduct the security deposit from the prorated rent. A tenant who moves is also entitled to the other remedies listed below, except the court order directing repairs and the court-ordered partial rent reduction when taking the landlord to court.

and/or

2. Take the landlord to justice, county, or district court where an order may be issued:

- Directing the landlord to make repairs;
- Granting partial rent reduction back to the date of the first request for repair;
- Awarding the tenant one month's rent plus \$500;
- Awarding the tenant money for actual damages, reasonable attorney's fees and court costs.

and/or

3. Repair and deduct as outlined below.

The repair and deduct law is complicated, and ATC strongly recommends that a tenant get further assistance before exercising this remedy. A tenant should contact either the Austin Tenants' Council or an attorney.

To exercise the right to repair and deduct, two things must be done:

1. The tenant must have a local housing, building, or health official or other official having jurisdiction notify the landlord in writing that the conditions affect the material health or safety of the tenant (but see exceptions described below); and
2. The tenant must deliver the required notices requesting the repair as outlined above. However, the final notice given to the landlord must state the tenant's intent to exercise the right to repair and deduct and include a reasonable description of the intended repairs. (NOTE: If the tenant sends the first request for repair by certified, registered or trackable private mail carrier, then a second notice is not required.) The first notice sent via certified, registered or trackable private mail carrier is also the final notice and must state the tenant's intent to exercise the right to repair and deduct and include a reasonable description of the intended repairs.

In Austin, the official having jurisdiction is usually a building inspector from the City of Austin's Building Inspection Department. (See below: "For Assistance in Enforcing Repair Rights.") If these conditions are met and the landlord still fails to make the repair or remedy within a reasonable time, a tenant may have the repairs made and deduct the costs from the monthly rent by using the following procedure.

The tenant's deduction for the cost of the repair or remedy may not exceed the amount of one month's rent or \$500, whichever is greater. If the tenant's rent is subsidized in whole or in part by a governmental agency, the deduction limitation of one month's rent shall mean the fair market rent of the dwelling and not the actual amount the tenant pays.

In two situations a tenant may exercise the right to repair and deduct without having an official send the landlord notice that the condition is a threat to health or safety:

1. If the landlord has failed to remedy the backup or overflow of raw sewage inside the tenant's dwelling or the flooding from broken pipes or natural drainage inside the dwelling; or
2. If the landlord has agreed to supply potable (drinking) water to the tenant's dwelling and the water service to the dwelling has totally ceased.

If the condition involves sewage or flooding, the tenant may repair and deduct immediately after giving notice of intent to repair and deduct. If the condition involves a lack of water, the tenant may repair and deduct if the landlord fails to repair the condition within three days following delivery of the tenant's notice of intent to repair.

If the condition involves inadequate heat or cooled air, the tenant may repair and deduct three days after giving notice of intent to repair and deduct (provided that an official has also sent the landlord notice that the condition is a threat to health or safety). The tenant may give only one notice provided the notice is sent by certified, registered or trackable private mail carrier. The notice must inform the landlord of the tenant's intent to repair and deduct.

Repairs must be made by a company, contractor, or repairman listed in the yellow pages or business pages of the telephone directory or in the classified advertising section of a local newspaper. Repairs may not be made by the tenant, the tenant's immediate family, the tenant's employer or employees, or a company in which the tenant has an interest.

Repairs must also be made in compliance with applicable building codes, including obtaining a building permit when required. When deducting the cost of repairs from the rent payment, the tenant shall furnish the landlord, along with the balance of the rent, a copy of the repair bill and the receipt for its payment.

Casualty Loss

If a landlord has filed an insurance claim with an insurer because the needed repairs are as a result of an insured casualty loss, such as fire, smoke, hail, explosion, or something similar, the landlord does not have to make the repair until the landlord receives the insurance proceeds.

If the casualty loss is not caused by the negligence or fault of the tenant or a guest of the tenant and the rental property is totally unusable for residential purposes, either the tenant or the landlord may terminate the lease by giving written notice any time before repairs are completed. Casualty loss situations can be complicated. If you are considering terminating your lease under Casualty Loss, it is strongly advised that that you schedule a walk-in appointment with Austin Tenants' Council or seek the advice of an attorney.

A Landlord May Not Retaliate

Subchapter H of Chapter 92 of the Texas Property Code (§92.331 – §92.335) prohibits a landlord from retaliating against a tenant by filing an eviction proceeding, depriving the tenant of the use of the premises, decreasing services to the tenant, increasing the tenant's rent, terminating the tenant's lease, or in bad faith, interfering with the tenant's rights under the lease for six months from the time the tenant, in good faith, takes any of the following actions:

1. Gives a landlord a notice to repair or exercises a remedy under Chapter 92 of the Texas Property Code;
2. Attempts to exercise against a landlord some right or remedy granted to the tenant by lease, municipal ordinance, or federal or state statute;
3. Complains to a government entity, a public utility, or a civic or nonprofit agency about a building or housing code violation or utility problem; or
4. Establishes, attempts to establish or participates in a tenant organization.

Retaliation by the landlord is a defense to an eviction. However, the landlord may evict the tenant if the landlord can prove that the eviction is not in retaliation (e.g. if the tenant does not pay full rent or has damaged the property). Also, the landlord may increase the rent or decrease services if it is part of a regular pattern of rent increases or service reductions for all units in a multi-dwelling project.

If a court finds that a landlord retaliated against a tenant, the tenant may recover one month's rent plus \$500; actual damages including moving costs if the tenant has moved; and court costs and reasonable attorney's fees less any rent or other sums the tenant owes the landlord.

In Austin, a landlord who retaliates against a tenant for calling the building inspection department may also face criminal penalties under the City's housing code.

For Assistance in Enforcing Repair Rights

If the landlord does not respond to repair requests, a tenant may want to call the local building inspection department for an inspection of the rental unit. A building inspector will be sent to investigate complaints. The inspector will then send an assessment of conditions to the owner. The tenant should request a copy of this report from the building inspector. In Austin, call the **inspection department** at 311 or 512-974-CODE or 512-974-2633, and an inspection will be performed free of charge. The local health department inspector and/or fire marshal may also be contacted, if appropriate.

The Austin Tenants' Council has two programs which assist tenants who live in Austin in obtaining repairs:

1. The **Telephone Counseling Program** advises tenants and landlords about their rights in Texas. The telephone number for the counseling line is 512-474-1961.
2. The **Repair Mediation** is a mediation program for low- to moderate-income tenants. Repair Mediation provides assistance to tenants who need repairs which are a threat to their health or safety. To qualify for Repair Mediation, a tenant must be income eligible and current on rent. Through this program, a tenant will be assisted in enforcing repair rights under the Texas Property Code repair law. The telephone number for this program is 512-474-7006.

The information in this brochure is a summary of the subject and other pertinent matters. It should not be considered conclusive or a substitute for legal advice. Unique facts can render broad statements inapplicable. Anyone needing legal assistance should contact an attorney.