

Landlord Tenant Complaints

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Common Issue: Conditions at Rental Unit

Standard advice for tenants regarding rental unit conditions:

1. Document the Condition: pictures = a thousand words
2. Provide WRITTEN notice to Landlord. (not text, not I called, not I told him, WRITTEN) retain a copy
3. You are NOT entitled to withhold all of the rent. You MAY be entitled to withhold that amount equal to the portion of the unit which you could not use, or an amount necessary to fix the condition. (*Rent Abatement*: depends on the percentage of the apartment's value that was reduced by the issue. (e.g. in a 1000 sq ft unit you could not use one 10x10 room (100 sq ft). Lower rent by 1/10th }

Most Common and Most Serious Issues: **Habitability**

- rental unit must be **habitable**, meaning the unit is fit for human habitation (can be lived in), you cannot be subject to any conditions which are dangerous, hazardous or detrimental to your life, health or safety. This right cannot be waived. *See* New York Real Property Law (RPL) § 235-b. Warranty of Habitability
- Your rental unit must be capable of meeting **code standards**. *See* Article 18 of the New York Executive Law New York § 371, § 377, § 378, § 381 Enforcement, New York Uniform Fire Prevention and Building Code 19 NYCRR 1220.
- Heat: Every *owner* and *operator* of any building who rents, leases or lets one or more *dwelling units* rooming units, dormitory or guestrooms on terms, either expressed or implied, to furnish heat to the *occupants* thereof shall supply heat during the period from **September 15th to May 31st**. to maintain a minimum temperature of **68°F (20°C)** in all habitable rooms, bathrooms and toilet rooms. *See* 19 NYCRR § 1226, PMCNY 602.3
- Must have a bathtub or shower, lavatory, water closet, kitchen sink that are sanitary, safe, and in working condition. *See* 19 NYCRR § 1226, PMCNY 502.1
- Hot water capable of reaching 110 degrees Fahrenheit. *See* 19 NYCRR § 1226, PMCNY 505.1
- The unit must be structurally sound. *See* 19 NYCRR § 1226, PMCNY 304.6, 304.10, 304.12, 306.1.1
- Plumbing must work and be free of leaks. *See* 19 NYCRR § 1226, PMCNY 504.1
- Exterior doors must lock. *See* 19 NYCRR § 1226, PMCNY 304.15
- Windows: must be openable and capable of providing ventilation to the unit. *See* 19 NYCRR § 1226, PMCNY 304.13.2, 403

NOTICE to LANDLORDS

Getting landlords to make repairs relies on having evidence that they knew something was wrong and didn't fix it.

In order to prove a warranty of habitability defense, your landlord or owner must have had actual or "constructive notice" of the condition that needs repair. As indicated above, by giving your landlord a written notice can provide actual notice of an unsafe or unlivable problem in your apartment or building.

-If you end up in court, it is best to be able to bring any written records of notice[s] of the conditions, any copies of letters, and if possible, any proof that the landlord or the landlord's employees got the information from you. Bring **photographs**, temperature logs (records, e.g picture of a thermometer!), any other type of proof that can help your case. You can also bring any witnesses who saw the conditions. You do not need an expert to testify in court to prove a warranty of habitability defense or claim.

-If the judge rules that you have proved the *warranty of habitability* defense or claim, you may be entitled to an "abatement," or a reduction of the rent. The amount of the abatement will depend on what the *judge says is the percentage of reduction of the value of the apartment when repairs were not made or services were not provided*.

-You can't have an abatement for conditions that you have caused. If you did not let the landlord or his or her employees get in to your apartment to correct conditions, a rent abatement will also be denied or severely limited.

New: Notice of Petition to Appoint Administrator Real Property Actions and Proceedings Law (RPAPL) Article 7-C

What it is: Tenant(s) may sue landlords for a judgment, for the court to appoint an administrator, collect rents, and make repairs to the property they are renting from you.

How it works: Judge issues a judgment to appoint an administrator. The judgment will direct that:

- a) The tenants making this application (petitioning tenants), if any, must deposit all rents due with the administrator starting on the date of the judgment
- b) b) Any tenants not included in this application (non-petitioning tenants) must deposit all rents due with the administrator starting on the date they are served with the judgment
- c) c) All tenants (petitioning and non-petitioning) must deposit future rents with the administrator as they become due
- d) d) The administrator uses deposited rents **to fix the condition(s)** stated in the Petition based on the court's instructions

How a Tenant initiates an Article 7C action:

Bring the original and one copy of the following completed papers to court:

1. Notice of Petition to Appoint Administrator [UCS-LT11A]
2. Petition to Appoint Administrator [UCS-LT11B]
3. Petitioner Information/Signature Addendum [UCS-LT11C], if applicable
4. Supporting papers (*e.g. photos, prior written notice*), if any.

Note: A judge or the clerk of the court **must** sign this form before you can serve your papers on Respondent (see Affidavit of Service for Proceeding to Appoint Administrator [UCS-LT11D]).

Note: the numbers are for Court forms, UCS (Unified Court System) –LT (Landlord Tenant) and form # (11A, 11B, 11C.) These can be found at:

<https://ww2.nycourts.gov/forms/landlordtenant/index.shtml>

Other NEW: Petition for Judgment Directing Repairs **RPAPL 7-D** Tenant Dignity and Safe Housing Act

How is it different then RPAPL 7C? Not seeking a court appointed administrator, rather tenant is looking for a money judgment from Landlord.

Order the respondents (Landlord) to repair the above stated conditions

Order the respondents to reduce future rent to \$_____ per month until the requested repairs are made

Award the petitioners \$_____ due to the difference between the rent paid and the actual rental value of the property based upon its current condition

Other (specify)

Tenant can choose more than one!

Other NEW: Petition for Judgment Directing Repairs **RPAPL 7-D** Tenant Dignity and Safe Housing Act

To file, a tenant must be able to verify

- I am a tenant living at the rental property listed below.
- I have lived there for at least 30 consecutive days.
- I have a lease or other type of agreement to live there

Note that more than 1 tenant can sign a petition! Multiple tenants can join on the same petition.

Other NEW: Petition for Judgment Directing Repairs **RPAPL 7-D** Tenant Dignity and Safe Housing Act

The standard form petition provides that a tenant must answer:

-1. What is your monthly rent? \$_____

-2. Describe the conditions that are dangerous, hazardous, or harmful to your life, health, or safety. These conditions cannot be caused by your wrongdoing or the wrongdoing of any person you allowed on the property [see Real Property Law Section 235-b].

You may also include any other conditions that violate state or local housing codes or standards.

Forms for **RPAPL 7-D** Tenant Dignity and Safe Housing Act

- <https://ww2.nycourts.gov/forms/landlordtenant/index.shtml>

The forms:

- Notice of Petition for Judgment Directing Repairs (UCS-LT12A)
- Petition for Judgment Directing Repairs (UCS-LT12B)
- Order to Show Cause for Judgment Directing Repairs (UCS-L

T12C)

Petitioner Information Addendum (UCS-LT12D)

Respondent Information Addendum (UCS-LT12E)

Other NEW: Petition for Judgment Directing Repairs RPAPL 7-D Tenant Dignity and Safe Housing Act

Who can the Tenant sue (name as a respondent) to make repairs?

- A respondent can be a natural person, business, or organization.
- They can name more than one respondent in the application.
- Anyone who is legally responsible for maintaining the living conditions of the property can be a respondent. That includes but is not limited to:
 - o *Owner* or part owner of the property, usually the landlord
 - o *Mortgagee* – holder of the mortgage loan for the property, usually a bank
 - o *Vendee in possession* – someone who bought the property on credit and is currently in control of the property
 - o *Assignee of rents* – someone who has been given the right to collect rent on the property, could be a property manager or another designated person
 - o *Receiver* – a person appointed by a court to take control of the property temporarily Exception: In this type of proceeding, you cannot sue a receiver appointed under Multiple Dwelling Law Section 309 where the property is deemed a public nuisance or poses a significant risk to the health, safety, or welfare of its occupants.
 - o *Executor* – someone named in a deceased property owner's will to carry out their wishes regarding the property
 - o *Trustee* – someone responsible for managing the property for the benefit of another
 - o *Lessee* – someone who is renting or leasing the property from the property owner
 - o *Agent* – someone who is authorized to act on behalf of the property owner

Last tid-bit. **Security Deposits** General Obligations Law § 7-108.

Deposits made by tenants of non-rent stabilized dwelling units (per 2019)

- (a) No deposit or advance shall exceed the amount of one month's rent under such contract.
- (b) The entire amount of the deposit or advance shall be refundable to the tenant upon the tenant's vacating of the premises except for an amount lawfully retained for the reasonable and *itemized costs* due to non-payment of rent, damage caused by the tenant beyond normal wear and tear, non-payment of utility charges payable directly to the landlord under the terms of the lease or tenancy, and moving and storage of the tenant's belongings. The landlord may not retain any amount of the deposit for costs relating to ordinary wear and tear of occupancy or damage caused by a prior tenant.
- ...the landlord shall notify the tenant in writing of the tenant's right to request an inspection before vacating the premises and of the tenant's right to be present at the inspection.... The tenant shall have the opportunity to cure any such condition before the end of the tenancy.
- (e) Within fourteen days (**14**) after the tenant has vacated the premises, the landlord shall provide the tenant with an itemized statement indicating the basis for the amount of the deposit retained, if any, and shall return any remaining portion of the deposit to the tenant. If a landlord fails to provide the tenant with the statement and deposit within fourteen days, the landlord shall forfeit any right to retain any portion of the deposit.
- (f) In any action or proceeding disputing the amount of any amount of the deposit retained, the landlord shall bear the burden of proof as to the reasonableness of the amount retained.
- (g) Any person who violates the provisions of this subdivision shall be liable for actual damages, provided a person found to have willfully violated this subdivision shall be liable for punitive damages of up to twice the amount of the deposit or advance.

LASNNY has resources available on our website at:

<https://www.lasnnny.org/>

And LASNNY Phone numbers:

1-833-628-0087

315-386-4586

Law Help NY: <https://www.lawhelpny.org/>

NY Court Help: <https://nycourts.gov/courthelp/>