

tenant may withhold rent. Before withholding rent, the tenant should send the landlord a letter identifying the needed repairs and informing the landlord that rent will be withheld if the repairs are not made. If the repairs are not then made after a reasonable time, the rent payments may thereafter be paid into a separate bank account established by the tenant (called an “escrow account”). The landlord should be informed of where the money is being held. The letter should also state that 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, but the court will not evict the tenant if it determines that the tenant’s actions were justified.

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 (MCLA 554.139; MSA 26.1109).
- (b) A notice to the landlord by the tenant that repairs are needed or actual knowledge on the part of the landlord that repairs are needed.
- (c) A reasonable lapse of time from the receipt of notice or actual knowledge by the landlord in order that the landlord could make the requested repairs.

If these 3 conditions exist, the tenant should obtain written estimates of the repair costs. The tenant should send a letter informing the landlord of the estimates and stating that the repairs will

be made and their cost deducted from the rent unless the landlord makes the needed repairs by a specified date. If the landlord does not then make the repairs, the tenant may contract and pay for the work, and then by letter inform the landlord of the work completed, enclosing copies of receipts for all expenditures, and deduct the cost from the rent. The landlord may challenge the tenant’s right to deduct the cost of the repairs in an eviction action, but the court will not evict the tenant if its actions are justified.

Again, all letters to the landlord should be sent certified mail, return receipt requested, and a copy of all correspondence (whether sent or received) should be kept by the tenant.

THIS BROCHURE SHOULD NOT BE USED IN PLACE OF LEGAL ASSISTANCE. IN THE EVENT OF A LANDLORD/TENANT DISPUTE, SEEK LEGAL ADVICE



**REAL PROPERTY LAW SECTION
STATE BAR OF MICHIGAN**

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TENANT-LANDLORD INFORMATION: SECURITY DEPOSITS & PROPERTY MAINTENANCE



SECURITY DEPOSITS

A security deposit shall not exceed one and a half months rent. A security deposit can be used only after the tenant moves out and for the following purposes:

- (a) To reimburse the landlord for actual damages (not cleaning expenses) not reasonably expected in the normal course of occupancy.
- (b) To pay the landlord for rent in arrearage, rent due for the premature termination of the rental agreement, and for utility bills not paid for by the tenant.

Within 4 days of moving, the tenant must notify the landlord in writing of his/her new address or forfeit notice of damages.

NOTICE OF DAMAGES

In the case of damages to the rental unit, the landlord must mail to the tenant within 30 days after the termination of occupancy, an itemized list of charges, including the cost of repair of each damaged item. The list must be accompanied by a check for the difference between the charges claimed and the amount of the security deposit. The notice must state that the tenant must respond to the notice by mail within 7 days of receipt of the same or forfeit the amount claimed for damages.

FAILURE TO SEND NOTICE OF DAMAGES

Failure by the landlord to comply with the notice of damages requirement within 30 days after the termination of occupancy is an agreement by the landlord that no damages are due and the landlord must immediately return to the tenant the full security deposit.

SUIT TO RETAIN A DISPUTED SECURITY DEPOSIT

If a landlord wants to keep part or all of a security deposit after the tenant has disputed charges claimed by the landlord, the landlord has 45 days after the termination of tenancy to bring suit against the tenant in order to keep the disputed money. The security deposit is considered the tenant's property until a landlord obtains a money judgment from the court for the disputed amount. The 45-day limit for the landlord to file suit to keep the security deposit will not apply where:

- (a) The landlord has filed with the court satisfactory proof of an inability to obtain service on the tenant.

- (b) The tenant has failed to provide his/her written forwarding address.
- (c) The tenant has failed to respond to the notice of damages within the seven day limit.
- (d) The parties have agreed in writing to the disposition of the balance of the deposit claimed by the landlord.
- (e) The amount claimed by the landlord to be deducted from the security deposit is equal to unpaid rent.

FAILURE OF THE LANDLORD TO SUE WITHIN 45 DAYS

Failure of the landlord to comply with the 45-day limit on an action to retain a security deposit constitutes a waiver of all claimed damages and makes the landlord liable to the tenant for double the amount of the security deposit retained.

PROPERTY MAINTENANCE

COVENANT OF FITNESS

Both landlords and tenants have maintenance responsibilities. Under Michigan law, a landlord is obligated to keep rental property in reasonable repair and to comply with health and safety laws. Tenants are generally expected to assist the landlord in maintaining the premises in a safe and sanitary condition, to promptly notify the landlord of maintenance problems that require attention, and to leave the premises in good condition. These responsibilities may be modified, by mutual agreement of the landlord and tenant, if the lease has a current term of at least one year.

WHEN MAINTENANCE PROBLEMS ARISE

If a landlord is not maintaining rental property according to the local housing code or the rental agreement, the tenant should first discuss the matter with the landlord. If after this initial discussion it appears that the landlord may not cooperate to correct defects, the tenant should send a letter to the landlord. The problems discussed should be restated and the landlord should be advised that action will be taken if the problems are not resolved immediately.

KEEP GOOD RECORDS – The tenant should keep a written list of the defects, the date they were first noticed and the date the landlord was notified. The tenant should write down what was said to the landlord about the defects, the times the landlord or repairman came to inspect the problems or to work on them and when the work was started and completed.

Photographs should be taken of all visible defects in the rental unit and the common areas of the building. The nature and location of the defect and the date on which the photo was taken should be written on the back of each photo.

Letters to the landlord should be sent certified mail, return receipt requested, and a copy of all correspondence (whether sent or received) should be kept by the tenant.

WHEN THE LANDLORD WILL NOT MAKE REPAIRS

Withholding Rent

If the landlord does not maintain the rental unit as required by the lease and Michigan law, the