

Implied Warranty of Habitability in Residential Rentals

When you rent a house, apartment, or condominium for residential purposes, your lease contains, by law, a [warranty](#) that the property will be fit for human habitation. This warranty applies whether or not it's written into the lease. The warranty is implied by law.

What is an Implied Warranty of Habitability?

An “implied warranty” could be seen as the law essentially putting words into somebody's mouth. So, if you are a landlord, and [your lawyer](#) drafts up a standard lease agreement for you to use with all of your tenants, that lease includes, whether you like it or not, a promise on your part that you will keep the property fit for human habitation.

The reasons for this are fairly obvious: when renting an apartment, tenants are often not in a position that affords them much bargaining power, and it would be very difficult to negotiate a guarantee on the landlord's part that they will adequately maintain the property. Also, if a tenant is paying the landlord for a place to live, it should go without saying that they have a reasonable expectation that the property will not contain serious health or safety hazards.

What Is Required to Make a Property Habitable?

First of all, the warranty of habitability does not mean that a rental property has to be particularly nice, luxurious, or pretty. It simply must have a few common-sense features that most of us would consider bare essentials.

Here are a few per se requirements for a unit to be considered habitable:

- Running, drinkable water, including hot water
- A working bathroom
- Electricity
- A working phone line
- Basic protection from the elements (wind, rain, etc.)
- Working heat in cold weather
- Sanitary premises (no severe pest infestations, toxic mold, etc)

If the property is missing any one of these features, it is “per se” uninhabitable, meaning that the warranty has been breached, even if the property is perfect in every other respect. Note that the above features are only most common “per se” requirements, and that your state or city might have additional ones.

However, a deficiency in one of these per se requirements is not the only way to render a piece of property unfit for human habitation.

Many small problems, one of which would not be sufficient to render property uninhabitable, can add up to make property uninhabitable. In a case like this, it will be up to the finder of fact (a judge or jury) in a lawsuit against the landlord to determine if the warranty has actually been breached.

For example, numerous small violations of local building codes, which add up to make the property unreasonably dangerous, might make a property uninhabitable, even if any one of them, by itself, would not.

What Should I do if My Apartment or Condo is Uninhabitable?

One of the most important considerations is who caused the unacceptable condition. Tenants are responsible for repairing damage to their apartments (beyond ordinary wear and tear) caused by their own conduct. So, if you decided to do some impromptu remodeling, and end up cutting off electricity to your apartment, don't expect a court to order the landlord to pay for the repairs.

However, if the condition was not caused by your conduct, or the conduct of another tenant, it is the responsibility of the landlord. The first thing you should do is bring it to your landlord's attention. In most cases, they'll have it fixed within a reasonable period of time.

However, if the landlord fails to adequately address the problem, you should contact the appropriate authorities in your state or city, and consider [hiring a lawyer](#).

If your apartment is truly uninhabitable, you have a few legal options at your disposal.

If the condition must be fixed as soon as possible, and the landlord is dragging his or her feet, you can pay to have the problem fixed, and then deduct the cost from your rent. This strategy is risky, however, because a landlord might disagree that the condition rendered the apartment uninhabitable, and sue you for the rent you deducted. If a court agrees, it can order you to pay the landlord the rent you deducted.

Another option is "constructive eviction." This can occur when the conditions on the property have become so bad that you have no choice but to move out, and stop paying rent. A court will treat this as if the landlord had breached the lease agreement (if it is for a term of years, and not month-to-month) and evicted you early. Because this is a breach of contract, you, as the other party to the contract, will be relieved of your obligations under it. This means that you won't have to pay rent for any additional months left on the lease agreement.

Again, this is risky, since your landlord might believe that conditions were not so bad as to amount to a constructive eviction, and sue you for breaching the lease agreement by not paying rent. If a court sides with the landlord, you will have to pay rent for the rest of the lease's term.

The safest option (though sometimes the slowest) is to take the landlord to court, or whatever local authority adjudicates these types of disputes, and get an order to fix the unsafe condition. Once this order is granted, you will have far more security to pursue the options mentioned above, if the landlord fails to abide by it.

What Should I do if I'm a Landlord?

Running a rental property can be a difficult, stressful, and thankless job. But it is a job, nonetheless: you are paid to provide a service, and your customers have a legitimate expectation that they will get what they're paying for – a habitable residence.

Therefore, it's important to stay on top of basic building maintenance. If a tenant complains about a hazardous condition, you should investigate and (if necessary) correct it as soon as possible. Keeping the premises in good condition is probably your least expensive option in the long run (if defending against numerous complaints and/or lawsuits is the alternative).

It's a good idea to retain the services of a lawyer, who will likely be able to advise you, early on, about the legal merit of a tenant's complaint. This can inform your decision on how to proceed.