

The Warranty of Habitability: When You Rent a Place that is not Safe to Live In

What is the Warranty of Habitability?

It is a legal concept. It holds that in renting a place to you, the landlord makes an unspoken promise (**warranty**) that it is safe to live in. If it turns out not to be, the landlord has violated (broken) the warranty.

Does the Warranty of Habitability apply to my landlord?

Yes. It applies to all residential landlords. It is the landlord's guarantee that the place is safe for you to live in.

My lease does not mention the Warranty of Habitability. Does that matter?

No. A warranty of habitability is implied in all tenancies where you are renting a place to live. **It does not need to be in writing in your lease agreement.**

Can the landlord put something in the lease saying there is no warranty of habitability for my place?

No. Anything in a written or verbal lease agreement saying this or trying to limit the landlord's legal duties to maintain and repair the rental is unlawful. It is unenforceable. The landlord cannot hold you to it.

Can I give up the warranty of habitability in exchange for lower rent?

No. You cannot give up or bargain away the Warranty of Habitability.

How does the Warranty of Habitability help me?

If the place is at all uninhabitable because the landlord did not make needed repairs, you may be able to claim a partial or total rent reduction for the period it was uninhabitable.

But the repairs must be major. They must affect your ability to live there safely. Minor code violations not affecting safety may not violate the warranty of habitability.

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- ❖ Rent withholding (not paying the rent to get the landlord to make repairs) is usually dangerous. We cannot predict how much rent you could safely withhold. You risk getting evicted. Never withhold rent before speaking with a lawyer! If you have a very low income, call CLEAR at **1-888-201-1014**.
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I was served with eviction papers. Can I use the Warranty of Habitability as a defense?

If you claim this as a defense in an unlawful detainer (eviction) for rent, the court will decide:

- If the unit was totally or partially uninhabitable (unlivable) while you lived there.
- What, if any, reduction in the rental value while you lived there should be.

Using this defense to eviction for rent nonpayment can **be risky**. You generally should not withhold even some rent. The court may not agree how much the place was actually worth. A court that thinks you withheld too much or owe even a little bit of rent may evict you without the chance to make up the difference.

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- ❖ If you were served with eviction papers and you have a very low income, call CLEAR at **1-888-201-1014** right away.
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Examples of what the court might do: Your rent is \$600 rent/month. For six months, you pay the rent (\$3,600 altogether). You then miss one month. The landlord files an eviction action.

Scenario 1: The court decides the apartment is only worth \$400/month because of problems or defects affecting habitability. That means you owe only \$2,800 total over the six months you paid and one month you did not. You have already paid \$3,600. **You do not owe rent.** You should not be evicted. In fact, the landlord would have to lower the rent to \$400 a month until the apartment is fixed.

Scenario 2: The court found the apartment was worth more than you paid over the six months. It orders your eviction and awards the landlord a judgment for unpaid rent, court costs, and attorney's fees.

What will help me prove the landlord violated the Warranty of Habitability?

- Housing code inspectors' reports and testimony.
- Photos.
- A **witness to testify about local rental values**, and what the rental unit was actually worth with the defects.
- **Testimony** from someone with experience in **property valuation**. **Examples:** building inspectors; some housing authority employees; real estate agents. Estimating the proper rental value will be hard for a judge. The judge may appreciate any help a witness offers.

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- ❖ Make sure you know what a witness would say before the witness says it in court or in a statement that you hand in to the court.
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Can I sue the landlord for a rent reduction?

Maybe. You can use a breach of the warranty of habitability claim to sue the landlord for a court-ordered rent reduction. **But** courts have a hard time determining how serious defects are and how much to reduce the rent.

If you believe the needed repairs are bad enough that the landlord should lower the rent, you can:

- Sue in Small Claims Court to try to make the landlord return rent you already paid. (Read [How Do I Sue in](#)

[Claims Court](#), available at www.washingtonlawhelp.org.)

- Sue in Superior Court for past and future reduction of rent.

What if I need legal help?

- Apply online with [CLEAR*Online](#) - <https://nwjustice.org/get-legal-help> or
- Call CLEAR at 1-888-201-1014

CLEAR is Washington’s toll-free, centralized intake, advice and referral service for low-income people seeking free legal assistance with civil legal problems.

- **Outside King County:** Call 1-888-201-1014 weekdays 9:15 a.m. - 12:15 p.m.
- **King County:** Call 211 for info and referral to an appropriate legal services provider weekdays 8:00 am –

6:00 pm. You can also call (206) 461-3200, or toll-free 1-877-211-WASH (9274). You can also get info on legal service providers in King County at www.resourcehouse.com/win211/.

- **Persons 60 and Over:** Seniors age 60 or over can call CLEAR*Sr at 1-888-387-7111, regardless of income. Assets limits may apply. Seniors in King County can call 2-1-1.

Deaf, hard of hearing or speech impaired callers can call CLEAR or 211 (or toll-free 1-877-211-9274) using the relay service of your choice.

CLEAR and 211 will conference in free interpreters when needed.

Free legal education publications, videos and self-help packets covering many legal issues are available at www.washingtonlawhelp.org.

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

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