
Repair and Maintenance

Maintenance problems range from things that are merely annoying to things that pose an immediate threat to health and safety. Both the landlord and the tenant have some responsibility for maintenance.

There are three types of maintenance problems:

1. **Emergencies** (require action within 24 hours and pose an immediate threat to the health and safety of the occupant—gas leak, flooding, defective furnace, or major roof damage);
2. **Major problems** (affect the quality of the residential environment, but not to the degree that the life of the occupant is immediately endangered—defective water heater, clogged drain, heating problem in part of a house); and
3. **Minor problems** (fall into the nuisance category—defective lighting, locks, faucets; household pests; and peeling paint and wallpaper).

A. RESPONSIBILITIES ARE SHARED WHEN MAINTAINING A RENTAL PROPERTY

Q1 What are the landlord's responsibilities?

Under Michigan statute, the landlord has a duty to keep the rental property and all common areas:

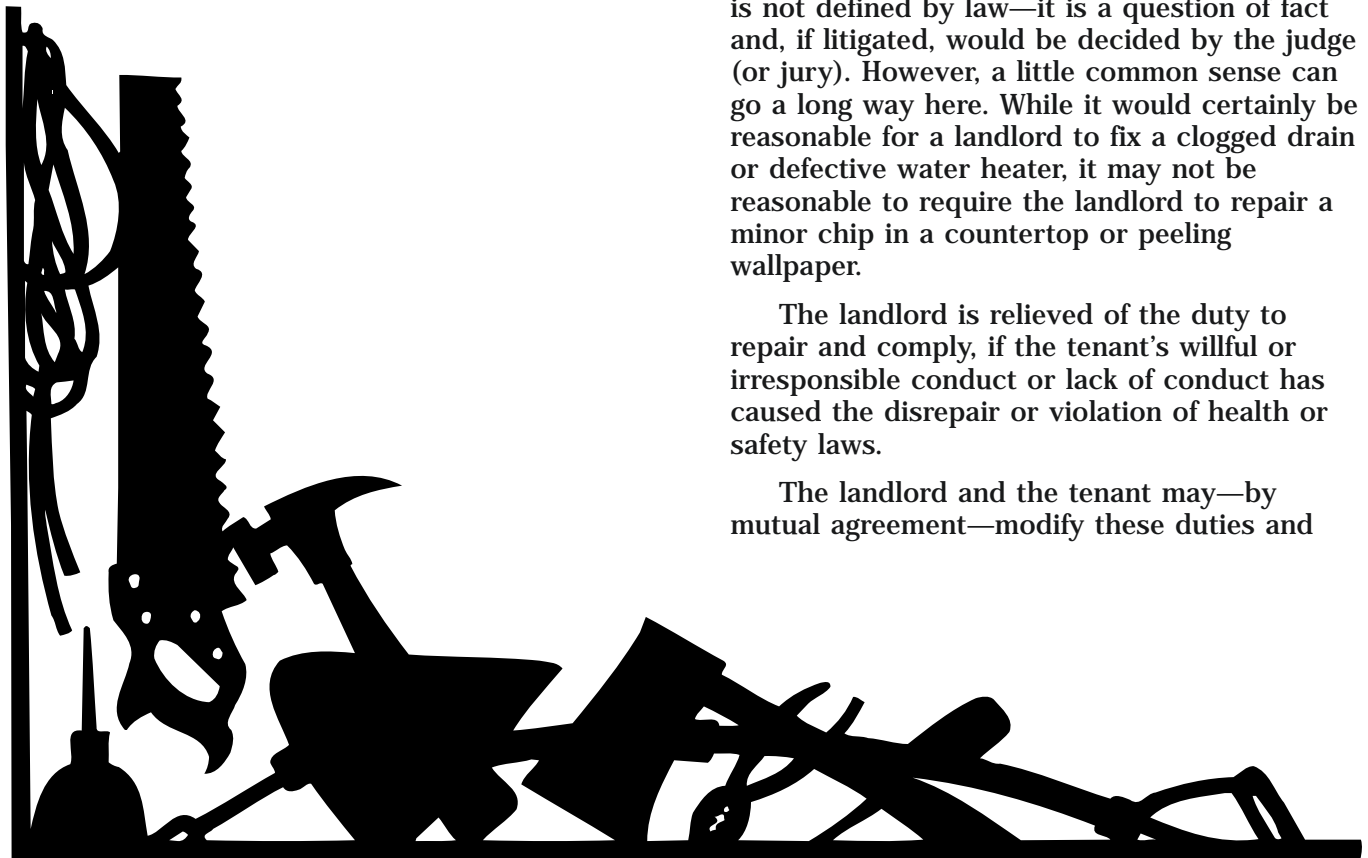
- a) Fit for the use intended by the parties; and
- b) In *reasonable repair* during the term of the lease, and to comply with the health and safety laws. (MCL 554.139)

Whether the landlord is required to repair a problem depends on two factors: the nature of the problem itself and whether the landlord's duty to repair has been modified—either by the tenant's conduct or by mutual agreement.

Unfortunately, the term “reasonable repair” is not defined by law—it is a question of fact and, if litigated, would be decided by the judge (or jury). However, a little common sense can go a long way here. While it would certainly be reasonable for a landlord to fix a clogged drain or defective water heater, it may not be reasonable to require the landlord to repair a minor chip in a countertop or peeling wallpaper.

The landlord is relieved of the duty to repair and comply, if the tenant's willful or irresponsible conduct or lack of conduct has caused the disrepair or violation of health or safety laws.

The landlord and the tenant may—by mutual agreement—modify these duties and



make the tenant responsible for repairs, but only if the lease agreement has a current term of at least one year. In other words, if the lease term is less than one year, the landlord's duty cannot be modified.

Additionally, almost all courts recognize that implied in a residential lease agreement is the understanding that the rental property must be fit for habitation by humans. This means that the rental property must meet some minimum level of standard so as not to expose the occupants to unreasonable health risks. This implied duty cannot be modified or waived.

In addition to state law requirements, counties and municipalities are free to enact ordinances that require landlords to maintain rental property above minimum habitability standards. Most municipalities have a housing code protecting the health, safety, and welfare of their citizens. Some require that the rental property be inspected on a regular basis. Some even require licensing before a tenant can move in. Check with the local city or county government code enforcement office for additional standards imposed on landlords in maintaining their rental property.

Q2 What are the tenant's responsibilities?

Although responsibilities can be modified in certain instances—by mutual agreement between the landlord and tenant—a tenant is generally expected to:

1. Pay rent on time;
2. Keep the rental property in a safe and sanitary condition;
3. Promptly notify the landlord of maintenance problems;
4. Exterminate insects that appear if they were not there when the tenant moved in; and
5. Leave the rental property in good condition—reasonable wear and tear excepted.

B. IMPORTANT STEPS TO TAKE IN SOLVING THE PROBLEM(S)

Depending on the problem, requesting that a repair be made could be as simple as a quick phone call or as complicated as filing a lawsuit. Outlined next are the recommended steps to take to solve a repair and maintenance problem:

STEP 1: Notify the landlord and provide reasonable time for repair.

Keep it simple. The tenant must notify the landlord and explain the situation, the importance of the repair, and when he or she would like it done. A simple phone call usually works. Sometimes, however, the landlord requires that a specific form or repair order be filled out before proceeding. Read the lease and talk to whoever is in charge and figure out the best course to take. Keep copies of communications and note discussions. Municipalities have enacted housing codes—establishing minimum standards—to protect the rights of both the landlord and the tenant. Contact the local city hall for information. Remember: the landlord must be given reasonable time to make repairs.

STEP 2: Contact the building inspector and schedule an inspection.

In some municipalities, if the rental property is up to municipal code standards, the tenant will be responsible for paying the inspector's fee. If it is not up to code, the landlord pays the fee (and may also have to pay a re-inspection fee once the repair is made). Call the local inspector's office to find out how much the fee will be.

STEP 3: If the landlord has failed to make necessary repairs, either withhold the rent and deposit it into an escrow account OR pay for the repair and deduct the cost from the rent.

But remember: the landlord must first be provided with notice of the problem, and must then be given a reasonable amount of time to fix the problem.

Escrow Account: A bank account or other account held by a third party, generally established in the name of the tenant, into which whole or partial rent payments are deposited to show that the tenant was ready, willing, and able to pay the rent, but is withholding the rent until a certain problem is fixed that the landlord is legally responsible for fixing. Once the problem is taken care of, the escrowed rent amount will be released to the landlord.

■ **If the rent, or a portion of it, will be withheld** for the purpose of addressing the maintenance or repair issue(s), the tenant

should send a letter—certified mail, return receipt requested—stating why the rent will be withheld, where it will be deposited (what financial institution), and that payment will be released when the maintenance or repair problem has been corrected.

■ **If the repair cost will be deducted from the rent**, call for three repair estimates. If it is a do-it-yourself job, shop and compare the cost of parts. Reputable repair companies will come to the house and provide a free written estimate. Send copies of the estimates to the landlord and state that the problem will be fixed unless the landlord agrees to do it by a certain date, and that the cost of repair will be paid from the rent withheld. Keep all receipts and note the dates of repair; send copies to the landlord, along with the remaining portion of the rent.

(*Note:* While the repair-and-deduct method may work well for small repairs, it may not work for large repairs.)

Q1 How much rent should be withheld?

The amount of rent withheld must reasonably relate to the cost of fixing the problem or to the amount of damage the tenant has incurred because of the landlord's failure to fix the problem. Withhold less for a clogged drain. Withhold more for an unusable toilet or shower. Only the most catastrophic problems will warrant withholding all of the rent. In any event, the amount withheld must be deposited into an escrow account.

Q2 What if the tenant lawfully withholds rent and the landlord starts the eviction process?

If the landlord has a run-in with the municipal code enforcement office OR if the landlord does not receive the rent, he or she may well decide to start the process for evicting the tenant. Nevertheless, Michigan law provides the tenant who was acting lawfully with certain defenses. The tenant, however,

must be able to prove the facts giving rise to the defense:

1. *A claim of retaliatory eviction.* There exists a presumption of retaliation if the landlord started the eviction proceedings within 90 days of the tenant trying to enforce his or her rights under law (*e.g.*, reporting health and safety code violations, exercising rights under the lease, filing a complaint against the landlord for a violation of the law).
2. *The landlord's breach of the warranty of habitability and duty to repair.* The tenant must show that the landlord was provided with notice of the problem and given a reasonable amount of time to fix the problem. The tenant must show that the landlord failed to make the necessary repairs.
3. *Rent was properly withheld and escrowed.* The tenant must be able to show that "but for the repair and maintenance required, he or she was ready, willing, and able to pay the rent."

The eviction process takes time—from start to finish, it takes as few as 27 days or as many as 57 days to evict a tenant. In the meantime, the landlord has mortgages, taxes, and bills to pay. Financial pressure may cause the landlord to negotiate. If the landlord will not negotiate, and if the tenant has carefully documented all communications about the needed repair and maintenance, the tenant may well succeed in the lawsuit for eviction.

Both the landlord and the tenant should remember that, in many disputes, the basic issues become obscured by personal disagreements that develop and continue to grow and fester. If an agreement cannot be reached, try mediation—either before a lawsuit is filed or after. Mediation might help to empower the parties to use their own problem-solving skills, to take responsibility, and to find solutions that best meet their needs, while strengthening the landlord-tenant relationship.