

TENANT'S RIGHTS WARRANTY OF HABITABILITY

As it applies to the landlord

The warranty of habitability is, in effect, your landlord's guarantee that the premises you rent are safe enough to live in. A landlord cannot make a tenant waive (give up) this warranty, even in exchange for lower rent. The warranty applies to all residential rentals.

As it applies to the tenant

A tenant may claim that rent is not owing because the landlord failed to make needed repairs. The repairs must be major, affecting the safety and livability of the residence. Even code violations will not necessarily amount to a breach (violation) of the warranty of habitability if they do not affect your ability to live safely in the residence.

Taking your landlord to court

A claim of "warranty of habitability" is based upon case law, not the Residential Landlord-Tenant Act. The reference department of your local library should be able to help you get copies of the cases establishing this claim, which are *Foisy v. Wyman*, 83 Wn. 2d 22, 515 P.2d 160 (1973) and *Knight v. Hallsthammer*, 29 Cal.3d 46, 623 P.2d 268 (1981). ("P.2d" stands for "Pacific Reporter, 2nd Series.")

If you make a warranty of habitability claim as a defense to an eviction action, the court will look at two things. First, it will decide whether the unit was totally or partially uninhabitable (unlivable) during the tenancy. Next, the court will decide what the reduc-

tion in the rental value for the unit should be during the term of the tenancy. If the amount of rent you did not pay under your rental agreement is less than the amount of reductions found by the court, the court must dismiss the landlord's eviction action.

What the court might do

For example, imagine you owe \$300 each month for rent, and paid that \$300 for six months (\$1,800 altogether), then missed one month's rent payment, causing the landlord to take you to court for eviction due to non-payment of rent. If the court decides that the apartment is only worth \$200/month because of things that are wrong with it, you would owe \$1,400 total over the 7 month period (the six months you paid and the one you didn't). Since you have already paid \$1,800, you do not owe rent, and the court would not evict you. Also, the landlord would have to decrease your rent to \$200/month until he fixed your apartment. If the court found that the apartment was worth more than \$257/month (making more than \$1,800 over 7 months), the landlord would win the eviction action and you would owe him the missing rent.

What will help your claim

- Although a warranty of habitability claim does not depend on an official inspection or official finding of violations of housing codes, reports and testimony from housing code inspectors are very useful and an inexpensive way to prove your claim of the landlord's breach (violation) of the warranty of habitability.
- Photographs are also very helpful.

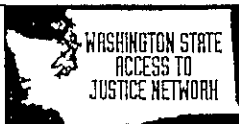
- It is best to have a witness testify regarding minimum rental amounts in your community, and what your unit was actually worth given the defects. The major difficulty in using this claim is setting the proper rental amount, and the judge may appreciate any help you can offer in the way of testimony from a person experienced in property valuation, perhaps a building inspector, someone from the housing authority, or a real estate agent. If you do use such a witness, be sure you know what he or she will say before having them talk in court or submit a statement.

Should the rent be Slowed?

It is possible to use the warranty of habitability claim to start an action on your own for less rent, even when the landlord is not evicting you. However, because of the problems courts have valuing rent reduction and the seriousness of defects, this is risky.

You should not just stop paying all or part of your rent on the assumption that a court will find that the apartment is not worth what your landlord is charging.

If you think the needed repairs are bad enough to justify rent reduction, you can start an action in Small Claims court to get back rent you have already paid in (call for the handout on Small Claims Court), or you can start an action in Superior Court for past and future reduction of rent.



This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, May, 1996.

© 1996 Columbia Legal Services and Northwest Justice Project — 1-888-201-1014
(Permission for copying and distribution granted to Washington State Access to Justice network)