RENTING 101: Basic Information All Renters Should Know

Repairs and Maintenance

ASUM Legal Services provides free and low cost legal assistance to qualifying students of the University of Montana. One legal issue that students frequently encounter is their rights and responsibilities as a tenant of private (non-University) rental housing. This is a very brief summary of what you should know about renting a home. This is not legal advice and students should contact ASUM Legal Services for more information.

Under the Montana Residential Landlord and Tenant Act, a landlord must:

- maintain the dwelling so as to comply with state and local building and housing codes related to a tenant’s health and safety
- maintain in good and safe working order all electrical, plumbing, heating, air-conditioning, and other facilities and appliances supplied by the landlord, including any elevators
- keep all common areas, such as lobbies, stairways and halls, in a reasonably clean and safe condition
- make repairs and do whatever is necessary to make the premises fit and habitable
- inform the tenant of the name and address of the landlord or landlord’s agent
- provide smoke and carbon monoxide detectors, and ensure they work properly when a new tenant moves in. (Tenants are responsible for maintaining the detectors.)

A landlord is required to keep the property in a fit and habitable condition. This includes keeping the all essentials in good working order, including electrical, hot water, plumbing, and heating in good and safe working condition. The landlord must also install an approved smoke detector.

Under the Montana Residential Landlord and Tenant Act, a tenant is required to:

- pay rent and any utilities agreed upon
- comply with any requirements of city, county or state regulations
- keep the rental unit clean and sanitary
- dispose of all garbage and waste properly
- properly operate plumbing, electrical and heating systems
- maintain smoke detectors, including replacing batteries

A tenant may not:

- damage or destroy any part of the property
- disturb neighbors’ peaceful enjoyment of their property
- change the locks without obtaining the landlord’s permission and providing the landlord with a copy of the new key
The tenant must maintain the premises in a reasonable clean and safe condition, using appliances and facilities in a reasonable way. A tenant may not damage or remove any part of the premises and must maintain the smoke detector in good working order.

**Read the lease carefully** to see what other rights and obligations the landlord and the tenant have.

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**What to do when something breaks— health and safety**

When something in the rental unit needs to be repaired, the first step is for the tenant to give **written notice** of the problem to the landlord or person who collects the rent. The notice must include:

- the full address of the rental property
- the name of the owner
- a complete description of the problem

Email or text alone is not sufficient notice, but is a good idea in addition to a letter. You can deliver the notice personally or mail it. If you will need to prove when the landlord received the notice, use certified mail and request a return receipt from the post office.

For repairs of that affect the habitability of the property and the tenant’s health and safety, the tenant may give written notice to the landlord that repairs must occur within 14 days or the tenant may terminate the rental agreement at the end of 30 days. Following receipt of the written notice, if the landlord does not make the repairs within 14 days and the cost of repairs is less than one month’s rent, the tenant may either:

- notify the landlord that the tenant is terminating the rental agreement,
- or
- have the repairs made and deduct the cost from the rent.

**Prior to deducting any amount from the rent**, the tenant should consult an attorney to make sure the deduction is lawful, and to discuss the risk of eviction. Whenever a tenant pays less that the full rent due, there is a risk that the landlord will seek eviction based on nonpayment of rent.

**Important**: If you, a member of your family, or any other person on the rental with your consent caused the maintenance problem, you may not end the rental agreement because of that problem.

For emergency conditions, the written notice should indicate the emergency and demand repairs within three working days. In an emergency the landlord must make repairs within three working days of written notice from the tenant.
What to do when something breaks— essential services

This is confusing because there is a different law when an ”essential service” needs repairing. Essential service includes heat, running water, hot water, and electricity. If the landlord fails to provide an essential service to your rental, your first step is to provide the landlord with written notice that you no longer have access to a specific essential service. After giving the landlord written notice, you must allow the landlord a reasonable amount of time to fix the problem keeping you from having essential services in your rental. The law does not specify what amount of time is “reasonable.” If the landlord does not fix the problem within a reasonable time, you have several remedies to choose from:

- **Repair and Deduct.** If it costs less than one month’s rent, you can buy reasonable amounts of heat, hot water, running water, electricity, gas, or other essential service for the time that the landlord does not fix the problem. You can then deduct the amount you have spent getting the essential service from your next month’s rent before paying the landlord;

**OR**

- **Alternate Housing.** You can decide to live somewhere else until the landlord fixes the problem. If you move somewhere else while the landlord fixes the problem you will not have to pay the rent during the time that you do not live in the rental, but you may have to pay whatever the cost is for the place that you live in while you are not living in the rental.

**OR**

- **Diminution in Value.** You can continue to live in the rental without the essential service(s) demand damages for the decrease in rental value. If you have to file a lawsuit, you will ask the court to determine what the value of the rental is without whatever essential service is missing from the rental. And you will owe the rental value determined by the court.

What to do when the property is seriously damaged

If the rental property is seriously damaged or destroyed by fire or casualty, you can:

- Immediately move out of the rental and give the landlord written notice within 14 days that you have moved out and are ending the rental agreement. If you choose this option, the rental agreement will have ended on the date you moved out of the rental. The landlord must return your security deposit minus any lawful deductions and any unused rent that you paid;

**OR**
• Continue living in the rental but move out of the parts of the rental that can no longer be used because of the damage. This is only an option if it is still lawful to live in the rental with the damage. If you choose this option, the landlord has to reduce your rent to reflect the lower value of the rental.

FAQ

Can I end the rental agreement AND repair and deduct?
No. You must decide to either end your rental agreement OR stay and repair and deduct the amount of the repair from the rent. You cannot do both. Regardless of which option you choose, you can also demand damages and possibly file a lawsuit, asking for actual damages you suffered from the landlord’s failure to make repairs. In your lawsuit, you can also ask the judge to order the landlord to make the repairs.

Can I go to court to force the landlord to make repairs?
Yes. This may be an option if you want to stay in the rental but the costs of repairs are more than one month’s rent. Even if the repairs are less than one month’s rent, you can still take the landlord to court to make the landlord make the repairs instead of doing it yourself. This is also an option for dealing with repairs that do not affect your health or safety. If the landlord refuses to make repairs that the landlord is required to make under the law, but they are not affect your health or safety, you can take the landlord to court to have the court force the landlord to make the repairs.

Can the landlord end the rental agreement if I do not maintain the rental?
Yes. If you fail to maintain the rental as required by law and by the lease, the landlord may provide you with written notice of that violation and possibly end your rental agreement. The number of days on the notice depends on the type of maintenance that you fail to perform. For destruction of the rental or being charged or arrested with the certain crimes, the landlord can give a 3 day notice. For other tenant maintenance duties the landlord is required to give you 14 days’ written notice to fix the violation or move out. If you do not move out or fix the violation, the landlord may file a lawsuit in court for possession of the rental property and for damages. You will have the opportunity to appear in court to fight the eviction. But if the landlord wins in court, you will be evicted from the rental. If you commit a violation of this duty within six months of receiving proper written notice of the same type of violation, the landlord does not have to allow you to fix the violation. The landlord may give you written notice that the rental agreement will end 5 days after you receive the notice.

Can the landlord make repairs for me and charge me for the repairs if I do not maintain the rental?
Yes. If you fail to do any maintenance required by the law or the lease, and your failure affects someone’s health and safety, the landlord has the right to enter and complete that duty for you. The landlord must provide you with proper written notice of the duty that you are not performing and that you have 14 days after receiving the notice to perform the duty. If it is an emergency, the landlord does not have to give you the 14-day notice, and can ask you to perform the duty immediately. If you do not perform the duty within the 14 days (or immediately if it is an emergency), the landlord may enter and get the work done. The landlord can then bill you for the
actual and reasonable cost of the work. The landlord can give you an itemized bill that will be due on the next date that rent is due. The amount of the bill will be considered part of your rent for that month.

Conclusion

ASUM Legal Services wishes everyone happy and safe moving this Spring and Summer! If you are a student and have any questions or need more information, contact ASUM Legal Services; 406-243-6213 www.umt.edu/asum/legalservices. This article is not legal advice and you should consult with an attorney regarding a specific legal situation.