

California Department of Consumer Affairs (DCA)

Edited to Pertain to Short-Term Rentals

REPAIRS AND HABITABILITY

A rental unit must be fit to live in; that is, it must be habitable. In legal terms, "habitable" means that the rental unit is fit for occupation by human beings and that it substantially complies with state and local building and health codes that materially affect tenants' health and safety.

California law makes landlords responsible for certain kinds of repairs and landlords ultimately are legally responsible for assuring that their rental units are habitable.

Landlord's responsibility for repairs

Before renting a rental unit to a tenant, a landlord must make the unit fit to live in, or habitable. Additionally, while the unit is being rented, the landlord must repair problems that make the rental unit unfit to live in, or uninhabitable.

The landlord has this duty to repair because of a California Supreme Court case, called Green v. Superior Court, which held that all residential leases and rental agreements contain an implied warranty of habitability. Under the "implied warranty of habitability," the landlord is legally responsible for repairing conditions that seriously affect the rental unit's habitability. That is, the landlord must repair substantial defects in the rental unit and substantial failures to comply with state and local building and health codes. However, the landlord is not responsible under the implied warranty of habitability for repairing damages that were caused by the tenant or the tenant's family, guests, or pets.

Generally, the landlord also must do maintenance work which is necessary to keep the rental unit livable.

The law is very specific as to what kinds of conditions make a rental uninhabitable. These are discussed below.

Conditions that make a rental unit legally uninhabitable

There are many kinds of defects that could make a rental unit unlivable. The implied warranty of habitability requires landlords to maintain their rental units in a condition fit for the "occupation of human beings." In addition, the rental unit must "substantially comply" with building and housing code standards that materially affect tenants' health and safety.

A rental unit may be considered uninhabitable (unlivable) if it contains a lead hazard that endangers the occupants or the public, or is a substandard building because, for example, a structural hazard, inadequate sanitation, or a nuisance endangers the health, life, safety, property, or welfare of the occupants or the public.

A dwelling also may be considered uninhabitable (unlivable) if it substantially lacks any of the following:

- Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system.
- Gas facilities in good working order.
- Heating facilities in good working order.
- An electric system, including lighting, wiring, and equipment, in good working order.

- Clean and sanitary buildings, grounds, and appurtenances (for example, a garden or a detached garage), free from debris, filth, rubbish, garbage, rodents, and vermin.
- Adequate trash receptacles in good repair.
- Floors, stairways, and railings in good repair.

In addition to these requirements, each rental unit must have all of the following:

- A working toilet, wash basin, and bathtub or shower. The toilet and bathtub or shower must be in a room which is ventilated and allows privacy.
- A kitchen with a sink that cannot be made of an absorbent material such as wood.
- Natural lighting in every room through windows or skylights. Windows in each room must be able to open at least halfway for ventilation, unless a fan provides mechanical ventilation.
- Safe fire or emergency exits leading to a street or hallway. Stairs, hallways, and exits must be kept litter-free. Storage areas, garages, and basements must be kept free of combustible materials.
- Operable dead bolt locks on the main entry doors of rental units, and operable locking or security devices on windows.
- Working smoke detectors in all units of multi-unit buildings, such as duplexes and apartment complexes. Apartment complexes also must have smoke detectors in common stairwells.
- A locking mail box for each unit. The mail box must be consistent with the United States Postal Service standards for apartment housing mail boxes.
- Ground fault circuit interrupters for swimming pools and anti-suction protections for wading pools in apartment complexes and other residential settings (but not single family residences).

The implied warranty of habitability is *not* violated merely because the rental unit is not in perfect, aesthetically pleasing condition. Nor is the implied warranty of habitability violated if there are minor housing code violations, which, standing alone, do not affect habitability.

While it is the landlord's responsibility to install and maintain the inside wiring for one telephone jack, it is unclear whether the landlord's failure to do so is a breach of the implied warranty of habitability.

An authoritative reference book suggests two additional ways in which the implied warranty of habitability may be violated. The first is the presence of mold conditions in the rental unit that affect the livability of the unit or the health and safety of tenants. The second follows from a new law that imposes obligations on a property owner who is notified by a local health officer that the property is contaminated by methamphetamine. (See *When You Have Decided to Rent, Methamphetamine Contamination*.) This reference book suggests that a tenant who is damaged by this kind of documented contamination may be able to claim a breach of the implied warranty of habitability.

Limitations on landlord's duty to keep the rental unit habitable

Even if a rental unit is unlivable because of one of the conditions listed above, a landlord may not be legally required to repair the condition if the tenant has not fulfilled the tenant's own responsibilities.

In addition to generally requiring a tenant to take reasonable care of the rental unit and common areas (see above), the law lists specific things that a tenant must do to keep the rental unit livable.

Tenants must do all of the following

- Keep the premises "as clean and sanitary as the condition of the premises permits."
- Use and operate gas, electrical, and plumbing fixtures properly. (Examples of improper use include overloading electrical outlets; flushing large, foreign objects down the toilet; and allowing any gas, electrical, or plumbing fixture to become filthy.)
- Dispose of trash and garbage in a clean and sanitary manner.

- Not destroy, damage, or deface the premises, or allow anyone else to do so.
- Not remove any part of the structure, dwelling unit, facilities, equipment, or appurtenances, or allow anyone else to do so.
- Use the premises as a place to live, and use the rooms for their intended purposes. For example, the bedroom must be used as a bedroom, and not as a kitchen.
- Notify the landlord when dead bolt locks and window locks or security devices don't operate properly.

However, a landlord may agree in writing to clean the rental unit and dispose of the trash.

If a tenant violates these requirements in some minor way, the landlord is still responsible for providing a habitable dwelling, and may be prosecuted for violating housing code standards. If the tenant fails to do one of these required things, and the tenant's failure has either substantially caused an unlivable condition to occur or has substantially interfered with the landlord's ability to repair the condition, the landlord does not have to repair the condition. However, a tenant cannot withhold rent nor has no action against the landlord for violating the implied warranty of habitability if the tenant has failed to meet these requirements.¹⁵²

Responsibility for other kinds of repairs

As for less serious repairs, the rental agreement or lease may require either the tenant or the landlord to fix a particular item. Items covered by such an agreement might include refrigerators, washing machines, parking places, or swimming pools. These items are usually considered "amenities," and their absence does not make a dwelling unit unfit for living.

These agreements to repair are usually enforceable in accordance with the intent of the parties to the rental agreement or lease.