

## **“BAD HOUSING” DEALING WITH HABITABILITY PROBLEMS**

*If you have no heat in January, call the landlord. But what if he doesn't fix it? Read on.*

Many tenants don't pay the rent when the landlord refuses to fix something. This is ***not*** what you should do. If conditions are so bad you can't live there and you move out, you may get back some of the rent you paid. But if you continue to live in the place, it is almost impossible to get a judge to say you don't owe any rent at all. If you withhold *some* of the rent, you take the risk that a judge won't agree with that amount. And you may be evicted before you get to explain to a judge why you didn't pay all the rent. The landlord could start a process (by posting a "possession bond") that would require you to pay a counterbond. You might not be able to pay it. If you couldn't pay it, you would be evicted. Only later would you get a chance to explain yourself. In any event, the law requires a tenant to notify the landlord before the tenant can be compensated for bad housing.

If you don't have a long-term lease, you can give your landlord written notice at least 15 days before the next time the rent is due telling the landlord that you are terminating your tenancy. (If you previously signed a rental agreement that requires 30 days notice to terminate your tenancy, give 30 days notice.) You can give your landlord notice in the alternative, such as: "I will move at the end of the month unless you fix the problem." You must still give at least 15 days notice.

### **Constructive Eviction - when conditions are extremely bad**

If you have no running water and the landlord refuses to fix it, you should probably move out. No reasonable person can be expected to live in a place without running water, or if the roof blows off in a windstorm, or when the entire rental unit is flooded. But you still have to give the landlord a chance to fix most major problems, especially ones that could be immediately fixed, like turning the electricity back on. If conditions are very bad and the landlord refuses to do anything and you don't move out, a judge will probably say that some rent is still due. If you do move out, it's possible that a judge would say conditions weren't so bad that you had to move out. In that case, you may still owe rent for another month or possibly for as long as the lease would have run.

### **Major problems**

Dealing with a toilet that doesn't work, no hot water, a sink that won't drain at all, a broken staircase inside your home, bare electric wires, dangerous holes in the floor, or anything like this always requires notice to your landlord. Don't assume that the landlord knows about a condition just because it was there when you moved in. Speak to the landlord. But talking to the landlord may not be enough; the law requires written notice if you want to enforce your rights.

Use the **NOTICE OF NONCOMPLIANCE** first, and then if the landlord still doesn't fix it the **FINAL NOTICE: REPAIR OR CORRECT CONDITION** attached here or from our website (see below). The time between the first and second written notices must be "reasonable." What a reasonable period is depends on the problem. For inoperable toilets and lack of hot water, one or two days is reasonable. For less urgent problems like a broken stove or window, a few more days are allowed. After the first notice, the landlord can terminate your tenancy (tell you to get out) ***if*** "the unit is unfit for occupancy." Whether a rental unit is "unfit" may be a question for a judge.

**People living within Salt Lake County** can call the Salt Lake Valley Health Department (SLVHD) at 313-6641 for immediate assistance with many habitability problems, especially lack of heat or water or a toilet that doesn't work. If conditions are very bad, the Health Department may tell you that you must leave your home. But this is rare; more often SLVHD will contact the landlord to get the repairs

done. [www.slvhealth.org/eh/pdf/rg/Regulation3HDEd.pdf](http://www.slvhealth.org/eh/pdf/rg/Regulation3HDEd.pdf) has more info. You can also call the building inspector for your city. You cannot be evicted just because you called a government agency.

**Residents of Salt Lake City, South Salt Lake, Murray, West Valley City, unincorporated Salt Lake County, Logan City and St. George** may be able use so-called "repair and deduct" laws adopted by these governments. The rules are stringent and must be followed.

- the problem must be designated as "critical" in the law (for example: no toilet, no water, no heat [in St. George only: no cooling]); look at the law itself or call ULS for help
- the owner must be notified in writing and given at least the amount of time required by the local rule to make the repair; you can use the **NOTICE OF NONCOMPLIANCE** form
- you must be current on the rent and any other required payments to the landlord
- if you caused the problem, you cannot use this method to get the problem fixed
- the landlord can terminate your tenancy (tell you to get out) **if** "the unit is unfit for occupancy." Whether a rental unit is "unfit" may be a question for a judge.
- get two bids from licensed contractors; use the lower bid; you pay the contractor
- the repair cannot cost more than the maximum allowed by the specific city or county, usually between \$400 and \$600; you cannot withhold more than half the rent in any given month in order to get your money back (not more than \$400 in Logan and St. George)
- you can use the "repair and deduct" rules more than once at the same place

If you follow these rules, you cannot be evicted for this reason. Unless you have a long-term lease, you are a month-to-month tenant and could be evicted for no reason (the landlord must wait until you've deducted the cost of the repair). In a "no cause" eviction, the landlord must give you written notice at least 15 days before the rent is due again in order to terminate your tenancy. And you still have to pay the rent even after being given such a notice for as long as you are in the rental unit.

### **Other Habitability Problems**

For any type of problem, including less severe problems such as badly caulked windows that lead to high heating costs or small intermittent ceiling leaks, you can use the *Utah Fit Premises Act*. The rent must be paid up. You must give two written notices. Use the **NOTICE OF NONCOMPLIANCE** first, and then if the landlord still doesn't fix it the **FINAL NOTICE: REPAIR OR CORRECT CONDITION** attached here or from our website (see below). The notices must be properly served. Each Notice has instructions about serving it. You must give the landlord a "reasonable" amount of time between the two notices to start fixing the problem; smaller problems will require you to give the landlord more time, maybe a month or two. Even if you have a lease, the landlord may terminate your tenancy if the unit is unfit for occupancy. Without a lease, you could get a 15-day no cause eviction notice. After the two notices are served, you must file suit in District Court to enforce your right to decent housing; you cannot "repair and deduct". Or pay for the repair yourself, then sue the landlord in Small Claims Court.

Landlords and tenants sometimes disagree about how bad a problem is. A judge may never force a landlord to eliminate small amounts of mold or replace badly stained carpets, especially if the condition existed when you moved in. If you pay for a repair, a judge may say it wasn't needed.

You can also try mediation. In the Salt Lake valley, call the Community Action Program at 359-2444. Elsewhere in Utah, call Utah Dispute Resolution toll free at (877) 697-7175. Both programs provide free help to low-income Utahns. However, a landlord must agree to mediation or it won't happen.

### **Utah Legal Services**

Offices in Ogden, Salt Lake, Provo, Cedar City and St. George  
New clients can call Monday through Friday from 9:00 until 2:00  
In the Salt Lake valley: 328-8891 or toll free from elsewhere: 1-800-662-4245  
Website: [www.utahlegalservices.org](http://www.utahlegalservices.org)

# NOTICE OF NONCOMPLIANCE

*Utah Code §57-22-4(2)*

Noncompliant premises:	Serve Owner at:
Address: _____	Name: _____
Apt./Unit: _____	Address: _____
City: _____	_____
Name of Tenant: _____	_____

This document notifies you that the above-referenced premises do not comply with the *Utah Fit Premises Act* as follows:

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This statute says: "Within a reasonable time after receipt of this notice, the owner shall commence action to correct the condition of the unit." If you, the owner, fail to correct the conditions described in this notice, you will be served with a three-day *Notice to Repair or Correct Condition* pursuant to Utah Code §57-22-6, following which I have the right to sue you in District Court for improper rent, return of deposit, an order from the court demanding that you repair or correct the conditions, termination of the rental agreement, damages, and my attorneys' fees.

Date: \_\_\_\_\_ Signature of Tenant: \_\_\_\_\_

Keep a copy of this notice. Record the date you served it. Serve this notice by: (1) giving it to the Owner or the Owner's agent/manager, or (2) sending it by certified mail to the Owner's home or usual place of business or to the Owner's agent/manager, or (3) giving it to someone 14 or older at the Owner's home or business or agent/manager's office and sending a copy by regular mail, or (4) if no one is home or at the office, taping it on the Owner's home or office in a conspicuous location such as the Owner's or manager's front door.

**Notice to Owner:**

This is a legal document. It was drafted by Utah Legal Services, Inc. In appropriate cases, ULS will represent tenants living in substandard housing due to an owner's failure to repair or correct significant conditions affecting habitability. Seek competent legal advice to understand your responsibilities.

# FINAL NOTICE: REPAIR OR CORRECT CONDITION

*Utah Code §57-22-6*

Noncompliant premises:	Serve Owner at:
Address: _____	Name: _____
Apt./Unit: _____	Address: _____
City: _____	_____
Name of Tenant: _____	_____

This is your **final three-day notice** to repair or correct the following conditions previously brought to your attention and which have not yet been corrected:

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You were previously served with a Notice of Noncompliance on \_\_\_\_\_ (date). It has now been \_\_\_\_\_ days since this notice was served upon you which is the reasonable time allowed under Utah Code §57-22-4.

**In the event of your failure to commence corrective action within three (3) calendar days, I will sue you in District Court for improper rent, return of deposit, an order from the court demanding that you repair or correct the conditions, termination of the rental agreement, damages, and my attorneys' fees.**

Date: \_\_\_\_\_ Signature of Tenant: \_\_\_\_\_

Keep a copy of this notice. Record the date you served it. Serve this notice by: (1) giving it to the Owner or the Owner's agent/manager, or (2) sending it by certified mail to the Owner's home or usual place of business or to the Owner's agent/manager, or (3) giving it to someone 14 or older at the Owner's home or business or agent/manager's office and sending a copy by regular mail, or (4) if no one is home or at the office, taping it on the Owner's home or office in a conspicuous location such as the Owner's or manager's front door.

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