

LANDLORD/TENANT ANSWER IN PERSON FACT SHEET (CIV-LT-91)



#10: WARRANTY OF HABITABILITY

Defense # 10 says: "There are conditions in the apartment which need to be repaired and/or services which the Petitioner has not provided." This defense is also called "warranty of habitability." A violation of the warranty of habitability can be a defense and a counterclaim in a nonpayment case.

The warranty of habitability makes the landlord or owner responsible for keeping your apartment and the building safe and livable at all times. You may have a warranty of habitability defense or counterclaim if you have *any* of the conditions listed here (or you had any during the time period the landlord or owner says you owe rent) in your apartment or in the public areas of your building. You can bring this list with you when you go to court. Check off all the conditions that are in your apartment or building:

- You can't live in all or part of the apartment.
- No water
- Water leaks or floods
- No hot water
- No heat
- Problem with pipes
- Radiator problems (too much heat, broken, exploding, noisy)
- Electric (broken outlets or light fixtures, exposed or bad wiring)
- No electricity or only extension cords
- Mice/Rats/Vermin
- Roaches/Insects/Bugs

- Mold
- Kitchen problems (stove/oven/refrigerator/sink broken)
- Gas (none or leaking)
- Bathroom problems (broken toilet/sink/shower/tub, leaks or blocks up)
- Floor problems (holes, sagging, etc.)
- Walls/Ceilings cracks, peeling paint or plaster
- broken tiles on walls or floors
- peeling paint or plaster
- Lead paint (In most buildings it will be assumed that the paint is lead paint if a child under age 7 lives in the apartment)
- Window problems (bad fit/leaks/drafty, broken glass, don't open or close, locks broken, torn screens)
- No window guards
- Bad ventilation
- Smoke detector missing or it's no good
- Carbon monoxide detector missing or it's no good
- Garbage not collected
- Smells or fumes
- Harassment by landlord or other tenants
- Noise
- Door locks broken
- Broken intercom or doorbell
- Fire or smoke damage

___ Asbestos

Public Areas

___ Crime or illegal activity

___ Dirty Hallways (sewage, garbage)

___ Bad lights (indoor or outdoor)

___ Dangerous stairs or railings

___ Broken elevator

___ Mailbox problems (none or no good)

___ Broken Fire Escape

___ Boiler is no good

___ Roof is no good

___ Fire escape is no good

___ Any other condition that is dangerous to life, health or safety or makes the apartment or building unlivable

The warranty of habitability also says the landlord or owner must maintain services and conditions that you were told about when you moved in, but that are not required by law; like, if your landlord or owner agreed to provide air conditioning, or a roof-top garden. If the landlord or owner did not provide these services, then you have a warranty of habitability defense and counterclaim.

In order to prove a warranty of habitability defense, your landlord or owner must have had actual or "constructive notice" of the condition that needs repair. If you called or wrote to the landlord or an employee of the landlord to tell them of an unsafe or unlivable problem in your apartment or building, they were placed on actual notice. Or, if the Department of Housing Preservation and Development ("DHPD") has put violations on the apartment or building, then the landlord or owner has actual notice of those conditions.

If you did not call or write to the landlord or an employee of the landlord to tell him or her about the condition, "constructive notice" may be found if you can show that the landlord or one of his or her employees should or could have known about the condition, even though you not give actual notice in writing or by talking about it. For example, you may not have told the landlord or an employee about the condition but he or she should have seen it because the conditions should have been discovered with routine maintenance. Or the problems are so clear, that any person would know about them.

When you go to court you must bring any written records of notice of the conditions, any copies of letters and if possible, any proof that the landlord or the landlord's employees got the information from you. Bring temperature logs (records), photographs, chips of peeling paint and plaster, dead mice or rats caught in the apartment or building, all the types of proof that can help your case. You should bring any witnesses who saw the conditions, like neighbors. If you kept any records that show the dates and times the unsafe or unlivable conditions existed, like poor heat, leaks, times when strange people came into the building during when the outside door lock was broken, or broken elevators. You do not need an expert to testify in court to prove a warranty of habitability defense or claim.

If the judge says that you have proved the defense or claim, you may be entitled to an "*abatement*," or a reduction of the rent. The amount of the abatement will depend on what the judge says is the percentage of reduction of the value of the apartment when repairs were not made or services were not provided. An abatement is not limited to the months that the landlord or owner is seeking in the nonpayment case. You can have an abatement for the entire time the condition existed, up to six years. The Judge may say there were many violations of the warranty of habitability. When a building is not taken care of in one area, it is often not taken care of in other areas.

Usually, you can get a judgment against the landlord on a counterclaim for violation of the warranty of habitability and get a refund for rent you paid and in an amount that is more than the rent you owe the landlord.

You can't have an abatement for conditions that you have caused. If you did not let the landlord or his or her employees got in to your apartment to correct conditions, a rent abatement will be denied or severely limited.

If you are a New York City Housing Authority ("NYCHA") tenant, you can counterclaim for warranty of habitability violations even if you have not served a Notice of Claim form on NYCHA before raising your claim, as long as you only want to set off NYCHA's claim for rent and do not want a money judgment. A money judgment can't be granted against NYCHA, unless you have first served the city with a timely notice of claim because the Housing Authority is an agency of the City of New York.