



# HABITABILITY 105: ALTERNATIVE WAYS TO ADDRESS HABITABILITY PROBLEMS

Tenants have several options when a landlord fails to repair habitability issues. These options should be used only after a tenant has reasonably requested repairs. Tenants should consult with an attorney on an appropriate remedy for their individual case.



## Repair and Deduct

### Option:

Tenants can deduct money from the rent after making repairs on their own accord, if those repairs would not cost more than one month's rent, to pay for repair of defects in the rental unit. Tenants must notify landlords via writing that they plan to repair the issue themselves and deduct costs from the rent. Tenants should provide landlords with a copy of receipts for costs of repair products or repair services.

### Risk:

Even if a tenant has legitimate reasons to deduct their rent, the landlord might still begin eviction proceedings based on nonpayment of rent. This does not necessarily mean that the landlord would win in court, but the tenant should be prepared to show evidence of the habitability problems as a defense, in the event of an eviction lawsuit.



## Small Claims Court

### Option:

Tenants can file a lawsuit against the landlord to recover money damages or for a repair order, and a landlord may initiate a counter suit against the tenant if there is a dispute over damages to the unit. Lawsuits filed in small claims court have a limit of \$10,000.

### Risk:

Tenants have to pay court fees up front and the landlord may counter ultimately leading to the landlord suing the tenant by claiming that the damages are the tenant's fault.



## Constructive Eviction

### Option:

If a rental unit has serious substandard conditions that affect a tenant's health and safety, and that substantially breach the implied warranty of habitability, a tenant has the right to immediately move out. The tenant is not responsible for paying further rent once they have vacated the unit. Tenants should notify their landlord in writing if they intend to move out due to the habitability issues, and the landlord's failure to act. The letter should include dates of communication and relevant records.

### Risk:

Your landlord can claim that you illegally broke the lease and can sue you for rent and damages. Additionally, the health and safety concerns may not be considered serious enough to justify this remedy.



## Rent Withholding

### Option:

A tenant can withhold (stop paying) some or all of the rent if the landlord fails to fix serious defects that violate the implied warranty of habitability. The defects must be considered substantial and pose serious risk to the health and safety of the tenant. There is no law that states how much should be withheld, but tenants can, for example, take a percentage off their rent depending on the severity of the issue. Tenants should notify their landlord in writing if they use this option and provide proper documentation and dates of prior communications to the landlord.

### Risk:

A landlord may start an eviction action for non-payment of rent. If the court decides that the defects were not serious enough to warrant rent withholding, then the tenant will lose and ultimately be evicted.

**IMPORTANT:** Tenants should speak to a lawyer if they have specific issues with their rental units.  
This flyer is for general information only.

## For more information:

Website: [www.HERACA.org](http://www.HERACA.org)

Email: [inquiries@heraca.org](mailto:inquiries@heraca.org)

Phone: 510-271-8443