



EXPERT ADVICE

Can my tenant withhold rent?

Detailed explanation for landlords and businesses on when your tenant can and can't withhold rent.



Suzy Hershman, Head of Dispute Resolution at mydeposits explains the unique circumstances when your tenant might be justified in not paying you rent. This highlights the importance of making sure you carry out any necessary repairs to the property which are your responsibility.

How can your tenant rightfully withhold rent?

A tenant renting a property takes on the contractual responsibility to pay rent, and look after the property, for the length of the tenancy. As a landlord you must:

- ✓ Provide the tenant with quiet and peaceful enjoyment of the property without interference;
- ✓ Maintain the property in a habitable condition.

Just because you have not provided, for example, Gas Safety or Energy Performance Certificates, or not carried out necessary repair work as promptly as the tenant would have liked your tenant is not legally entitled to withhold paying rent.

However, there is **one** specific set of circumstances where the tenant may be justified in not paying some, or all, of the rent.

Section 11 of the Landlord and Tenant Act 1985 places a compulsory duty on the landlord to make repairs to the interior and exterior structure and installations when required. See the Note below for the link to what repairs this covers.

As a landlord, if you fail to attend to required and necessary repairs within a 'reasonable' time after the tenant has reported them, then you may be in breach of your repairing obligations.

By delaying or refusing to get the work done, the tenant has a '**common law**' right to carry out the repairs themselves. The tenant is only then permitted to deduct the cost of these repairs from the rent.

The rules for this action are strict and can only be used in specific circumstances. It is known as the **Rule of 'Set Off'** and the procedure is as follows:

Rules of 'Set Off'

- The tenant must write to you, the landlord, or your agent, making you aware of the required repair and giving you a reasonable time to remedy it;
- Once this time has passed, if you have not responded, the tenant should inform you (again in writing) that they will allow you a further reasonable period to do the work requested but if you fail to respond in this time, they will arrange for the repairs to be undertaken;

Rules of 'Set Off' continued

- The tenant must then obtain a minimum of two estimates, from reputable contractors, for the cost of the work;
- The tenant must then write to you again, reminding you of your responsibilities, enclosing copies of the estimates, and giving you a further reasonable period to carry out the work. This letter acts as a warning that, unless you have the work completed within a reasonable time, the tenant may organise it and potentially deduct the cost from the rent;

- If you still fail to respond, the tenant can arrange for the contractor who has given the 'best value for money' estimate to carry out the work and supply a detailed invoice. The tenant must send you the invoice/receipt(s), with a request for payment;
- If you still refuse to settle this account, the tenant may then deduct the costs from the rent and send you a breakdown of the amounts and period of the rent to be withheld.

Damages

Should the tenant decide not to use their right to 'Set Off', they must pay the rent and then deal with the contractual breaches separately. The tenant can do this by making a claim for damages against you. Contractual damages are what the tenant is entitled to as a result of you not keeping to the terms of the tenancy agreement. These damages are claimed in the same way you can claim damages for breach of any contract.

Legally, a tenant cannot just withhold rent in the belief that it covers what they would be entitled to for the damages.

TIP...At mydeposits we cannot deal with a deposit dispute if the tenant has not paid their rent just because they feel that they are entitled to damages as a result of you breaching the Tenancy Agreement. Only a county court judge can decide if a tenant is entitled to these damages.




Note

- Only the cost of the repairs required under the Act can be withheld from the rent. Any other deductions may be mutually agreed between the parties (preferably in writing) e.g. compensation for the work not being carried out in a timely fashion or other repairs carried out that do not fall under the Act. (<https://www.legislation.gov.uk/ukpga/1985/70/section/11>).
- This right is limited to situations where the tenant has informed you, or your agent, what they intend to do and they should not undertake the work before making you aware.
- What is a 'reasonable time'? This will depend on the issue in question and how urgently action is required e.g. heating and hot water in the middle of winter, electrical wiring, blocked pipes...


If the matter comes to adjudication, it will be for an adjudicator to decide on what is 'reasonable'.
- **TIP...**Keep a diary of events and obtain as much evidence as possible in writing.



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