



**EXPERT ADVICE**

# Can I withhold rent?

Detailed guidance for tenants explaining why it is illegal to withhold rent payments, except in one specific set of circumstances.



Suzy Hershman, Head of Dispute Resolution at mydeposits explains the **ONLY** circumstance when you might be justified in not paying your rent. This highlights the importance of making sure you continue to pay your rent for the length of the tenancy.

## Can I legally withhold rent?

When you rent a property, you are taking on a contractual responsibility to pay rent, and look after the property, for the length of the tenancy. As a tenant you are entitled to:

- ✓ Quiet and peaceful enjoyment of the property without interference;
- ✓ A property that has been well maintained and given to you in a habitable condition.

Just because you have not been provided with, for example, a Gas Safety, Energy Performance Certificate, or not had necessary repair work carried out as promptly as you would have liked you are not legally entitled to withhold, or reduce, rent payments.

However, there is **one** specific set of circumstances, other than by mutual agreement with the landlord/agent, where you 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 on the next page for the link to what repairs this covers*.

If your landlord fails to organise required and necessary repairs to the property within a 'reasonable' time after you have reported them, then the landlord may be in breach of his/her repairing obligations and you **may** have an option to deal with the repair yourself.

Where the landlord delays or refuses to get the work done, you have a '**common law**' right to carry out the repairs yourself. Only then are you permitted to deduct the cost of these repairs from the rent.

The rules for this action are strict, must be followed to the letter, and can only be used in specific circumstances. They are known as the **Rules of 'Set Off'** and the procedure is as follows:

### Rules of 'Set Off'

- **STEP 1.** You must write to your landlord, or your agent, making them aware of the required repair and giving them a reasonable time to remedy it;
- **STEP 2.** Once this time has passed, if you have not had a response, you must repeat STEP 1 (again in writing) giving them a further reasonable period to do the work requested and that if there is no response to this correspondence, you will arrange for the repairs to be undertaken yourself;

### Rules of 'Set Off' continued

- **STEP 3.** You must then obtain a minimum of two estimates, from reputable contractors, for the cost of the work;
- **STEP 4.** Send a final written reminder to the landlord, or agent, reminding them of their responsibilities, enclosing copies of the estimates, and giving a further reasonable period to carry out the work. This letter acts as a warning that, unless the work is completed within a reasonable time, you will organise it yourself and potentially deduct the cost from the rent;

- **STEP 5.** If there is still no response, you can arrange for the contractor who has given the 'best value for money' estimate to carry out the work and supply a detailed invoice/receipt(s), which you must send to the landlord with a request for payment;
- **STEP 6.** ONLY AT THIS POINT and if the landlord refuses to settle this account, may you deduct the costs from the rent and send a written account breaking down the amounts and period of the rent to be withheld.

## Damages

Should you decide not to use this procedure, or your complaint does not fall under the repairing criteria defined in law (see Note), you **MUST** continue to pay the rent and then deal with the contractual breaches separately. You can do this by making a claim for damages against the landlord, which you are entitled to as a result of a landlord failing to keep to the terms of the tenancy agreement. These damages are claimed in the same way anyone can claim damages for breach of any contract.

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

**TIP...** At mydeposits we cannot deal with a deposit dispute if you have not paid your rent, just because you feel entitled to damages due to the landlord breaching the Tenancy Agreement.

Only a county court judge can decide if you are 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 you have informed the landlord, or agent, what you intend to do but you should not undertake the work before following STEPS 1 - 6 above.
- 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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mydeposits is a government authorised tenancy deposit protection scheme with over 100,000 landlord members.

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