

# Landlord-Tenant - Repairs

## REPAIRS

A landlord must keep the rental unit in reasonable repair and fit for humans to live in (except for damage caused by the tenant's fault). This reasonable repair includes keeping all electrical, plumbing, and heating systems in good and safe working order. This duty cannot be ended or changed by the landlord or tenant. However, the landlord and tenant can agree to let the tenant make certain repairs instead of paying some or all of the rent. The tenant should obtain such an agreement in writing.

## What can the tenant do if no repairs are made?

If the landlord fails or refuses to make needed repairs, the tenant must give written notice to the landlord of the specific repairs to be made. The tenant then can act only if the landlord fails to make the repairs. If a tenant does not have heat, water, or electric power, an emergency situation exists and the tenant should demand immediate action from the landlord. The tenant needs to keep a copy of any written notice given or mailed to the landlord.

Once the written notice has been given and a reasonable time passes, if the landlord has not made the repairs, the tenant can do one of two things:

1. The tenant may vacate the premises, in which case he/she shall be discharged from additional charges of rent or performance of other conditions; or
2. The tenant may make the needed repairs, in which case the tenant may subtract the cost of the needed repairs from the rent. If the cost of needed repairs is more than one month's rent, the tenant must put the rent in a bank account opened only for the purpose of depositing the withheld rent. The tenant must give the landlord written proof of the rent money deposits into the

account. The bank account is to be kept until either the landlord makes the repairs (the rent in the account is then given to the landlord), or enough rent is in the account for the tenant to make the repairs. Then, the tenant uses the money for the repairs and gives copies of the receipts for the work, and any remaining rent money, to the landlord.

## **What if the tenant caused damages?**

In addition to the tenant's duty to pay rent, he/she is required to repair all damages to the rental units caused by the tenant, his/her family members, or uninvited guests. A tenant is not responsible for ordinary "wear and tear" to the rental unit.

## **LOCKOUT AND LANDLORD UTILITY SHUT-OFFS**

A landlord may seek an eviction order from a Court (see "Eviction" below), but a landlord cannot take matters into his/her own hands and lock a tenant out of the rental unit or cut off electricity, gas, water, or other essential services to the rental unit, the tenant has the right to sue the landlord for:

1. Return of the rental unit to the tenant, terminate the agreement and/or re-connection any cut off utilities; and,
2. An amount equal to two month's rent, plus advance rent paid and the amount of any security deposit paid by the tenant.

A landlord also does not have the right to unlawfully keep or withhold personal property of the tenant unless it is abandoned (see below).

## **Additional Resources**

South Dakota Consumer Protection - [Landlord/Tenant Information](#)

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[Housing Landlord/Tenant Rights](#)

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