

## **“BAD HOUSING”**

### **DEALING WITH HABITABILITY PROBLEMS**

*If you have no heat in January, call the landlord. But what if he doesn't fix it? Read on.*

Many tenants don't pay the rent when the landlord refuses to fix something. This is not what you should do. If conditions are so bad you can't live there and you move out, you may get back some of the rent you paid. But if you continue to live in the place, it is almost impossible to get a judge to say you don't owe any rent at all. If you withhold *some* of the rent, you take the risk that a judge won't agree with that amount. And you may be evicted before you get to explain to a judge why you didn't pay all the rent. The landlord can get a hearing before a judge within 10 days after filing an eviction action against you for nonpayment. At the hearing the judge will only determine if any amount of rent is due, not how much. If any rent is due, you can be evicted about 3 days after that hearing. Only later would you get a chance to explain your rent deductions. In any event, the law requires a tenant to notify the landlord before the tenant can be compensated for bad housing or force repairs.

If you don't have a long-term lease, you can give your landlord written notice at least 15 days before the next time the rent is due telling the landlord that you are terminating your tenancy. (If you previously signed a rental agreement that requires 30 days notice to terminate your tenancy, give 30 days notice.) You can give your landlord notice in the alternative, such as: "I will move at the end of the month unless you fix the problem." You must still give at least 15 days notice.

#### **Constructive Eviction - when conditions are extremely bad**

If you have no running water and the landlord refuses to fix it, you should probably move out. No reasonable person can be expected to live in a place without running water, or if the roof blows off in a windstorm, or when the entire rental unit is flooded. But you still have to give the landlord a chance to fix most major problems, especially ones that could be immediately fixed, like turning the electricity back on. If conditions are very bad and the landlord refuses to do anything and you don't move out, a judge will probably say that some rent is still due. If you do move out, it's possible that a judge would say conditions weren't so bad that you had to move out. In that case, you may still owe rent for another month or possibly for as long as the lease would have run.

If you believe that a dangerous conditions exists - a condition that poses a substantial risk of death or significant physical harm - you should notify the landlord by any reasonable means. The landlord then has 24 hours to begin fixing the dangerous condition.

#### **Major problems**

Dealing with a toilet that doesn't work, no hot water, a sink that won't drain at all, a broken staircase inside your home, bare electric wires, dangerous holes in the floor, or anything like this always requires notice to your landlord. Don't assume that the landlord knows about a condition just because it was there when you moved in. Speak to the landlord. But talking to the landlord may not be enough; the law requires written notice if you want to enforce your rights.

Use the **NOTICE OF DEFICIENT CONDITION(S)**. After receiving the notice, the landlord can terminate your tenancy (tell you to get out) **if** "the unit is unfit for occupancy." Whether a rental unit is "unfit" may be a question for a judge. See Using the Notice of Deficient Condition(s) below.

**People living within Salt Lake County** can call the Salt Lake Valley Health Department (SLVHD) at 385-468-3835 for immediate assistance with many habitability problems, especially lack of heat or water or a toilet that doesn't work. Try calling your own local Health Department. If conditions are very bad, the Health Department may tell you that you must leave your home. But this is rare; more often SLVHD will contact the landlord to get the repairs done.

You can also call the building inspector for your city. You cannot be evicted just because you called a government agency but if you are a month-to-month tenant, the landlord can evict you for ‘no cause’ even if the real reason is that you called a governmental agency. You would have to prove that was the real reason in order to win a retaliatory eviction case.

Some local governments (Salt Lake City, South Salt Lake, Murray, West Valley City, Cottonwood Heights, unincorporated Salt Lake County, Logan City and St. George) have adopted Fit Premises ordinances that contain “repair and deduct” provisions. These rules may have been superseded by changes to the Utah Fit Premises Act that became effective May 11, 2010.

### **Using the NOTICE OF DEFICIENT CONDITION(S)**

If your rental unit is unsafe, unsanitary, has major electrical, heating or plumbing problems or lacks hot or cold water, you can use the Notice attached to this flyer to demand repairs. Please read the Notice carefully before you fill it out. Follow the instructions about giving the notice to the landlord or manager. **If you choose the “rent abatement” remedy in the event the owner does not fix the problems, you will be required to move out within 10 calendar days following the expiration of the corrective period.** If you do not move out, you may lose the protection of the Fit Premises Act regarding rent abatement. If you choose the “repair and deduct” remedy in the event the owner does not fix the problems, the owner could challenge the deficient condition by saying it was minor. For example, you may think that mold in your home is an “unsanitary condition” but the landlord would probably argue that such a problem is minor and not within the Fit Premises Act’s “standards of habitability.”

In an appropriate case, we may help you make your claim. Please call us first, before providing the notice to the landlord. Some landlords are known to us by reputation. If your circumstances are similar to others who rent from such landlords, we will be interested to hear your complaints.

### **Other Habitability Problems**

For any type of problem, including less severe problems such as badly caulked windows that lead to high heating costs or small intermittent ceiling leaks, you should give written notice to the landlord describing the condition and asking that it be repaired. However, the attached Notice of Deficient Condition(s) may not be appropriate because the 2010 amendments to the Utah Fit Premises Act appears to apply only to the narrow “standards of habitability” and to specific terms found in your written rental agreement. Even if you have a lease, the landlord may terminate your tenancy if the unit is unfit for occupancy. Without a lease, you could get a 15-day no cause eviction notice. You could also sue the landlord in Small Claims Court to pay for repairs you made. But you must still give advance notice to the landlord before you make repairs yourself. Landlords and tenants often disagree about how bad a problem is. A judge may never force a landlord to eliminate mold or replace badly stained carpets, especially if the condition existed when you moved in. If you pay for a repair, a judge may say it wasn’t needed. If you are a month-to-month tenant, consider moving after giving notice.

You can also try mediation. In the Salt Lake valley, call Utah Community Action’s Landlord-Tenant Mediation at (801) 214-3109. Elsewhere in Utah, call Utah Dispute Resolution toll free at (877) 697-7175. Both programs provide free help to low-income Utahns. A landlord must agree to mediation or it won’t happen.

## **Utah Legal Services**

Offices in Ogden, Salt Lake, Provo, Cedar City and St. George

New clients can call Monday through Friday from 9:00 until 2:00

In the Salt Lake valley: 801-328-8891 or toll free from elsewhere: 1-800-662-4245

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

[rev. 11/21]

# NOTICE OF DEFICIENT CONDITION(S)

Utah Fit Premises Act – Utah Code §§57-22-1 *et seq.*

<b>Name and address of owner/agent:</b> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>	<b>Tenant name and rental address:</b> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>
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Pursuant to Utah Code §57-22-6(2)(a), the undersigned Tenant now gives this Notice to the Owner of the following deficiencies in the rented premises. The Utah Fit Premises Act requires that the Owner take substantial action to fix these deficiencies within the number of days (“corrective period”) required by the Act. The undersigned Tenant hereby gives the Owner permission to enter the rented premises in order to take corrective action.

CHECK IF APPLICABLE	STANDARD OF HABITABILITY OR REQUIREMENT OF RENTAL AGREEMENT (References are to Utah Fit Premises Act sections)	CORRECTIVE PERIOD	SELECTED REMEDY IF OWNER FAILS TO TAKE SUBSTANTIAL ACTION
<input type="radio"/>	§3(1) and §4(1)(a): Rented premises are unsafe and/or unsanitary for the following reason(s): <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>	3 (three) calendar days	<input type="radio"/> Rent abatement  <input type="radio"/> Repair and deduct
<input type="radio"/>	§3(1) and §4(1)(b)(ii): Electrical system is deficient because: <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>	3 (three) calendar days	<input type="radio"/> Rent abatement  <input type="radio"/> Repair and deduct
<input type="radio"/>	§3(1) and §4(1)(b)(ii): Heating is deficient because: <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>	3 (three) calendar days	<input type="radio"/> Rent abatement  <input type="radio"/> Repair and deduct
<input type="radio"/>	§3(1) and §4(1)(b)(ii): Plumbing is deficient because: <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>	3 (three) calendar days	<input type="radio"/> Rent abatement  <input type="radio"/> Repair and deduct
<input type="radio"/>	§3(1) and §4(1)(b)(ii): Hot and/or cold water is deficient because: <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>	3 (three) calendar days	<input type="radio"/> Rent abatement  <input type="radio"/> Repair and deduct
<input type="radio"/>	§4(1)(b)(iii): Air conditioning system is deficient because: <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>	3 (three) calendar days	<input type="radio"/> Rent abatement  <input type="radio"/> Repair and deduct



Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Tenant's signature)

Date this Notice given to Owner: \_\_\_\_ / \_\_\_\_ /20\_\_\_\_

#### TENANT'S REMEDIES

If the Owner fails to take substantial action before the end of the corrective period toward correcting each deficient condition, the Tenant's remedies are as follows, depending on the remedies chosen above and the owner's response:

§6(4)(a)(i): "Rent Abatement" remedy:

- ① No rent is due beginning on the date this Notice was given to the Owner, and
- ② The rental agreement is terminated, and
- ③ The Owner must immediately pay to the renter the entire security deposit paid by the Tenant and any prepaid rent, including rent paid for the period beginning on the date this Notice was given to the Owner, and
- ④ The Tenant must vacate the rented premises within 10 calendar days following expiration of the corrective period.

§6(4)(a)(ii): "Repair and Deduct" remedy:

- ① The Tenant may correct the deficient condition described in this Notice, and
- ② Deduct from future rent the amount the Tenant paid to correct the deficient condition(s), not to exceed an amount equal to two months' rent, and
- ③ Provide to the Owner within five calendar days after the beginning of the next rental period a copy of all receipts documenting the amount paid by the Tenant to correct the deficient condition(s)

#### GIVE THIS NOTICE TO THE OWNER:

Keep a copy of this notice. Record the date you served it on both the Owner's Notice and your copy. Serve this notice by: (1) giving it to the Owner or the Owner's agent/manager, or (2) sending it by certified mail to the Owner's home or usual place of business or to the Owner's agent/manager, or (3) giving it to someone 14 or older at the Owner's home or business or agent/manager's office and sending a copy by regular mail, or (4) if no one is home or at the office, taping it on the Owner's home or office in a conspicuous location such as the Owner's or manager's front door.

#### NOTICE TO THE OWNER/AGENT:

This is a legal document. It was drafted by Utah Legal Services, Inc. In appropriate cases, ULS will represent tenants living in substandard housing due to an owner's failure to repair or correct significant conditions affecting habitability. Seek competent legal advice to understand your responsibilities. Pursuant to Utah Code §57-22-6(5), the Tenant may bring an action in district court to enforce this Notice.