

Working on Your Rented Home Instead of Paying Rent

Oral agreements to do work in lieu of paying rent are almost never enforceable!

Tenants are often surprised by a three day notice to pay rent or vacate after the tenant has done a lot of work on the rental unit. The tenant believes that she had an agreement with the landlord to do work instead of paying some part of the rent or the cleaning deposit. But oral agreements in any circumstance are very difficult to enforce, particularly in the landlord-tenant area. If there is a written agreement signed by both landlord and tenant, evidence of oral modification of that written agreement is rarely admissible in court.

To enforce a contract, a judge must find four areas of agreement between the parties:

PARTIES + PERIOD + PRICE + PERFORMANCE

A court cannot make a contract without good evidence that both parties agreed to the terms. The evidence must show a “meeting of the minds” – that both parties actually agreed to enforceable terms and conditions. Once a dispute exists, an oral modification of a written contract is almost never enforceable. Oral rental agreements always involve a monthly payment in exchange for the tenant’s right to possession of the rented premises. Beyond that, an oral agreement to do work in exchange for rent will still be very difficult to prove.

Identifying the **PARTIES** is easy: the landlord and the tenant. Even the **PERIOD** is not much in question: the term of the landlord-tenant relationship or at least some part of it.

PRICE and **PERFORMANCE** are the center of the dispute with oral contracts. **PRICE** refers to the amount of compensation or credit to be given – such as cleaning deposit or monthly rent payment reduction – in exchange for the tenant’s **PERFORMANCE** – such as painting or plumbing repairs or fixing the evaporative (“swamp”) cooler. This is the *quid pro quo* – “what for what” – of contract law.

PERFORMANCE is the list of “parts and labor” that a tenant has agreed to. Often a tenant will say something like “the landlord said I could clean the place up so that I wouldn’t have to pay the deposit listed in the rental agreement.” This works as long as there’s no dispute or a long time has passed between the signing of the lease and the landlord’s attempt to force the tenant to pay the deposit. It also works if the landlord signs a receipt saying “deposit paid” or “tenant need not pay the deposit.” But if the landlord gives a 3-day notice to pay the deposit or vacate shortly after the tenant has moved in and the written rental agreement states a deposit is required, the landlord has already disputed – by giving the notice – that any oral modification exists. It’s now the tenant’s word against the signed written agreement. Tenants almost always lose such cases. Even when the tenant says “I have witnesses!” the witnesses’ recollection of the event may not help prove the existence of such an agreement but only that some discussion occurred.

PRICE refers to the value (usually money) that the landlord gives to the tenant’s **PERFORMANCE**. Maybe the landlord agrees to pay \$15 per hour for a tenant’s painting of the kitchen. If this agreement is in writing and the amount of effort is reasonable (20 hours vs. 1,000 hours), a judge is likely to enforce it. If a tenant has submitted statements of work done month after month over a long period of time and deducted the value of the work from the rent without receiving a notice to pay or vacate from the landlord then it is also possible for a judge to find that a contract exists by reason of long time custom and practice. But this is almost never the case. A landlord can accept a single instance of work done by a tenant without committing to accept all future work.

A TENANT CANNOT FORCE THE LANDLORD TO ACCEPT A TENANT’S LABOR IN EXCHANGE FOR RENT. Nor can a tenant expect compensation for materials (drywall, faucets, tile and the like) absent an enforceable agreement with the

landlord. Even when a landlord has accepted some receipts for a tenant's out-of-pocket expenses (like a new hose, parts to repair the furnace, door knobs) instead of all the rent money, the landlord does not have to continue accepting such receipts as credit against the rent. In a few circumstances a landlord may have to give the tenant a written notice about not accepting repairs as payment in the future. The facts of each landlord-tenant relation will control.

TENANTS OFTEN PROVIDE LABOR AND MATERIALS TO IMPROVE THE RENTED PREMISES. The tenant then wants to be paid either in the form of "free rent" or in cash at the end of the tenancy. Absent some agreement by the landlord, the tenant will not be able to get a judge to order such compensation. Even if the tenant asked the landlord in advance: "Can I paint the kitchen?" and the landlord said: "Yes, go ahead" that permission does not commit the landlord to pay the tenant either for the work or for the paint. The landlord might even say later that the tenant's color selection will make it hard to re-rent the apartment and so the tenant must repaint the kitchen before leaving – or pay to have it done.

SOME TENANTS ARGUE THAT NOW THE LANDLORD'S PROPERTY IS BETTER THAN BEFORE and it's worth more after all the work done by the tenant. The legal claim is called "quantum meruit" or "unjust enrichment." That is, the landlord gets something for free that the tenant never intended to give away and so now the landlord should be made to compensate the tenant. But a judge will say that this is like forcing someone to accept a gift and then charging for it.

THE 3-DAY NOTICE TO PAY OR VACATE IS BOGUS. I WANT TO FIGHT THIS!

Please read the flyer "[Nonpayment Eviction](#)". After the notice period expires (3 calendar days after delivery or posting), the landlord no longer must accept payment even if the tenant changes her mind about contesting the notice. Once the notice period expires, the landlord can go forward with an eviction action. Then it is up to the judge to decide who is right. If the landlord wins, the tenant does **not** have the right to pay in order to stay in the rental unit. Even if the landlord agrees to accept payment, the amount will almost certainly include late fees and court costs (usually at least \$100) plus an attorney fee if the landlord hired a lawyer. In other words, the tenant risks both being evicted and a monetary judgment by contesting the eviction. As an alternative, the tenant should consider paying the disputed amount of rent or deposit and then suing the landlord in small claims court. This avoids the possibility that the tenant will be evicted for nonpayment. See our flyer about [Small Claims Court](#).

To avoid misunderstandings, GET IT IN WRITING!

When paying in cash, DEMAND A RECEIPT!

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