

Chapter 8



WHAT TO DO WHEN REPAIRS ARE NEEDED

A. Types of repairs

There are three kinds of repairs that may be needed at a rental unit:

1. Those required by something the tenant caused to happen (such as accidentally breaking a lamp or a window)
2. Those required by normal wear and tear (such as a leaky faucet or a stopped-up drain)
3. Those involving the landlord's obligation to adequately maintain the property (such as faulty plumbing or electrical wiring problems)

The rights and obligations of the tenant are different for each type of repair.

1. Tenant-caused damage

Accidents will happen. If something breaks as a result of a tenant's negligence, or something goes wrong that is part of the tenant's responsibilities, the tenant will probably have to pay for the repairs. It is still a good idea to notify the landlord, because many landlords insist on controlling the repairs around their property. Often, lease agreements require notifying the landlord before doing any repairs. Also, if there is a dispute later on over whether a particular repair was needed because of the tenant's negligence or was the landlord's responsibility, the tenant will want a record of what happened. If the tenant does a repair with the landlord's permission, the landlord will later have a hard time saying that the tenant had no business doing it.

2. Wear and tear repairs

Remember, the cost of wear and tear is the landlord's responsibility. If something needs repair simply because it is old or worn, the landlord should make the repair (NMSA § 47-8-20(A)(2)). Once again, the tenant should notify the landlord of any repairs needed by wear and tear (preferably in writing). This will both provide the tenant with evidence that the landlord was notified that something needed fixing and provide a record of wear and tear damage for the tenant to use if the landlord later claims the right to deduct such damage from a security or damage deposit.

Usually these kinds of repairs can be handled by agreement with the landlord. Either the tenant will get it fixed and give the bill to the landlord, or the landlord will have it fixed. Sometimes, the tenant will not care about the repair but will want the landlord to know that something is no longer working.

3. Material repairs

A *material* (important) repair is one of the basic obligations of a landlord. For example, bad plumbing or a leaky roof is something a landlord must fix and fix promptly, because they go to the health and safety of the rented property. Landlords' failures to make material repairs produce many of the conflicts that bring landlords and tenants into court. The next section will deal with the situation where important repairs are needed but are not done by the landlord within seven days (NMSA § 47-8-27.1(A)(1)).

B. When the tenant requests repairs

1. Making a record of needed repairs

Whenever a major repair is needed, the tenant should notify the landlord or the landlord's agent in writing (NMSA § 47-8-27.1(A)(1)).

Sometimes, a tenant will think that a repair is so obviously needed (as in the case of a leaky roof or bad plumbing) that it isn't necessary to put the request in writing. However, these are just the kinds of repairs that it is most important to request in writing, because if the repairs aren't made the tenant will want to take drastic action. The written notice is necessary before the tenant can terminate the lease, seek to use the remedy of rent abatement (discussed later in this chapter), or even defend against an eviction action for non-payment of rent.

When the tenant sends a repair notice to the landlord, it should say what is wrong, and ask the landlord to fix it; a sample letter demanding repairs is in the Appendix ("Resident's 7-day notice of abatement") (NMSA § 47-8-27.1(A)(1)). If the landlord has an agent managing the property, the tenant should send the notice to the agent, too. The tenant should always keep a copy of the letter or of any written note to the landlord or the landlord's manager. To prove that the landlord received the notice, it is a good idea to send it by certified mail, return receipt requested, and by regular mail. You can also hand deliver it to the landlord or the manager in front of a witness who can testify in court if necessary.

As part of the tenant's record, it is a good idea to take pictures of the problem, so the tenant will have evidence if he or she has to go to court as a result of the landlord's failure to make repairs. The tenant should also show the problem to witnesses, who will be able to support the tenant's argument that repairs were needed. It is best, however, to get an official report from an agency whose job it is to enforce housing and building codes.



2. Health and safety violations

If the landlord does not make a reasonable attempt to correct a new problem within seven days, or if the landlord has ignored the tenant's requests to have a long-term problem corrected, the tenant should write or call the local housing authority or local code enforcement office. The tenant should send the office copies of any correspondence with the landlord about the repair problem and any notices the tenant has sent

demanding repairs. The tenant has the right to contact code enforcement agencies, and if the landlord tries to evict the tenant for doing so, the landlord is acting illegally (NMSA § 47-8-39(A)(1)). (See Chapter 9 in this guide on "Retaliatory evictions").

In Albuquerque and many other cities, a tenant complaint might cause an inspector from the code enforcement office to come to the apartment or house and make an official record of the violations found. The official report will be made and filed with the code enforcement agency. The landlord will generally be ordered to make repairs. It is important to notify code enforcement if the landlord fails to comply with the order. The tenant can get a copy of the report as evidence, and the tenant will be able to use the inspector as a witness in court if that becomes necessary.

Code Enforcement Offices

Below is a listing of Code Enforcement contacts. Due to limited resources, some of the below offices do NOT respond to tenants' issues, but they will direct you to the appropriate office/agency that may be able to assist you.

Albuquerque Code Enforcement Division

311 or 505/768-2000; 505/924-3850

Bernalillo County Planning & Development Services

505/314-0350; 505/314-0351

Bernalillo County Health Protection Office

505/314-0310

Bernalillo County Natural Resources Office

505/314-0375

City of Carlsbad Code Enforcement

575/885-1185, Extensions 2238 & 2239

City of Clovis Code Enforcement

575/763-9461 & 575/763-9609

City of Deming Code Enforcement

575/546-3011

Dona Ana County Code Enforcement

575/526-0795, then Dial 6

Eddy County Code Enforcement

575/887-9511 (Administrative Offices), then Dial 1

City of Gallup Code Enforcement

505/863-1240

Grant County Code Enforcement (NO)

575/574-0065; 575/313-7722

City of Hobbs Code Enforcement

575/391-8158

Las Cruces Code Enforcement (NO)

575/525-4100

City of Las Vegas Code Enforcement

505/426-3272 or 505/454-1401, Extension 3272

City of Lordsburg Code Enforcement

575/542-3421

Los Lunas Code Enforcement Community

Development (Building Inspector)

505/839-3842

Luna County Planning Department (Code Enforcement)

575/543-6620

Rio Rancho Code Enforcement Division of the Police Department

505/891-5862

City of Roswell Code Enforcement

575/624-6700, Extension 280; 575/637-6280

City of Santa Fe Code Enforcement

505/955-6560

Santa Fe County Code Enforcement

505/986-6225

Town of Silver City Code Enforcement

575/534-6344; 575-534-6367

County of Taos Code Enforcement

575/737-6452; 575/737-6440

Town of Taos Code Enforcement

575/751-2016

Valencia County Code Enforcement

505/866-2053

C. Tenant remedies

If a tenant has notified the landlord of a problem, and the landlord does nothing, the tenant will need to consider the remedies allowed by law.

1. Damages and injunctive relief

A tenant may sue the landlord for money damages for any failure, or *breach*, of the landlord in performing his duties under the law or the rental agreement. Once the tenant has given the landlord notice of the breach and the landlord has not corrected the problem, the tenant has the right to go to court seeking damages (NMSA § 47-8-27.1(C)). The tenant can raise a damage claim even when the tenant is being sued for eviction (NMSA § 47-8-30(A)). (See Chapter 16 of this guide on “Going to Court”). In addition, the tenant may sue for damages even in addition to any of the other remedies available (NMSA § 47-8-27.1(C)).

The tenant may also go to court to get an order forcing the landlord to make repairs or do any other act necessary to make up for the breach. This type of order is called *injunctive relief*. It is like a restraining order signed by a judge (NMSA § 47-8-27.1(C)). If the landlord doesn't follow the order, he or she can be held in contempt of the court.

2. Termination of the tenancy

If the problem needing repair poses a serious threat to the tenant's health or safety, the tenant may choose to move out. If the tenant chooses to do this, it will be necessary to give the landlord a written notice. The written notice must state the problem and make a demand that the landlord correct the problem within seven days. It must also state if the problem is not corrected within seven days, the tenant will terminate the tenancy and move out. If the landlord does not make a reasonable attempt to correct the problem within the seven-day notice period, the tenant can consider the tenancy over and move out. After the tenancy is terminated, the landlord should follow the procedure outlined in Chapter 5, Section B-5 of this guide in returning the damage deposit. At the termination of the tenancy, the landlord should also return any prepaid rent amounts (NMSA § 47-8-27.1(A)(1)).

If the landlord does make a reasonable attempt to cure the problem within seven days, the tenant is not allowed to terminate the tenancy (NMSA § 47-8-27.1(A)(1)). However, the tenant may still be able to claim damages for any losses the tenant suffered from the time the tenant first notified the landlord of the need for repairs and/or get injunctive relief forcing the landlord to finish the repairs (NMSA § 47-8-27.1(C)).

3. Rent abatement

When a landlord has failed to meet obligations under the law, and particularly when the landlord fails to make important needed repairs, the tenant gets less from the rental agreement than he or she is paying rent for. The law has created a remedy to correct this situation, and it is called *abatement of rent*. Think of abatement as withholding a part of the tenant's rent because of the reduced value of the rental unit due to the landlord's failure to make repairs.

To use the remedy of abatement, the tenant must be very careful. The tenant must give the landlord a *written notice* of the conditions that need to be

corrected (NMSA § 47-8-27.2(A)). These conditions must involve the landlord's basic duties to maintain the property and to keep the property up to the standards of the local building and housing codes. The notice does not need to say what the tenant will do if the repairs are not made, but it would be wise to state that the tenant intends to abate rent if the repairs are not done. Alternatively, if the tenant plans to move out if repairs are not made, the tenant should give notice of termination as set forth in the previous section of this guide. A tenant may terminate the rental agreement or use the abatement remedy, but not both at the same time.

Once the notice has been given, if the landlord does not make the repairs within seven days, the tenant may abate rent (NMSA § 47-8-27.2(A)).

There are several things to think about when calculating the amount the tenant will abate. If the problem is so serious that the tenant cannot live in the rental unit, the tenant may abate 100% of the rent for each day the tenant is not living in the rental unit because of the needed repair (NMSA § 47-8-27.2(A)(2)). If the tenant continues to live in the rental unit while abating rent, the tenant may deduct 1/3 of the daily rent for each day the repairs are not made (NMSA § 47-8-27.2(A)(1)).

Example	
The roof in the kitchen leaks. The tenant gave the landlord a written 7-day notice on July 20 and the landlord has not repaired the problem. The tenant pays \$450 rent per month. The tenant decides to abate a portion of the August rent.	
✓ Monthly rent	\$ <u>450</u> (A)
✓ # days in month	<u>31</u> (B)
✓ Divide (A) by (B)	\$ <u>14.51</u> (C) [daily rent]
✓ # days since notice given to landlord	<u>10</u> (D)
✓ Divide (C) by 3	\$ <u>4.84</u> (E)
✓ Multiply (D) x (E)	\$ <u>48.40</u> (F) Abatement
✓ Subtract (F) from (A)	\$450 - 48.40 = \$401.60
In August, the tenant will take \$48.40 out of the rent and pay \$401.60. The tenant has reduced the rent payment by one-third of the daily rent for the number of days that passed since giving the notice to the landlord.	
If the landlord still hasn't fixed the roof by September 1, the tenant may abate one-third of the rent for the entire month of August.	

Rent Abatement Worksheet	
Find your daily rent	
✓ Monthly rent	\$ _____ (A)
✓ Number days in month	_____ (B)
✓ Divide (A) by (B)	\$ _____ (C) [daily rent]
Unable to live in your house or apartment?	
✓ Number of days unable to live in home	_____ (D)
✓ Multiply (C) x (D)	\$ _____ (E)
(E) is the amount to deduct from your next rental payment.	
OR	
Able to live in your house or apartment?	
✓ Number of days since notice given to landlord	_____ (F)
✓ Divide (C) by 3	\$ _____ (G)
✓ Multiply (F) x (G)	\$ _____ (H)
(H) is the amount to deduct from your next rental payment.	

Remember, a tenant usually pays rent in advance of the rental period. This is very important in dealing with abatement. Once the tenant gives the landlord a notice and the landlord fails to repair, the tenant will start figuring the abatement deduction. When it comes time to pay rent for the next month, make the rent payment after deducting the amount of the abated rent from the last month. It is not wise to estimate how long it will take for the landlord to make the repairs and abate the rent prospectively. If the landlord has committed to have the repairs done by a certain day, the tenant may figure the abatement amount up to that day and adjust the rent payment for the abatement. If the tenant does not know when the repairs will be done, the tenant will risk making

too large a deduction if the landlord then promptly makes the repairs. The best course to follow is to deduct the amount of rent that can be abated based on the prior month.

This is all somewhat complicated, but the tenant should remember there are risks involved when withholding the rent. If the landlord moves to evict the tenant for non-payment because the tenant abated rent, the tenant will need to explain to the judge very clearly why and how the rent abatement was calculated. If the judge sees that the tenant has acted reasonably and carefully and is not just using abatement as an excuse not to pay rent, there is a

better chance that the judge will find that the tenant paid the right amount of rent.

Even if the judge finds that the tenant has not properly abated rent, if the tenant has acted carefully he or she will be in a better position to avoid eviction. The law allows a tenant who has incorrectly abated rent to pay the amount deducted within three days of an order for eviction. If the rent is paid within that time, the eviction order will be set aside. It is therefore wise to hold onto the abated rent and not spend it until the matter has been finally settled.

D. Limitations on the landlord's duty to make repairs, and the tenant's remedies

Remember, the landlord does not have any duty to repair damage caused by the tenant's negligence or by the negligence of the tenant's family members or guests. None of the remedies discussed here cover that situation (NMSA § 47-8-27.1(B)).

In addition, if the repairs needed in the rental unit are the result of circumstances beyond the landlord's control (for example, a flood or a fire), the tenant may not get damages or injunctive relief. The tenant may, however, abate rent or terminate the rental agreement as set out in the chapters on termination and abatement (NMSA § 47-8-27.1(B)).

