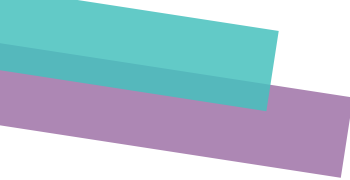


mydeposits

Can my tenant withhold rent?





Renting a property involves a mutual agreement between landlords and tenants. As a landlord, you're responsible for providing a peaceful living environment and maintaining the property. In this guide, Suzy Hershman, Resolution Department Lead at mydeposits, explains the unique circumstances when your tenant might be justified in not paying you rent, emphasising the importance of making sure you carry out any necessary repairs to the property which are your responsibility.

How can your tenant rightfully withhold rent?

A tenant renting a property takes on the contractual responsibility to pay rent and look after the property for the length of the tenancy. As a landlord you must:

- provide the tenant with quiet and peaceful enjoyment of the property without interference
- maintain the property in a liveable condition

Just because you have not provided, for example, a [gas safety certificate](#) or [Energy Performance Certificate](#), or not carried out necessary [repair work](#) as promptly as the tenant would have liked, your tenant is not legally entitled to withhold paying rent.

However, there is one specific set of circumstances where the tenant 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 interior and exterior repairs to the structure and installations when required. See the 'Note' below for the link to what repairs this covers.

As a landlord, if you make no effort to attend to the repairs required in a 'reasonable' time after the tenant has reported them, then you may be falling short of your repairing responsibilities.

By delaying or refusing to get the work done, the tenant has a 'common law' right to carry out the repairs themselves. It is only then that the tenant may be allowed to deduct the repair costs from the rent.

The process rules for this are strict and can only be used in specific circumstances. It is known as the rule of 'set off', which is as follows:

Rule of 'set off'

- The tenant must write to you, the landlord, or your agent, making you aware of the repair needed and giving you a reasonable time to remedy it
- Once this time has passed, if you have not responded, the tenant should inform you (again in writing) that they will allow you an additional reasonable time to do the work requested. If there is no response during this time, the tenant can start to arrange for the repairs to be carried out
- The tenant must then obtain at least two estimates for the cost of the work, from reputable contractors
- The tenant must then write to you again, reminding you of your responsibilities, enclosing copies of the estimates, and giving you another reasonable amount of time to carry out the work
- This letter acts as a warning that, unless you arrange to have the work completed in a reasonable time, the tenant may organise it and potentially deduct the cost from the rent
- If you still do not respond to the tenant, the tenant can arrange for the contractor who has given the 'best value for money' estimate to carry out the work and supply a detailed invoice. The tenant must send you the invoice/receipt(s), with a request for payment
- If you still refuse to settle this account, the tenant may then deduct the costs from the rent and send you a breakdown of the amounts and amount of rent being withheld

Note

- Only the cost of the repairs required under the Act can be withheld from the rent. Any other deductions will need to be mutually agreed between the parties (preferably in writing) e.g. compensation for the work not being carried out in a reasonable time or other repairs carried out, not covered by the Act
- This right is limited to situations where the tenant has informed you, or your agent, what they intend to do and no work should be carried out before making you aware
- 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, leaks, electrical wiring, blocked pipes

If the issues come to resolution, it will be for an adjudicator to decide on what is 'reasonable'.

TOP TIP: Keep a diary and make sure all communications are followed up in writing and kept together with other written evidence.

Damages

If the tenant decides not to use their right to 'set off', they must pay the rent and then deal with the contractual breaches separately. Contractual damages are what the tenant is entitled to as a result of you not keeping to the terms of the tenancy agreement.

The tenant can do this by making a claim for damages against you. This can be done in the same way you can claim damages for breach of any contract. Legally, a tenant cannot just withhold rent to cover what they believe they are entitled to for the damages.

TOP TIP: At mydeposits we are unable to deal with an issue requiring resolution if the tenant has not paid their rent just because they feel that they are entitled to damages. Only a county court judge can decide if a tenant is entitled to these damages.

Expert advice for successful resolution

Understanding that a tenant can withhold rent, and the process required, is essential for both landlords and tenants. Keeping open communication and addressing repair concerns promptly is helpful. Remember that mydeposits offers impartial resolution services for cases where any negotiation is unsuccessful.

Our resolution case study about a tenant withholding rent due to repairs caused by a leak in the property highlights the need for landlords to respond to repairs and organise contractors promptly, and for tenants to understand the implications of withholding rent without agreeing this with the landlord first, or using the rule of set off process.

mydeposits

Limelight, 1st Floor
Elstree Way
Borehamwood
Hertfordshire
WD6 1JH

Tenancy Deposit Solutions Limited, trading as mydeposits.
Registered office: 7th Floor Corn Exchange, 55 Mark Lane, London EC3R 7NE.
Registered in England No: 05861648. VAT No: 893 9729 49



Ministry of Housing,
Communities &
Local Government



TOTAL
Property

PART OF THE
BROWN & BROWN TEAM