

**The Only Thing We Have to Fear is the Law Itself “Tenant Rent Withholding; Deductions Without Repairs”  
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There is hardly a tenant I have dealt with in over 15,000 eviction actions that doesn't tell me how much they know about the law and, of course, what an idiot, buffoon I am as the attorney for a more intensely imbecilic client landlord.

One of the acts of idiocy which my clients and I are accused of is not understanding how rent withholding should work. The process is very simple. It is encompassed in a California Civil Code Section that isn't too complicated or obtuse. Either some politician must have been asleep at the switch or apartment association lobbyists earned their keep when this legislation went through.

California Civil Code Section 1942 requires the tenant give prior notice of an intention to withhold rent with enough time for the owner to take care of the needed and requested repair. California Civil Code Section 1942 comes right after California Civil Code Section 1941.1.

In California Civil Code Section 1941.1, the legislature lays out eight categories of basic things that a residential building must have to be habitable. The items are obvious and sensible. Such things as a roof that doesn't leak, running water, sewage and stairs that don't collapse. Nowhere in California Civil Code Section 1941.1 does it refer to spas, air conditioning, cable television, landscaping, microwaves, etc.

Failure of an owner to maintain those eight basic categories of items allows the Courts to deem the premises not tenantable. If the defect the tenant gives notice of in accordance with California Civil Code Section 1942 concerns the tenantability of the premises, then the tenant may, if they follow the Code procedure, withhold rent. The tenant isn't excused however, from ever paying said rent.

The way rent withholding needs to be done is that the tenant gives a notice to the owner with a reasonable time for the owner to take care of the habitability repair required. IF the owner does not do so within a realistic time frame, then the tenant may withhold the rent indicated, do the repair that was noticed and after the repair is completed, deduct the cost of the repair from the next rental payment.

California Civil Code Section 1942 is often referred to as the “repair and deduct” statute. Note that the phrase has two elements – (1) repairing and then (2) deducting. Most tenants only follow the second word deducting only. There are two elements, do the repair and then you can deduct. The Code Section is not an open invitation to just deduct the rent.

That is how it should be done. In over 15,000 cases, I have only seen that simple, common sense procedure done correctly by the tenant less than five times. This is not brain surgery. Still, it isn't done correctly 99.9% of the time. When that incorrectness is

pointed out to the procedurally challenged tenant, the reply is usually a challenge to my legal manhood.

Virtually all the time, all the tenant does is just stops paying any rent whatsoever. Then the tenant, in their answer to the eviction action, states that they don't owe rent since they have a habitability problem.

Here is how it should work. Suppose the tenant's rent is \$500 per month. Suppose the tenant has a problem with a broken window. The tenant gives the landlord a one week notice to fix the window. The landlord ignores the notice. The tenant takes a picture of the broken window, calls a glass company and has the window fixed. The cost of the repair is, let us say, \$50.00. Then, the next time the rent is due after the now documented requested repair is done, the \$50.00 repair cost is deducted. The tenant gives the owner \$450.00 rent and a copy of the paperwork covering the \$50.00 repair and showing the repair's completion. That repair is in lieu of \$50.00 of the rent payment. That's no so difficult to accomplish correctly.

But it is never done like that. Instead, the tenant just withholds all rent placing their tenancy in total jeopardy often over repairs of less than \$100.00. Then the tenant tells me that is the correct way to do things and that I don't know squat about anything, particularly concerning landlord/tenant law.

Sometimes the simplest things are the most difficult to achieve. Consider the lowly paperclip. A very simple device, yet, that device didn't come about until the late nineteenth century.

In the future, if one of your tenants threatens to withhold rent, don't be intimidated. The odds are stacked against them, even better than the slot machines in Vegas that the tenant will muff the attempt and give you the opportunity to evict the tenant. However, if your tenant gives you a request to do a repair, especially if the repair is for something concerning basic habitability, take care of the repair. If not, then see to it that the tenant does the repair properly and withholds only the legitimate repair cost.

Requests to reset the temperature in the spa, etc., may be annoying, but they are not a basis for rent withholding. Almost none of your tenants ever understand that. Instead, your tenant will become one more source of lawyer intelligence insults. In this rare instance, the insult issuing tenant may actually be wrong.