

Asking Your Landlord for Repairs in Your Rental

Note: Use these instructions and form letter to write a letter to your landlord. In the letter, you will ask your landlord to make repairs in your rental.

These instructions and form letter may not be right for your case. They cannot take the place of advice from a lawyer. Talk to a lawyer if you have **any** questions.

Do not change this form letter. If you change the form letter, you might lose language you need.

What form will I need?

You only need one form. The form is the form letter that follows these instructions. It begins on page 12 of this packet. The form letter includes a form with information on Montana law beginning on page 14 of this packet. Be sure to send the information form along with the letter to the landlord.

Important - If the landlord has cut off essential services to the rental you have different options available to you under different sections of the law. Please also take a look at the “What To Do If Your Landlord Locks You Out Or Shuts Off Services To Your Rental” Packet before you decide which letter to send to the landlord.

Who can use this form letter?

You can use this form letter if:

- You rent a home, mobile home, lot for your mobile home, or apartment in Montana;
- AND**
- At least one of these problems exist in your rental:

1. The electrical, plumbing, sanitary, heating, ventilating, air-conditioning, or other facilities and appliances are not working right;



2. There is no running water or reasonable amounts of hot water;
3. There is not enough heat in your rental between October 1 and May 1;
4. There is no smoke detector in your rental;
5. There is an emergency in your rental and it affects your health and safety;

OR

6. There is a problem in your rental that is not an emergency or one of the problems listed above but it affects your health and safety.

What are my rights under the law?

Right #1 - You have the right to have the landlord maintain the rental.

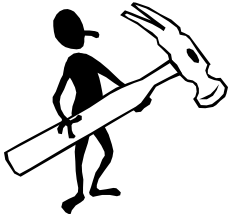
The law requires the landlord to maintain the rental property. The landlord must:



- Make sure the rental property meets all applicable building and housing codes that affect your health and safety;
- Not allow any tenant or other person to act on the rental property in a way that creates a reasonable chance that the rental property may be damaged or destroyed or that neighboring tenants may be injured by any of these crimes:
 - ▶ Criminal production or manufacture of dangerous drugs;
 - ▶ Operation of an unlawful clandestine laboratory; or
 - ▶ Gang-related activities.
- Make repairs and do whatever is necessary to put and keep the rental property in a fit and habitable condition;
- Maintain all common areas in a clean and safe condition;
- Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities

- and appliances. This includes elevators that are supplied or required to be supplied by the landlord;
- Provide and maintain appropriate containers and conveniences for the removal of ashes, garbage, rubbish, and other household waste and arrange for their removal, unless otherwise provided in the rental agreement;
 - ▶ The landlord and tenant of a one-, two-, or three-family rental may agree in writing that the tenant perform this duty.
 - Supply running water and reasonable amounts of hot water at all times;
 - ▶ The landlord and tenant of a one-, two-, or three-family rental may agree in writing that the tenant perform this duty.
 - Supply reasonable heat between October 1 and May 1; and
 - ▶ The landlord and tenant of a one-, two-, or three-family rental may agree in writing that the tenant perform this duty.
 - Install an approved smoke detector in each rental under the landlord's control.
 - ▶ At the start of the rental agreement, the landlord must make sure that the smoke detector in the rental is in good working order.
 - ▶ An approved smoke detector is a device that is capable of detecting visible or invisible particles of combustion. The smoke detector must also bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.
 - ▶ The landlord is not liable for damages caused by the failure of the smoke detector.

Can the landlord require me to make repairs?



The general rule is that the landlord cannot require you to make repairs. The law allows you and the landlord to agree that you will make certain repairs, or do certain maintenance tasks or remodeling only if:

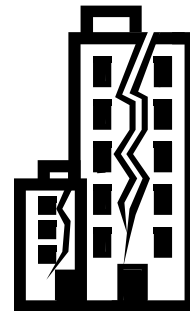
- Your rental is part of a one-, two-, or three-family rental property;
- The agreement is entered into in good faith with honest intentions, and not just because the landlord is trying to avoid the landlord's obligations under the law;
- The agreement is in writing and states specifically what tasks you are responsible for;
- If construction of the rental was completed after July 1, 1977, the rental must already be in compliance with the building and housing codes that affect health and safety; and
- The agreement does not reduce the responsibilities of the landlord to other tenants in the rental.

What if the landlord does not make repairs that are necessary?

If the maintenance problem affects your health and safety, you can choose between the following two remedies:

- 1) **End the Rental Agreement If the Landlord Does Not Fix the Problem.** You can deliver a written notice about the problem to the landlord. The written notice must include:

- ▶ A statement telling the landlord what repairs or maintenance the landlord is required to perform but is not performing; and
- ▶ A statement that if the problem is not fixed within 14 days, the rental agreement will end on a date at least 30 days after you gave the landlord notice. If the problem has created an emergency, you only have to give the landlord three working



days to fix the problem. You must tell the landlord in the notice you will end the rental agreement immediately if the problem is not fixed in three working days.

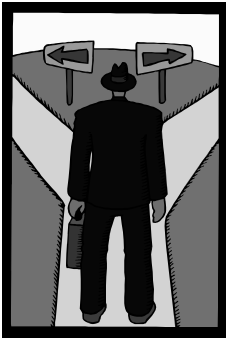
If you have given the landlord a written notice of the same problem within the last six months, you do not have to give the landlord another chance to fix the problem. You can end the rental agreement by giving written notice that states that you have provided written notice on this same problem within the last six months and that you are ending the rental agreement at the end of 14 days.

Important: If you, a member of your family, or any other person on the rental with your consent caused the maintenance problem, you may not end the rental agreement because of that problem.

OR

2) Repair and Deduct. First you must give the landlord written notice of the problem and give the landlord a reasonable amount of time to repair the problem. Then, if the costs of repairs for the problem are less than what you pay for one month's rent, you can make the repairs and subtract the costs of the repairs from the rent that you pay next month. The law does not specifically say how much time is "reasonable" to make a repair. It would depend on the kind of repair needed. If the problem has created an emergency and the landlord has not made the repairs within a "reasonable" time, you can have the emergency repairs done as long as they do not cost more than one month's rent. You must have the emergency repairs done by someone qualified to make the repairs. For example, if your heater breaks in the winter and the landlord does not fix it quickly, you can have a qualified repairman fix it as long as the repair will not cost more than one month's rent. Then, you can deduct the cost of the repair from your next month's rent.

Can I end the rental agreement AND repair and deduct?



You must decide to either end your rental agreement OR repair and deduct the amount of the repair from the rent. You cannot do both. Regardless of which option you choose, you can also file a lawsuit, asking the court to award you any actual damages you suffered from the landlord's failure to make repairs. In your lawsuit, you can also ask the judge to order the landlord to make the repairs.

Can I go to court to force the landlord to make repairs?

Yes. This can be a good option if you want to stay in the rental but the costs of repairs are more than one month's rent. Even if the repairs are less than one month's rent, you can still take the landlord to court to make the landlord make the repairs instead of doing it yourself.



This is also an option for dealing with repairs that do not affect your health or safety. If the landlord refuses to make repairs that the landlord is required to make under the law, but not making the repairs does not affect your health or safety, you can take the landlord to court to have the court force the landlord to make the repairs.

Right # 2 – You have a right to “essential services.”



You have the right to have heat, running water, hot water, electric, gas and other essential services in your rental. The landlord is required to make sure that you have access to these essential services in your rental. It is against the law for the landlord to shut off

essential services, even if you are behind on the rent, unless the shut-off is necessary for safety or for repairs.

Important - If the landlord has cut off essential services to the rental you have different options available to you under different sections of the law. Please also take a look at the “What To Do If Your Landlord Locks You Out Or Shuts Off Services To Your Rental” Packet before you decide which letter to send to the landlord.

Sometimes a landlord may shut off your utilities in an attempt to force you to move. Those actions are illegal, except in limited circumstances. If the landlord wants to make you move, the law requires the landlord to first give you a written notice to vacate, then if you do not move by the deadline given in the notice, the landlord’s only legal option is to file an eviction lawsuit against you in court. The landlord cannot legally shut off your services unless the landlord has an order from a court, or unless you have consented to the landlord’s actions.

If the landlord fails to provide an essential service to your rental, your first step is to provide the landlord with written notice that you no longer have access to a specific essential service. After giving the landlord written notice, you must allow the landlord a reasonable amount of time to fix the problem keeping you from having essential services in your rental. The law does not specify what amount of time is “reasonable.” If the landlord does not fix the problem within a reasonable time, you have several remedies to choose from:

- 1) **Repair and Deduct.** If it costs less than one month’s rent, you can buy reasonable amounts of heat, hot water, running water, electricity, gas, or other essential service for the time that the landlord does not fix the problem. You can then deduct the amount you have spent getting the essential service from your next month’s rent before paying the landlord;
- OR**

2) Alternate Housing. You can decide to live somewhere else until the landlord fixes the problem. If you move somewhere else while the landlord fixes the problem:

- ▶ You *will not* have to pay the rent during the time that you do not live in the rental;
- ▶ You *may* have to pay whatever the cost is for the place that you live in while you are not living in the rental. You can ask your landlord to pay the cost for this alternate housing, but the law does not specifically require the landlord to pay it.

OR

3) Diminution in Value. You can continue to live in the rental without the essential services and file a lawsuit against the landlord. In the lawsuit, you will ask the court to determine what the value of the rental is without whatever essential service is missing from the rental. The value determined by the court will be the value that you will be expected to pay for the rental for the time that the rental did not have the essential service and the landlord knew that the rental did not have the essential service.

Note: If you, a member of your family, or any other person on the rental with your consent caused the lack of essential service you do not have the right to any of these remedies for loss of essential services.

Important: You must choose between the remedies offered for loss of essential services and the remedies for the landlord's failure to provide maintenance of the rental property described in Right #1. You cannot use both.

Before you use this letter to contact the landlord, it is a good idea to read the laws mentioned at the end of these instructions.

What if the landlord does not make the repairs?

After the date the landlord gets your letter, the landlord has a reasonable amount of time to make the repairs. The amount of time depends on the kind of repair being made. For emergencies, it is 3 business days; for restoring "essential

services” such as running water and heat, it’s a “reasonable” time; for repairs that are not emergencies and not essential services, it’s 14 days. If the landlord does not make the repairs, you have several options, including the right to sue the landlord in court and the right to terminate your rental agreement. To terminate your rental agreement, see the forms and instructions called “Telling Your Landlord That You Are Moving Out.” You can find these forms on www.MontanaLawHelp.org. Or, you can call the Montana Legal Services Association HelpLine at 1-800-666-6899.

How do I use the form letter?

1 Complete the form letter and sign it

- Make sure all of the blanks on the form letter are filled in completely.
- Sign the form letter on the line that says “(*sign your name*).”

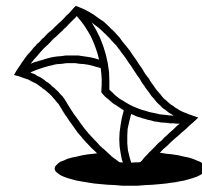
2 Make a copy

- Make one copy of the completed and signed letter for yourself. Keep the copy in a safe place. It may be important if you have to go to court.

3 Deliver the letter to the landlord

You have two choices of how to deliver the letter to the landlord:

- Hand-deliver the letter to the landlord. If you choose this option, you must either (1) actually hand the letter to the landlord in person, or (2) leave it at the landlord’s place of business if the landlord made the rental agreement through that business. It is a good idea to bring two copies of the letter. If possible, ask the landlord to sign and date one copy of the letter as “received.” Keep that copy as proof that the landlord got your letter and give the landlord the



second copy. In case the landlord will not sign the letter, it is a good idea to bring someone with you when you hand-deliver the letter to the landlord. That person can testify in court later if the landlord denies receiving the letter. If you choose this option, the notice period starts on the day you hand the letter to the landlord. For example, if you hand-deliver a letter, giving the landlord 14 days to make the repairs, on April 2, the landlord is not required to make the repairs until April 16.

OR

- Mail the letter to the landlord. It is a good idea to mail the letter by first-class mail with a Certificate of Mailing. The post office will charge you more for the Certificate of Mailing, but it's worth it. Keep the Certificate of Mailing receipt. That is your proof that you sent the letter. With a Certificate of Mailing, the landlord will not have to sign anything to get your letter. The landlord cannot refuse delivery. For example, if you mail a letter, giving the landlord 14 days to make the repairs, on April 2, the landlord is not required to make the repairs until April 19 (April 2 + 3 days mailing = April 5 + 14 days notice = April 19).

Where can I get more information?

The laws of Montana are called the Montana Code Annotated or "MCA". The laws about the landlord's duty to make repairs are located in the MCA at Title 70, Chapter 24, Section 303, Section 406, and Section 408 (regular rentals) and Title 70, Chapter 33, Section 303, Section 405, and Section 406 (rentals of only a lot for a tenant-owed mobile home). An easier way to write that is: § 70-24-303, MCA, § 70-24-406, MCA, and § 70-24-408, MCA and § 70-33-303, MCA, § 70-33-405, MCA, and § 70-33-406, MCA. The symbol § means section. The MCA can be found at your local library or on the Montana State Law Library website at

www.lawlibrary.mt.gov. Click on the “MCA” option near the top of the page on that website.



Where Can I Get Legal Help?

These organizations may be able to help you:

- **Montana Legal Services Association** (MLSA) gives free legal help to low-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.
- **The State Bar Lawyer Referral and Information Service** (LRIS) refers people to Montana lawyers who might be able to help. The referral is free. Call LRIS at 1-406-449-6577.
- **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at www.lawlibrary.mt.gov. Or you can contact a Reference Librarian at 1-710-9827 or by email at mtlawlibrary@mt.gov.

Please take a short survey about this form.

When you are done with the form, please take our online survey at this address:

http://www.surveymonkey.com/s.aspx?sm=fCBhbBj4MdOWw_2fjsCjlg_3d_3d

Or you can access the survey on the “Forms” page of the State Law Library website, at www.lawlibrary.mt.gov. Your answers will help make the form better.

Thank you!

Date: _____ (the date you hand-deliver or
mail the letter)

From (write your name and address):

_____ (name)
_____ (street address or P.O. Box)
_____ (city, state, ZIP)
_____ (phone—optional)

To (write the landlord's name and address):

_____ (name)
_____ (street address or P.O. Box)
_____ (city, state, ZIP)
_____ (phone)

Dear (write the name of the landlord): _____,

I rent and live in one of your units. The address I live at is:

_____.

At the above-named address, the following problems need to be fixed:

_____.

Please repair these problems. If these repairs are not made within the time required under Montana law, I will use the remedies provided to me under the law. One of those remedies is to terminate my rental agreement if you do not

make the repairs. If you do not make the requested repairs in the time allowed by the law: (*check **one** box*)

- The rental agreement will end on the 4th day after you receive this notice if the needed repairs create an emergency or on the 30th day after you receive this notice if the repairs do not create an emergency.

OR

- The rental agreement will not end, but I will seek another remedy allowed under the law.

I have enclosed an information sheet on Montana's repair law for you. This information sheet tells you how much time you have to make repairs, and tells you what my options are if you do not make the repairs.

Thank you for your time and attention.

(*sign your name*)

Landlord-Tenant Law Information Sheet

Something needs to be fixed in a rental unit. What does the law require? It depends on whether the problem is considered an emergency or affects an essential service.

I. Emergencies

Emergencies: If the problem is an emergency for the tenant and is not healthy or safe for the tenant, the landlord has to fix the problem. Section 70-24-406, MCA, says if the landlord does not make the repairs in **3 working days** after getting notice from the tenant, then the tenant may choose one or more of these options:

- To have repairs done by a qualified person and deduct the cost from the next rent payment. This option only applies if the repairs do not cost more than 1 month's rent;
- To sue the landlord in court, asking the judge to force the landlord to make the repairs; or
- To end the rental agreement with the landlord, effective on the 4th working day after the landlord receives the notice, if the landlord has not made the repairs. The tenant may not end the rental agreement for a condition the tenant or the tenant's family member caused. The tenant may not end the rental agreement for any condition caused by a person the tenant allowed on the rental premises.

The law does not specifically say what conditions are emergencies.

II. Essential Services

Essential services: Section 70-24-303, MCA, requires a landlord to provide certain services in the tenant's rental unit. These services are as follows:

- Maintain in good working order all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;
- Provide and maintain appropriate receptacles for the removal of garbage and arrange for their removal, unless otherwise agreed in the rental agreement;

- Supply running water and reasonable amounts of hot water at all times;
- Supply reasonable heat between October 1 and May 1; and
- Install an approved smoke detector.

Section 70-24-408, MCA, says if any of these essential services are not working and the situation is not healthy or safe, the tenant can give notice to the landlord to make repairs. The landlord has a **reasonable time** after getting notice from the tenant to make the repairs. The law does not specifically state what amount of time is “reasonable” for repairing an essential service. If the landlord does not make the repairs in a reasonable time, then the tenant may choose one or more of these options:

- Getting reasonable amounts of heat, hot water, running water, electricity, gas, and other essential services during the time that the landlord has failed to fix the problem, and deducting the actual and reasonable cost of such services from the tenant’s rent;
- Seeking money from the landlord to compensate the tenant based on a reduction in the fair rental value of the rental unit; or
- Temporarily moving to suitable housing during the time that the landlord has failed to fix the problem, and not paying any rent for the time that the tenant resides somewhere else.

A tenant has rights under this law when the tenant has notified the landlord of the problem and given the landlord a reasonable chance to fix it. This law does not apply if the problem was caused by the tenant, a member of the tenant’s family, or any other person on the premises with tenant’s consent.

III. Non-emergencies and Non-Essential Services

Non-emergencies and non-essential services: The law requires a landlord to fix problems that affect a tenant’s health and safety, even if those problems are not emergencies and don’t affect an essential service. Section 70-24-406, MCA, says if the landlord does not make the repairs within **14 days** after receiving notice from the tenant, then the tenant may choose one or more of these options:

- To make repairs and deduct the cost from the next rent payment. This option only applies if the repairs do not cost more than 1 month’s rent;
- To sue the landlord in court, asking the judge to force the landlord to make the repairs; or

- To end the rental agreement with the landlord, effective on the 30th day after the landlord receives the notice. The tenant may not end the rental agreement for a condition the tenant or the tenant's family member caused. The tenant may not end the rental agreement for any condition caused by a person the tenant allowed on the rental premises.