

How To Request Your Landlord To Make Repairs Under the Mississippi Residential Landlord & Tenant Act

At the outset, let's clear up one common misunderstanding: *Mississippi law does **NOT** allow you to withhold your rent until the landlord makes a repair.* Nor does Mississippi law allow you to "repair and deduct" except under certain very specific conditions which are discussed below.

If you are renting your "dwelling unit" from a private landlord, with very few exceptions the law governing your relationship is the *Mississippi Residential Landlord & Tenant Act.*, Miss. Code Ann. §89-8-1 *et seq.* Hereafter we will refer to this law as the "Act."

People not covered under the Act include:

- Residents in an institution incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar service.
- Occupants under a contract of sale.
- Members of a fraternal or social organization in the portion of the structure operated for the benefit of the organization.
- Transient occupants in a hotel, motel or lodgings.
- An owner who occupies a condominium unit, or a holder of a lease in a cooperative.
- An occupant under a rental agreement covering premises used primarily for agriculture, or agricultural workers when the premises occupied are rented for less than fair market value.

People who rent from Public Housing Authorities or other projects, which subsidize rent with state or federal funds will have different remedies than those under the Act. These remedies should be spelled out in their leases.

Commercial leases are not covered under the Act.

If you are a residential tenant, and you do not fall in one of the above exceptions, then you are covered under the provisions of the aforesaid *Mississippi Residential Landlord & Tenant Act.* Under the Act, and - specifically - under §89-8-23, your landlord is required to:

a) Comply with the requirements of applicable building and housing codes materially affecting health and safety.

b) Maintain the dwelling unit, its plumbing, heating and/or cooling system, in substantially the same condition as at the inception of the lease reasonable wear and tear excluded, unless the dwelling unit, its plumbing, heating and/or cooling system is damaged or impaired as a result of the deliberate or negligent actions of the tenant.

. If you have not already done so you should read your lease. Your lease may give you more rights than those set out above and discussed below. If it does you should follow your lease.

If your lease is silent as to the landlord's duty of repair then you should follow the provisions of the Act.

If your lease gives you less rights than those set forth above, or discussed below, then you should consult an attorney if your landlord is not willing to make the needed repairs.

Let's assume that your lease is silent as to the landlord's duty of repair, and that you are attempting to follow the Act. Let's assume that you are experiencing a problem with your home, which you need the landlord to repair.

First, call your landlord and request that he repair the problem immediately. Then, as soon as you hang up, write and mail your landlord a ***dated*** letter describing the problem in detail, requesting repair, and confirming the date and time of your telephone call. You must write the letter because the landlord's duty is triggered only by a ***written*** request under the Act. *Be sure you **keep a copy** of the dated letter.* If you can afford it, send the letter return receipt requested, and keep the return receipt when it arrives. A cheaper alternative is to request the post office to give you a confirmation of mailing, which will show that your letter was mailed. Keep the confirmation with your copy of the letter. If your landlord has a rental agent send the letter to both persons.

If your landlord or his agent is not reachable by telephone then, obviously, you will have to communicate by letter. If the matter is urgent you may wish to hand deliver the letter in addition to or instead of mailing it. The virtue of mailing is that it allows you to prove that the notice was sent by means of a confirmation or return receipt, and not merely your own testimony, should this subsequently become an issue. So, even if you hand-deliver the letter, it is usually advisable to mail it as well.

If, within **thirty (30)** days after your ***written*** notice to the landlord of a specific and material defect which constitutes a breach of the terms of the rental agreement or of the obligation of the landlord under the Act, the landlord fails to repair such defect, you - the tenant:

- a) May repair such defect yourself,
- b) Shall be entitled to reimbursement of the expenses of such repairs within forty-five (45) days after submission to the landlord of receipted bills for such work, provided that they do not exceed the usual and customary charge for such repairs, and:
 - i) You - the tenant - have fulfilled your affirmative obligations under §89-8-25.
 - ii) The expenses incurred in making such repairs do not exceed an amount equal to one (1) months rent;

- iii) You have not exercised the remedy provided by this section in the six (6) months immediately preceding your request, and -
- iv) You are current in your rental payments.
- c) May offset the cost of the repairs against future rent.

Obviously, if the repairs required are substantial, they are likely to exceed one month's rent. If they do you will not be allowed to offset them against future rent. Even if the repairs are less than one month's rent you must still wait forty-five (45) days after submitting the receipted bills to the landlord before offsetting them against future rent.

By this point it will have occurred to you that you will need to have surplus money to make the repairs, and that you will need to be able to wait for up to two months before you will be entitled to offset them against future rent.

You should also consider that in the event the landlord does not agree the repairs were needed, or that they were a material defect, or that they resulted from a breach of his statutory or contractual obligations, or that the request for repair was properly made, that you may find yourself facing eviction for non-payment of rent soon after you commence your offset.

If you choose to avail yourself of the "repair and deduct" remedy make sure you keep a copy of your written notice to your landlord and of your receipted bills. Even then be prepared to prove in court that the cost of the repairs was "usual and customary," that the defect needing repair was a breach of the landlord's obligations under the lease or the Act, that it was not caused by you or your guests, and that you complied with all the notice periods set out above.

What are your alternatives to this difficult and time consuming procedure? There are several available to you.

- First, if the landlord has committed a substantial violation of the lease or the Act which "materially affects health and safety," the Act gives you the right to terminate your tenancy without notice. §89-8-19. So, if your landlord's failure or refusal to maintain the premises has resulted in a truly dangerous circumstance, such as - for instance a gas leak - you would be entitled to terminate your tenancy.

- Second, in the event that you do not wish to move, or cannot afford to do so, if the defect materially affects health or safety it is probably a violation of the local building code. You could contact your local code enforcement officer who in turn has the power condemn the dwelling unless and until it is repaired and brought up to code. The difficulty with this remedy is that unless the landlord makes the needed repairs you will still have to vacate the premises. However, the landlord is more likely to make the repairs in response to the threat of condemnation as he will not be able to rent the unit to anyone else until he does so.

- Third, in addition to calling a code enforcement officer you have the right to go to court and seek to enforce your lease and have the landlord ordered or “enjoined” to make the needed repairs. The Act makes clear that it is “in addition” to all other rights and remedies provided by law. §89-8-3.

- Fourth, either instead, or in addition to the foregoing, do not underestimate the power of the press. Oftentimes a landlord may be shamed into making needed repairs as the result of a critical newspaper article.

Attached, for your convenience, is a form notice to provide your landlord in the event your home needs repairs.

In filling out this form notice please observe that it contains a place for you to describe your damages. You should take pains to describe your damages in detail as there will be a presumption that anything you leave out did not - in fact - occur. If you need more space write “see attachment” and use additional pages to describe your damages. The reason to include this information is so that your landlord cannot claim ignorance later regarding the urgency of your request, or whether it really did relate to health and safety, and so that you - yourself - remember it later. Time has a way of blurring details.

You should also be aware that any injuries you suffer as a result of your landlord’s breach of his contractual or statutory obligations, or of his common law obligation to provide fit and safe premises may ground a claim for damages. Thus, for example, if you fall through the floor and break your leg, you may have a claim for your medical costs, pain and suffering, and any associated loss of income. If you have significant injuries you should consult a lawyer immediately and - if possible - before communicating with your landlord. Your lawyer will assist you in making any necessary communications.

In filling out the form also notice that there is a space for you to describe whether a defect materially affects your health and safety. If you think it does, check the box provided and take pains to describe how and why you think it does so in the space provided. If you need more space write “see attachment” and use additional pages.

Obviously, if you are being subjected to a serious threat to you or your family’s health such as - for instance - might be posed by defective wiring or a gas leak, you should vacate the premises until it is cured if there is any way you can do so.

If you cannot afford to terminate the lease and/or move to alternate lodgings until the defect is repaired please notice that the form provides a paragraph with which you can request that your landlord provide you alternate lodging. If you require this assistance check the box provided. However, do not assume that your landlord will provide such assistance just because you ask. If your health and safety is truly threatened you should also contact relief agencies, churches, family, friends and

neighbors for assistance in vacating as soon as possible. Costs so incurred may be recouped later from your landlord if he or she ignores your request for assistance.*

Finally, please notice that the form provides boxes for you to check regarding the method of delivery. You can check hand-delivery, first class mail, or registered mail, return receipt requested. Be sure that you check the appropriate box or boxes. Take care also to note individually the dates of mailing/delivery if they differ from the date of your letter.

If you do send your letter by registered mail *note the confirmation number on the letter in the space provided*. Not only does this allow you to match the letter to your receipt, but even if you lose your receipt, or if it somehow gets lost in the mail, you will still be able to verify whether or not the letter was delivered by reference to the Post Office's computer records.*

** **Remember:** The law often changes. Each case is different. This pamphlet is meant to give you general information and not to give you specific legal advice. While every effort has been made to be accurate as of the time of writing no warranties, express or implied, are made regarding the foregoing information or the efficacy of the attached form(s). This pamphlet has been provided free of charge and no attorney/client relationship is created hereby.*

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North Mississippi Rural Legal Services Corp.

**NOTICE OF SPECIFIC AND MATERIAL DEFECT
AND REQUEST FOR REPAIR AND ASSISTANCE**

Date: _____

To:

_____ (Name of Landlord or Landlord's Agent)

_____ (Street Address or Post Office Box)

_____ (City and State)

_____ (Zip Code)

Regarding: *Specific and Material Defects In Your Rental Property Located At:*

_____ (Address)

and rented

to: _____ (Tenants)

(Check if Applicable) The following letter is in follow up and confirmation of our call to you at the following telephone number: (_____) _____ on the ____ day of the month of _____ in the year 20__ at the following time _____ a.m or p.m.

Dear Sir/Madam:

Please be advised that we are experiencing the following specific and material defects with the dwelling unit which you have rented to us: These defects consist of the following: (Describe defects in detail including date defects started):

The above described specific and material defects constitute a breach of the terms of our rental agreement and/or of your obligations as our landlord under the Mississippi Residential Landlord & Tenant Act., Miss. Code Ann. §89-8-1 et seq.

Accordingly, please consider this a demand that you immediately repair the above described specific and material defects pursuant to the lease contract and the Mississippi Residential Landlord & Tenant Act., Miss. Code Ann. §89-8-1 et seq.

Additionally, for your information, and solely in an attempt to mitigate our damages by alerting you to the urgency of our request, and not by way of waiver or

compromise of any potential claims which are hereby explicitly reserved, please be aware that to date the above described specific and material defects have caused and/or are causing us the following damages, including but not limited to the following (Describe losses, injuries, sickness, mental impact, loss of use of premises, actual or potential threat to health and safety, and/or inconvenience in detail):

(Check if Applicable) Additionally, as described above, the specific and material defects complained of are substantial violations of the rental agreement and/or the Mississippi Residential Landlord & Tenant Act., Miss. Code Ann. §89-8-1 et seq. and have materially affected and/or continue to materially affect and threaten our health and safety.

(Check if Applicable) Therefore, solely in an attempt to mitigate our damages, and not by way of waiver or compromise of any potential claims which are hereby explicitly reserved, we are requesting that you arrange and provide alternate safe and adequate housing for us until the above referenced specific and material defects are remedied as we cannot afford same on our own behalf.

Accordingly, we look forward to and thank you in advance for your prompt attention to the foregoing request(s), and - also - your prompt remedy of the above described specific and material defects.

Sincerely,

(Tenant)

(Tenant)

*Sent by (Check all applicable):**

Hand Delivery on _____ *(Date of delivery)*

First Class U.S. Mail, postage prepaid. _____ *(Date of mailing)*

Registered U.S. Mail, return receipt requested _____ *(Date of mailing)*

Confirmation No: _____

**Note: If dates not provided they are identical with the letter's date noted above.*