

What if your landlord won't make needed repairs?

If you've told your landlord that s/he needs to make repairs but s/he hasn't made them, follow these steps:

STEP 1: Make a complete list of the specific defects or needed repairs.

STEP 2: Check that the defects on your list are covered by Idaho's Tenants' Law.

Idaho Code Section 6-320 gives tenants the right to sue a landlord for certain problems:

- ▶ (1) Failure to provide reasonable **water-proofing** and **weather protection**...
- ▶ (2) Failure to maintain in good working order **electrical, plumbing, heating, ventilation, cooling, or sanitary facilities**...
- ▶ (3) Maintaining the premises in a manner **hazardous to the health and safety** of the tenant...
- ▶ (4) Failure to **return a security deposit** as and when required by law...
- ▶ (5) Breach of any term or provision of the lease or rental agreement materially affecting the **health and safety** of the tenant...
- ▶ (6) Failure to install approved **smoke detectors** in each dwelling unit...

As examples: a broken furnace, toilet or water heater is a violation of #2. Cold wind blowing through cracks in a window frame is a violation of #1. Many problems may fall under #3 or #5, but only if they are hazardous to health and safety, like a broken sidewalk causing falls.

On the other hand, if your landlord broke his promise to paint your bedroom, you probably couldn't use this law to force your landlord to paint it because an unpainted bedroom probably doesn't materially affect your health and safety (even if it's ugly).

▶ **The law does not cover defects caused by you (or your family or guests).** For example, if you locked yourself out of your apartment, and broke a window to get back in, you couldn't use this law to sue your landlord to repair the window; s/he wouldn't have to fix it if you hadn't broken it in the first place.

▶ **The law also does not cover repairs that you agreed to do under your lease or rental agreement** (unless your landlord caused the damage).

STEP 3: Write your landlord a letter. Be sure to keep a copy!

List only problems covered by the law in your letter and demand that your landlord begin fixing the problems.

Your letter may look like the example below:

Dear Landlord:

I demand that you repair the following defects in my apartment at 123 Oak Street within three days of receiving this letter:

- 1. The bathroom sink leaks onto the floor;*
- 2. The house is infested with cockroaches;*
- 3. Two of the stove's burners don't work.*

If you do not repair these defects within three days, I will be allowed to sue you for damages or to force you to make repairs. If I must sue you, the judge is permitted to make you pay three times the damages I prove, and you may have to pay my attorney's fees and court costs.

Sincerely, T. Tenant

STEP 4: Deliver the letter to your landlord in either one of 2 ways:

▶ **(1) Personally Deliver** the letter to the landlord or the landlord's agent (such as an employee at the landlord's usual place of business). Have a friend or relative go with you as a witness, so the witness can testify in court that the landlord received it. (This is the quickest method).

▶ **(2)** Go to the post office and **send the letter "certified mail, return receipt requested."** Later, you will receive a postcard showing when the landlord received the letter. The postcard can prove when the letter was delivered.

STEP 5: Give your landlord time and opportunity to make the repairs.

Your landlord has **three days** after the day she receives the letter to make the repairs (not counting weekends or holidays). Of course, you should make sure the landlord has a way of coming inside to make the repairs. Usually, after the landlord receives the letter, s/he will make the repairs. You should **cooperate fully** with the landlord so that s/he can make the repairs. The landlord may want to **negotiate**. Perhaps s/he cannot get all the problems fixed in three days and will want a little extra time to finish. If you both agree to something other than what you demanded in your letter, the new agreement will be binding on you both. Try to get any new agreement in writing and have your landlord sign it. Be sure to keep a signed copy!

STEP 6: Sue the landlord.

If the repairs are not made within three days after the landlord receives the letter, you can file a suit in Magistrate or Small Claims Court. This will probably undermine your relationship with your landlord. Also, you still have a duty to pay rent, regardless of the outcome of your suit.

In **Magistrate Court**, you should probably have an attorney. When a landlord or tenant sues under Landlord/Tenant Laws in Idaho, the winner can generally get an award for attorney's fees for having to bring or defend the action. However, you may not be able to find an attorney to take your case. In any case, you can also file suit in **Small Claims Court** (where neither party can have a lawyer).

To file suit in **Small Claims Court**, go to the local county clerk's office and fill out two forms. You will have to give information such as your name and address and your landlord's name and address. You must also state the nature of your claim.

You can get a copy of the Small Claims Court filing form at: www.courtselfhelp.idaho.gov.

Your claim may look like following example:
*"My landlord owes me a debt of \$ ____ for his failure to **make repairs to my apartment** at (ADDRESS) despite my demand letter to him that he received on (DATE). Also, I request he pay my filing fees and that the damages be tripled under Idaho Code Section 6-317. These damages became due three days after the landlord received the letter under Idaho Code Section 6-320. I claim damages for the landlord's violation of Idaho Code Section 6-320, and for breach of the **warranty of habitability***. The damages** are calculated as follows:*

<i>Actual Damages:</i>	<i>\$ _____</i>
<i>Loss of Value:</i>	<i>\$ _____</i>
<i>Resulting Damages:</i>	<i>\$ _____</i>

*The "**warranty of habitability**" is an implied promise in all rental contracts; it assumes all landlords promise to maintain rental units to the legal minimum level of health and safety.

**See below for how to calculate your damages.

How to Calculate Your Damages:

- 1. ACTUAL DAMAGES** are how much it would cost to have the repairs made. You may have to ask a repairman (for example, a plumber or exterminator) to make an estimate. Attach copies of the estimate to your Small Claims Court forms.
- 2. LOSS OF VALUE** is how much the value of the apartment has been reduced because of the defects. This requires some guesswork, but be prepared to explain your calculations to the judge. For example, if your front door has had no lock for two months, and you feel this defect is worth \$50 per month, you can claim \$100 for “loss of value” of your apartment. You can list all of the loss of value from when the defect began until the date you filed suit.

- 3. RESULTING (or CONSEQUENTIAL) DAMAGES** are other damages suffered because of the defect. For example, if your landlord failed to repair a hole in the roof, and as a result, some of your furniture was damaged, you can add that amount of damage to the total. Another example is if your landlord failed to fix the heater during the winter and your children became sick. You may list the medical expenses that were a consequence of living in an unheated and unhealthy apartment.

STEP 7: Go to Small Claims Court

You will get notified of the date, time and place for the trial. Be prepared to explain why you are suing. Bring your copy of your demand letter and any proof you have showing how you calculated your damages (repairman’s estimates, medical bills, receipts, etc.). You will be given an opportunity to present witnesses who can explain the defects and their seriousness. If you can, **bring witnesses and photographs.**

▲ If the judge finds that the landlord violated the law maliciously or intentionally, the judge might award you three times the damages that you prove you are owed.

Common Questions about Renters’ Rights & Repairs

I asked my landlord to fix several things in my apartment and she sent me an eviction notice. Can she do this?

No. It is illegal to evict a tenant solely for exercising the tenant’s right to request repairs. If your landlord threatens to evict you because you demanded s/he make repairs, contact an attorney immediately.

My landlord hasn’t repaired my heater. Can I refuse to pay rent?

No. In Idaho, unlike other states, there is no law that allows a tenant to make repairs themselves and then deduct expenses from the next rent payment. If you have done this, your landlord may legally try to evict you for not paying full rent.

Can I call an inspector to come look at my apartment building?

You may want to call your city or county building inspectors to have them inspect the defects in your rental space. If you have an insect or other sanitary problem, call the health department. They can help encourage your landlord to make repairs and can also be witnesses for you in court.

Sometimes, inspectors will find defects that are so serious that they will condemn the building. After that, you will not be permitted to live there any longer. If you are afraid this might happen, call an attorney before calling the inspectors.

Idaho Legal Aid Services

Local Offices

Boise	345-0106
310 N. 5th St.	
Caldwell	454-2591
1104 Blaine St.	
Coeur d’Alene	667-9559
410 Sherman Ave., #303	
Idaho Falls	524-3660
482 Constitution Way, # 101	
Lewiston	743-1556
633 Main St., # 103	
Pocatello	233-0079
150 S. Arthur Ave., # 203	
Twin Falls	734-7024
475 Polk St., # 4	

Statewide Hotlines

Idaho Senior Legal Hotline

1-866-345-0106
(*en español* 1-866-954-2591)

Idaho Domestic Violence Legal Hotline

1-877-500-2980

TTY (Deaf and Hearing Impaired)

1-800-245-7573

Idaho Rental Assistance & Properties:

1-877-428-8844

www.housingidaho.com

Looking for more information?

Visit www.idaholegalaid.org to find more free forms and information for renters. Find the Idaho Attorney General’s manual, **Landlord and Tenant Guidelines**, at <http://www.ag.idaho.gov>

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Advice for Idaho Renters:

Repairs

Read this handout to understand:

▲ **What do Idaho laws say about repairs on rental properties?**

▲ **What if my landlord refuses to make needed repairs?**

▲ **How can I protect my rights as a tenant in the future?**

If you have already notified your landlord that your rental space needs repairs, but s/he hasn’t made the repairs, try following the steps described inside this handout.

Idaho’s Legislature passed a law in 1977 (**Idaho Code Section 6-320**) to provide a simple, quick way to force landlords to make needed repairs for tenants.

The advice in this handout is very general and there might be special factors in your case. If you have legal questions, contact an attorney. If you cannot afford an attorney, contact the Idaho Legal Aid Services office nearest you using one of the phone numbers on the back of this handout. Also, visit us on the web at:

www.idaholegalaid.org