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.**

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

1. Failure to provide reasonable waterproofing and weather protection...
2. Failure to maintain in good working order electrical, plumbing, heating, ventilation, cooling, or sanitary facilities...
3. Breach of any term or provision of the lease or rental agreement (unless your landlord caused the damage).
4. Failure to install approved smoke detectors in each dwelling unit...
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 return a security deposit as and when required by law...

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 #3. 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 date she received the letter to make the repairs (not counting weekends and 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.

Your claim may look like following example:

```
Your 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:

| Actual Damages: | $______ |
| Loss of Value:   | $______ |
| Resulting Damages: | $______ |

*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.
```

You can get a copy of the Small Claims Court filing form at: [www.courtselfhelp.idaho.gov](http://www.courtselfhelp.idaho.gov)

---

**See below for how to calculate your damages.**

---

**Calculating Your Damages:**

- **Resulting Damages:** $______
- **Actual Damages:** $______
- **Loss of Value:** $______

---

**STEP 7: You can also file suit in the Magistrate Court.**

**STEP 8: 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).
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.