

# Disaster survivors with LANDLORD/TENANT QUESTIONS



Georgia Legal  
Services Program®

**The home I was renting was severely damaged during the recent storms. I can no longer live in the home due to the damage. Do I still have to pay rent to my landlord?**

In general, a tenant should not have to pay rent if the rental unit is no longer habitable. When the tenant unit is damaged, the tenant needs to notify the landlord of the damage verbally and in writing. If the tenant wants to move, the tenant should offer to vacate the unit and ask that the landlord provide a written document releasing the tenant from the lease.

If the landlord will not let the tenant out of the lease, the landlord must make any necessary repairs to the unit. Georgia law (O.C.G.A. §§ 44-7-13) states that in a residential lease "[t]he landlord must keep the premises in repair." This law requires that a landlord repair the unit damaged by a natural disaster.

Georgia courts have recognized that when a landlord fails to make repairs that are necessary that failure can make the residential unit uninhabitable. The landlord's failure to repair a unit damaged by flooding or any other natural disaster is a breach of his duty to the tenant to keep the unit in good repair. When a landlord breaches his duty to a tenant, it can result in what the courts call a "constructive eviction" which relieves the tenant from having to pay rent.

It may be possible to argue that the destruction of the property, unrepaired by the landlord, is a "constructive eviction" which would make the tenant no longer responsible for paying the rent.

## **What is a constructive eviction?**

There are two elements necessary to show there has been a constructive eviction. They are: (1) That the landlord's failure to repair has made the unit an unfit place for the tenant to live, and (2) That the unit cannot be restored to a fit condition by ordinary repairs. Put another way, for damage to a residential unit to constitute a constructive eviction which would release the tenant from the obligation to pay rent, there must be a failure by the landlord to make repairs which leaves the unit unfit for the tenant to live in and not just uncomfortable for the tenant to live in. The tenant must also vacate the unit.

**I asked the landlord to make a repair but it took several months before it was fixed. Should the landlord reduce the rent for the time before the repair was made? What if my furniture or personal belongings were damaged?**

The landlord is responsible for making repairs within a reasonable time after being notified of the need for the repair. If the landlord undertook and completed roof repairs within a reasonable time after notice, the landlord has fulfilled his repair responsibilities and compensation to the tenant for the loss of the room is unlikely. However, if the landlord unreasonably delayed in undertaking the repairs and the tenant suffered a loss due to the delay, the tenant may have a claim against the landlord for damages to personal property caused by the delay in repair. The tenant does have a responsibility to protect his property from damage.

Generally, a landlord will not be required to compensate a tenant for the temporary loss of a portion of the premises. This should not prevent the tenant from asking the landlord for compensation for their loss and inconvenience. The apartment complex is a business and you are its customer. A well-run apartment complex would want to maintain good tenant relations and ensure that you will want to remain there when your current lease expires. It is usually more successful for a tenant to negotiate for a future rent credit, than to ask the landlord to pay cash out of pocket. Use common sense and reasonableness when approaching the landlord seeking compensation.

**I spoke to my landlord over a month ago about repairing a leak in the kitchen, but it still has not been done. What can a tenant do to force a landlord to make repairs?**

First, you must notify the landlord of the condition needing repair. It is best to give a written dated notice informing the landlord of the problem. Keep a copy for yourself. Written notice provides evidence that the landlord was aware of the need for the repair. If it is not possible to give written notice, verbal notice is acceptable unless the lease requires written notice. Be sure the lease provision for notice is followed. If your landlord fails to make the requested repairs within a reasonable time after notice, you can either file a lawsuit against your landlord for damages caused by his failure to repair or, if your landlord sues you, counterclaim for damages due to the failure to repair. A tenant may also want to consider using repair and deduct. The tenant cannot stop paying rent even if the landlord fails to make repairs.

**What is repair and deduct?**

Georgia courts have held that when a landlord fails to respond to repair requests after a reasonable time, the tenant can have the required repair performed by a competent repair person at a reasonable cost and deduct the cost from future rent. In determining what is a reasonable time for the landlord to make the repair, consider the seriousness of the condition and the nature of the repair. It is a good idea to notify the landlord in writing that you plan to use the "repair and deduct" remedy before you arrange for the repair to be done. Written notice is the best notice. The tenant should keep copies of all repair receipts and ask the repair person for a statement detailing the work performed and the problem corrected. Keep copies of this information. You may subtract these repair costs from your next months rent by sending copies of the repair receipts along with the remaining amount of rent due to your landlord. When using "repair and deduct" the tenant must be careful and spend only a reasonable amount on the repair. The tenant should not improve the property, only repair the defect. The tenant should use only qualified and licensed workers to make the repairs. If you do not feel that "repair and deduct" will address your issue, you should consider contacting an attorney.

A tenant-at-will has the right to use repair and deduct but should keep in mind that the lease can be terminated with sixty (60) days notice. A tenant-at-will would be wise not to spend more on repairs than he can deduct from the rent in sixty (60) days.

**Are there any agencies which can force a landlord to make repairs?**

There is no statewide agency which regulates the condition of residential rental housing. Some cities and counties have local ordinances or codes which regulate residential rental housing. These codes and ordinances are often enforced by the city or county. You may wish to contact the housing code inspector if you are in a city, town, or county with a housing, building, or health and safety code. A landlord must comply with applicable local housing codes. If you are unaware whether or not your area has such codes, call the city hall or county courthouse and ask for the building inspector or the code enforcement office.

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