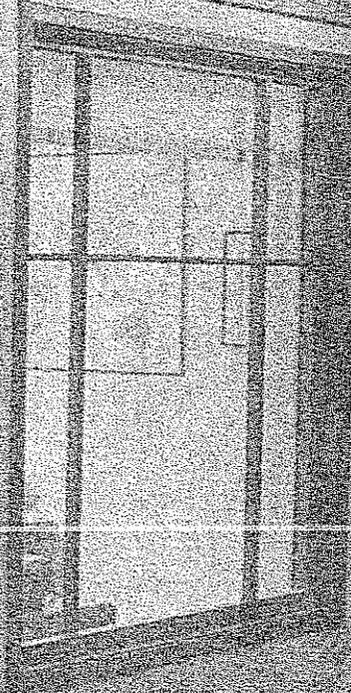


MSU LAW RENTAL
HOUSING CLINIC

RENTAL
HOUSING
CLINIC

TAX
CLINIC





About
the MSU Law
Rental Housing Clinic

WHO are we?

The Rental Housing Clinic is a public-interest law clinic. It is a cooperative effort of Michigan State University, MSU College of Law and the City of East Lansing. We provide an important community service to the local rental community. At the same time, we provide a clinical education program for MSU Law students. Under Michigan Court Rule 8.120, second- and third-year law students are able to practice law under the supervision of our clinical faculty who are members of the State Bar of Michigan.

WHAT do we do?

The Rental Housing Clinic provides legal services to low-income tenants and landlords in the Greater Lansing area—Ingham, Eaton, and Clinton counties—who have some type of rental-housing issue. The law students are prepared to offer traditional legal representation and counsel, as well as community education information. Clinic staff strictly maintain the confidentiality of information relating to your legal matter.

WHEN are we open?

We offer walk-in hours Monday through Friday, from noon to 4 p.m. Individuals will be seen on a first-come, first-served basis. You may also call to schedule an appointment if you are not able to meet during regular office hours.

WHERE are we located?

The Rental Housing Clinic is located in the lower level of the Campus Town Mall building at 541 East Grand River Avenue in downtown East Lansing. We can be reached by phone at 517/336-8088 or by fax at 517/336-8089. Additional information about our services can be found on our website at www.msulawclinics.org.

WHY would you need our help?

We are prepared to handle all types of rental-housing issues: review of leases (preferably before signing), security-deposit disputes, subleasing, housing-code violations and compliance, eviction, and other housing issues. Our law students will provide you with the necessary information to tackle the problem yourself, or they will handle it for you through education, negotiation or litigation. We prefer prevention and encourage you to come to the Rental Housing Clinic to find out about your legal rights and obligations as a tenant or landlord.

HOW much will you have to pay for our legal services?

A nominal fee for our services will be charged. Clients will be responsible for all other fees and costs associated with our representation and counsel, such as court filing fees, deposition fees, postage and long-distance phone charges.

Security Deposit Timeline

Security Deposit Timeline	Landlord's Duties	Tenant's Duties
<p>Beginning of Lease (generally move in) MCL 554.602, 554.604, 554.605, 554.608(2)</p>	<p>Ensure that any security deposit, if required, does not exceed 1 1/2 months' rent. Deposit tenant's security deposit in a regulated financial institution OR file a surety bond with the state. Provide tenant: 1. A copy of the lease, and 2. Two blank copies of the inventory checklist.</p>	<p>The security deposit is the lawful property of the tenant. <i>Recommendation:</i> Read the lease (preferably before signing it) and all other information provided to you by the landlord. Request from landlord the inventory checklist and/or itemized list of damage report from previous tenancy.</p>
<p>Within 7 days from move in (landlord and tenant may agree to a shorter period, but not a longer period) MCL 554.608(3)</p>	<p><i>Recommendation:</i> Keep tenant's completed checklist.</p>	<p>Return to landlord the completed inventory checklist, noting condition of rental unit (add pages if necessary); be sure to keep a copy.</p>
<p>Within 14 days from move in MCL 554.603</p>	<p>Provide tenant in writing:</p> <ol style="list-style-type: none"> 1. Landlord's name and address for receipt of rent and communications; 2. Where tenant's security deposit will be held (name and address of the financial institution or surety bond company); and 3. Include specific statutory notice of tenant's duty to provide forwarding address within 4 days of move out. 	<p><i>Recommendation:</i> Read the information provided to you by the landlord.</p>
<p>Move out (not necessarily the end of the lease) MCL 554.608(5)</p>	<p>Complete a termination inventory checklist, noting condition of rental unit.</p>	<p><i>Recommendation:</i> Remove all personal property; clean the rental unit; turn in keys.</p>

Security Deposit Timeline, cont.

Security Deposit Timeline	Landlord's Duties	Tenant's Duties
<p>Within 4 days after move out</p>	<p><i>Recommendation:</i> Keep a copy of tenant's forwarding address.</p>	<p>Provide landlord in writing (not orally) your forwarding address.</p>
<p>MCL 554.611 Within 30 days from move out</p>	<p>Mail to tenant an itemized list of damages, with proper statutory notice provision, claimed against tenant's security deposit accompanied by a check or money order for the difference. Only unpaid rent, unpaid utility bills, and damages to the rental unit beyond reasonable wear and tear caused by tenant may be claimed against the deposit (not cleaning fees).</p>	<p><i>Recommendation:</i> Watch for the itemized list of damages in the mail.</p>
<p>MCL 554.609 Within 7 days of tenant's receipt of landlord's itemized list of damages</p>	<p>Watch for tenant's mailed response to the itemized list of damages.</p>	<p>Respond in detail, by ordinary mail, indicating agreement or disagreement to the damages charged. Be sure to count the days; the date of mailing is considered the date of response.</p>
<p>MCL 554.612 Within 45 days—not thereafter—of move out MCL 554.613</p>	<p>To be entitled to keep the disputed amount of security deposit, file suit against tenant for damages—unless an exception applies.</p>	<p>If suit is filed, appear in court and defend. <i>Note:</i> If suit is not filed, you may file suit for recovery of your security deposit.</p>

Eviction Timeline

FROM START TO FINISH—IT CAN TAKE AS FEW AS 27 DAYS OR AS MANY AS 57 DAYS TO EVICT A TENANT!

Eviction Timeline	Landlord's Duties	Tenant's Duties
<p>Some incident gives rise for eviction. MCL 600.5714</p> <p>24-HOUR NOTICE is required for: Illegal drug activity and formal police report filed (lease provision must allow for termination).</p> <p>7-DAY NOTICE is required for the following reasons:</p> <ul style="list-style-type: none"> a) Nonpayment of rent; b) Extensive and continuing physical injury to property; OR c) Serious and continuing health hazard. <p>30-DAY NOTICE is required for the following reasons:</p> <ul style="list-style-type: none"> a) Violation of a lease provision and the lease allows for termination; b) Forceful entry OR peaceful entry, but forceful stay OR trespass; c) Holding over after natural expiration of lease term; d) "Just cause" for terminating tenant of mobile home park; OR e) "Just cause" for terminating tenant of government-subsidized housing. 	<p>Provide proper notice of intent to evict. MCL 600.5716; 600.5718 Forms DC 100a, DC 100c (from the court)</p> <p>The notice MUST:</p> <ul style="list-style-type: none"> a) Be in writing; b) Be addressed to the tenant; c) Describe the rental property (address is sufficient); d) Give reason for eviction; e) State the time for tenant to take remedial action; f) Include landlord's signature; and g) Include date. <p>The notice MUST be delivered:</p> <ul style="list-style-type: none"> a) In person to the tenant, OR b) At the rental property, to a member of tenant's household—of suitable age—requesting that it be delivered to the tenant, OR c) By sending it through first-class mail addressed to the tenant. 	<p>Read the notice. Certain reasons for eviction can be cured (e.g., nonpayment of rent can be cured by paying the rent). Certain other reasons cannot be cured and tenant must move out (e.g., breach of lease, illegal drug activity). Otherwise, you may be sued.</p> <p><i>Recommendation:</i> Contact the landlord to peacefully discuss his or her reasons for eviction. Try to work things out to remain in the rental property.</p>

Eviction Timeline, cont.

FROM START TO FINISH—IT CAN TAKE AS FEW AS 27 DAYS OR AS MANY AS 57 DAYS TO EVICT A TENANT!

Eviction Timeline	Landlord's Duties	Tenant's Duties
<p>BEGIN THE LAWSUIT: After the time period in the notice has expired—either 7 or 30 days—if things cannot be worked out: File with the district or municipal court and serve on the tenant a Summons and Complaint. MCL 600.5704 and 600.5735</p>	<p>The Summons. The Summons commands the tenant to appear at the court for trial. Michigan Court Rule 4.201(C) Form DC 104 (from the court)</p> <p>The Complaint. The Complaint gives further notice of the cause of action, or reasons, for the eviction. Landlord MUST attach the following:</p> <ul style="list-style-type: none"> a) A copy of the Lease; AND b) A copy of the Notice of Eviction— stating when and how it was delivered. Michigan Court Rule 4.201(B) Forms DC 102a, DC 102C (from the court) <p>The Summons and Complaint MUST be delivered (and proof of how and when they were delivered must be filed with the court) to the tenant BY MAIL AND ONE OTHER WAY:</p> <ul style="list-style-type: none"> a) Personally, OR b) Sent by mail—certified, return receipt, restricted delivery, OR c) At the rental property, to a member of tenant's household—of suitable age— requesting that it be delivered to the tenant, OR d) After diligent attempts at personal service, by securely attaching the papers to the main entrance of the rental property unit. Michigan Court Rule 4.201(D) 	<p>The Summons will have a date and time ordering the tenant to appear in court. As the Summons commands, you MUST appear in court for this hearing.</p> <p>You MUST appear and answer the Complaint by the date on the Summons. You can do this either in writing OR orally at the hearing.</p> <p><i>Recommendation:</i> It is best to contact a lawyer to help you through this process.</p>

Eviction Timeline, cont.

FROM START TO FINISH—IT CAN TAKE AS FEW AS 27 DAYS OR AS MANY AS 57 DAYS TO EVICT A TENANT!

Eviction Timeline	Landlord's Duties	Tenant's Duties
<p>TRIAL: Within 10 days there will be a trial/hearing. Michigan Court Rule 4.201(F)</p> <p>If either party appears without an attorney, but requests to retain one, the judge will generally adjourn the trial/ hearing for 7 days.</p>	<p>You have a right to an attorney; you may ask for time to retain one. Generally, the judge will adjourn for 7 days.</p> <p>You have a right to a jury trial; however, you must demand it in the Complaint and pay the jury fee. (The fee starts at \$50 and goes up depending on the amount in controversy.) Provide testimony, documents, and other evidence to show that you are lawfully entitled to recover possession of your rental property.</p> <p><i>Recommendation:</i> Dress nicely, be prepared, and be respectful of the legal process.</p>	<p>You must appear and answer the Complaint. You have a right to an attorney; you may ask for time to retain one. Generally, the judge will adjourn for 7 days. You have a right to a jury trial; however, you must demand it in your first response— written or oral—and pay the jury fee. (The fee starts at \$50 and goes up depending on the amount in controversy.)</p> <p>Defending landlord's claim may require you to testify and provide documents and other evidence of why you should be entitled to remain in possession of the rental property.</p> <p><i>Recommendation:</i> Dress nicely, be prepared, and be respectful of the legal process.</p>
<p>JUDGMENT: After trial, the judge or jury will render a decision either in favor of the:</p> <ul style="list-style-type: none"> a) Landlord (evicting the tenant), OR b) Tenant (allowing him or her to remain in possession). <p>A money award may also be entered for damages incurred by either party. Michigan Court Rule 4.201(K)</p>	<p>If judgment is for you, the landlord, it may include an award for any money due and for costs. You may begin collections on the money judgment if tenant does not otherwise pay or appeal. You will have to wait to regain possession by requesting an Order of Eviction. MCL 600.5741</p> <p>If judgment is for the tenant, he or she may remain in possession of your rental property.</p>	<p>If judgment is for you, the tenant, you may remain in possession of the rental property. MCL 600.5747</p> <p>If judgment is for the landlord, you must either:</p> <ul style="list-style-type: none"> a) Make full payment (if the eviction can be cured by payment), OR b) Settle the dispute, OR c) Move out.

Eviction Timeline, cont.

FROM START TO FINISH—IT CAN TAKE AS FEW AS 27 DAYS OR AS MANY AS 57 DAYS TO EVICT A TENANT!

Eviction Timeline	Landlord's Duties	Tenant's Duties
<p>APPEAL: Within 10 days after judgment, either party may appeal the judge's decision. The party appealing the judge's decision must pay an appeal bond, filing fees, and transcript fees to preserve the appeal and stop the Order of Eviction from being issued. Michigan Court Rule 4.201(N)</p>	<p>Decide quickly whether to appeal.</p>	<p>Decide quickly whether to appeal.</p>
<p>EVICTON: After 10 days, an Order of Eviction may be requested, issued, and executed. Michigan Court Rule 4.201(L)</p>	<p>Once the sheriff executes the Order of Eviction, you regain possession of your rental property.</p>	<p>If the reason for the eviction was nonpayment of rent, full payment of the rent, plus fees and costs awarded, may stop the issuance of the Order of Eviction. In most cases, partial payment will not stop the issuance of the Order.</p> <p>WARNING: Other reasons for eviction may not be cured by payment and you must move out before the sheriff executes the Order and moves things out for you.</p>

Repair and Maintenance

Maintenance problems range from things that are merely annoying to things that pose an immediate threat to health and safety. Both the landlord and the tenant have some responsibility for maintenance.

There are three types of maintenance problems:

1. **Emergencies** that require action within 24 hours and pose an immediate threat to the health and safety of the occupant—gas leak, flooding, defective furnace, or major roof damage;
2. **Major problems** that affect the quality of the residential environment, but not to the degree that the life of the occupant is immediately endangered—defective water heater, clogged drain, heating problem in part of a house; and
3. **Minor problems** that fall into the nuisance category—defective lighting, locks, faucets; household pests; and peeling paint and wallpaper.

A. RESPONSIBILITIES ARE SHARED WHEN MAINTAINING A RENTAL PROPERTY

Q1 What are the landlord's responsibilities?

Under Michigan statute, the landlord has a duty to keep the rental property and all common areas:

- a) Fit for the use intended by the parties; and
- b) In *reasonable repair* during the term of the lease, and to comply with the health and safety laws. (MCL 554.139)

Whether the landlord is required to repair a problem depends on two factors: the nature of the problem itself and whether the landlord's duty to repair has been modified— either by the tenant's conduct or by mutual agreement.

Unfortunately, the term "reasonable repair" is not defined by law—it is a question of fact and, if litigated, would be decided by the judge (or jury). However, a little common sense can go a long way here. While it would certainly be reasonable for a landlord to fix a clogged drain or defective water heater, it may not be reasonable to require the landlord to repair a minor chip in a countertop or peeling wallpaper.

The landlord is relieved of the duty to repair and comply, if the tenant's willful or irresponsible conduct or lack of conduct has caused the disrepair or violation of health or safety laws.

The landlord and the tenant may—by mutual agreement—modify these duties and only if the lease agreement has a current term of at least one year. In other words, if the lease term is less than one year, the landlord's duty cannot be modified.

Additionally, almost all courts recognize that implied in a residential lease agreement is the understanding that the rental property must be fit for habitation by humans. This means that the rental property must meet some minimum level or standard so as not to expose the occupants to unreasonable health risks. This implied duty cannot be modified or waived.

In addition to state law requirements, counties and municipalities are free to enact ordinances that require landlords to maintain rental property above minimum habitability standards. Most municipalities have a housing code protecting the health, safety, and welfare of their citizens. Some require that the rental property be inspected on a regular basis. Some even require licensing before a tenant can move in. Check with the local city or county government code enforcement office for additional standards imposed on landlords in maintaining their rental property.

Q2 What are the tenant's responsibilities?

Although responsibilities can be modified in certain instances—by mutual agreement between the landlord and tenant—a tenant is generally expected to:

1. Pay rent on time;
2. Keep the rental property in a safe and sanitary condition;
3. Promptly notify the landlord of maintenance problems;
4. Exterminate insects that appear if they were not there when the tenant moved in; and
5. Leave the rental property in good condition—reasonable wear and tear excepted.

B. IMPORTANT STEPS TO TAKE IN SOLVING THE PROBLEM(S)

Depending on the problem, requesting that a repair be made could be as simple as a quick phone call or as complicated as filing a lawsuit. Outlined next are the recommended steps to take to solve a repair and maintenance problem:

STEP 1: Notify the landlord and provide reasonable time for repair.

Keep it simple. The tenant must notify the landlord and explain the situation, the importance of the repair, and when he or she would like it done. A simple phone call usually works. Sometimes, however, the landlord requires that a specific form or repair order be filled out before proceeding. Read the lease and talk to whoever is in charge and figure out the best course to take. Keep copies of communications and note discussions. Municipalities have enacted housing codes—establishing minimum standards—to protect the rights of both the landlord and the tenant. Contact the local city hall for information. Remember: the landlord must be given reasonable time to make repairs.

STEP 2: Contact the building inspector and schedule an inspection.

In some municipalities, if the rental property is up to municipal code standards, the tenant will be responsible for paying the inspector's fee. If it is not up to code, the landlord pays the fee (and may also have to pay a re-inspection fee once the repair is made). Call the local inspector's office to find out how much the fee will be.

STEP 3: If the landlord has failed to make necessary repairs, either withhold the rent and deposit it into an escrow account OR pay for the repair and deduct the cost from the rent.

But remember: the landlord must first be provided with notice of the problem, and must then be given a reasonable amount of time to fix the problem.

Escrow Account: A bank account or other account held by a third party, generally established in the name of the tenant, into which whole or partial rent payments are deposited to show that the tenant was ready, willing, and able to pay the rent, but is withholding the rent until a certain problem is fixed that the landlord is legally responsible for fixing. Once the problem is taken care of, the escrowed rent amount will be released to the landlord.

■ **If the rent, or a portion of it, will be withheld** for the purpose of addressing the maintenance or repair issue(s), the tenant should send a letter—certified mail, return receipt requested—stating why the rent will be withheld, where it will be deposited (what financial institution), and that payment will be released when the maintenance or repair problem has been corrected.

■ **If the repair cost will be deducted from the rent**, call for three repair estimates. If it is a do-it-yourself job, shop and compare the cost of parts. Reputable repair companies will come to the house and provide a free written estimate. Send copies of the estimates to the landlord and state that the problem will be fixed unless the landlord agrees to do it by a certain date, and that the cost of repair will be paid from the rent withheld. Keep all receipts and note the dates of repair; send copies to the landlord, along with the remaining portion of the rent.

(Note: While the repair-and-deduct method may work well for small repairs, it may not work for large repairs.)

Q1 How much rent should be withheld?

The amount of rent withheld must reasonably relate to the cost of fixing the problem or to the amount of damage the tenant has incurred because of the landlord's failure to fix the problem. Withhold less for a clogged drain. Withhold more for an unusable toilet or shower. Only the most catastrophic problems will warrant withholding all of the rent. In any event, the amount withheld must be deposited into an escrow account.

Q2 What if the tenant lawfully withholds rent and the landlord starts the eviction process?

If the landlord has a run-in with the municipal code enforcement office OR if the landlord does not receive the rent, he or she may well decide to start the process for evicting the tenant. Nevertheless, Michigan law provides the tenant who was acting lawfully with certain defenses. The tenant, however, must be able to prove the facts giving rise to the defense:

1. *A claim of retaliatory eviction.* There exists a presumption of retaliation if the landlord started the eviction proceedings within 90 days of the tenant trying to enforce his or her rights under law (e.g., reporting health and safety code violations, exercising rights under the lease, filing a complaint against the landlord for a violation of the law).
2. *The landlord's breach of the warranty of habitability and duty to repair.* The tenant must show that the landlord was provided with notice of the problem and given a reasonable amount of time to fix the problem. The tenant must show that the landlord failed to make the necessary repairs.
3. *Rent was properly withheld and escrowed.* The tenant must be able to show that "but for the repair and maintenance required, he or she was ready, willing, and able to pay the rent."

The eviction process takes time—from start to finish, it takes as few as 27 days or as many as 57 days to evict a tenant. In the meantime, the landlord has mortgages, taxes, and bills to pay. Financial pressure may cause the landlord to negotiate. If the landlord will not negotiate, and if the tenant has carefully documented all communications about the needed repair and maintenance, the tenant may well succeed in the lawsuit for eviction.

Both the landlord and the tenant should remember that, in many disputes, the basic issues become obscured by personal disagreements that develop and continue to grow and fester. If an agreement cannot be reached, try mediation—either before a lawsuit is filed or after. Mediation might help to empower the parties to use their own problem-solving skills, to take responsibility, and to find solutions that best meet their needs, while strengthening the landlord-tenant relationship.

The MSU Law Rental Housing Clinic is a cooperative effort of Michigan State University, MSU College of Law and the City of East Lansing.

MSU Law Rental Housing Clinic

541 E. Grand River Avenue
P.O. Box 310
East Lansing, MI 48826
517/336-8088
517/336-8089 fax
www.msulawclinics.org



**MICHIGAN STATE
UNIVERSITY**

Timelines and repair/maintenance information is reprinted from *Tenants and Landlords: A Practical Guide*, prepared by the MSU Law Rental Housing Clinic for the Michigan Legislature.