

THE ESCROW PROCESS FOR HABITABILITY REPAIRS

What is Escrow?

- 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 is ready, willing, and able to pay the rent, but is withholding the rent until a certain problem, that the landlord is legally responsible for, is fixed. Once the problem is taken care of, the escrowed rent amount will be released to the landlord.

When to Escrow?

- Tenants can consider escrow for serious maintenance repairs that impact habitability and safety such as:
 - No heat in the winter
 - Mold (but now mildew)
 - Sewage in the basement/apartment
 - No hot water for an extended period of time

What's Required to Withhold Rent in Escrow?

- Tenant must notify landlord in writing that tenant is withholding rent because repair has not been made
- Tenant must not be responsible for damage requiring repair
- Tenant must be current on rent
- Tenants must provide paperwork to document the situation
 - Most courts will require supporting documents such as: documentation of repair request, lease, identification, pictures of the repair issue, and receipts for anything tenant has paid related to the repair issue

THE ESCROW PROCESS FOR HABITABILITY REPAIRS

How to Escrow?

1. Notify the landlord of the necessary repairs and provide reasonable time for repair
 - a. Tenants should document that they have contacted the landlord with the repair request and that the repair issues continue to persist in the unit
2. If possible, contact the local building inspector and schedule an inspection
 - a. Getting your unit inspected is recommended before escrowing rent, but it is not a necessary step in the process.
 - b. If the building is up to code, the tenant could be responsible for the cost of the inspection.
 - c. Having an inspector determine that repairs are necessary for the habitability of the apartment bolsters tenant's case for escrowing rent.
 - d. If the building has major habitability issues, the building inspector may condemn the building or pink tag it. This may mean the home is not safe to sleep in until repairs have been made.
3. If the landlord has failed to make necessary repairs, either withhold the rent and deposit it into an escrow account OR
4. Pay for the repair and deduct the cost from the rent
 - a. If the landlord fails to respond to repair requests in a reasonable time, tenant may contact contractors and get three estimates for the repair and let the landlord know they have done so.
 - b. Example: "If I don't hear back you by XXX, I'll have XXX contractor come out and do the work and then have the cost of the repairs deducted from my rent."