

*“This Place is Not Fit to Live In!”*

## Landlord’s Duty to Maintain Premises for the Tenant

### Warranty of Habitability

Under the Arizona Residential Landlord and Tenant Act (ARLTA), landlords have an obligation to comply with Arizona and local codes and regulations that affect health and safety. In addition, this obligation to provide a warranty of habitability provides remedies to a tenant if their landlord fails to comply with the regulations that affect health and safety.

### Landlord’s Duties to Maintain Premises

The landlord has an obligation to maintain fit premises for their tenants. This means that the landlord must:

- 1) Comply with the requirements set forth in applicable building codes materially affecting health and safety;
- 2) Make all necessary repairs to maintain the premises in a fit and habitable condition;
- 3) Keep all common areas of the premises in a clean and safe condition;
- 4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances supplied or required to be supplied by the landlord;
- 5) Provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the

rented dwelling unit and arrange for its removal;

- 6) Supply running water and reasonable amounts of hot water at all times, reasonable heat and reasonable air conditioning or cooling where such units are installed and offered, when required by seasonal weather conditions, unless the building where the dwelling is located is not required by law to be equipped for that purpose or the dwelling unit is so constructed that the heating, air conditioning, cooling or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection; and
- 7) Deliver constructive possession of the dwelling unit to the tenant.

In addition, the landlord also has a duty to provide the tenant with heat, air conditioning, cooling, water, hot water or essential services unless the landlord and tenant have an agreement to the contrary. This is known as the landlord’s duty to provide essential services.

### Exceptions to Landlord’s Duties to Maintain Fit Premises

A tenant will not be able to enforce a landlord’s duty to maintain fit premises if the landlord and tenant have entered into a written contract and the contract is entered into in good faith and not for the purpose of

the landlord evading their obligations and the work is not necessary to cure the landlord's duty to either:

- 1) Comply with the requirements set forth in applicable building codes materially affecting health and safety; or
- 2) Make all repairs as necessary to maintain the premises in a fit and habitable condition.

However, a landlord may contract with the tenant so that it is the tenant's responsibility to perform the following duties:

- 1) Provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the rented dwelling unit and arrange for their removal;
- 2) Supply running water and reasonable amounts of hot water at all times, reasonable heat and reasonable air conditioning or cooling where such units are installed and offered, when required by seasonal weather conditions, unless the building where the dwelling is located is not required by law to be equipped for that purpose or the dwelling unit is so constructed that the heating, air conditioning, cooling or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;
- 3) Make specified repairs; and
- 4) Perform maintenance tasks, alterations and remodeling.

**Tenant's Rights if Landlord Fails to Maintain Fit Premises**

If the landlord fails to maintain the premises or essential services (water, heat, cooling), the tenant is entitled to certain remedies which may include the right to terminate the lease, seek money damages or injunctive relief. However, a tenant's remedies depend on the landlord's actions discussed below.

**Tenant Remedies Scenario Chart**

Tenant's interested in determining their likely remedies against their landlord should reference the Tenant Remedies Scenario Chart provided below.

For example, if the landlord's actions were most similar to the events provided in Scenario #1 of the chart below, see Tenant Remedies to Scenario #1 immediately following the chart for likely remedies.

**Chart**

#1	#2	#3	#4
Broken toilet	Landscaping issues	Utility issues	Failure to provide water
Severe garbage issues	Roofing issues	Construction issues	Failure to provide A/C
Severe sanitation issues	Pool maintenance	Air quality issues	Failure to provide heat
Severe safety issues	Home repair	Safety issues	Failure to provide essential services

**Tenant Remedies to Scenario #1**

Where the landlord's failure to maintain fit premises materially affects the tenant's health and safety, the tenant is entitled to terminate the rental agreement after the tenant has given the landlord five (5) days written notice of the breach, unless the landlord remedies the breach within five (5) days of receipt of the notice. The tenant's written notice must contain certain facts including the facts and omissions that constitute the breach as well as set forth the termination of the rental agreement.

**IMPORTANT:** A tenant's failure to provide proper notice to the landlord may not sufficiently satisfy the notice requirements and prevent the tenant from being able to terminate their lease.

### **Tenant Remedies Scenario #2**

Where the landlord fails to maintain fit premises and the reasonable cost of complying with maintaining fit premises is less than three hundred dollars and no/cents (\$300.00) or an amount equal to one half (½) of the tenant's monthly rent, which ever is greater, the tenant may recover damages for the breach or may notify the landlord of their intention to correct the condition at the landlord's expense.

**CAUTION:** In order for a tenant to legally abate their rent (i.e. reduce their monthly rent payment) or charge the landlord for the cost to fix minor defects, the tenant must first notify the landlord of the minor defect in writing. If the landlord fails to comply within ten (10) days or as promptly thereafter as conditions require (in the case of an emergency), the tenant may proceed to have the work done by a licensed contractor.

Once the work has been completed and the tenant has submitted to the landlord an itemized statement of costs and a waiver of lien, the tenant may deduct from their rent the actual and reasonable cost of the work that does not exceed the greater of three hundred dollars and no/cents (\$300.00) or one half (½) of the month's rent. However, a landlord will not be responsible to pay for the expenses associated with fixing damages to the property, if the damages were caused by the deliberate or negligent acts or omissions of the tenant, a member of the tenant's family or other person on the premises with the tenant's consent.

**Rate Abatement Example:** Under Scenario #2, if a tenant pays nine hundred dollars and no/cents (\$900.00) a month in rent and the cost incurred by the tenant to fix a minor defect with the property totaled four hundred dollars and no/cents (\$400.00), the tenant's monthly rent payment could be reduced to five hundred dollars and no/cents (\$500.00) the following month.

### **Tenant Remedies to Scenario #3**

Where the landlord fails to deliver constructive possession to the tenant because the landlord has failed to maintain fit premises, the tenant must still pay rent. However, the tenant is entitled to terminate the rental agreement if the problem is not remedied by the landlord within five (5) days after the landlord's receipt of notice of the problem from the tenant. Further, the tenant is entitled to obtain injunctive relief for the landlord's noncompliance with the rental agreement.

### **Tenant Remedies to Scenario #4**

Absent an agreement to the contrary, if the landlord deliberately or negligently fails to supply running water, gas or electrical services, or both if applicable, and reasonable amounts of hot water, heat, air conditioning, cooling (where such units are installed and offered) or essential services, the tenant may give reasonable notice to the landlord specifying the landlord's failures (or breaches) and may do one of the following:

- 1) Procure reasonable amounts of hot water, running water, health and essential services during the period of the landlord's noncompliance and deduct their actual reasonable costs to procure hot water, essential services from their rent payment;

2) Procure utilities (e.g. electric) by paying the landlord's delinquent utility bill after giving the landlord written notice of the tenant's intent to do so and deduct from any rent owed to the landlord the actual cost of the payment the tenant made to restore utility services.

NOTE: A tenant may only seek this course of action if the tenant is unable to avoid a utility shutoff by arranging to have the utility services transferred from the landlord's name to the tenant's name; (e.g. single family detached home)

3) Recover damages (e.g. money) from the landlord based on the rental units decrease in rental value; or

**Rate Comparison Example:**

Consider two apartments (A and B) which are identical in all respects except apartment A has air conditioning while apartment B does not. Apartment A rents for one thousand dollars and no/cents (\$1,000.00) a month while apartment B rents for five hundred dollars and no/cents (\$500.00) a month because it does not provide air conditioning. If the air conditioning in apartment A goes out and the landlord has a duty to fix the air conditioning and does not, the tenant in Apartment A has the right to recover damages in the amount of roughly five hundred dollars and no/cents (\$500.00) because that is the rent for a similar apartment without air conditioning.

4) Move out and get reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant will not have to pay rent to the noncompliant landlord for the period of time the landlord is in noncompliance.

CAUTION: What happens if your temporary housing is more expensive?

When a tenant is forced to seek alternative housing because of a breach by the landlord, the displaced tenant is entitled to be reimbursed by their noncompliant landlord for an amount up to one hundred and twenty-five percent (125%) of the cost the tenant paid to the breaching landlord. Thus, if a tenant pays one thousand dollars and no/cents (\$1000.00) a month in rent and they are forced to move out due to a breach by their landlord, the tenant can stop paying rent to their noncompliant landlord, use the one thousand dollars and no/cents (\$1,000.00) rental payment to pay towards another property and, if the new rental unit costs up to one thousand two hundred fifty dollars and no/cents (\$1,250.00), the displaced tenant is entitled to be reimbursed from their noncompliant landlord for the extra two hundred and fifty dollars and no/cents (\$250.00) for each month until the noncompliant landlord has remedied the breach.

**About the Author**  
**Scott F. Burns, Esq.**

Scott F. Burns, Esq. is an Arizona attorney whose clientele include professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning and business consulting.

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[www.B-BLAW.com](http://www.B-BLAW.com)

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