

To Withhold Rent Or Not To Withhold Rent - That Is The Question

You have a problem at your apartment. The roof leaks nonstop. Bedbugs are eating you alive every night. The landlord barges into your apartment to see if you have a dog which your lease doesn't allow...

You talked to the landlord about your problem. Or you kept silent. Either way, the landlord hasn't fixed the problem. In fact, the landlord seems to be ignoring you.

Now you're upset. And you have a right to be! Now you've decided to withhold rent to get the landlord's attention so the problem gets fixed. And you have a right to withhold rent! But is rent withholding your best choice? Your safest choice? Your only choice? Will withholding all or some of your rent money solve your problem? Or could you be making an already bad situation even worse?

Two things are clear. 1. A tenant in NH has the right to withhold rent. But the problem must be serious and the tenant must correctly follow certain legal steps. 2. At the same time, a landlord has the right to try and evict that tenant for nonpayment of rent. [See 603 Legal Aid's article on this website called [A Question/Answer Walk Through the Eviction Process](#).

What if your landlord brings you to eviction court for withholding rent? A judge might first think you just didn't have the rent money. You'll have a lot of explaining to do for the judge to show your case is different. It's the judge who will have the final word on whether your decision to withhold rent was the right one. If a judge thinks you didn't follow the law, you're evicted.

How does a judge handle these rent withholding evictions? A judge must look to a specific law - NH's rent withholding law, or statute - called [RSA 540:13-d](#). This law is called Defenses to Violations of Fitness.

This is the law a judge will use to decide whether a tenant's decision to withhold rent was the right one.

You must give the judge facts that show you satisfied all the requirements in this rent withholding law, or statute. The judge will apply your facts to this statute and make a decision. If the judge decides you satisfied all the requirements in the statute, you will defeat the eviction. If the judge decides you have not satisfied all the requirements in the statute, you will lose the eviction. If you lose the eviction, your landlord does not have to accept your rent money anymore. Your landlord can refuse your money and have you removed from the apartment. Below are all the requirements in the rent withholding statute:

1. Your reason for withholding rent must be a serious violation of the state housing codes, or a serious violation of your town codes. Find the state codes at [RSA 48-A:14](#). Call your town code enforcement department to learn more about your local codes. You should ask your local code enforcement officer to inspect your problem before you withhold rent. This is not a requirement of the rent withholding statute, but it's a great idea. And please note - a state or local code violation isn't enough to satisfy the rent withholding statute. A judge must agree that the code violation is also serious enough to threaten your health or safety. To sum up: Your problem must be a state or town code violation. It must be serious enough to threaten your health or safety. If these conditions aren't met, you'll be evicted.
2. You must give the judge "clear and convincing evidence" that you gave the landlord notice of the code violation and a chance to fix it before you withheld rent. The surest way to satisfy this requirement is to write your landlord a letter that describes the code violation and asks the landlord to make repairs. Your letter does not have to mention rent withholding. Next, sign & date your letter. Then make a copy of the letter for your records before handing or mailing the original to your landlord. [Click the blue button below to create your letter.] A judge will want to read your copy of the letter at the hearing to see if you satisfied this requirement. VERY IMPORTANT: You must get this written notice to the landlord when you are current with your rent. This written notice must get to the landlord at least 14 days before your next rent payment is due. For example, your rent is due on the first of the month. You want to begin rent withholding on December 1st. The landlord must get your written notice no later than November 16th.

3. Your landlord failed to fix the code violation within 14 days of getting your written notice.
4. You, your family, or your guests did not cause the code violation.
5. Extreme weather conditions did not prevent the landlord from making the repairs.
6. You did not prevent the landlord from making repairs by refusing to let the landlord into your apartment.

You must have all the withheld rent at the eviction hearing. Your rent withholding defense will fail if you do not have all the money available at the hearing. If the judge accepts your rent withholding defense, the judge will order you to give the court all your withheld rent. You can stay in your apartment while the landlord does repairs.

The judge may postpone the hearing for 30 days to give the landlord more time to make the repairs. If you reach this point, you have won the eviction – whatever happens next, you should not be evicted. While waiting for the next hearing, you will be ordered to pay any future rent as it comes due.

At this next hearing the judge will ask if the repairs were made. If the landlord made the repairs, the judge will decide how much of the rent the landlord gets and how much to give back to you, as damages. The judge will then dismiss the eviction case against you. If the landlord didn't make the repairs, the judge should give all the rent back to you. And then the judge will dismiss the eviction case against you.

You've learned quite a bit about rent withholding. Now you know judges must follow a certain law when your defense is rent withholding. Now you know that law is RSA 540:13-d, or Defenses To Violations Of Fitness. You know you must have all the withheld rent with you at the hearing. And now you know that even if you have all the withheld rent with you at the hearing, there is NEVER a guarantee you will defeat the eviction. Not all rent withholding defenses are the same. Some tenants have strong rent withholding defenses. Some tenants have weak rent withholding defenses. But all tenants who withhold rent have one thing in common - they risk being evicted.

With all this information, is it necessary for you to call 603 Legal Aid if you still want to withhold rent? 603 Legal Aid thinks it is! Why? Let's go back to the specific problems mentioned at the very beginning of this article - 1. The roof that leaks nonstop; 2. The bedbug infestation; 3. The landlord barging into the apartment without any advance notice. Now

let's pretend you suffer with each of these problems. You call 603 Legal Aid for help.

1. 603 Legal Aid would advise that your leaky roof is a code violation. If you followed all the required steps in the rent withholding statute, you might convince the landlord to fix the roof. But 603 Legal Aid would point out that should a judge not see the leak as a serious threat to your health or safety, you could get evicted. 603 Legal Aid would ask how important your apartment is to you. Maybe you don't drive and your apartment is within walking distance of your work, your doctor, your bank? Maybe you have difficulty climbing stairs and this apartment is on the 1st floor? Perhaps it is within a fantastic school district where your children are doing well? 603 Legal Aid would point you to another option - stay current with rent if you can't afford to flirt with eviction. Call your local code enforcement department. Some code enforcement departments are quite aggressive. They may threaten your landlord with fines or loss of an occupancy permit if the roof isn't repaired. What if this makes your landlord mad, and you get served you with an eviction notice with a phony reason? You would have a defense - Defense To Retaliation. Look it up at RSA 540:13-a. This defense could result in you defeating such an eviction and winning damages from your landlord! Look it up at [RSA 540:14,II](#).
2. 603 Legal Aid would advise you that a bedbug infestation, like the leaky roof, is a code violation. And as with the roof, you could try rent withholding. But 603 Legal Aid would discuss another option, like bringing a special court action against your landlord. [See 603 Legal Aid's article on this website called ***Filing a Petition Under RSA 540-A (Need to add link)*** In this type of court action, the judge won't let the landlord say one word about eviction. The judge will only want to hear why the landlord hasn't attacked the awful bedbug problem. In this type of court action, you are on the offensive and your landlord is on the defensive. In this type of court action, a judge can order the landlord to take immediate action to remove the bedbugs. The judge can also order the landlord to pay you damages.
3. 603 Legal Aid would advise you that your landlord's unscheduled visits to search for an unauthorized pet are unlawful. But these visits do NOT represent a state code violation. They do NOT represent a local code violation either. 603 Legal Aid would caution you NOT to withhold your rent, because if you did, you would be evicted. Like with the bedbug problem, 603 Legal Aid would discuss with you a special court action you could bring against your landlord. [see 603 Legal Aid's article on this website

called ***Filing a Petition Under RSA 540-A (Need to add link)***.

Again, this special court action would put you on the offensive and your landlord on the defensive. In this type of court action, a judge can order the landlord to stop unlawfully barging into your home. The judge can also order the landlord to pay you damages.

Every situation is different. And as the above examples show, there's usually more than one way to attack a problem.

Did you already start withholding rent before you read this article? If so, maybe the information in this article has made you think that rent withholding isn't your best option. Maybe you'd like to pay the rent and then call 603 Legal Aid for more information about how to get your problem fixed, but you no longer have the withheld rent money. In that case, consider calling your town welfare office immediately and apply there for rental assistance. You can get the phone number to your town or city welfare office by calling NH Helpline at 2-1-1.

603 Legal Aid has an important SHOUT OUT to all Section 8 voucher holders and folks living in public housing apartments who are thinking of withholding rent. DON'T DO IT!!! At least talk first with someone at 603 Legal Aid or another legal aid office before you withhold some or all of your rent. Section 8 voucher holders and public housing tenants have other options and protections which are not available to private tenants. You've waited months, perhaps years, to get your voucher or public housing apartment. Don't risk your valuable and affordable housing by withholding rent and flirting with eviction. 603 Legal Aid can help you figure out other, safer solutions to your problem.

To withhold rent or not to withhold rent. If that is your question, please call 603 Legal Aid at 603-224-3333, or [submit an online application](#). The final decision on withholding rent will be yours to make. But talk to us first about this problem that has you so hot under the collar. We can help you figure out the answer that works best for you.

Click the button below to create a letter that tells your landlord about a problem in your home and asks them to fix it.

CREATE MY LETTER

Or if you are facing eviction because you withheld rent, you can click this button to fill out your Answer form to file with the court.

CREATE MY FORM

Try also reading...

- [Tenant's rights overview](#)
- [Do you smoke and live in public housing?](#)
- [Fair Housing Laws](#)
- [Rental Housing and Service Animals: ADA and FHAA- when does each apply?](#)
- [Saving Your Personal Property Left in Apartment](#)
- [Filing a Petition Under RSA 540-A](#)
- [Discovery in Landlord and Tenant Cases](#)
- [Bed Bugs in New Hampshire & The Law](#)

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