



SAN DIEGO
HOUSING
COMMISSION

Storm-Related Tenants' Legal Rights and Responsibilities

The San Diego Housing Commission (SDHC) does not provide legal advice. Please consult a legal professional of your choice for advice about your specific situation.

Information about legal and other resources is available at www.sdhc.org/tenantprotections or www.sdhc.org/storm.

Tenants in California have rights to rental homes that are suitable for people to live in, safe and sanitary—even during a natural disaster like an earthquake, heavy rain or flooding. This is true even if you only have a verbal rental contract. Due to a natural disaster, part or all of your home might be damaged or in a condition that is not suitable for people to live in.

Always first review the terms of your lease to see if it addresses the owner's and tenant's responsibilities during a natural disaster. Then if needed, seek legal assistance on understanding your rights and obligations for the payment of rent in a natural disaster.

The law that states your right to a habitable home is California Civil Code 1941

([https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=\[1941.\]](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=[1941.]))

The law that states your right to peace and quiet in your home is California Civil Code 1927

(https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=1927).

If you are forced to move out because of conditions that are not suitable for people to live in, known as an “uninhabitable dwelling,” that may be a “constructive eviction, without cause,” which may require benefits under the City of San Diego Residential Tenant Protections Ordinance. To view the ordinance, the City of San Diego Tenant Protection Guide and additional resources, visit www.sdhc.org/tenantprotections.

On the following pages are common questions and answers related to tenants' rights and responsibilities in connection with a natural disaster, including “uninhabitable dwellings.”

What is an uninhabitable dwelling?

A dwelling may be considered uninhabitable if it substantially lacks any of the following:

- Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- Plumbing facilities in good working order, including hot and cold running water furnished to appropriate fixtures, connected to a sewage disposal system.
- Gas facilities in good working order.
- Heating facilities maintained in good working order.
- An electric system, including lighting wiring, and equipment in good working order.
- Clean and sanitary buildings, grounds and appurtenances (for example, a garden or a detached garage) free from debris, filth, rubbish garbage, rodents and vermin.
- Adequate trash receptacles in good repair.
- Floors, stairways and railing in good repair.

In addition to these requirements, each rental unit must have all of the following:

- A working toilet, wash basin, and bathtub or shower. The toilet and bathtub or shower must be in a room, which is ventilated and allows privacy.
- A kitchen with a sink that cannot be made of an absorbent material such as wood.
- Natural lighting in every room through windows or skylights. Windows in each room must be able to open at least halfway for ventilation unless a fan provides mechanical ventilation.
- Safe fire or emergency exits leading to a street or hallway. Stairs, hallways, and exits must be kept litter-free. Storage areas, garages, and basements must be kept free of combustible materials.
- Operable deadbolt locks on the main entry doors of rental units, and operable locking or security devices on windows.
- Operable window security or locking devices for windows that are designed to be opened.
- Working smoke alarms in each dwelling intended for human habitation.

Apartment complexes also must have smoke detectors in common stairwells.

- An operable carbon monoxide device in each dwelling unit intended for human occupancy having a fossil fuel burning heater or appliance, fireplace or an attached garage.
- Required ventilating equipment that functions properly.

Does a tenant have to pay rent when the home is unusable because it was flooded?

If your home is damaged and unusable due to rain or floods, you may have a right to pay reduced rent based on the reduced value of the home. If the home is completely unusable for living or storing belongings, you may have a right to pay no rent at all. This right was established in the case *Green v. Superior Court*, 10 Cal.3d.616 (1974). However, if only part of your home is unusable, you probably still need to pay rent for the remaining, usable portion. For example, if one bedroom of your three-bedroom house is flooded and unusable, you might consider withholding one third of your rent until the room is usable again.

What about when utilities are out?

When your utilities are not working, whether or not you have to continue paying rent or can reduce the amount of rent you pay depends on the length of time the utilities aren't available. If a major utility like electricity, water or gas is unavailable for only a short period (one or two days), you will have a harder time justifying not paying rent. However, if you are not supplied with these utilities for a longer period—such as a whole week—you may have a stronger case to justify reduced rent, or that your landlord should pay back some of your rent. One way to think about this issue is to ask yourself, "What is a fair price for a home that doesn't have working utilities for as long as mine have been out?"

What about when the home is in a condition that can be lived in (habitable) but under an evacuation order?

If you have been ordered or advised to evacuate by police or sheriffs, but your home is still usable, you will probably still need to pay rent.

If a home is damaged by floods or rain and needs repairs before you can live in it again, can you hold onto your lease until repairs are completed or do you have to move out?

If your home is totally destroyed by floods or rain, your rental agreement is probably over. However, if your home is only damaged and can be repaired, you are still a tenant of that home. You can live there while repairs are being made and/or after they are completed.

Even if your home can be repaired, there are two main ways that you could be made to leave.

- Your landlord could ask you to leave to make major repairs or renovations. In some cases, they have to pay you one month's rent to leave.
- A building code enforcement agency (City or County) could order you to move out because your home is unsafe. In some cases, the landlord will have to pay you between two and four months' rent to leave.

If my landlord agrees to repair my home, do I have to pay rent during repairs?

In general, you do need to pay rent during repairs if you can live in the home while they repairs are being made. However, if the landlord is not making a prompt, good faith effort to complete the repairs, then your obligation to pay may change. If the repairs are being done slowly or in a way that unreasonably interferes with your normal use of your home, then the landlord might be violating your rights to a habitable home and to peace and quiet in your home.

If my landlord does not agree to repair my home, what are my options?

Your landlord must provide you with a habitable home that complies with state standards. If they do not agree to make necessary repairs, you can make those repairs yourself or hire someone to make them for you. You can then deduct the cost of those repairs from your next rent payment. Be aware that before you can take this action yourself, you have to first tell your landlord the repairs are needed and give them a reasonable period of time to complete them. If you wait 30 days before making repairs yourself, the law assumes you're being reasonable. If the necessary repairs are severe or threaten your health, you could act sooner.

The law that states your right to make repairs and deduct the cost from your rent is California Civil Code 1942 (https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=1942). Be aware, however, that California Civil Code 1942 does not allow you to claim reimbursement from the landlord for repairs worth more than one month's rent.

If you do give up your rental agreement, do you have a right to move back in once repairs are completed? What if you are ordered to move out by a government agency?

If you agree to move out of your home for good, you do not automatically have a right to move back in. If you are moving out and think you might want to move back in, you should ask the landlord to sign a written agreement with you that you have the option to reoccupy once repairs are finished. If you are told to move out by a code enforcement agency because your home is substandard, you may have a right to move back in once repairs are made.

If I have to move because my home is unsafe to live in, do I get any money to help me find a new home?

If your home is damaged by a flood or other disaster and a government code enforcement agency tells you that you have to move because your home is unsafe, you normally do not get any relocation money. However, if the agency decides that your landlord caused or contributed to the damage, you may have a right to between two and four months of rent money to help you move.

(Answer continues on the next page)

For example, if your home was in perfect condition and flooded simply because floodwaters were very high, you probably will not get relocation money from the landlord. On the other hand, if your home flooded because rain poured in through a broken window that the landlord knew had to be fixed, then you can probably claim relocation money.

Tenants maybe eligible for relocation costs pursuant to the City of San Diego's Tenant Protection Ordinance. In addition, under Health and Safety Code Section 34320.5, Housing Authorities may provide relocation assistance in excess of that required under other applicable law. This would generally apply to households with income under 80% of San Diego's Area Median Income, but funding sources could increase the amount. Information about San Diego's Area Median Income amounts is available at <https://sdhc.org/wp-content/uploads/2023/AMIIncomeLimits-2023.pdf>

When can I get my landlord to replace my belongings, pay for a hotel, or cover other costs due to a flood/rains?

When they accept your rent money, your landlord is essentially making a promise that your home complies with state standards. In general, most lease agreements make the landlord responsible for repairs. If the landlord fails to make normal repairs to the property, they have to pay for any damage to your personal belongings that come from the lack of repair. For example, if your landlord neglected to fix a roof that leaked onto and destroyed your clothes, they're probably responsible for replacing your clothes.

If there are long term impacts on the property from flooding/rain (such as mold, structural damage), what are my options for getting those fixed?

Even when there has been a disaster, your landlord still has to keep your home up to state standards. If there are problems with your home that need to be fixed, it's important for your landlord to know that the problems exist. Consider communicating with them in writing about the problem. If they don't make repairs in a reasonable time, you have the right to repair the problem yourself and take the cost from your next rent payment.

You can also report the problem to a local code enforcement agency, which will look at your home. If they find a violation, they will order the landlord to make repairs that bring the home up to state standards. However, if the home is too dangerous to live in or doesn't have the right permits, they may order you to move out. You may be paid relocation money in some cases.

If repairs are necessary to bring the home up to state standards, but you cannot make the repairs yourself, you might consider paying less rent until the landlord agrees to make repairs.

Can my landlord raise my rent during or after a disaster?

The state of California has laws against anyone raising prices as a way to take advantage of a disaster. When a state of emergency is declared in a county, it is then illegal for landlords to raise rent by more than 10%. This protection lasts at least 30 days after the state of emergency is declared. The law that prohibits these rent increases is California Penal Code 396 (https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=396).

If your home is damaged by a disaster, your landlord's right to raise rent might be limited. Remember that they have to provide you with a home that is up to state standards if they want to collect your rent. If your home is damaged and substandard, your landlord may not be able to collect rent at all, much less raise it.