

# Montana Landlords' Rights & Duties Handbook

## Foreword/Disclaimer:

The Montana Legal Services Association developed this handbook to help residential landlords understand and exercise their rights and responsibilities under the Montana Residential Landlord and Tenant Act. This handbook is intended to provide general guidance only. It is not a substitute for the advice of an attorney.

## What Is This?

This is a handbook for residential landlords to learn more about their rights and responsibilities under Montana law. As mentioned below, this handbook does not apply to all tenancies.



## Who Can Use This Handbook?

If you are a residential landlord who leases or rents a house, apartment, or mobile home to someone else, this handbook was designed for you.

**Note:** If your tenant owns a mobile home and only rents the lot from you, different laws apply and this handbook is not right for you. This handbook also does not cover:

- Commercial rentals (including renting space for a business);
- Rent-to-own agreements;
- Fraternity or sorority houses;

- Temporary stays at hotels or motels;
- Condominium owners or holders of a proprietary lease in a cooperative;
- Commercial or agricultural rental agreements;
- Halfway houses or other residences related to detention;
- Housing that is provided as part of a job;
- Public or private residences that provide tenants with services including medical, geriatric, counseling, religious, educational, or other similar service (including all housing provided by the Montana university system and other postsecondary institutions);
- Members of a social or fraternal organization who rent part of a building that is operated for the benefit of the organization; or
- Rental agreements giving hunting, fishing, or agricultural privileges with the rental (for example, hunting lodges).

This handbook does not cover all the rights and remedies available to landlords who participate in government assistance programs, such as public housing or Section 8 voucher programs. Montana law still applies to these types of tenancies, but those landlords and tenants also have extra protections under federal law that are not addressed in this handbook. For more information about public housing and subsidized housing, visit [www.MontanaLawHelp.org](http://www.MontanaLawHelp.org).

### **Where Can I Get More Information?**

The laws of Montana are called the Montana Code Annotated or “MCA.” This handbook is based on the Residential Landlord and Tenant Act of 1977, which you can find in Title 70, Chapter 24 of the Montana Code Annotated. An easier way to write this law is § 70-24-101, MCA. The symbol “§” means section. You can also write a law as Section 70-24-101, MCA. You can find the MCA at your local library or on the Montana State Law Library website at [www.lawlibrary.mt.gov](http://www.lawlibrary.mt.gov). Click on the “Laws” option near the top of the page on that website and then click on “MCA.”

## Warning:

This handbook is not designed to cover all possible situations where a landlord might need legal advice about a rental. The handbook is merely a guide to the general rights and responsibilities of a landlord. Please read the “Who Can Use This Handbook?” section of this handbook carefully to make sure this handbook applies to your situation. Please consult an attorney to ensure all the legal requirements have been met if you plan to:

- Terminate the rental agreement early;
- Sue your tenant; or
- Take other serious action based on what you have read in the Montana Code Annotated or this handbook.

It is a good idea to talk to a lawyer if you have **any** questions. If you end up in court and win, you may be able to get the tenant to pay your attorney’s fees. However, if you end up in court and lose, the court may make you pay for the tenant’s attorney’s fees. This may be true even if your rental agreement says something different. See Section 70-24-442, MCA.

**WARNING:** If you are filing a lawsuit against your tenant, you may be required to hire an attorney. Rule 2(a) of the Montana Justice and City Court Civil Rules allows a “person” to file a lawsuit without an attorney, but requires an agent or a business entity (such as a corporation or LLC) to file a lawsuit through an attorney.



## Where Can I Get Legal Help?

These organizations may be able to help you:

- **Montana Legal Services Association (MLSA)** gives free legal help to low-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.

- **The State Bar Lawyer Referral and Information Service (LRIS)** refers people to Montana lawyers who might be able to help. Call LRIS at 1-406-449-6577.
- **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at [www.lawlibrary.mt.gov](http://www.lawlibrary.mt.gov). Or you can contact a Reference Librarian at 1-406-444-3636 or by email at [mtlawlibrary@mt.gov](mailto:mtlawlibrary@mt.gov).

**Note:** There may be forms available to help you with rental concerns. You can find form letters and housing pleading forms that can help you with security deposit issues, eviction, and other topics. Visit [www.lawlibrary.mt.gov](http://www.lawlibrary.mt.gov) and click on the “Forms” option near the top of the page to find forms that can help you write letters or court documents. You can also visit [www.MontanaLawHelp.org](http://www.MontanaLawHelp.org) for more information and access to forms.

# Table of Contents

<b>Section One: Rights of a Landlord</b>	<b>7</b>
Right # 1: Right to have the tenant maintain the rental	7
What if the tenant does not maintain the rental?	8
What if I just want to make the repair that the tenant has not made and not end the rental agreement?	9
Right # 2: Right to enter the rental.	10
What if the tenant denies me access to the property?	11
Right # 3: Right to have keys to locks for the rental property	12
Right # 4: Right to have reasonable rules for the rental property	12
Right # 5: Right to not have the tenant move out of the rental before the end of the rental agreement.	13
What do I do if the tenant moves out early?	14
Can the tenant sublet the rental?	14
What do I do with personal property left at the rental after the tenant leaves?.	15
Right # 6: Right to have the tenant maintain the smoke detector in the rental	17
Right # 7: Right to have the tenant leave the rental	17
 <b>Section Two: What a Landlord Must Do</b>	 <b>19</b>
Duty # 1: Duty to provide the name of the person responsible.	19
Duty # 2: Duty to deliver possession when the rental agreement begins.	19
Duty # 3: Duty to maintain the rental property	20
Can I require the tenant to make repairs?	22
What happens if I do not make the repairs that are necessary?	23
Can the tenant end the rental agreement AND repair and deduct?.	24
Can the tenant go to court to force me to make repairs?	25

Duty # 4: Duty to provide “essential services” to the rental. . . . .	25
Duty # 5: Duty to allow tenants to join resident associations . . . . .	27
Duty # 6: Duty to provide a rental that has no serious fire or casualty damage. . . . .	27
Duty # 7: Duty to only enter the rental property in a lawful and reasonable way . . . . .	28
Duty # 8: Duty to not exclude a tenant from the rental or diminish services to the rental to force the tenant to move out. . . . .	29
Duty # 9: Duty to not retaliate against the tenant . . . . .	29

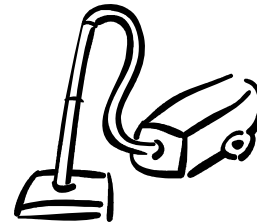
## Section One: Rights of a Landlord

### Right # 1 - Right to have the tenant maintain the rental.

- Section 70-24-321, MCA -

The tenant must:

- Obey any building and housing codes that deal with health and safety;
- Keep the rental reasonably clean and safe;
- Dispose of all waste in a clean and safe way;
- Keep all plumbing fixtures in the rental clean;
- Use facilities and appliances reasonably;
- Use all parts of the rental reasonably;
- Act (and make the tenant's guests act) in a way that does not disturb other tenants' peaceful enjoyment of their rentals and common areas;
- Use each room of the rental reasonably, considering the purpose for which each room is intended;
- Not (and not allow others to) destroy, deface, impair or remove the any part of the rental;



- ▶ If the tenant or the tenant's guests cause the destruction or damage of the rental, you may give the tenant a three day written notice. For the notice to be proper it must be in writing. This notice must specify the acts or omissions constituting the noncompliance. It must also state that the rental agreement will terminate on the 3rd day after the tenant receives the notice if the tenant fails to remedy the noncompliance within those three days. If the tenant adequately remedies the noncompliance within the three days, the rental agreement does not terminate.
- ▶ If the tenant does not remedy the noncompliance and does not move out of the rental at the end of the three days, you may file a



lawsuit in court for possession of the rental property. If you win in court, then the judge will order the tenant to vacate the property.

- Not criminally produce or manufacture dangerous drugs, operate a clandestine laboratory, or participate in gang-related activities on the rental property (and not allow others to do so);
  - ▶ If the tenant is arrested for or charged with one of these crimes, you may give the tenant a three day written notice of violating this duty and end the rental agreement at the end of the three days.
- Obtain your consent in writing before running any kind of business from the rental.
  - ▶ You cannot unreasonably withhold consent as long as the limited business or cottage industry is maintained within your reasonable rules, and within the covenants that apply to the subdivision, if any.

### **What if the tenant does not maintain the rental?**

If the tenant fails to maintain the rental you may provide the tenant with written notice of that violation and possibly end the rental agreement. The number of days on the notice depends on the type of maintenance that the tenant fails to perform. For destruction of the rental or being charged or arrested with the



crimes given in the list above, you can give the tenant a three day notice. For all of the other maintenance duties in the above list, you are required to give the tenant at least 14 days' notice to fix the violation or to move out. For the notice to be proper it must be in writing. The notice must explain what duty the tenant

has violated. The notice must also state that the rental agreement will end 14 days after the tenant gets the notice if the tenant does not fix the violation. If the tenant does not move out or fix the violation at the end of the 14 days, you may file a lawsuit in court for possession of the rental property. The tenant will have

the opportunity to appear in court to fight the eviction. If you win in court, the judge will order the tenant's eviction.

If you sent the tenant proper written notice of a violation and the tenant commits the same violation within six months of receiving that first notice, you do not have to allow the tenant to fix the violation. You may give the tenant written notice that the rental agreement will end five days after the tenant receives the new notice. For the notice to be proper it must be in writing and it must explain:

- What duty the tenant has violated;
- That the tenant has been given written notice of violating this duty within the last six months; and
- That the rental agreement will end five days after the tenant gets the notice.

If the tenant does not move out at the end of the five days, you may file a lawsuit in court for possession of the rental property. The tenant will have the opportunity to appear in court to fight the eviction. If you win in court, the judge will order the tenant's eviction.

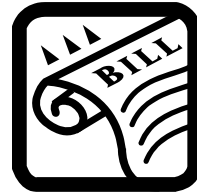
### **What if I just want to make the repair that the tenant has not made and not end the rental agreement?**

- Section 70-24-425, MCA -

You may enter the rental and make the repair. You have the right to enter and complete that duty for the tenant if the tenant fails to do one of the maintenance duties described above and:

- The tenant's failure affects someone's health and safety; and
- The condition can be remedied by repair, replacement of a damaged item, or cleaning.

You must provide the tenant with proper written notice of the duty that the tenant is not performing. You must also inform the tenant that she has 14 days after receiving the notice to perform the duty. [**Note:** If it is an emergency, you do not have to give the tenant the 14-day notice, and you can ask the tenant to perform the duty immediately.] If the tenant does not perform the duty within the 14 days (or immediately if it is an emergency), you may enter and get the work done in a workmanlike manner. You can then bill the tenant for the actual and reasonable cost of the work. You can give the tenant an itemized bill that will be due on the next date that rent is due. The amount of the bill will be considered part of the tenant's rent for that month.



## **Right #2 - Right to enter the rental.**

- Sections 70-24-312 and -424, MCA -

You have the right to go onto the rental property when you have a good reason, such as to:

- Inspect the rental;
- Make repairs, decorations or alterations, or improvements;
- Supply necessary or agreed services; or
- Show the rental to possible purchasers, mortgagees, tenants, workmen, or contractors.

Unless there is an emergency, you must give the tenant at least 24 hours' notice of your plan to enter the rental and you can only enter the rental at reasonable times. In an emergency, you can enter the rental without the tenant's consent.

You cannot abuse the right of access to the rental or use it to harass the tenant. See Duty # 7 on page 28 for more information.

## What if the tenant denies me access to the property?



If the tenant unreasonably denies you lawful access to the rental property, you must first give the tenant proper written notice that the tenant denied you reasonable access to the rental property.

For the notice to be proper it must be in writing and it must explain that the tenant unreasonably denied you access to the rental property. The notice must also state that the rental agreement will end 14 days after the tenant gets the notice if the tenant does not provide reasonable access to you.

If the tenant does not provide access, you can choose to either:

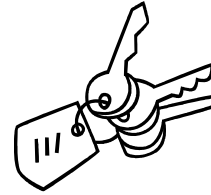
- File a lawsuit in court to ask the court to make the tenant allow access to the rental property; or
- End the rental agreement.

Regardless of which remedy you choose, you can also ask the court to make the tenant pay you for any damages you suffered because the tenant unreasonably denied you access to the rental property.

If you decide to end the rental agreement and the tenant does not move out at the end of the 14 days, you may file a lawsuit in court for possession of the rental property. If you win in court, the judge will order the tenant's eviction. Under some circumstances, the court also has the authority to order the tenant to pay you a penalty for staying beyond the date in the notice you sent the tenant, and to pay your attorney fees. If the tenant wins in court, you may have to pay the tenant's attorney fees. See Right #7 on page 17 for more information.

### **Right # 3 - Right to have keys to locks for the rental property.**

- Section 70-24-312 and -424(2), MCA -



The tenant may not remove any locks or replace or add a different lock without your written permission. If the tenant does remove, replace or add locks, the tenant must provide you with a key so your right of access is preserved.

If the tenant adds new locks and does not give you keys to the new locks, you must first give the tenant proper written notice of changing the locks without providing keys to you. For the notice to be proper it must be in writing and it must explain that the tenant changed the locks without providing keys to you. The notice must also state that the rental agreement will end 14 days after the tenant gets the notice if the tenant does not provide the new lock keys to you.

If the tenant does not provide the keys to you, you can choose to either:

- File a lawsuit in court to ask the court to make the tenant give you the keys; or
- End the rental agreement.

If you decide to end the rental agreement and the tenant does not move out at the end of the 14 days, you may file a lawsuit in court for possession of the rental property. If you win in court, the judge will order the tenant's eviction.

### **Right # 4 - Right to have reasonable rules for the rental property.**

- Section 70-24-311, MCA -

You may adopt rules about the tenant's use of the rental property. A rule is enforceable against the tenant only if:

- The rule is in writing;

- The rule is given to the tenant and any other tenant on the rental property and to each new tenant on the rental property upon arrival;
- The purpose of the rule is to:
  - ▶ Promote the convenience, safety, or welfare of people living on the rental property;
  - ▶ Preserve your property from abusive use; or
  - ▶ Make access to services and facilities fair for all tenants.
- The rule is reasonably related to the purpose for which you adopted it;
- The rule applies to everyone living in the rental property in a fair way;
- The rule is clearly worded so that the tenant is fairly informed of what the tenant must or must not do to follow the rule;
- The rule is not for the purpose of allowing you to avoid your duties as a landlord; and
- The tenant has notice of the rule at the time that the tenant enters into the rental agreement or when the rule is first in effect.



If the rule is adopted after the tenant enters into a rental agreement and the rule makes a major change in the rental agreement, the rule is not valid until:

- Seven days after you give the tenant written notice, if the rental is week-to-week; or
- 30 days after you give the tenant written notice, if the rental is month-to-month.

### **Right # 5 - Right to not have the tenant move out of the rental before the end of the rental agreement.**

- Section 70-24-426(3), MCA -



The rental agreement is a contract between you and the tenant. Basically, the tenant is agreeing to pay you so much a month in exchange for you letting the tenant live in the

rental. You must uphold your end of the bargain, and the tenant must uphold the tenant's end. Under some circumstances, if the tenant moves out or stops paying rent before the end of the rental agreement, the tenant may be responsible for the rent until the end date of the rental agreement. This may be true even if the tenant does not live there anymore.

### **What do I do if the tenant moves out early?**

If the tenant moves out early from the rental, you must try to re-rent the rental at a fair price. If you can re-rent the rental before the end date of the rental agreement, the rental agreement ends on the day the rental agreement with the new tenant begins. The old tenant is responsible for the rent from the time the old tenant moved out until the time the new tenant's rental agreement begins. If you do not try to re-rent the rental at a fair price after a tenant moves out early, then the rental agreement ends on the day you first had notice that the tenant left the rental. Then, the tenant is only responsible for the rent for the time that the tenant lived in the rental.



You can also just decide to accept that the tenant has left the rental and end the rental agreement on the day you first noticed that the tenant has left the rental.

### **Can the tenant sublet the rental?**

- Section 70-24-305, MCA -



If the tenant moves out during the term of the rental agreement and wants to sublet the rental, the tenant must get your written permission. If the tenant sublets the rental without your written permission, the tenant is violating the tenant's duties under the rental agreement. You can take the tenant to court for violating the agreement.

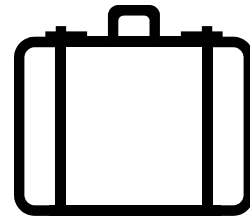
## What do I do with personal property left at the rental after the tenant leaves?

- Section 70-24-430, MCA -

You can remove the tenant's property from the rental if:

- You reasonably believe that the tenant has abandoned personal property in the rental; and
- It has been at least five days since the occurrence of events that led you to believe that the tenant has abandoned the property.

The law requires you to do certain things if you remove the tenant's property. When you remove the property from the rental, you must inventory and store all of the property somewhere safe. You may bill the tenant for storage costs, labor to move the belongings, and other costs involved with moving the property to storage.



After seizing the tenant's property, you must:

- Make a reasonable attempt to notify the tenant in writing that you have the tenant's property and that the tenant must come and get it;
- Notify law enforcement that you have the property (and it is a good idea to give this notice in writing and keep a copy for yourself, so you will have proof of the notice if the tenant ever contests it);
- Try to find out if someone else has an ownership interest in the property; and
- Send a notice by certified mail to the tenant's last-known address. The notice must say that you will dispose of the property if not removed within a specific time. That specific time cannot be less than 15 days after you mailed the notice to the tenant. You can require the tenant to pay the

reasonable or actual costs of removal and storage of the tenant's property before you release the property to the tenant, but you cannot require the tenant to pay whatever rent the tenant may have left owing.

If the tenant responds in writing to your notice on or before the deadline you gave the tenant in your notice, and says that the tenant will come get the tenant's belongings, you must wait for seven days after you receive the tenant's response. If the tenant does not come get the tenant's belongings within those seven days, then the law allows you to presume that the property is abandoned, and you can dispose of it.

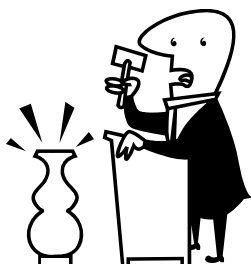
After you follow the steps above, if the tenant does not pick up the tenant's belongings, then you can dispose of the tenant's property by:

- Selling all or part of the property at a public or private sale; or
- Destroying or disposing of all or part of the property. You can only do this if you reasonably believe that the value of the property is so low that the cost of storage or sale would be larger than the value of the property.



You are not responsible for any loss or damage to the tenant's property because of the storage unless you cause the loss or damage on purpose or through your carelessness.

If you follow the procedure above and have the public or private sale, you may subtract from the amount raised by the sale the reasonable costs of:



- Notice,
- Storage,
- Labor,
- Sale, and

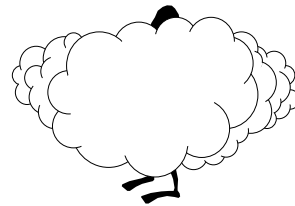
- Any rent or damages the tenant still owes on the premises.

If any money from the sale is left after these deductions, you must give the money to the tenant along with an itemized accounting of the sales proceeds and the deductions you made. If you cannot find the tenant, you must send the remaining money to the county treasurer where the sale happened. From that point the tenant still has three years to claim the money from the county treasurer. If the tenant does not claim the money within three years, the money goes to the general fund of the county.

### **Right # 6 - Right to have the tenant maintain the smoke detector in the rental.**

- Section 70-24-303(1)(h), MCA -

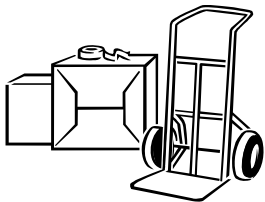
You must provide the tenant with an approved smoke detector that works. The tenant must maintain the smoke detector in the rental in good working order while the tenant is renting the rental.



### **Right # 7 - Right to have the tenant leave the rental.**

- Section 70-24-429, MCA -

The tenant has a responsibility to leave the rental once the rental agreement ends, unless you and the tenant have agreed otherwise. You can legally end the rental agreement if you give the tenant proper notice. If you have a written rental agreement, the tenant must leave the rental at the end of the term of the rental agreement unless you and the tenant have agreed otherwise. If the tenant does not move out of the rental once the rental agreement has been legally ended, you can file a lawsuit against the tenant in court to get possession of the rental from the tenant.

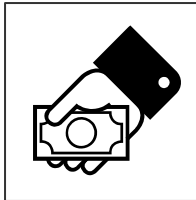


When you file an eviction lawsuit against your tenant, the court could order the tenant to pay a penalty for staying beyond the date in the notice you gave the tenant and to pay your attorney fees. If the court finds that the tenant remained in the rental after you properly ended the rental agreement and that the tenant did so on purpose and not for a good reason, the court may make the tenant pay you the amount of three months' rent or three times the damages that you suffered because the tenant stayed in the rental, whichever amount is larger. If you hire an attorney, the court also may order the tenant to pay your attorney fees. If the tenant wins in court, you may have to pay the tenant's attorney fees.

## Section Two: What a Landlord Must Do

### Duty # 1 – Duty to provide the name of the person responsible.

- Section 70-24-301, MCA -



You must give the tenant the name and address of the manager of the rental property and the name and address of the owner of the rental property (or the person the owner has designated to accept notices and demands from tenants). You must give this information in writing before or when the tenant starts renting the rental property. You must also update this information in writing when the information changes.

### Duty # 2 – Duty to deliver possession when the rental agreement begins.

- Section 70-24-302 and -405, MCA -

You have the duty to provide possession of the rental to the tenant as soon as the rental agreement starts. It is your responsibility to make the rental physically available to the tenant at that time. If someone else remains in possession of the rental when the new rental agreement is supposed to start, it is your responsibility to have that person move or bring a lawsuit against that person for wrongful possession.



A tenant does not have to start paying you rent until the tenant actually gets possession of the rental. Whenever you accept rent or deposit from someone who intends to occupy the rental, you have established a landlord-tenant relationship under the law, even if you did not consider yourself that person's landlord.

If you do not make sure that the tenant can take possession of the rental, the tenant has two options:

Montana Landlords' Rights and Duties Handbook, page 19 of 31, including instructions and handbook.

© 2010 Montana Supreme Court Commission on Self-Represented Litigants and Montana Legal

Services Association. Use of this form is restricted to not-for-profit purposes.

Last updated 02/26/2010

- 1) Give you five days' written notice that the tenant is ending the rental agreement. Then you must return all prepaid rent and security deposits that the tenant paid;

**OR**

- 2) Demand that you make sure that the tenant can take possession of the rental. The tenant can also file a lawsuit against you or the person that is wrongfully in possession of the rental. If the tenant wins the lawsuit, the court can award the tenant money for any actual damage that the tenant suffered by not having possession of the rental. If the court finds that your actions were on purpose or not in good faith, the court may make you pay up to three months' rent or three times the actual damages the tenant suffered because the tenant could not take possession of the rental as promised, whichever amount is larger.

### **Duty # 3 – Duty to maintain the rental property.**

- Section 70-24-303, MCA -

The law requires you to maintain the rental property. Specifically, you must:

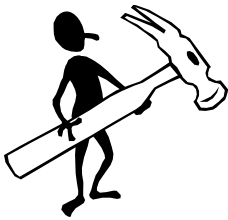
- Make sure the rental property meets all the applicable building and housing codes that affect health and safety that were in effect at the time the housing was built. This is only for housing completed after July 1, 1977;
- Not allow any tenant or other person to act on the rental property in a way that creates a reasonable chance that the rental property may be damaged or destroyed or that neighboring tenants may be injured by any of these crimes:
  - ▶ Criminal production or manufacture of dangerous drugs;
  - ▶ Operation of an unlawful clandestine laboratory; or
  - ▶ Gang-related activities.



- Make repairs and do whatever is necessary to put and keep the rental property in a fit and habitable condition;
- Maintain all common areas in a clean and safe condition;
- Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances. This includes elevators that are supplied or required to be supplied by you;
- Provide and maintain appropriate containers and conveniences for the removal of ashes, garbage, rubbish, and other household waste and arrange for their removal, unless otherwise provided in the rental agreement;
  - ▶ The landlord and tenant of a one-, two-, or three-family rental may agree in writing that the tenant perform this duty.
- Supply running water and reasonable amounts of hot water at all times;
  - ▶ The landlord and tenant of a one-, two-, or three-family rental may agree in writing that the tenant perform this duty.
- Supply reasonable heat between October 1 and May 1; and
  - ▶ The landlord and tenant of a one-, two-, or three-family rental may agree in writing that the tenant perform this duty.
- Install an approved carbon monoxide detector and approved smoke detector in each rental under your control.
  - ▶ At the start of the rental agreement, you must make sure that the carbon monoxide detector and smoke detector in the rental are in good working order.
  - ▶ An approved carbon monoxide detector is a device that detects the presences of carbon monoxide and emits an alarm at elevated levels of carbon monoxide.
  - ▶ An approved smoke detector is a device that detects visible or invisible particles or combustion.

- ▶ The carbon monoxide detector and smoke detector must also have a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.
- ▶ You are not liable for damages caused by the failure of the carbon monoxide detector or smoke detector.

### Can I require the tenant to make repairs?



The general rule is that you cannot require a tenant to make repairs. The law allows you and the tenant to agree that the tenant will make certain repairs, or do certain maintenance tasks or remodeling only if:

- The rental is part of a one-, two-, or three-family rental property;
- The agreement is:
  - ▶ In writing;
  - ▶ Signed by you and the tenant;
  - ▶ A separate document from the rental agreement; and, specifically states the tasks for which the tenant is responsible;
- The agreement is supported by adequate consideration, which means that both parties must receive some benefit from the agreement.
  - ▶ For example, if the tenant agrees to fix the leaky roof, then the agreement would specify what benefit the tenant will receive for doing that task which would normally be the landlord's responsibility.

The law also requires that:

- The agreement be entered into in good faith with honest intentions and not just because you are trying to avoid your responsibilities under the law;

- The rental already be in compliance with the building and housing codes that affect health and safety, where construction of the rental was completed after July 1, 1977; and
- The agreement does not diminish your obligation to other tenants in the rental premises.

### What happens if I do not make the repairs that are necessary?

- Section 70-24-406, MCA -

If the maintenance problem affects the tenant's health and safety, the tenant can choose between the following two remedies:



- 1) *End the Rental Agreement If You Do Not Fix the Problem.* The tenant can deliver a written notice to you of the problem.

The written notice must include:

- ▶ A statement telling you what repairs or maintenance you are required to perform but are not performing; and,
- ▶ A statement that if you do not have the problem fixed within 14 days, the rental will end on a date at least 30 days after the tenant gives you the notice. If the problem has created an emergency, then the tenant only has to give you 3 working days to fix the problem. For emergency conditions, the tenant may tell you in the notice that the tenant will end the rental agreement immediately if the problem is not fixed in 3 days.

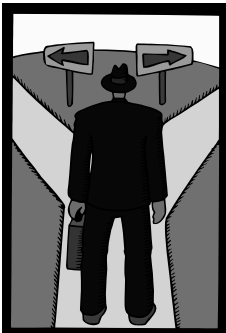
If the tenant has given you a written notice of the same problem within the last six months, the tenant does not have to give you another chance to fix the problem. The tenant can end the rental agreement by giving written notice that states that the tenant has provided written notice on this same problem within the last six months and that the tenant is ending the rental agreement at the end of 14 days.

**Important:** If the tenant, a member of the tenant's family, or any other person on the rental with the tenant's consent caused the maintenance problem, the tenant may not end the rental agreement because of that problem.

**OR**

2) *Repair and Deduct.* First, the tenant must give you written notice of the problem and give you a reasonable amount of time to repair the problem. Then, if you do not make the repair and the cost of repairs for the problem is less than what the tenant pays for one month's rent, the tenant can make the repairs and subtract the cost of the repairs from the rent that the tenant pays you in the next month. The law does not specifically say how much time is "reasonable" to make a repair. It would depend upon the kind of repair needed. If the problem has created an emergency and you have not made the repairs within a reasonable time, the tenant can have the emergency repairs done as long as they do not cost more than one month's rent. The tenant must have the emergency repairs done by someone qualified to make the repairs. For example, if the rental's heater breaks in the winter and you do not fix it quickly, the tenant can have a qualified repairman fix it as long as the repair will not cost more than one month's rent. Then, the tenant can deduct the cost of the repair from the tenant's next month's rent.

### **Can the tenant end the rental agreement AND repair and deduct?**



The tenant must decide to either end the rental agreement OR repair and deduct the amount of the repair from the rent. The tenant cannot do both. Regardless of which option the tenant chooses, the tenant can also file a lawsuit asking the court to

award the tenant any actual damages the tenant suffered and to force you to make the repairs.

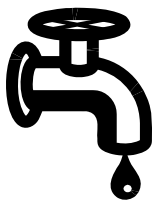
### **Can the tenant go to court to force me to make repairs?**

Yes. This may be a good option for the tenant if the tenant wants to stay in the rental but the costs of repairs are more than one month's rent. Even if the repairs cost less than one month's rent, the tenant may choose to take you to court to force you to make you make the repairs, rather than choosing to make the repairs himself or herself.



### **Duty # 4 – Duty to provide “essential services” to the rental.**

- Section 70-24-408, MCA -



The tenant has the right to have heat, running water, hot water, electric, gas and other essential services in the rental. You are required to make sure that the tenant has access these essential services in the rental.

If you fail to provide an essential service to the rental, the tenant can provide you with written notice that the tenant no longer has access to a specific essential service. After giving you written notice, the tenant must allow you a reasonable amount of time to fix the problem that is keeping the tenant from having essential services in the rental. The law does not specify what amount of time is “reasonable.” If you do not fix the problem within a reasonable amount of time, the tenant has several remedies to choose from:

- 1) *Repair and Deduct.* If obtaining the essential service costs less than one month's rent, the tenant can buy reasonable amounts of heat, hot water, running water, electricity, gas, or other essential service for the time that

you do not fix the problem. The tenant can then deduct the amount the tenant spent getting the essential service from the tenant's next month's rent before paying you;

**OR**

- 2) *Alternate Housing*. The tenant can decide to live somewhere else until you fix the problem. If the tenant moves somewhere else while you fix the problem, the tenant *will not* have to pay the rent during the time that the tenant does not live in the rental.

**OR**

- 3) *Diminution in Value*. The tenant can continue to live in the rental without the essential services and file a lawsuit against you. In the lawsuit, the tenant can ask the court to determine what the value of the rental is without whatever essential service is missing from the rental. The value determined by the court will be the value that the tenant will be expected to pay for the rental for the time that the rental did not have the essential service and you knew that the rental did not have the essential service.

**Note:** If the tenant, a member of the tenant's family, or any other person on the rental with the tenant's consent caused the lack of essential services the tenant does not have the right to any of these remedies for loss of essential services.

**Note:** The tenant must choose between the remedies offered for loss of essential services and the remedies for your failure to provide maintenance of the rental property. The tenant cannot use both.

**Duty # 5 – Duty to allow tenants to join resident associations.**

- Section 70-24-314, MCA -



The tenant has the right to become a member of a resident association. A resident association has the right to elect officers of the association at a meeting where a majority of the members are present. All residents have a right to attend association meetings.

**Duty # 6 – Duty to provide a rental that has no serious fire or casualty damage.**

- Section 70-24-409, MCA -



The tenant has the right to live in a rental that has no serious fire or casualty damage. If the rental or the rental property is seriously damaged or destroyed by fire or casualty to an extent that the tenant's enjoyment of the rental is substantially impaired, the tenant can either:

- 1) Immediately move out of the rental and give you written notice within 14 days that the tenant moved out and is ending the rental agreement. If the tenant chooses this option, the rental agreement will have ended on the date the tenant moved out of the rental. You must return the tenant's security deposits minus any lawful deductions and any unused rent that the tenant has paid;

**OR**

- 2) Continue living in the rental but move out of the parts of the rental that can no longer be used because of the damage. This is only an option if it is

still lawful to live in the rental with the damage. If the tenant chooses this option, you must reduce the tenant's rent to reflect the lower value of the rental.

**Note** – The tenant cannot use these options if the fire or casualty damage is caused by the tenant, the tenant's family or the tenant's guests.

**Duty # 7 – Duty to only enter the rental property in a lawful and reasonable way.**

- Section 70-24-410, MCA -

You have the right to go onto the rental property when you have a good reason, as described above in Right #2. You cannot:



- Unlawfully enter the rental; or
- Lawfully enter (or make demands to enter) the rental:
  - ▶ In an unreasonable way; or
  - ▶ Repeatedly, unreasonably harassing the tenant.

If you abuse your right of entry, the tenant can either:

- File a lawsuit against you in court and ask the court to stop you from continuing this behavior; or
- End the rental agreement.

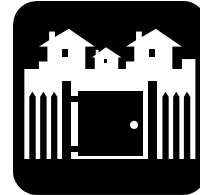
Regardless of which remedy the tenant chooses, the tenant can also ask the court for any damages the tenant suffered because of your actions.

**Duty # 8 – Duty to not exclude a tenant from the rental or diminish services to the rental in an effort to force the tenant to move out.**

- Section 70-24-411 and -428, MCA -

You cannot:

- Unlawfully remove or exclude the tenant from the rental; or
- Keep the heat, running water, hot water, electricity, gas or other essential service from the rental.



Even if the tenant is behind on the rent, you cannot lawfully change the tenant's locks or otherwise bar the tenant's entry or shut off the tenant's utilities. If you do so, the tenant can file a lawsuit against you. If the tenant wins the lawsuit, the court can order you to pay the tenant up to three months' rent or three times the amount of the actual damages the tenant suffered, whichever is larger.

If you want to force a tenant to vacate, you must follow the usual steps for an eviction, including:

- Sending tenant a written notice to vacate in the number of days specified in the law; or,
- If the tenant doesn't vacate by the end of the notice period, filing a lawsuit for possession in court.

**Duty # 9 – Duty to not retaliate against the tenant.**

- Section 70-24-431, MCA -

The law makes it illegal for you to retaliate against a tenant in any way for requesting repairs or for joining a tenant's union. You cannot punish or retaliate against the tenant for:

- Complaining of a health or safety violation to a government agency that enforces the codes;

Montana Landlords' Rights and Duties Handbook, page 29 of 31, including instructions and handbook.

© 2010 Montana Supreme Court Commission on Self-Represented Litigants and Montana Legal

Services Association. Use of this form is restricted to not-for-profit purposes.

Last updated 02/26/2010

- Complaining in writing to you about your failure to maintain the rental or to make necessary repairs; or
- Becoming a member of or organizing a tenant's union or similar organization.

If the tenant takes one of the above actions, you cannot retaliate against the tenant by increasing the rent, decreasing services to the rental, or filing or threatening to file a lawsuit against the tenant in court for eviction. If you do any of these actions within six months after the tenant has done one of the three things listed above, the court will assume that you are retaliating against the tenant. The court will allow you the opportunity to prove that there was no retaliation.



- If you violate the anti-retaliation law, the tenant can choose whether to end the rental agreement and move out, or to continue living in the rental despite your retaliation. In either case, the tenant can file a lawsuit against you and ask the court to make you pay the tenant up to three times the monthly rent or three times the tenant's actual damages because of your retaliation.

The tenant can also raise retaliation as a defense in any eviction lawsuit you may file a lawsuit against the tenant, claiming that you cannot evict the tenant because you are only seeking the tenant's eviction because of the tenant's protected actions as described above.

The tenant cannot use these anti-retaliation remedies if:

- The tenant or the tenant's family or guests caused the violation of the building or housing code;
- The tenant is behind in rent; or

- To comply with the building and housing codes, you must alter, remodel or demolish the rental in a way that would not allow the tenant to live there, so you have no choice but to ask the tenant to move.