

A.: At common law, the landlord had no general duty to repair or maintain the rented residential premises, except the duties with regard to conditions that might cause personal injury. The landlord may, of course, covenant to repair or maintain the premises, and the breach of such a covenant may give the tenant a right to rescind the lease, or a right to damages. It is important to note that a covenant to repair is generally considered to be independent of the covenant to pay rent. As set forth below, however, the landlord's common-law duty to repair residential property has been modified by statute in California.

Civil Code sections 1941 and 1942 reflect the policy of the state of California that landlords have the duty to maintain the leased residential premises in habitable condition and that tenants have the right, after notice to the landlord, to repair dilapidations and deduct the cost of repairs to the extent of one-month's rent. Civil Code section 1941 provides that the lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupancy, and repair all subsequent dilapidations thereof which render it "untenantable," except that the tenant must repair all deteriorations to the premises caused by want of ordinary care as provided by Civil Code section 1929.

In addition, Civil Code section 1942 provides that if the landlord fails to repair dilapidations rendering the premises "untenantable" within a reasonable time after written or oral notice to the landlord or his or her agent, the tenant may make the repairs himself or herself when the cost of such repairs does not require an expenditure of more than one-month's rent when due and deduct the expenses from the rent when due. This remedy is not available to the tenant more than twice in any 12-month period. In the alternative, the tenant may vacate the premises, in which case the tenant is discharged from further payment of rent or performance of other conditions as of the date of vacating the premises. For purposes of section 1942, if a tenant acts to repair and deduct after the thirteenth day following notice, he or she is presumed to have acted after a reasonable time. This presumption is a rebuttable presumption affecting the burden of providing evidence and shall not be construed to prevent a tenant from repairing and deducting after a shorter notice if all the circumstances require shorter notice.

A dwelling is deemed "untenantable" for purposes of Civil Code sections 1941 if it meets the definition of "substandard building" set forth in Health & Safety Code section 17920.3, contains lead hazards as set forth in Health & Safety Code section 17902.10, or substantially lacks certain affirmative standard characteristics (check the provisions of Civil Code section 1941.1 for more details). Make sure that the residential premises are actually "untenantable," prior to proceedings with the remedy provided in section 1942.