 Premises are deemed “uninhabitable” if there is a problem that could have a significant negative impact on the tenant’s health or safety. If a unit is truly uninhabitable, California Civil Code provides tenants with three methods to remedy the situation: repair and deduct, rent withholding, and abandonment. Use extreme caution and consult CHO or ASL Legal Resource Center before invoking any of the remedies described below. Misapplication of these remedies can lead to eviction proceedings against the tenant.

Repair and Deduct

Civil Code Section 1942

The tenant can take care of the repair and deduct the cost from the following month’s rent.

Legal Requirements.
1. The defect must affect the rental unit’s habitability. In other words, it must be a serious deficiency that threatens the tenant’s health or safety.
2. The hazard itself must not be attributable to the tenant’s own actions or negligence.
3. The cost of the repair may not exceed the amount of one month’s rent.
4. No tenant may invoke the repair and deduct remedy more than twice in any 12-month period.
5. No tenant may invoke the repair and deduct remedy without having first given the property provider “reasonable” notice of the problem. Generally this means the property provider has 30 days to solve the problem, but emergency situations might justify a 24-hour corrective action. Emergencies include lack of water, gas, or electricity, or conditions in the unit that could be hazardous and result in injury.
6. Tenant must give the property provider notice of intent to resort to the Repair and Deduct remedy. It is strongly recommended that such notice be given in writing and sent certified mail, return receipt requested. Tenants should also keep a dated copy of any such communication for their own records.

Legal Risks. If the tenant deducts money for repairs that are not serious enough to justify using the remedy, or, if the tenant doesn’t give the property provider notice or reasonable time to make repairs, a court can order the tenant to pay full rent. The court could even order eviction proceedings.

COMMUNICATE!

It is essential to have effective communication with your property provider.
• All communication should be in writing and letters should be sent by certified mail, receipt returned.
• Keep dated copies of all communications for your records. (See sample letter on next page.)

Recommended Procedures. Obtain two or three quotes from different sources if you need to bring in a specialist, like a plumber or an electrician, to do the work. Keep copies of these estimates as well as detailed records of all time, labor and materials that the job requires. Inform your property provider, in writing, that work is proceeding on the repairs. It is also a good idea to take photographs or videotape the defects on the property.

When the following month’s rent is due, give the property provider a written explanation of why you are not paying full rent. Include a statement itemizing all expenses for the repairs, along with the balance of rent due.

Legal Protections. Tenants who use Repair and Deduct are protected for at least 180 days against any “retaliatory action” from the property provider. In other words, a property provider cannot increase rent or evict a tenant solely for enacting repair and deduct. Some leases and rental agreements provide for a tenant’s waiver of these rights. Any such waiver is void and unenforceable, even if you
have signed it. However, tenants may only raise the issue of retaliatory action if they are current with their rent payments.

**Abandonment**
Abandonment, or moving out, carries the same legal requirements and legal risks as the repair and deduct remedy. Use the same caution and procedures as with repair and deduct.

**Rent Withholding**
In certain extreme circumstances tenants may withhold all or partial rent until a problem has been remedied. The repairs that are needed must be **more** serious than would justify the use of the repair and deduct or abandonment remedies. This remedy carries the same legal restrictions and risks as the other two remedies.

Withholding rent does not mean that tenants may live in the premises rent-free. Depending on the nature of the problem, tenants may be entitled to a retroactive rent reduction. Consult with AS Legal Resource Center or CHO before considering this last resort option.

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**SAMPLE INITIAL MAINTENANCE REQUEST FOR HABITABILITY LETTER**

This represents the type of letter that you should send when you think a defect in your unit is threatening your health or safety. If the property provider fails to respond to such a letter, consult with CHO or AS Legal services regarding your next step. You will need to send further letters of a more serious nature prior to resorting to any of the remedies described above.

[Date]
Dear [Property Provider]:

This is to inform you that the heating system at [address], as we reported by phone to you yesterday, is inoperable and needs repair as soon as possible. Because we are having extremely cold weather, we feel that this repair needs immediate attention, as we have had to borrow portable heaters and some of us have had to find alternative locations to stay.

If there are extenuating circumstances with this situation that prevent the heater from being repaired, we are willing to meet with a mediator from the UCSB Community Housing Office.

Please call us by (date)* to let us know about the repairs. Although we normally would like 24-hour notice for repairs, please feel free to have the maintenance worker come at any time to repair the heater.

Thank you for your prompt attention to this matter:

Sincerely,

[Tenants’ names]
cc: Community Housing Office**

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* Usually within 48 hours.
** This means that you have given us a copy of the letter; be sure you actually do so.