

This handbook is intended as general legal information. It is not legal advice about your specific case. If you would like advice about your case, you must contact a lawyer. Contact information for legal aid programs is available at the end of this handbook.

RENTER'S HANDBOOK ON INFESTATIONS

Have you noticed bedbugs, cockroaches, mice, rats, or other pests in your rental housing? This handbook has information about your rights and responsibilities related to pests in your home. It can also help you get results from your landlord when requesting repairs or extermination services.

Your rights and responsibilities will depend on what kind of housing you're renting. A landlord has different obligations depending on whether the rental is a single-family house or is a unit in a multi-family dwelling (like an apartment building or duplex).

No matter what, your landlord is legally required to keep your home "habitable." That means that your landlord is responsible for:

- responding to infestations of bugs or other pests in the common areas of an apartment building or complex
- providing an exterminator if the infestation has spread throughout a building or complex
- making any necessary repairs to your rental to prevent future infestations

This handbook focuses on laws that apply everywhere in Oregon. However, some cities or counties may have additional requirements. Some of these are listed at the end of the handbook, but you can also call your local city or county to ask if there is a code enforcement office where you live.

This handbook has information about how to deal with an infestation in your rental housing. If you follow the steps suggested in exactly the order they are laid out and keep good records of all of the steps you take, it is more likely that you and your landlord will be able to reach a good resolution of the problem.

It is **very important** throughout the process to **document** all infestations with photographs and to keep records of your **written** communications with your landlord. If you have a problem with your housing, it's better not to call or speak to the landlord in person. Instead, write it down!

This packet contains the following:

- Information about a landlord's responsibilities to respond to infestations
- Information about renters' responsibilities
- Guidelines for how to ask for your landlord's help with the problem
- Checklist for your investigation
- Checklist for reporting issues to your landlord
- Letters and forms to use in communicating with your landlord:
- Letter 1 (first request)

- Letter 2 (notice of intent to move, withhold rent for alternate housing, or withhold rent for reduced rental value)
- Form A (itemized list of property damage)
- Form B (reasonable accommodation request)

Legal Requirements: Who has to fix it and who has to pay

Oregon law requires the landlord make sure that at the beginning of the tenancy the rental is safe, clean, sanitary, and free from rodents and vermin (“vermin” means roaches, bedbugs, or other insects). The landlord also must maintain the rental property so that all of the areas within the landlord’s control are safe, clean, sanitary, and free from rodents and vermin.

That means that the landlord is legally required to provide pest control when necessary to get rid of mice, rats, roaches, bedbugs, and other insect infestations in common areas. The landlord must also provide pest control in a multi-unit building or complex if the infestation is spreading between units. The landlord is also required to make repairs to prevent new infestations.

But renters are legally required to keep their rental clean enough to prevent infestations. Renters must also not do anything that would create an unreasonable risk of causing an infestation, like:

- Bringing in used furniture or bedding found by a dumpster or on the sidewalk
- Adopting a pet without treating it for fleas
- Leaving food out in the kitchen

No matter what, if you find that your rental has become infested, **you should tell your landlord right away.** Not telling your landlord about an infestation can be a violation of your rental agreement

The landlord will usually arrange for an extermination, but whether the landlord can bill the renter for it will depend on the facts of your situation. This handbook will give more details about this later.

Renters often aren’t sure who’s responsible for paying for extermination services. Landlords often insist that the infestation is the renter’s fault and try to make the renter pay. Renters often believe that the landlord is required to pay for all exterminations. In truth, it’s a little complicated.

Landlord’s obligations

The rental must not have any infestation at the time you move in. ORS 90.320(1)(f).

The landlord is responsible for extermination in any common area or areas within the landlord’s control.

ORS 90.320(1)(f). For example, the landlord is responsible for paying for exterminations:

- in the lobby of a building
- the hallways of a building
- the kitchen or living areas of an SRO building
- around the dumpster areas in an apartment complex

The landlord is also responsible for responding to a building-wide infestation. So if you *and* your neighbors have a roach problem or a bedbug problem, your landlord has to take care of it.

The landlord also must make any necessary repairs to prevent re-infestation. That could include:

- Blocking holes that mice or rats use to enter
- Fixing leaky plumbing that's encouraging roaches
- Removing a "free box" or other area that renters use to exchange items that could communicate bedbugs
- Providing proper garbage disposal areas to discourage pests

It's important to remember that if you live in a single family rental like a detached house, cabin, manufactured home or trailer, your landlord is likely not responsible for paying for an extermination. However, it's **very important** that you **tell your landlord about it**.

- Be aware that your landlord may require you to pay for the extermination and may terminate your tenancy if you refuse to do so.
- The landlord could also issue a termination notice if the living conditions in your rental or your behavior caused the infestation.
- If you get a notice based on an infestation, you can fix the problem and your tenancy will not terminate.
- If the problem happens again within six months, the landlord can terminate your tenancy without giving you another chance to fix the problem.

But, if the infestation was **present when you moved in**, then the landlord is responsible for it. Notify the landlord right away, **in writing**, about the problem.

Renter's obligations

If you live in a single-family home (a house or a detached unit) then you are responsible for paying for an extermination if your house becomes infested, unless you can prove that the infestation was already there when you moved in. ORS 90.325(1)(b); ORS 90.320(1)(f).

If you notice pests within a few weeks to a month after you move in, document the situation with pictures, talk to your neighbors, and tell the landlord **in writing** as soon as possible. More detailed instructions start on page 5 of this handbook.

If you live in a multi-unit building or complex, and your unit is the *only one* with an infestation, then you are likely responsible for paying for an extermination.

- If you moved in within the past month, you may be able to prove that the pests were there when you moved in.
- If you do have an infestation, it's very important to talk to your neighbors about it.
- If you can prove that you are not the only one with the problem, the landlord will be less likely to be able to make you pay.

If the landlord can prove that something you did caused the infestation, then you may be responsible for paying for the extermination. Conduct that could lead to infestation might include:

- Housekeeping issues (for example, food left out in the kitchen or on the floor)
- Bringing in used furniture or bedding
- Hosting friends or family members who have bedbugs
- Keeping pets that have not been treated for fleas

No matter who you think is responsible for the infestation, **renters must inform the landlord about it**. Many rental agreements require renters to “promptly” inform landlords about the infestation. Failure to report an infestation within a week or so could lead to a notice for violating the rental agreement.

- A landlord can’t terminate your rental agreement for reporting the infestation.
- BUT, if the landlord determines that your actions caused the infestation, the landlord could issue a termination notice requiring that you fix the problem.

Renters also have an obligation to cooperate with the extermination. That can mean:

- Allowing workers into the unit at reasonable times
- Clearing out space in kitchen drawers and cupboards, if necessary for extermination
- Disposing of or allowing heat treatment or sealing of belongings infested with bedbugs
- If you have a medical or health reason that makes it difficult for you to cooperate with extermination, you should ask the landlord for a reasonable accommodation. (See page 5 and Form C)

Renters’ rights

Renters have the right to safe, decent housing. The landlord should provide extermination services, even if the landlord thinks the renter caused the infestation. However:

- The landlord can charge for the extermination.
- The landlord can also terminate the tenancy for cause if the renter refuses to pay for an extermination, if the landlord can prove that the infestation was the renter’s fault.
- If a renter can’t afford to pay for the extermination costs all at once, the renter should ask the landlord for a payment plan.

If a renter has disabilities that make it difficult to prevent infestations, or to prepare for an extermination, the renter has the right to ask for a reasonable accommodation. More information on accommodations is available on page 5 and Form C.

If the landlord fails to respond to an infestation in the common areas, or if the infestation was there when the renter moved in, a renter has certain rights:

- The right to break the lease, if the rental agreement is for a fixed term.
- The right to collect damages for reduced rental value.
- The right to vacate the unit and seek substitute housing.
- If the unit is not habitable, to withhold rent.

However, renters need to report the issue to the landlord **in writing** before the renter can exercise most of these renter's rights. If you don't report the issue, or can't prove that you reported it, it will be much more difficult to resolve your problem.

In many situations, it will be important for you to be able to prove that the infestation was not caused by you. You should talk to your neighbors, the previous renters, or exterminators to get proof that you did not cause the infestation. If you can't prove that you didn't cause the infestation, a court will likely believe the landlord, not the renter.

Withholding rent

DO NOT, under any circumstances, withhold any part of the rent unless you have made a request for extermination **in writing**. If you withhold rent without making a written request first, you could lose your housing.

- If you do withhold rent, hold on to it and keep it in a safe place.
- **Do not** spend it on something else, unless it's related to your housing (like a motel). If that happens, **keep all receipts**.
- If you wind up going to court, you will need to prove that you withheld rent for a good reason, and that you had the money to pay the rent.
- The judge may require you to give the withheld rent to the court to hold, so it's very important not to spend it.

Guidelines for responding to an infestation

Step 1: Investigate (Form A)

If you notice an infestation, the first and most important step is to talk to your neighbors and the previous renters, if you know them. Your rights and responsibilities will depend on whether you're the only renter with a pest problem, or if there's an infestation in the whole building or complex.

If the problem was there before you moved in, you are not responsible for it. But you will need to get as much evidence as you can to show that you did not cause the problem or bring the pests with you.

Write down the names, addresses, and phone numbers of everyone you talk to. If possible, ask them to put something in writing saying that they also have noticed pests, or that they have reason to know that your rental was infested when you moved in.

If you know the name of the exterminator who regularly treats your building or complex, you can also try asking the company if they have treated your rental in the recent past.

Step 2: Report (Letter 1)

If you notice an infestation, **TELL YOUR LANDLORD, in writing**. Don't assume that the landlord knows about the problem, and **don't rely on a phone call or verbal conversation to inform the landlord**. If you live somewhere that has forms or online reporting for repairs, use those as well.

- You must report the problem to the landlord in **writing**.
- You can call or text the landlord first, but you **must** follow up with a written request.
- You **lose** many important legal rights if you fail to make a written request.

To report the infestation in writing, you must send the landlord a **letter**, not an email or text. The letter doesn't have to be typed, but it must have a **date** on it, it must **describe the problem**, and it must give the landlord a **deadline** to respond to the request. Ten days to two weeks is a reasonable amount of time.

There are sample letters included in this packet. Start with Letter 1. You can fill in the blanks or write your own version. Any letter that you send must include these elements:

- Your name and address
- Landlord's name and address
- Date you're sending the letter
- Specific information about the problem
- Deadline for fixing the problem – at least ten days from the date of the letter.

You can mail the letter or deliver it personally to the landlord. If you mail it, you must send it regular first class mail — not registered or certified mail. You can get a certificate of mailing from the post office to prove that you mailed the letter.

Be sure to keep a copy of the letter. You can take a picture of the letter with a camera-phone, if you have one. You should also take pictures of the problem and keep them in a safe place.

Important note: After you send your landlord the written repair request, the landlord can enter **without giving you additional notice** for one week to inspect the problem and make repairs.

Step 3: Landlord's response

After you report the infestation, the landlord might do one of three things:

1. Call in an exterminator and fix the infestation without charging you for it.

This is likely if you just moved in, if other renters have reported the same problem, and/ or if the infestation is visible in the common areas of the building or complex.

2. Perform an inspection of your unit, call in an exterminator, and then issue you a notice requiring you to pay for the extermination.

If this happens, the landlord might also issue a termination notice based on the condition of your rental and/ or your actions in causing the infestation.

You have the right to cure a termination notice for cause. That means that you can solve the problem by either doing something (like cleaning your kitchen) or not doing something (like bringing in furniture from the dumpster).

If you solve the problem within amount of the time given by the notice, your tenancy will not terminate. But, if the problem comes up again anytime in the next six months, you could be terminated with only ten days' notice, with no right to fix the problem.

- If you receive a termination notice, you should ask a lawyer to review it for you.
- If you have a disability that means that you need a reasonable accommodation to comply with the notice, make sure to request one from your landlord. Examples could include needing more time to fix the problem, or help preparing your rental for treatment by pest control. Use Form C to request a reasonable accommodation.

3. It's also possible that the landlord will do nothing and will take no action in responding to your request for extermination.

If your landlord does not respond to the infestation, you have options. This depends, though, on what kind of housing you have. If you live in multifamily housing, like an apartment or duplex, then your landlord must respond to the infestation if more than one unit is affected, or if the common areas are also infested. Talk to your neighbors and consider writing a joint letter.

Step 4: Other solutions

If the landlord still refuses to fix the problem, you may have other options.

Call your city or county to find out if your area has a municipal or county health, safety, or sanitation code.

If there is such a code, your landlord may be in violation of the code for failure to maintain the rental unit. This is more likely if the repairs needed involve a large-scale infestation in more than one unit.

You can contact the city, county, or code enforcement office to ask if your landlord is violating the local code. Some local areas that have regulations about infestations include:

- Portland (City Code 8.20.130 states that the landlord is responsible for extermination in a multi-unit building if more than one unit is infested)
- Gresham and Unincorporated Multnomah County (International Property Maintenance Code Section 309 states that the landlord is responsible for extermination in common and shared areas)
- Salem (City Code Compliance inspects multi-family buildings for infestations, call 503-588-6421)

If you live in public housing (HUD housing), the landlord cannot require you to pay for extermination of infestations.

- If the landlord believes that your actions caused the infestation, you could be issued a termination notice.
- You have the right to a hearing if you receive a termination notice.

If you receive a housing subsidy, the landlord is required to maintain the unit.

- If the landlord refuses to make repairs, you can contact your housing authority caseworker to report that the unit needs repairs.
- This could create problems, though, because it's possible that the housing authority could stop paying the landlord if the problems are bad enough. You might be required to move.

Step 5: Alternate housing (Letter 2)

If your landlord is not fixing the problem and you believe that there is a serious threat to your health, safety, or property, you may need to temporarily move out of your rental. You should only do this if it is **obvious** what the risk is or if you have some kind of **written proof** that staying in your rental is dangerous to you or your family. Obvious risks would include things like:

- Major rat or mouse infestation with photos of visible infestation or injuries (like bites) from the infestation
- Major insect infestation with photos or documentation of bites

If the risk is not obvious, it could be something like:

- Someone in the household has an allergy or sensitivity to insect bites or rat/ mouse urine or feces
- Insects nesting in belongings, like furniture or appliances

If the risk is not obvious, you should only move out of your rental if you have written proof of the risk of harm. That proof could be:

- A letter from a health care provider
- A report from code enforcement or another official agency

If you believe that you are in danger if you stay, you should send Letter 2 to your landlord. That letter gives you three options. You can:

- Terminate your rental agreement with 48 hours' notice if you personally hand the letter to your landlord or with at least 5 days' notice if the letter is mailed (If you mail it, you **must** send it regular first class mail — not registered or certified mail);
- Move into a motel and deduct the cost of the motel from the rent; or
- Pay partial rent to make up for the reduced value of your rental.

Again, you **cannot** legally withhold rent using this option unless you have proof that you have given your landlord a **written notice** about the problem and told the landlord that you intend to withhold rent.

DO NOT, under any circumstances, withhold rent without giving your landlord written notice first — you could lose your housing.

- If you withhold rent, hold on to it and keep it in a safe place.
- Don't spend it on something else, unless it's related to your housing (like a motel).
- If you withhold rent to pay for a motel or other alternate housing, **you must keep receipts**.

Step 6: Legal consequences

If you do decide to withhold rent from your landlord, the landlord may issue you a nonpayment notice or a termination notice. If that happens, you should talk to a lawyer if at all possible.

- For legal assistance, you can contact the Oregon State Bar's lawyer referral service at 800-452-7636.
- A list of attorneys who represent low income renters is included at the end of this packet.

There is also information and assistance available to help you represent yourself in court. For more information, go to your county law library or visit

<http://www.courts.oregon.gov/help/Documents/civiltrialbrochure.pdf>

Whatever option you choose, it's important that you respond to the notice as soon as possible. After the deadline in the termination notice passes, your landlord can take you to court to try to evict you. BUT, if you have followed these steps **exactly** and **kept copies of all of the required paperwork**, you should be able to prove that you deducted rent as allowed by law. This will be a legal defense against an eviction.

Your landlord **cannot** force you to move out by calling the police, changing the locks, or turning off the power or other utilities. The landlord must go through a court eviction process before you have to move out.

- If your landlord has locked you out or shut off your utilities, or has threatened to do so, you have a legal claim against your landlord for two months' rent.
- You can call Legal Aid for more information about this issue. Visit OregonLawHelp.org for more information about how to find your local legal aid office.

If your landlord sends you a nonpayment notice, you should respond in writing. Explain that you withheld rent as permitted by law, and that you've provided written repair requests before withholding rent. If possible, let the landlord know that you still have the rent that you withheld.

- If you withheld rent to pay for an extermination or the cost of alternate housing, provide your landlord with copies of your receipts.
- If your landlord decides to take you to court, you will receive a summons. It's very important that you show up to court on the date and time stated in the summons.
- If you don't show up, your landlord will win automatically and the court will order you to move out.

- If you and your landlord can't come to an agreement at the first appearance, you must ask for a trial. To ask for a trial, you'll need to file an answer with the court and either pay a filing fee or apply for a fee waiver.
- Be prepared to present copies of the letters you sent your landlord requesting repairs, and any receipts, to the judge at trial.

Other legal options

Renters also have the legal right to sue their landlords for reduced rental value if the rental has been in poor condition for a long time. There are two ways that a renter can do this:

- As a counterclaim in an eviction
- As an independent lawsuit

Counterclaim:

If your landlord is trying to evict you and you are asking for a trial, you can also file a **counterclaim** against the landlord. In the counterclaim, you can ask for the court to order the landlord to pay you back for the excess rent the landlord charged for a rental that wasn't livable.

If you decide to file a counterclaim, keep in mind that the court can order you to pay the full rent into court while the case is going on. This means that, if you're being evicted for nonpayment of rent and you don't have the money to pay the rent, you may not be able to bring a counterclaim.

Independent lawsuit:

You don't have to wait for an eviction case to try to get back some of the rent that you paid to your landlord. You can also file your own lawsuit. Depending on how much of the rent you think you should get back, you can sue in small claims court.

Small claims court is a simplified process for people who don't have lawyers to sue for up to \$10,000. If you want more information about suing in small claims court, go to www.oregonrentersrights.org or call Legal Aid at (503) 224-4086 and ask for the Renter's Handbook on Small Claims Court. You may also go to the Oregon State Bar's website, http://www.osbar.org/public/legalinfo/1061_SmallClaims.htm.

You don't have to sue in small claims court. If you want to sue your landlord for more than \$750, you can sue in regular civil court. That process is more complicated, and you will probably need a lawyer to help you.

No matter how you decide to try to get back money for reduced rental value, you should be prepared to prove that the rental was in such bad condition that you shouldn't have to pay full rent. If you've followed the steps in this booklet, you should have plenty of evidence, like:

- Photos of the problems
- Written repair requests to the landlord
- Letters or other papers from health care providers about the problems

- Reports from building inspectors, code inspectors, or public housing inspectors
- Eyewitness testimony from you, your family, or friends about the condition of the rental

If you would like to talk to an attorney about your rights, you can find contact information for a legal aid office near you at <https://oregonlawhelp.org/find-legal-help>.

CHECKLISTS FOR RENTERS

Renter Information

Your name:	
Address of unit:	
Name of landlord or property management company:	
Date of move in:	
Date you noticed the problem	

Neighbor Information #1

Name of renter:	
Address of unit:	
Phone number:	
Do they have an infestation?	
Do they know if the previous renter had an infestation?	

Neighbor Information #2

Name of renter:	
Address of unit:	
Phone number:	
Do they have an infestation?	
Do they know if the previous renter had an infestation?	

Task list			
	Task	Date completed	Location of documentation
☐	Document problem with photos		
☐	List all property damage on Form B		
☐	Notify landlord/ property manager in writing with Letter 1. Keep a copy of the letter.		
☐	If you need to request a reasonable accommodation, use Form C. Keep a copy of the form.		
☐	Notify landlord with Letter 2. Keep a copy of the letter.		
☐	Contact local code enforcement		
☐	If necessary, pay for extermination, save receipt, deduct cost from rent using Form A		
☐	Send Letter 3. Keep a copy of the letter.		

Notes & Additional Info:	
Agencies contacted:	
Dates/ times of landlord contact	
Health symptoms:	
Other notes:	

Letter 1

Date: _____

Dear Landlord:

I am writing to notify you about a pest infestation in my rental. (Describe)

I reasonably believe that I have not caused this infestation because (check all that apply):

- ☐ I noticed the problem less than a month after I moved in
- ☐ Other neighbors in the building/ complex have reported the same problem
- ☐ I have reason to believe that the previous renters also had an infestation
- ☐ I have seen pests in the common areas of the building/ complex
- ☐ Other (explain):

Please contact me by _____ (10 days from date of letter) and provide extermination services no later than _____ (14 days from date of letter).

ORS 90.385 does not permit a landlord to retaliate against a renter who makes a good faith complaint related to the tenancy.

Thank you,

_____ (renter name)

_____ (renter address)

Letter 2

Date: _____

Dear Landlord:

I wrote to you on _____ (date(s)) to notify you of a serious problem in my rental unit. The problem has not been solved.

The ongoing problem represents an imminent and serious threat to my health, safety, and/ or property and places you in violation of the rental agreement and ORS 90.320.

The risk is:

I have provided you with reasonable time and reasonable access to fix the problem. If repairs are not complete by _____ (at least 48 hours from date the letter is handed to the landlord or at least 5 days from date it's mailed) I am notifying you that, as permitted by ORS 90.365:

☐ The rental agreement will terminate;

☐ I will seek to recover damages for diminished rental value of the unit and deduct damages from the rent; or

☐ I will seek to procure substitute housing until the problem is solved. I will be excused from paying rent during this period and can recover any cost in excess of the rent as damages.

Thank you,

_____ (renter name)

_____ (renter address)

REQUEST FOR REASONABLE ACCOMMODATION

This is to inform you that, because of a disability, I am unable to do the following things that you have asked me to do in relation to the pest extermination:

Please accommodate my disability with the following alternative plan:

If my disability is not obvious, and if you require medical documentation of my need for accommodation, please let me know.

Thank you,

(Renter name)

(Renter address)

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