

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 MOLD

Mold and mildew are common in the Pacific Northwest, and most kinds of mold and mildew do not pose a health risk to most people. Many people think that any black-colored mold or mildew they find is a toxic variety of mold known as “black mold.” However, toxic black mold is very rare. Most of the black-colored mold that you find is likely to be common mildew, which can be cleaned up without much difficulty.

Landlords are legally required to keep your rental “habitable,” which is legalese for livable. That means that landlords must make any repairs necessary to stop the growth of mold in a rental.

But renters also have legal obligations. Renters are required to do what they can to prevent mold growth. Often, that means that renters need to open windows, run exhaust fans, keep items from touching the walls, and reduce moisture in the air.

This packet contains information about how to respond to a mold issue 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 mold problems with photographs and to keep records of your **written** communications with your landlord.

This packet contains the following:

- Information about mold and mildew
- Information about renters’ responsibilities for cleaning up and preventing the growth of mold and mildew
- Guidelines for getting repairs
- Checklist for reporting mold issues to your landlord
- Letters and forms to use in communicating with your landlord about mold

Mold and mildew information

- Mold and mildew grow in damp environments. Water can get into your rental through the outside – because of a leaking roof, pipes, or other problem with the building. Water can also build up from the inside, because of steam from showers, heat from cooking, and other normal activities.
- If there is water coming from the outside, that needs to be fixed first. Once the problem has been fixed, then the inside needs to be dried out by using fans or a dehumidifier.

- If the moisture is coming from the inside, then it's important to improve air circulation by opening windows, using exhaust fans, and increasing the temperature inside.
- A common source of mold/ mildew is condensation. This happens when the outside is cold, the inside is warm, and there's a lot of moisture in the air. (Basically, winter in Oregon!)
- If conditions are right, water drops will form on the wall or window that is next to the cold air.
- Then, if the water isn't cleaned up, mold or mildew can grow on the wall, the window, or anything that comes in contact with the wall or window.
- For more information about mold and mildew, visit:
- <https://www.epa.gov/mold>
- <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1009AZX.PDF?Dockey=P1009AZX.PDF>
- https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12335.pdf

Renters' responsibilities in dealing with mold and mildew

As a renter, you do have certain responsibilities when mold/ mildew appears anywhere in your home. You should follow these three steps: Report; Respond, and Prevent.

Report:

- The first step in dealing with the mold problem is to report it to your landlord in writing as soon as you notice it. That way, there's a record of the problem.
- You can use Letter 1 (included in this packet) to tell your landlord about the mold/ mildew. Send the letter through **regular mail** (not registered or certified mail, and not email). Make sure to keep a copy of the letter for your records. You can ask the post office for a certificate of mailing to prove that you sent the letter.
- You should also take pictures of the mold and store them so that the date is recorded. If you take the pictures with a phone or digital camera, the date should be automatically recorded.
- Another way to record the date is to send an email to yourself with the photos as attachments. That way you can prove when the photos were taken.
- If you take the pictures with a conventional camera, make sure to keep the envelope from the photo developer, so you can prove when the photos were printed.

If the mold/ mildew was caused by an obvious leak or other problem with the building, then your landlord must fix the problem. However, if the mold/ mildew growth is on a wall that has one side on the outside of the home, a window, or an object touching an exterior wall or window (like a couch or a bed, or curtains) one source of the problem is probably condensation. **The renter should take the first step in responding to condensation.**

Respond:

- The second step is to clean up the mold.
- Cleaning up mold/ mildew is actually pretty simple. However, people with breathing problems, compromised immune systems (people with HIV/ AIDS, some cancers, and people who are pregnant), or severe allergies to mold should not participate in cleanup activities.
 - If you have one of these health conditions, you should ask a friend, a family member, or your landlord for assistance in cleaning up the mold/ mildew.

- If you have a disability and your landlord refuses to help with cleanup, you can use Form C (included in this packet) to ask for a reasonable accommodation.
- Tips for clean-up:
 - Use gloves when cleaning.
 - If there is a lot of mold/ mildew, tie a scarf or towel over your nose and mouth.
 - If possible, wear goggles or other eye protection while cleaning.
 - Take lots of breaks in areas with plenty of fresh air a.
- If the mold/ mildew is on a hard surface (walls, windows, floors, doors) then you can use soap and warm water to clean it off. There are also commercial products available specifically for mold.
 - Wipe the area down, throw out the sponge or rag you used for cleaning, and then (this is important) **let the area dry**.
 - If necessary, put a heater or fan nearby to make sure that the area dries out.
- If the mold/ mildew is on something soft, like fabric or upholstery, you can wash the item in hot water and dry it thoroughly. If that's not possible, you can try wiping the item off and then drying the item out (for instance, use a hair dryer on furniture). That can be enough, if the mold/ mildew hasn't penetrated too deeply. However, in many cases, you may have to throw the item away.
- If mold/ mildew has penetrated an item so that you have to throw it away, use Form A (included in this packet) to make a record of the item or items and about how much money the item was worth. You should also take a photo of the item before you throw it away.
- If you believe that mold is in an area you can't reach – for example, inside a wall, under the floor, or in a crawlspace – let your landlord know about it using Letter 1. It is the landlord's responsibility to clean those areas.

Prevent:

Once you've cleaned up the mold/ mildew and thrown out anything that was ruined, take these steps to help prevent a future build-up:

- Keep your home aired out. Crack a window once a day. Run the exhaust fan in the bathroom when you take a shower and for at least 15-30 minutes after. If the exhaust fan doesn't work, tell your landlord in writing. If you don't have an exhaust fan, open a window.
- Keep your home heated. If there's a problem with your heat, tell your landlord in writing.
- Make sure that all furniture is at least 2 inches away from any outside wall.
- Run a towel along the bottom edge of every window at least once a week in winter to remove condensation.
- If necessary, use a dehumidifier to reduce moisture in the air.
- If there's a repair problem that's causing the moisture in the air, your landlord needs to fix it.

Once you have reported the mold/ mildew to your landlord, cleaned it up, and taken steps to prevent its re-growth, if the mold comes back it is your landlord's responsibility to fix the problem.

Getting repairs made: step by step

If you continue to have mold issues after taking steps to clean up and prevent mold, or if there is water leaking in to your rental from outside, you need to ask your landlord to make repairs.

The most important thing to remember when asking your landlord for repairs is that you must make the request in writing. The law provides certain legal remedies to tenants, but they all require a renter to be able to prove that the renter told the landlord about the problem. Some laws require that the request be made in writing. The best and safest way for renters to protect themselves and get results is to keep all communications with the landlord in writing, and to keep copies.

Here are the steps to follow when asking your landlord to make repairs:

Step 1: Letter #1

If you've been using this packet all along, you should have already sent Letter #1 to notify your landlord of a mold problem. If you haven't notified your landlord in writing about the problem yet, do it **now**.

Use Letter # 1, or write your own. Any letter that you send should 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 repairs – at least ten days after the date of the letter

Either give the letter to your landlord personally or send it through regular first class mail – NOT certified or registered mail, as those can take much longer to arrive, and the landlord could refuse to sign for them. To prove you sent the letter, you can ask the post office for a certificate of mailing at the time that you send the letter. Be sure to keep a copy of the letter.

You can also take a photo of the letter and save it on your phone or in your email account. You can send an email or text message to your landlord in addition to the letter, but **do not** rely on email or text messages to communicate about repairs. Oregon law requires that renters send a letter, either in person or by first class mail, in order to take many legal steps.

Step 2: Photos

Take pictures of the problem and save them somewhere safe. Either print them out or attach them to an email that you send to yourself.

Step 3: Access for repairs

Give your landlord the amount of time stated in your letter to make repairs. You must allow your landlord access to your home to make the repairs. If you don't allow access, the landlord is not obligated to complete the repairs and could potentially terminate your rental agreement.

You should also be aware that your landlord is allowed to come into your home without giving you notice ahead of time for **seven days** after the landlord gets your letter requesting repairs. You should make sure that your home is ready for your landlord to enter, because your landlord is not required to tell you ahead of time when the landlord plans to show up. After seven days, the landlord is required to give you 24 hours' notice before coming in to make repairs.

Step 4: Letter # 2 for minor repairs

If your landlord does not fix the problem on time, or if the repairs don't solve the problem, and if the problem can be fixed with a repair that **costs less than \$300**, you can send Letter #2, included in this packet, or write your own. Your letter should include:

- Your name and address
- Landlord's name and address
- Date you're sending the letter
- Date you sent Letter #1
- Specifics about the ongoing problem
- Statement that you will deduct money from the rent to pay for repairs if the repairs are not complete within one week from the time you send Letter #2.

You can deduct up to \$300 from the rent to pay for minor repairs, like fixing a window or putting in weather-stripping, but first you must tell your landlord in writing. **You CANNOT legally deduct for repairs without telling your landlord in writing first.**

You must pay someone else to do the repairs. You cannot make the repairs yourself. You also must give your landlord a receipt for any amount up to \$300 that you plan to deduct from the rent.

The law governing deductions for minor repairs is ORS 90.368. Oregon landlord-tenant laws are online at https://www.oregonlegislature.gov/bills_laws/ors/ors090.html.

Step 5: Reporting

If the minor repairs don't solve the problem, you should consider reporting the problem to local code enforcement. Many cities have a municipal code that requires landlords to maintain buildings according to a certain standard. You should look for code enforcement in your city, either by looking it up on the internet or calling your city hall to ask for help contacting code enforcement.

If a code inspector comes to the property, you must allow them to enter to examine your home for mold. Ask for a copy of any report they produce and keep it with your records.

If your landlord is refusing to help or is saying that there is no problem, you can also consider hiring your own mold inspector. However, that can be expensive. If the inspector does find mold and concludes that it was not caused by you, you can deduct the cost of the inspection from the rent. But if the inspector does not find mold or concludes that it was caused by you, you would have to pay for the inspection.

Step 6: Alternate housing

If your landlord is not fixing the problem and you believe that the mold is causing a serious threat to your health, safety, or property, you may need to temporarily move out of your home. You should only do this if you have some kind of **written proof** that staying in your home is dangerous to you or your family. That proof could be:

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

If you believe that you are in danger if you stay, and you have written proof that you or your family are in danger, you should send Letter # 3 to your landlord. That letter gives you three options. You can:

- 1) 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);
- 2) Move into a motel and deduct the cost of the motel from the rent; OR
- 3) Pay partial rent to make up for the reduced value of your rental.

You **cannot** use this option **unless you have proof that you have given your landlord a written notice about the problem** and told the landlord what you plan to do.

Legal Consequences

If you do end up withholding 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.

- For legal assistance, you can contact the Oregon State Bar's lawyer referral service at 800-452-7636.
- 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. That is a legal defense against an eviction.

- 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 minor repairs 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.

- 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.
- It's a good idea to have an attorney for your trial, if possible. You can contact the Oregon State Bar at 800-452-7636.
- 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

Tenants 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 tenant 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 a copy of our Renter's Handbook on Small Claims Court. You may also find additional information on Oregon State Bar's website at: 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

MOLD CHECKLIST

Tenant Information

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

Checklist

	Task	Date completed	Location of documentation
☐	Document mold with photos		
☐	Locate and photograph any areas of water intrusion from outside (holes in roof, cracks in walls, broken window, etc.)		
☐	Check bathroom exhaust fan		
☐	Identify any property at risk of damage or that has been damaged and document with photos		
☐	List all property damage on Form A		
☐	Move all furniture at least 2 inches away from walls		
☐	Dry interior windows to remove condensation		
☐	Notify landlord/ property manager in writing with Letter 1. Keep a copy of the letter.		
☐	Clean all hard surfaces with soap and water. Wash all washable items in hot water.		

☐	Photograph area after cleaning.		
☐	Photograph area after landlord entry to repair		
☐	Photograph reappearance of mold		
☐	Notify landlord with Letter 2. Keep a copy of the letter.		
☐	If applicable, contact health care provider		
☐	Contact local code enforcement		
☐	Document second repair attempt, if applicable		
☐	Photograph reappearance of mold		
☐	Send Letter 3. Keep a copy of the letter.		
☐	If no response, contact attorney		

Letter #1

Date: _____

Dear Landlord:

I am writing to notify you of a serious mold problem in my rental unit. I have identified mold growing in the following locations:

I have already taken the following steps to remedy the problem, but the mold is still there:

- Moved items away from the wall
- Dried condensation on interior windows
- Run the bathroom fan

I know that an untreated mold infestation can create structural damage, property damage, and health problems. Accordingly, I am requesting that you help to resolve this issue as quickly as possible. The following personal property has already been damaged by the mold:

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

I know that ORS 90.385 does not permit a landlord to retaliate against a tenant who requests repairs.

Thank you,

_____ (tenant name)

_____ (tenant address))

Letter #2

Date: _____

Dear Landlord:

I wrote to you on _____ to notify you of a serious mold problem in my rental unit. However, the problem has not been solved. I have identified mold regrowth in the following locations:

ORS 90.368 permits a tenant to repair habitability problems that cost less than \$300 and deduct the cost from the rent. With this letter, I am notifying you that if you do not solve the problem by _____ (10 days from date of letter) I will pay for the minor repair, and deduct the cost from the rent. If that does not solve the problem, I will pursue other legal options as permitted by ORS 90.360 or 90.365.

If my property is damaged as a result of the mold, I have the right to seek reimbursement from you in small claims court.

Thank you,

_____ (tenant name)

_____ (tenant address)

Letter # 3

Date: _____

Dear Landlord:

I wrote to you on _____ (date(s)) to notify you of a serious mold problem in my rental unit.

The problem has not been solved.

The ongoing mold infestation 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. 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,

_____ (tenant name)

_____ (tenant address)

NOTIFICATION OF RENT WITHHOLDING ORS 90.368

ORS 90.368 permits a tenant to deduct up to \$300 from the rent for repair of minor habitability defects. On _____ (date of Letter 2) I informed you that if the problem in my unit was not solved I would make the necessary repairs and deduct the cost from the rent. On _____ (date) I paid _____ (name of person or company) \$ _____ (total cost). A copy of the receipt is attached to this notice.

I am therefore deducting \$ _____ (cost) from my rent for this month. I am enclosing payment for \$ _____ (monthly rent minus cost).

Thank you,

_____ (Tenant name)

_____ (Tenant address)

REQUEST FOR REASONABLE ACCOMMODATION

The federal Fair Housing Act requires landlords to make reasonable accommodations for tenants who have disabilities. With this form, I am requesting that you make a reasonable accommodation for my disability so that I can continue to access my housing.

I am requesting that you make an adjustment or exception to this rule or policy:

The rule or policy is related to my disability in this way:

I have attached documentation from my health care provider.

Thank you,

 (Tenant name)

 (Tenant address)

LIST OF PRIVATE ATTORNEYS WHO REPRESENT RENTERS

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