

GARFIELD HEIGHTS MUNICIPAL COURT
TENANT RENTING DEPOSITING

1. May a tenant withhold rent in Ohio? Yes a tenant has the right to withhold rent under the following circumstances:
 - a. If a landlord fails to fulfill any obligation imposed upon him by section 5321.04 of the Revised Code, other than the obligation specified in division (A)(9) of that section, or
 - b. Any obligation imposed upon him by the rental agreement, or
 - c. If the conditions of the residential premises are such that the tenant reasonably believes that a landlord has failed to fulfill any such obligations, or
 - d. If a governmental agency has found that the premises are not in compliance with building, housing, health, or safety codes that apply to any condition of the premises that could materially affect the health and safety of an occupant.

2. Are there certain landlords who are not subject to the rent withholding law? Yes, the following is the exception:
 - a. Any landlord who is a party to rental agreements that cover three or fewer dwelling units and who provides notice of that fact in a written rental agreement or, in the case of an oral tenancy, delivers written notice of that fact to the tenant at the time of initial occupancy by the tenant.

3. What notice must the tenant give the landlord before withholding rent?
 - a. The tenant must give notice in writing to the landlord, specifying the acts, omissions, or code violations that constitute noncompliance.
 - b. The notice shall be sent to the person or place where rent is normally paid.
 - c. The best practice for proving that the tenant gave notice to the landlord is to deliver the notice by United States Post Officer certified mail, return receipt requested or FedEx or similar private service with signature required acknowledging receipt.

4. What if the landlord failed to provide the tenant with his name and address or the name and address of his agent for purposes of notice by the tenant?
 - a. The landlord is required by law to give the tenant notice of his name and address or the name and address of his agent.
 - b. If the landlord failed to give notice, the tenant is not required to give the landlord notice of the acts, omissions or code violations prior to depositing rent with the Court.

5. How long must the tenant wait after giving notice to the landlord before withholding rent?

- a. The tenant must wait a “reasonable period of time” which depends on the nature of the acts, omissions or code violations in issue but thirty days is usually an acceptable time to wait for the landlord’s compliance.
6. What should the tenant do if the landlord does not comply? The tenant may do one of the following:
 - a. Deposit all rent that is due and thereafter becomes due the landlord with the Garfield Heights Municipal Court
 - b. Apply to the Court for an order directing the landlord to remedy the condition. As part of the application, the tenant may
 - i. deposit rent with the Clerk
 - ii. apply for an order reducing the periodic rent due the landlord until the landlord remedies the condition, and
 - iii. apply for an order to use the rent deposited to remedy the condition.
 - c. Terminate the rental agreement.
 7. What are the consequences if the tenant wrongfully withholds rent?
 - a. If the Court finds that the condition contained in the notice was the result of an act or omission of the tenant or The tenant intentionally acted in bad faith in depositing rent with the Clerk, the tenant shall be liable for damages caused to the landlord and court costs, together with reasonable attorney's fees if the tenant intentionally acted in bad faith.
 8. How does a tenant deposit rent with the Clerk of Court?
 - a. The tenant must complete and file with the Clerk the form entitled Application to Deposit Rent with the first month’s rent by check or in cash.
 9. Are there filing fees which the tenant must pay to the Clerk to rent deposit?
 - a. No but the Clerk is not permitted to charge a filing fee but will withhold 1% of the amount of the rent deposited at the time that the rent is remitted to the landlord or the tenant upon the agreement of the parties or by court order.
 10. Once a tenant deposits rent with the Clerk, what action may the landlord take to recover the rent?
 - a. The landlord may apply to the Clerk of Court for release of the rent because the condition in issue has been remedied and the matter will be set for hearing before a judge or magistrate. If the tenant agrees in writing that the condition is corrected and that rent should be released to the landlord, no hearing is required.
 - b. The landlord may apply to the Clerk of Court for release of the full amount of the rent on the grounds that

- i. the tenant did not comply with notice requirements and/or
 - ii. the tenant was not current in the rental payments at the time of the initial rent deposits
 - iii. there was no violation of any of the landlord's obligation
 - iv. The matter will be set for hearing before a judge or magistrate if the landlord asserts any of the grounds set forth above
- c. The landlord may apply to the Clerk of Court for a partial release of rent for payment of periodic rent on a mortgage, insurance premiums, real estate taxes, utilities, repairs and other customary and usual costs of operating the premises.
- i. The application for release of partial rent will be set for hearing before a judge or magistrate and the application is subject to the discretion of the hearing officer who must consider the amount of rent the landlord receives from other rental units in the buildings of which the residential premises are a part, the cost of operating those units, and the costs which may be required to remedy the condition of which the tenant complains.

11. What happens if the landlord does not correct the conditions within a reasonable period of time even after the tenant deposits rent with the Clerk of Court?

- a. The tenant may terminate the rental agreement, leave the premises and request the Court to refund the rental deposits to the tenant. The best practice is to request a court hearing be set prior to the leaving the premises.
- b. The reasonableness of the time to wait before terminating the lease depends on the seriousness of the acts, omissions or code violations in issue.