

This article does not address the many possible tactics and strategies to influence your landlord/agent, short of lawful coercion. Caution is advised: "Self-help" may not be an appropriate remedy for your circumstances.

1) Pursuant to A.R.S. § 33-1361(B), sue the owner in Superior Court, seeking injunctive relief whereby the judge orders the owner to do the work;

2) A.R.S. § 33-1324 requires the owner to comply with applicable building codes affecting health and safety, while A.R.S. § 33-1381 references your right to complain to a governmental agency in order to enforce building or housing codes. In this way your local municipality can order the owner to do the work; and

3) Exercise your right to perform "self-help" for small jobs, under A.R.S. § 33-1363.

Option one is very complex and often time consuming, and so it is highly advised that you retain an attorney. Success is by no means assured. Injunctive relief should be used only as a last resort.

Option two usually requires that you first complain to the owner, is limited in what conditions constitute enforceable noncompliances with regards to applicable ordinances, is available in many municipalities to varying degrees (depending on if codes have been enacted and whether the respective municipalities have a policy of enforcing what is on the books), and may take a long time before compliance is enforced. Still, many municipalities are adopting and strengthening their ordinances. Moreover, using the government as your ally can give you a good witness should your owner resort to retaliation against you. On the other hand, many government workers can be ignorant and anti-tenant, so be careful. Contact tenants advocates before attempting to recruit government help.

Option three can work for small jobs, but involves many factors. A.R.S. § 33-1363, the "self-help" clause, permits you either to sue the owner for monetary damages if repairs are not done, or to do them yourself, deducting the cost out of the next month's rent. It is limited to small jobs that can be completed at a maximum cost of either one-half of your periodic rent, or \$299.99, whichever amount is more.

The balance of this article addresses the repair elements of A.R.S. § 33-1363. The self-help provision stipulates that: prior notice must be properly given to the owner, allowing him the opportunity to remedy the conditions himself; a licensed contractor is the only person who may do the work; and specific follow-up documentation must be presented to the owner when the deduction is made.

A great benefit of using self-help is that all owners absolutely despise it. They hate having you take money out of their pockets for any reason. They hate losing the power to keep you in degraded conditions against your will. So, once you have successfully used the self-help remedy, your owner will take you more seriously and act more respectfully towards you. On the other hand, you should first expect that any attempt to deduct will be refused by your owner and mis-characterized as a partial payment. An eviction may ensue. You should be prepared to defend yourself, even to the extent of securing attorney representation. This remedy is not for the faint-hearted.

What May be Repaired?

Any repair of an owner's noncompliance with A.R.S. § 33-1324 that can be completed at a cost of no more than either half your periodic rent, or \$299.99, whichever is more. If an item is damaged or worn beyond repair, it is reasonable to replace it, so long as the licensed contractor procures it and then incorporates the cost into the billing.

While you can give notice for everything that arguably is an A.R.S. § 33-1324 breach, focus first on repairing those items that are most egregious. Things that the owner would possibly assert are merely cosmetic, such as to repaint the dwelling, should be a low priority or avoided. Remember, if a judge has a doubt, he will invariably rule in the owner's favor. Read that last sentence over again.

Larger jobs should be broken down into separate segments over a several month period, if practical and financially feasible; each segment should be noticed separately so it is apparent as a discrete job. Ask ATA about this if it confuses you, as the distinction is important. Another alternative for larger jobs is to join with other tenants to correct shared noncompliances, such as a roof covering more than one dwelling unit. Just make sure the total billing, when divvied up, falls within the dollar range for each household, who will then have to give separate notice to the owner, of course. Never complain about a repair/condition that you have caused. Doing so is grounds to evict you.

Give the Bastard a Legal Chance

You must tell the owner specifically what and where is the problem. If it is not obvious, explain the consequences or impact of the problem, and what must be done. Tell him the condition is a violation of A.R.S. § 33-1324, and that if he fails to remedy the breach within ten days from receiving your demand, then you will correct the condition yourself at his expense.

All communications should be by certified mail, return receipt requested. Make sure the certified number is notated on the letter. Keep a copy of all documentation. Check with the Tenants Advocates how all of this is to be done. Better yet, have ATA help you draft the correspondence.

If you never got back your return receipt, or if the letter was refused or unclaimed, then the clock starts ticking five days after you sent it out. Never open a certified letter sent by you to a owner that is returned unopened. Also, keep your original certified receipt from when you sent out the letter.

The Owner's Response, if Any

Avoid speaking with the owner, or any agents of the owner. Doing so provides an opening for him to later lie, claiming that certain things were stated that could potentially harm you (e.g. you supposedly agreed that the work was no longer of concern to you, or that you refused entry to do a repair). If the owner approaches you, only suggest that he read your letter and that if he has anything to say to you, then it should likewise be put in writing. If the owner claims that certain items needed for repairs are either unavailable or on order, these are just unacceptable excuses. **DO NOT AGREE TO ANY DELAYS OR CHANGES IN YOUR WRITTEN DEMANDS. SIGN NOTHING.** Ignore this advice at your peril. You have been warned.

If the owner wants to come in to do repairs, allow him to do them so long as he has given you the required two days' notice per A.R.S. § 33-1343. However, in order to prevent you from proceeding under the self-help clause it must be within the ten day period. You, or someone representing your interests (e.g. friend, roommate, relative), ought to be present whenever anybody enters your dwelling.

If the owner enters without notice, call the police immediately and have him removed. Contact ATA.

If the owner does the repairs, but inadequately or incompletely, make a record of it by photographs, videotaping, witnesses, etc. Makeshift, shoddy or partial work is unacceptable, and you may proceed to do the job the right way.

Preliminary Steps and Cautions

Document the existing substandard conditions about which you complained, and especially that you plan to repair. Be sure to make a record of the specific items right before the contractor works on them. This is so you can refute any subsequent claims that the work was unnecessary or unwarranted. At the very least take dated photographs or videotape, but witnesses are useful, too.

All self-help repairs must be performed in their entirety by licensed contractors. **DO NOT ATTEMPT TO DO THE REPAIRS YOURSELF.** Also, forget about using a handyman, unless he is licensed with the Registrar of Contractors. That he may hold some other type of license is irrelevant. ATA has relationships with capable contractors who are familiar with our routine, whom we suggest you use.

Repairs must be conducted within a reasonable time from your notice, and the sooner the better. At the outside, repairs ought to be completed within a month or two after the owner received your demand notice. Otherwise, you will have to re-notice the owner.

Repairs must be completed and paid for prior to the month you intend to deduct. For example, if notice is received by the owner in March and you do the work in March, then the deduction could be from the April rent. Or, if you waited until April to do the work, then the deduction could be from the May rent. Meanwhile, interim rents must be paid in full.

It is irrelevant whether or not these points are explicitly delineated in the statutes. Rather, this advice is based on the fact that a tenant must always strictly adhere to the most rigid and conservative interpretation, because the courts are so biased in favor of owners. Remember this.

Do not bring a contractor over only to present you with an estimate or bid. That's unfair, because these guys are doing you a favor just by being willing to do such small jobs. Believe me, it has taken ATA a long time just to find reliable contractors that can do this work. The purpose is to get the work done for a reasonable cost, not to get the best deal for the owner. If the owner wanted the job done on his payment terms, he should have done them in the first place. You owe the owner no favors. You ought to plan on making the maximum number of repairs within the applicable financial constraints (i.e., \$299.99 or ½ the rent).

Repair Procedures

As stated above, prioritize the work done according to how a judge would look at it. Focus on the most offensive breaches, such as those that create unsanitary or unsafe conditions. (Of course, for severe conditions you may decide to pursue other remedies, such as moving out.)

Bring the contractor in as quickly as possible following the expiration of the ten day period. The longer you wait, the more opportunity for the owner to fabricate additional things detrimental to your situation. Start counting ten days from when the owner received, or is by law deemed to have received, your notice -- not from when it was sent. You are personally responsible for paying the contractor for the work. You must pay as soon as the work is completed, or according to whatever arrangements you and the contractor reach. Remember, it's unimportant that you secure the lowest price, because whatever reasonable charges you pay, up to the applicable limit, are deductible from your next rental payment.

Make sure that you receive a receipt, invoice or statement for all payments you tendered to the contractor, specifying the exact jobs performed, and that it is marked "Paid in Full." It is imperative that you always keep this receipt. Also, when a contractor has completed his work you must obtain a "Waiver of Lien" from him/her. Before the work is completed contact ATA so we can provide you with the appropriate form and guidance in filling it out correctly. As with receipts, keep any completed "Waiver of Lien" forms.

Should the owner show up while the contractor is doing the work and attempt to prevent the contractor from completing the job, call the police and ATA. Absent the owner having given you lawful notice of his intent to access your dwelling, you can have him removed. In any case, an owner may not interfere with work already underway following the ten day period.

Rent Payment and Deductions

It is strongly suggested that you come back to ATA to prepare the paperwork for paying the rent with the applicable deductions. Bring with you the completed Waiver of Lien form as well as the receipt indicating, in detail, the work that was performed. A photocopy of each of these items will be forwarded to the owner, along with the reduced rent. Keep the originals hidden away safely (owners have been known to enter dwellings and steal essential records).

It is best to perform the job well before the end of the month, to allow for time to prepare and mail the paperwork and rental payment. If, for some reason, you must extend beyond the forthcoming periodic rental date, be prepared to tender late fees to the day the letter containing your rental payment and documentation should reasonably be expected to be received by the owner. Be careful not to go beyond the period of any five day notice from the owner demanding rent payment, as you will then face eviction. If time is of the essence, you may wish to transmit the paperwork and rent by process server, rather than certified mail. The reason is that it is quicker and more reliable; a owner cannot refuse delivery by process server, but may play games with delivery of the mail. If you are up against a deadline, the cost of delivery by process server is well worth it.

It is strongly recommended you tender your rental payment by personal check. Use your own or one of someone you trust. If there is time, open up a bank account. Even though there may be a

monthly surcharge, you should arrange that the bank sends back to you the actual checks that have been negotiated and cleared. You want them in your hand as evidence.

Write on the check memo line exactly what it is for. Commonly, the language would be similar to, "6/99 rent less lawful deductions only."

Subsequent Steps

Once you have done any work and deductions pursuant to your notice you may only do another job by starting the process all over again with a new notice. (This is the conservative approach.)

If the owner refuses the rent or sends it back, contact ATA immediately. Odds are, the jerk has claimed it is a partial payment, which is untrue, of course. You will have to go through the motions to resubmit it along with an explanation as to why it is the full amount lawfully due. Brace yourself for a lawsuit to evict.

Should it proceed to litigation, you ought to counterclaim on the basis the eviction is retaliatory. Pursuant to A.R.S. §§ 33-1367 and 33-1381 you may recover damages of twice the periodic rent, or twice your actual damages, whichever amount is greater. Of course, you will also seek to recover your court costs and attorney's fees. If you have followed all of these steps in this article, you will likely prevail if you use a competent attorney, although it may be only upon appeal.

A Few Final Comments

Unfortunately, the dollar cost for justice is very high and effectively punitive. This is the price we pay for living in a repressive state run by the big money interests.

It is wrong that tenants must suffer, and then pay again to end the suffering. But what are the options? Continue to be a passive victim while allowing your owner to persist in abusive behavior towards you and others?

We owe it to ourselves and society to challenge this egregious conduct. That is why ATA is around. If enough tenants demand that their cases be heard in the courts, then the courts will be forced to listen to what we say. Sooner or later, the system will have to accommodate, and laws will adapt.

With your stepping up to the plate, it will be much sooner.