



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Repair and Deduct	Number 03-18AM
Originating Department Housing and Community Affairs	Effective Date July 24, 2018

Department of Housing and Community Affairs

Montgomery County Regulation on:

REPAIR AND DEDUCT

Issued By: County Executive
Regulation Number: 03-18AM

Authority: Montgomery County Code, 2014, Chapter 29, Section 29-22(f)(1)

Supersedes: N/A

Council Review: Method Two (2) under Code Section 2A-15

Register 35 Volume 3

Comment Deadline: March 31, 2018

Effective Date: July 24, 2018

Sunset Date: None

SUMMARY:

This regulation sets forth additional guidance and procedures related to implementing the repair and deduct remedy available to tenants of rental housing under Chapter 29, Section 29-22(f)(1), in cases where the landlord fails to correct a violation identified under Chapter 26 of the Montgomery County Code, 2014.

ADDRESSES:

Information and copies of this regulation are available from the Department of Housing and Community Affairs (DHCA), 1401 Rockville Pike, Fourth Floor, Rockville, MD 20852.

STAFF CONTACT:

Christopher J. Anderson, Chief, Community Development Division, DHCA, Telephone Number 240-777-3713



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CHAPTER 29. LANDLORD-TENANT RELATIONS – REGULATIONS

Insert the following in its entirety before COMCOR SEC. 29-30 OBLIGATIONS OF LANDLORDS — REGULATIONS

SEC. 29-22 INSPECTION OF RENTAL HOUSING — REGULATIONS

COMCOR 29.22.01 Repair and Deduct

29.22.01.01 Purpose

Landlords have the legal responsibility and obligation to correct violations of Chapter 26 of the County Code in an expeditious manner in order to provide decent, safe and sanitary housing for the use and enjoyment of their tenants. In cases where the Department has determined that the landlord has failed to meet this responsibility and obligation, Montgomery County has adopted a remedy available to tenants to correct a violation and deduct the reasonable cost of the repair, up to one month's rent, from the tenant's rent. This remedy is in addition to any other remedies available under State and County law, and may be used to correct any type of violation subject to the following regulations.

29.22.01.02 Definitions

Unless defined below, all terms herein have the same meaning as in Chapters 26 and 29 of the County Code.

- (a) *Life and Safety Violation* is any violation listed in Section 29-22(b) of the County Code, *Inspection of Rental Housing*, any violation with a high severity rating as required in Section 29-22(c) as criteria for a troubled property, and any violation that creates an unfit dwelling or severe condition as defined in Chapter 26, *Housing and Building Maintenance Standards*.
- (b) *Reasonable and Specified Time to Correct* means that legally required period of time under Chapters 26 and 29 of the County Code after a landlord is issued a notice of violation during which the landlord has the responsibility, obligation, and opportunity to correct the violation.
- (c) *Repair and Deduct Provision* means the remedy available to tenants as provided for and described in Chapter 29, Section 22(f)(1) of the County Code.

29.22.01.03 Reasonable and Specified Time to Correct



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- (a) For life and safety violations, the landlord shall be given 24 to 48 hours from the time the notice of violation is issued to correct the violation, with the specific time frame being determined by the nature of the violation.
- (b) For violations that do not threaten the immediate life and safety of the tenant, the landlord shall generally be given between 15 and 30 days from the time the notice of violation is issued to correct the violation, with the specific time frame being determined by the nature of the violation.
- (c) In cases where the Department finds any violation for which it has previously issued citations on two or more occasions within the preceding twelve-month period, the Department shall give the landlord no more than 48 hours to correct the violation.

29.22.01.04 Authorization to Use the Repair and Deduct Provision

- (a) The use of the Repair and Deduct Provision may only be initiated following an inspection by the Department and the issuing of a notice of violation to the landlord.
- (b) The Department shall provide written notification to the landlord of the availability and scope of the Repair and Deduct Provision at the time a notice of violation is issued.
- (c) If, upon expiration of the Reasonable and Specified Time Period to Correct contained in the notice of violation, the Department finds that the violation has not been corrected as required under the Department's order, the Director may authorize the tenant to use the Repair and Deduct Provision.
- (d) A tenant may use the Repair and Deduct Provision only after receiving written authorization from the Director, along with a copy of this executive regulation. The authorization must specify the exact violation or violations for which the authority is being granted to the tenant. The Department must provide a copy of said authorization, along with a copy of this executive regulation, to the landlord via hand delivery and/or the use of certified mail, return receipt requested.
- (e) In determining whether or not to authorize a tenant to use the Repair and Deduct Provision, the Director shall consider the following factors:
 - (1) Whether or not the complaining party is the tenant under the lease;
 - (2) Whether or not the tenant has granted the landlord and/or the landlord's contractors the necessary entry to correct the violation, as required under the lease, provided that the landlord issued the notice of entry to the tenant required under the lease;



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- (3) Whether or not the violation was deliberately caused by the tenant in order to initiate or claim rights under the Repair and Deduct Provision, or to claim other rights under Chapters 26 or 29 of the County Code;
- (4) Whether or not the correction made by a landlord meets the standard required by law as determined by the Department, regardless of whether or not a tenant believes the corrective action is satisfactory or sufficient;
- (5) Which party is responsible for correcting the violation, under the lease; and/or
- (6) Whether or not the tenant is current in the payment of rent to the landlord.
- (f) If a dispute exists as to the presence of one or more of the above circumstances, the Director shall refer the complaint to the Office of Landlord Tenant Affairs, or to the Commission, for investigation and further action. Such action may include a recommendation to the Director to authorize a tenant to use the Repair and Deduct Provision.
- (g) The Repair and Deduct Provision shall not be authorized for items that are solely cosmetic or aesthetic, such as a new paint color, new cabinets, or new carpeting, unless repairs to or replacement of these items is attendant to and required to correct a violation.
- (h) The Repair and Deduct Provision shall not be authorized for the replacement of heating and/or cooling systems or appliances unless such replacement is required to correct a violation and there are no other reasonable corrective actions available.
- (i) The Repair and Deduct Provision shall not be authorized for the purpose of making major capital improvements to the dwelling unit or property unless such improvement is required to correct a violation and there are no other reasonable corrective actions available.
- (j) The Repair and Deduct Provision may not be used to withhold rent to pay for the cost of repairs for which the landlord would have been able to charge the tenant, such as the repair of a violation or other damage that was intentionally caused by the tenant or damage that is due to the tenant's negligence.
- (k) The Repair and Deduct Provision shall not supplant the existing and mutually agreed upon terms of the tenant's lease.
- (l) The use of the Repair and Deduct Provision does not prohibit the Department from issuing a citation to the landlord for failure to correct a violation under Chapter 26 of the County Code, or for taking other remedial actions such as revoking the landlord's rental license under Section 29-22(f)(2) of the County Code.



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29.22.01.05 Selection of a Licensed Contractor

- (a) In selecting a contractor, the tenant may choose a general home improvement contractor with the ability to make a wide range of repairs, including repairs to the existing violation experienced by the tenant, or a contractor that specializes in repairs to the existing type of violation.
- (b) The tenant must select a contractor licensed to do business in the State of Maryland (including a Maryland Home Improvement License and any other license specific to the contractor's specialty) to perform any corrective action under the Repair and Deduct Provision. The Maryland Home Improvement Commission (MHIC) within the Maryland Department of Labor, Licensing and Regulation (DLLR), maintains an internet website with information for consumers on home improvement contractors, including a resource to verify whether or not a general contractor or specialized contractor (e.g. electrician, plumber, HVAC) is licensed in the State. The MHIC website is: <https://www.dllr.state.md.us/license/mhic/>
- (c) The Better Business Bureau of Greater Maryland (<https://www.bbb.org/greater-maryland/accredited-business-directory>) provides to the public list of contractors accredited by that organization.
- (d) The tenant shall attempt to solicit the lowest responsible and responsive bid to correct the violation.
- (e) The tenant may only deduct the cost of the repair of the specific violation designated in the Director's letter, up to one month's rent. The tenant may not deduct the cost of any other repairs or work performed by the contractor.
- (f) The tenant or the tenant's contractor is responsible for securing any necessary permits, paying any fees, and arranging any inspections by the appropriate permitting officials, which are separate from any inspections performed by the Department.
- (g) The tenant must request and maintain documentation to be provided to the landlord and the Department upon request. Information to be documented includes:
 - (1) A copy of the Director's letter of authorization permitting the tenant to proceed with contracting for the specific repair at issue;
 - (2) Information on the number and cost estimates of the bids received, if applicable;
 - (3) Contact and business license information for the contractor selected, and the amount of payment to the contractor for the work performed, including associated costs such as cost of materials, labor, permitting or inspection fees, etc.;
 - (4) A description of the specific repair that was made; and,



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(5) Copies or information on any warranties from the contractor on the work performed.

29.22.01.06 Final Inspection and Authorization for Rent Deduction

- (a) Upon completion of the repair, the tenant must contact the Department to conduct an inspection to verify whether or not the violation has been corrected in a workmanlike manner. Once the Department finds that the violation has been sufficiently corrected, the tenant shall provide the documentation listed in Section 29.22.01.05, and a copy of the tenant's current lease showing the tenant's rent, to the Department for review.
- (b) Within 14 days of the Department's inspection, and upon the Director's determination of the completeness and sufficiency of the tenant's documentation, the Department shall provide the tenant with written authorization to withhold the cost of the repair from the tenant's monthly rent, subject to the terms of Chapter 29, a copy of which shall be forwarded to the landlord.
- (c) In reviewing the cost of the repair, the Department shall not make any determination as to the reasonableness of the costs claimed besides the determination that the cost does not exceed the amount of one month of the tenant's rent.
- (d) In cases where the landlord had abrogated his or her responsibility under the County Code, thereby requiring the tenant to use the Repair and Deduct provision, the Department shall not dismiss the aforementioned notice of violation issued to the landlord, and shall proceed through the established legal process for code enforcement.

29.22.01.07 Dispute Resolution and the Department's Liability

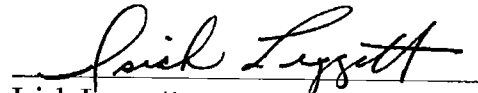
- (a) Disputes related to the use of the Repair and Deduct Provision are between the tenant and landlord. The Director shall refer any disputes related to the exercise of this remedy, including but not limited to the reasonableness of the repair cost or the quality of the workmanship, to the Office of Landlord Tenant Affairs, or to the Commission, for further investigation and action.
- (b) The Department shall not be a party to any contract for work performed, nor is it responsible to provide funds for the performance of a corrective action.
- (c) The Department is not liable for the quality of materials provided or the work performed, or for any damage or additional violations that may occur attendant to, or resulting from, the corrective action.



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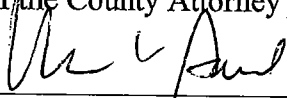
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Isiah Leggett
County Executive

Date: 07/17/18

Approved as to Form and Legality
Office of the County Attorney

By: 

Date: 7-16-18