

## Lead Legal Strategies Partnership Technical Assistance Tool

### Opportunities to Strengthen Local Lead-Related Policies: Rent Escrow

*In an ongoing effort to effect change at a systems level and improve outcomes today and for generations to come, the [National Center for Healthy Housing \(NCHH\)](#), [ChangeLab Solutions](#), and [Earthjustice](#) joined forces in 2019 to establish the Lead Legal Strategies Partnership. With funding from [The New York Community Trust](#), the Lead Legal Strategies Partnership mobilizes effective existing resources, data, model policies, and best practices to equip communities with the tools needed to actuate that change.*

*This series of informal technical assistance tools was developed in reaction to direct coaching requests and ongoing conversations between the [Lead Legal Strategies Partnership](#) and the [Equipping Communities for Action](#) cohort. You'll find the opportunities and real-world examples presented below useful as you work to improve local policies in your area. This concrete, direct glimpse at how other localities have structured policies and processes, combined with a discussion of points to consider as you plan, can guide your first steps as you determine the approach most suitable for your community.*

## Introduction

There are numerous ways local policies can be used as a lever to motivate and implement positive change, and every community's technical assistance needs, ground-level realities, and potential solutions will be unique. However, as a starting point, it can be useful to compare and contrast a range of available actions. Building an awareness of what other communities are implementing, both successfully and unsuccessfully, can help you better design and advocate for policies to advance your goals.

## What Is Rent Escrow?

*Rent escrow* is part of a rent withholding mechanism utilized to enforce the implied warranty of habitability, which requires landlords to keep their property "habitable." While this warranty exists in most jurisdictions, the exact scope of the warranty differs depending on state and local law. Each state has its own rules on what conditions a rental unit must be in to be deemed habitable and what corresponding remedies or actions tenants may take in case the

landlord fails to comply with this warranty. To be effective, the warranty of habitability is usually coupled with rules prohibiting landlords from retaliating against tenants who report housing code violations.

Forty-one states have established some form of rent withholding mechanisms by statute or court decision, and 36 states have established some form of right to repair and deduct by statute or court decision. For additional detail, visit <https://www.nolo.com/legal-encyclopedia/state-laws-on-rent-withholding-and-repair-and-deduct-remedies.html>.

## How Does Rent Escrow Work?

The term *rent withholding* is actually somewhat misleading: Most states and cities do not excuse tenants from the requirement of paying rent installments until their landlord fixes the problem. Generally speaking, in order for a tenant to withhold rent:

1. The housing habitability problem must be serious,

2. The tenant must be paid up in rent and in compliance with all lease terms, and
3. The tenant must follow specific procedural requirements (which often include providing notice to the landlord and sometimes petitioning a court for permission to withhold rent) spelled out in the statute.

Additionally, rather than just withholding rent, tenants are often required to deposit the withheld rent with a court, a neutral third party, or an **escrow account** set up by a local court or housing agency until the repairs are accomplished, thus the term *rent escrow*.

If the rent money is being held by a court or housing authority, landlords can sometimes ask for release of some of the withheld rent to pay for repairs. While repairs are being made, tenants may sometimes

continue to pay the entire rent to the court or housing authority or may be directed to pay some rent to the landlord and the balance to the court or housing authority. When the dwelling is certified as fit by the local housing authorities or the court, any money in the account is returned to the landlord, minus court costs, inspection fees, and any penalties assessed by the city.

However, failure by tenants to follow local or state rent withholding procedures may result in eviction or other legal consequences. For example, while New York law<sup>i</sup> recognizes a tenant's right to withhold rent, tenants must first notify their landlord of the problem with their rental unit and provide the landlord a "reasonable" amount of time to make the requested repairs.<sup>ii</sup> While the "Spiegel Law" in New York provides a complete defense to an eviction case brought for nonpayment of rent, it only does so for tenants receiving public assistance from the Department of Social Services (DSS) and then only if the tenant follows necessary procedure and is able to prove that housing conditions dangerous to life, health, and safety exist in their apartment or building. To prove this defense in court, tenants must demonstrate (1) that they receive public assistance that helps pay for their housing, (2) that they live in a building with one or more housing code violations that are hazardous to life or health, (3) that the Department of Housing Preservation and Development (DHPD) notified DSS about the hazardous conditions in the building, and (4) that DSS (not the tenant) stopped payments of rent to the landlord or owner because the DHPD told them about the hazardous housing code violations.

In states that have not established an escrow scheme, tenants' rights to withhold the rent are much weaker. While some states permit tenants to make necessary repairs themselves and deduct the cost of doing so from rent, most states only permit tenants to raise the violation of the implied habitability during an eviction proceeding as a reason for their nonpayment of rent, and they are rarely successful when doing so.

## WHAT IS THE "IMPLIED WARRANTY OF HABITABILITY"?

Most jurisdictions have an enforceable implied warranty of habitability that requires landlords to keep their property "habitable," however, the exact scope of the warranty differs depending on state and local law. Features typically covered by the warranty and assumed to be present in "habitable" housing include the following:

- Safe and sanitary plumbing,
- Sanitary premises,
- Doors and egress windows that open and close properly and have working locks,
- Electrical service to the dwelling and all living spaces within,
- Adequate heat and ventilation,
- Functional smoke detectors and carbon monoxide alarms, and
- General compliance to building codes.

## How Local Rent Escrow Ordinances Work

Many localities (e.g., **Los Angeles**, **Ann Arbor**, **Detroit**, **Baltimore**) have supplemented state housing protections and passed their own rent escrow ordinances, allowing tenants to withhold

<sup>i</sup>100 W 174 LLC v. Haskins, 2014 NY Slip Op 51673(U).

<sup>ii</sup>Solow v. Wellner, 154 Misc.2d 737 (N.Y. App. Div. 1st Dep't 1992).

*If you're looking for flexible coaching and support related to local policy opportunities, NCHH may be able help!*

Contact us at for additional detail:

**askanexpert@nchh.org**

rent for violations of local housing codes, which are generally more protective than state guarantees. Some of these programs, such as Los Angeles' Rental Escrow Account Program (REAP) and Ann Arbor's Uninhabitable Postings, help relieve some of the burden on tenants in accessing rent escrow by automatically enrolling or listing properties found to violate local housing code (either in a previous inspection or after complaint) in the rent escrow programs and creating city- or court-run escrow accounts for renters to pay into (thus removing the need to petition a court).

There are a couple of particularly interesting aspects of Los Angeles' Rental Escrow Account Program. First, when a property is placed into REAP, the city records a *Notice of REAP* as a lien on the property, which may restrict refinancing or sale of the property. Second, in addition to allowing tenants to pay into a rent escrow account, REAP also reduces tenants' rent obligations (typically by 10% or 50%, depending on the severity of the housing code violations found). Once the funds are deposited into the escrow account, the landlord can only access the money via an application process to ensure that the landlord is using the funds for an acceptable reason. In order to remove a property from REAP, landlords must apply to the City of Los Angeles Housing Department (LAHD) to access the money for repairs, make all necessary repairs identified by any city enforcement agencies, and pass a reinspection, after which LAHD makes a recommendation to the Los Angeles City Council to release the property from REAP. LAHD only allows landlords to use escrow funds for specific reasons, including the following:

- Expenses sustained by renters due to uninhabitable conditions,
- Voluntary relocation expenses,
- Performing repairs,

- Court judgments,
- Paying for utilities, or
- Other essential services.

LAHD prohibits landlords from using requested funds to pay for property taxes, mortgage payments, or repairs on other properties. In addition, LAHD deducts a nonrefundable administrative fee of \$50 for each individual rent payment made to LAHD per month, per unit. If the escrow account balance exceeds the amount owed in fees after a property has been removed from REAP, LAHD refunds the owner of record at the time that the city council authorizes the property's removal from REAP; otherwise, a bill is issued for the balance of fees.

By pairing these programs with periodic rental inspections, cities further incentivize landlord compliance, help maintain existing affordable housing stock, and enhance tenant protections. For more information, see Los Angeles' Rent Escrow Account Program [Los Angeles Housing Code Article 2, Sec. 162], effective April 16, 2001).

## Considerations

As you determine the best approach for your community, it's important to consider the following:

- Does your locality have the authority to create a local rent escrow program?
- How will you administer the rent escrow program, via the court system or through a city-run rent escrow account?
- How will you educate landlords and tenants about their rights and responsibilities and about what tenants must do before withholding rent?
- Do you have other community supports in place to assist both tenants and landlords throughout the process (e.g., low- or no-interest loan programs to help struggling landlords finance more expensive repairs or relocation services for tenants living in unsafe conditions)?
- What fees will be charged to landlords who interact with the rent escrow program? Will those fees go to a general fund or be dedicated to offsetting the rent escrow and other associated program costs?
- Can the landlord access the rent held in escrow? If so, what expenses are and are not allowable?

- Does your locality have the infrastructure in place to track rental properties (e.g., a rental registry) and administer such a program? Many rent escrow programs leverage existing inspections, rental assistance, and weatherization programs to incentivize landlord compliance. City-run rent escrow programs generally also require support from municipal finance departments to create escrow accounts and administer deposits into and distributions from such accounts.
- What habitability standard will you set for the program?

*For additional resources and technical assistance tools related to other valuable local policy change opportunities, visit...*

**<https://bit.ly/LLSPtoolbox>**

*We gratefully acknowledge ChangeLab Solutions for participating in the development of this technical assistance tool:*



**ChangeLab Solutions**



### Technical Assistance Tool

Opportunities to Strengthen Local Lead-Related Policies: Rent Escrow

*This technical assistance tool is part of a Local Policy Tool Box, available at <https://nchh.org/tools-and-data/technical-assistance/lead-legal-strategies-partnership/local-policy-tool-box/>.*

*These technical assistance resources and the projects they reference have been supported with funding from multiple funders, including The Kresge Foundation, Robert Wood Johnson Foundation, The New York Community Trust, American Public Health Association, Centers for Disease Control and Prevention's (CDC) National Center for Environmental Health, the Michigan Department of Health and Human Services. The contents of these materials are solely the responsibility of the authors and do not necessarily represent the official views of any funding partner or Lead Legal Strategies Partnership member. No official endorsement should be inferred.*