landlord failed to fix problems, can I withhold rent?

Description

Expats living in China very often get frustrated with their Chinese landlords. A tipical situation is where the landlord fail to fix problems of the apartment/house, for example, air-conditioning breaking down, no hot water etc..

I got a help call this morning from a foreigner living in Shanghai, accusing his landlord of failing to fix some problems in the apartment, including door to the kichen cabinet not moving, clothes dryer not working, hot water often failing to come through to bathroom. According to him, some of the problems have been there for long even though he had duly notified the landlord. He wanted to take some action to counter-fight the landlord's breach of his normal obligation to repair things in his house. The only thing he got in hand is the landlord's rent, so his question is whether I can withhold his rent till the day he fixed all the problems.

This is rather a common question that popped up in a tenant's mind when confronted by such a bad landlord.

Shanghai Landing Law Offices

The answer in most cases is NO, unless the items that need repair have rendered the tenant's enjoyment impossible.

Under China Contract Law, breaches of contract are classified into basically two categories: fundamental breach, and non-fundamental breach. Fundamental breach of contract refers to breach that renders the purpose of the contract frustrated or unable to attained on the part of the non-breaching party. Fundamental breach gives the other party the power to terminate the contract and claim damages suffered from such breach. Other than fundamental breaches, the other non-breaching party shall not overreact to resort to counter-measures that in turn may constitute a fundamental breach. This is the balance required by equity.

In the landlord-tenant relationship, so long as the landlord provides a tenantable apartment to the tenant, generally speaking, the tenant shall pay the rent. Though the landlord has the obligation to fix any problem of the equipments and appliances in the apartment, failure to fix such problems does not constitute a fundamental breach so long as the apartment is still livable. In such a case, the tenant shall not withhold all rents. Unless expressly stipulated in the leasing contract, refusing to pay any rent by the tenant will make the tenant in more serious breach of contract than the landlord's falure to repair appliances.

China Contract Law does afford the tenant the right to decrease the rent or extend leasing term if the repair of the apartment affects the use or enjoyment by the tenant. Though the law does not clearly grant the same right to tenant in the case of landlord failing to repair, I believe that the tenant in such cases can also have the right to decrease rent or extend leasing term as compensation. However, as the law does not set forth standards for such decreasing and extension, nor is it possible, in practice such actions taken by tenants are very likely to anger the landlord and to make relationship sore.

Date Created
February 2012

Author
admin

Shanghai Landing Law Offices